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The Oslo Accords: A Modern-Day Story of Occupation Told Through Violations of the Right to Freedom of Privacy

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The Oslo Accords: A Modern-Day Story of Occupation Told Through Violations of the Right to Freedom of Privacy

CATHERINE DEMETROVICH*

The Israeli-Palestinian conflict began in the early 1900s when the disputed land, what is now the West Bank and the Gaza Strip, fell under British rule. After the Six-Day War in 1967, Israel took control of the West Bank, Golan Heights, and the Gaza Strip. Since then, tensions between Israel and Palestine have continued to grow. This Note explores a modern-day occupation question: Israel's control over Palestine's information and communication technology (ICT) sector. Along with privacy and human rights violations, Israel's control is in direct violation of the Oslo Accords—guaranteeing Palestinians limited self-governance in Gaza and the West Bank. Since the current legislative structure and international efforts do not provide adequate support, this Note suggests several recommendations to promote Palestine's ICT sector: clarified legislation, support from international actors, increased social media presence, and steps to take at the local level.

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INTRODUCTION.....	308
I. THE ISRAELI-PALESTINIAN CONFLICT AND ICT SECTOR DEFINED.....	309
A. THE HISTORY OF THE ISRAELI-PALESTINIAN CONFLICT.....	309
B. THE INFORMATION AND COMMUNICATIONS TECHNOLOGY SECTOR.....	310
II. A BALANCING ACT: DIFFERENT COURTS' JUDGMENTS REGARDING THE SEPARATION BARRIER.....	311
A. PALESTINIAN HARMS.....	311
B. ISRAELI MOTIVES.....	312
C. THE CLASH OF TWO COURTS.....	313
III. A CASE STUDY: ISRAEL'S TREATMENT OF PALESTINE IN RELATION TO THE OSLO ACCORDS.....	315
A. THE DEVELOPMENT OF THE OSLO ACCORDS.....	315
B. ANALYSIS OF ARTICLE 36 GOVERNING THE ICT SECTOR.....	316
C. ISRAEL'S INTERPRETATION OF ARTICLE 36(D)(1).....	322
D. THE FINANCIAL IMPACT OF PALESTINE'S LACK OF DEVELOPMENT PROGRESS.....	323
1. ISRAEL'S RELIANCE ON CIVIL AND MILITARY LAW TO DISCRIMINATE AGAINST PALESTINIANS.....	324
2. SURVEILLANCE CONCERNS.....	325
3. DATA COLLECTION CONCERNS.....	326
4. THE IMPACT OF INTERNATIONAL SOCIAL MEDIA COMPANIES.....	327
a. INSTAGRAM.....	328
b. FACEBOOK.....	328
c. OTHER DISCRIMINATION WITHIN MEDIA SOURCES.....	328
IV. RECOMMENDATIONS TO POSITIVELY REINFORCE PALESTINE'S FUTURE DEVELOPMENT IN THE ICT SECTOR.....	329
A. LEGISLATIVE APPROACH.....	329
B. INTERNATIONAL SUPPORT.....	330
C. TRENDING HASHTAGS.....	331
D. STEPS AT THE LOCAL LEVEL.....	331
CONCLUSION.....	332

INTRODUCTION

International legal frameworks, such as the Hague Conventions and the Fourth Geneva Convention, exist to govern situations of occupation.¹ However, these legislations were written at a time before data privacy became a source of conflict. Article 12 of the Universal Declaration of Human Rights and Article 17 of the International Covenant on Civil and Political Rights (ICCPR) identify the existence of a right to privacy.² Specifically, Article 17 states that “no one shall be subjected to arbitrary or unlawful interferences with their privacy.”³ Technology continues to

1. See generally AEYAL GROSS, *THE WRITING ON THE WALL: RETHINKING THE INTERNATIONAL LAW OF OCCUPATION* (2017).

2. Asaf Lubin, *The Rights to Privacy and Data Protection Under International Humanitarian Law and Human Rights Law*, in *RESEARCH HANDBOOK ON HUMAN RIGHTS AND HUMANITARIAN LAW* 462, 467 (Robert Kolb, Gloria Gaggioli & Pavle Kilibarda eds., 2022).

3. G.A. Res. 2200A (XXI), at 17, International Covenant on Civil and Political Rights,

progress, and occupations, such as Israel's occupation of Palestine, so frequently change course that the current legislative framework struggles to stay relevant. It has been previously stated that "[t]he story of occupation . . . can be told through the story of the restrictions on freedom of movement."⁴ The law of occupation should also consider technological shifts.⁵ The story of occupation should, therefore, factor in technology and be told through the story of the freedom of privacy, or lack thereof.

This Note focuses on one aspect of the development of the Israeli-Palestinian conflict: the information and communication technology (ICT) sector. Part I of this Note provides the necessary background to understand the Israeli-Palestinian conflict and the ICT sector. Part II highlights an example of traditional occupation law, the construction of the separation barrier, and how the International Court of Justice (ICJ) and the Israeli High Court of Justice (HCJ) created an opportunity for discourse through their differing decisions. Using the Oslo Accords, Part III highlights a controversy within the ICT sector, exemplifying a prevalent conflict under occupation law. Part IV concludes by providing different recommendations and factors to consider when analyzing future violations in this area of occupation law.

I. THE ISRAELI-PALESTINIAN CONFLICT AND ICT SECTOR DEFINED

A. *The History of the Israeli-Palestinian Conflict*

The current conflict has been previously described in three ways: the Israeli-Palestinian conflict, the Israeli-Arab conflict, and the Jewish-Islamic conflict.⁶ However, the Israeli-Palestinian conflict reflects a more recent dispute about land ownership.⁷ The Israeli-Palestinian conflict refers to the dispute between two peoples of different nationalities, while the Israeli-Arab description encompasses the conflict between Israelis and all Arabs.⁸ Lastly, the Jewish-Islamic conflict refers to the dispute between two religions, specifically regarding the Muslim religion's disapproval of a Jewish state.⁹ Muslims, Jews, and Christians all shared this disputed land under the Ottoman Empire; however, when it fell in 1918 after the end of World War I, the land came under British rule.

Britain began instigating disputes between Palestinians and Zionists by making conflicting agreements.¹⁰ Overall, the modern state of Israel was developed to correlate with the main Zionist goal: "to establish a modern, independent state for

(Dec. 16, 1966).

4. GROSS, *supra* note 1, at 258.

5. *Id.* at 129.

6. Pinhas Inbari, *On the Roots of the Israeli-Palestinian Conflict*, 28 JEWISH POL. STUD. REV. 66, 66 (2017).

7. Kandace Redd, *The Complex History of the Israel-Palestine Conflict*, ABC10 (July 12, 2021, 5:54 PM), <https://www.abc10.com/article/news/community/race-and-culture/need-to-know-the-israel-and-palestine-conflict/103-79ca68a9-31c4-4adb-9b74-99e26b16cebf> [<https://perma.cc/54D5-JAYB>].

8. Inbari, *supra* note 6.

9. *Id.*

10. Redd, *supra* note 7.

the Jews in the land of their forefathers.”¹¹ In 1919, the Zionists’ motive was to establish a Jewish state for the fifteen million Jews across the world.¹² This motive corresponds directly with the Jewish ideology that calls for “a return to the land,” which further explains their disapproval of a Palestinian state.¹³ Accordingly, the Israeli-Palestinian conflict has a long, complex history.

In all but six months of Palestine’s history, Israel has maintained some portion of military control over this territory.¹⁴ More specifically, since 1967 Israel has controlled the West Bank and Gaza Strip.¹⁵ The conflict between Israel and Palestine began after World War I when both the West Bank and the Gaza Strip became part of British-mandated Palestine. However, the Jews fleeing Nazi Europe after World War II demanded a homeland in Palestine, which was dominated by Arabs. In 1947, the British mandate ended, and the land was partitioned as follows: fifty-three percent to Israel and forty-seven percent to Palestine.¹⁶ This officially established two states in Palestine—a Jewish State and an Arab State.¹⁷ Since the Arab countries disapproved of a Jewish-majority state in the Middle East, Jewish parliamentary groups stormed Israel by force, causing the Arab-Israeli War in 1948. Egypt, Iraq, Lebanon, Syria, and Jordan were involved in this war; however, Israel won and retained control of its land.¹⁸ By 1949, Israel controlled seventy-eight percent of what was historically Palestine. Furthermore, Israel won the Six-Day War in 1967, which gave Israel control of the West Bank, Golan Heights, and the Gaza Strip.¹⁹ The Six-Day War also led to “secured and recognized boundaries” for Israel through UN Resolution 242.²⁰

B. The Information and Communications Technology Sector

Israel’s control over Palestine has limited Palestine’s development of its information and communications technology (ICT) infrastructure. The ICT sector is defined as “[the] combination of manufacturing and service industries that capture, transmit, and display data and information electronically.”²¹ The industry has been

11. *Id.* at 75.

12. *Id.* at 75–76.

13. *Id.* at 76.

14. HUM. RTS. WATCH, A THRESHOLD CROSSED: ISRAELI AUTHORITIES AND THE CRIMES OF APARTHEID AND PERSECUTION 2 (2021).

15. Pia Krishnankutty, *What Israel-Palestine Conflict Is All About and Why Both Want West Bank & Gaza Strip*, THE PRINT (Nov. 21, 2019, 10:25 AM), <https://theprint.in/theprint-essential/what-israel-palestine-conflict-is-all-about-and-why-both-want-west-bank-gaza-strip/323825/> [<https://perma.cc/RL6K-FWBY>].

16. *Id.*

17. Gideon Biger, *The Boundaries of Israel Palestine Past, Present, and Future: A Critical Geographical View*, 13 ISR. STUD. 68, 81 (2008).

18. *Id.* at 88.

19. Jeremy Bowen, *1967 War: Six Days That Changed the Middle East*, BBC NEWS (June 5, 2017), <https://www.bbc.com/news/world-middle-east-39960461> [<https://perma.cc/LQ59-4JV7>].

20. Biger, *supra* note 17, at 83.

21. ORG. OF ECON. COOP. AND DEV., *Annex I. The OECD Definition of the ICT Sector*, in MEASURING THE INFORMATION ECONOMY 2002 81, 81 (2002),

described as a pillar of other sectors, enabling development and prosperity in areas such as agriculture, transportation, health, and education, among others.²² Additionally, there is a positive correlation between direct investments in the ICT sector and job creation. Specifically, a new job in ICT creates three jobs in other sectors.²³ The leading subsectors of the Palestinian ICT sector are telecommunication equipment, computer hardware, software, networking equipment, and audiovisual equipment.²⁴

II. A BALANCING ACT: DIFFERENT COURTS' JUDGMENTS REGARDING THE SEPARATION BARRIER

Although Israel's impact on the Palestinian ICT sector represents one side of occupation, the construction of the separation barrier shows that the Palestinians continue to face a traditional restriction on their freedom of movement. This Part highlights the immediate harms faced by Palestinians, while also exemplifying the motives behind Israel's actions. It concludes by explaining the differing judgments by the International Court of Justice and the Israeli High Court of Justice to emphasize the logical reasoning behind both. These clashing narratives emphasize that, despite both sides' motives, the legal analysis should extend beyond the current legal framework.

A. Palestinian Harms

In June 2002, Israel erected the separation barrier around the West Bank.²⁵ The separation barrier has posed many immediate harms towards the Palestinians.²⁶ For example, the barrier damaged Palestinians' olive groves and water wells, thereby harming the agricultural and food production industries.²⁷ Additionally, the barrier has immediately cut community ties by separating neighbors from one another.²⁸ More generally, it impedes Palestinians' access to essential facilities such as work, school, and medical services.²⁹

<https://www.oecd.org/sti/ieconomy/2771153.pdf> [<https://perma.cc/M9K4-KYDH>].

22. Nur Arafah, Wassim F. Abdullah & Sam Bahour, *ICT: The Shackled Engine of Palestine's Development*, AL-SHABAKA (Nov. 9, 2015), <https://al-shabaka.org/summaries/ict-the-shackled-engine-of-palestines-development/> [<https://perma.cc/3MKK-WD58>].

23. *Id.*

24. *Information and Communication Technology (ICT)*, INT'L TRADE ADMIN. (Sept. 13, 2020), <https://www.trade.gov/knowledge-product/west-bank-information-and-communication-technology-ict> [<https://perma.cc/STH8-LFFR>].

25. *The Separation Barrier*, B'TSELEM (Nov. 11, 2017), https://www.btselem.org/separation_barrier [<https://perma.cc/NML3-TXTH>]; *see also* Max Karpefors & Micheline van Riemsdijk, 'We Are Not Free Here...' – Palestinian IT Student (Im)mobile Transition from University to Employment or Further Education, 33 J. EDUC. & WORK 19, 22 (2020).

26. *See* DAVID KRETZMER & YAËL RONEN, *THE OCCUPATION OF JUSTICE: THE SUPREME COURT OF ISRAEL AND THE OCCUPIED TERRITORIES* (Oxford Univ. Press, 2d ed. 2021).

27. *Id.* at 235.

28. *See id.*

29. *Id.*

Palestinians also face travel restrictions because of new obstacles regarding their passports and necessary permits.³⁰ The barrier prevents Palestinians from traveling from the West Bank to Israel without a permit.³¹ Resultingly, Palestinians have faced difficulties in receiving medical treatment.³² More specifically, doctors can only travel through the gates to the West Bank during opening hours, their visits must be prearranged, and there are not any arrangements for medical emergencies.³³ Palestinians have also been unable to travel for extended family members' gatherings, such as weddings or funerals.³⁴ Along with the separation barrier, they also face obstacles such as "[f]ixed and flying checkpoints, earth mounds, trenches, road gates, [and] roadblocks."³⁵

In order to travel, Palestinians must hold the "right" identification card.³⁶ Palestinians living in the West Bank or Gaza Strip have green identification cards, and Palestinians living in East Jerusalem and Israel have blue identification cards. The green ID provides Palestinians access to travel to only thirty-seven countries, which makes it "one of the most restricted passports globally."³⁷ Additionally, the West Bank does not have an airport or seaport, so Palestinians must attempt to travel to Jordan or apply for an Israeli permit to reach the airport.³⁸ However, Israel, without any specific reason, has withdrawn permits and/or denied travel.³⁹

B. Israeli Motives

Palestinians might face immediate harms, but Israel also suggests legitimate motives for the erection of this barrier. In March 2002, there was the second highest number of Israeli casualties due to terrorist attacks.⁴⁰ Between September 2000 and July 2003, there were 73 terrorist attacks in which 293 Israelis were killed and 1950 were wounded.⁴¹ Resultingly, proposals for the separation barrier began. In April 2002, the Israeli government first began adopting plans of construction.⁴² The government's national security cabinet explained that the construction's motive was

30. See Karpefors & van Riemsdijk, *supra* note 25, at 22.

31. See Arafeh et al., *supra* note 22.

32. KRETZMER & RONEN, *supra* note 26, at 236.

33. GROSS, *supra* note 1, at 290.

34. KRETZMER & RONEN, *supra* note 26, at 236.

35. Arafeh et al., *supra* note 22.

36. Karpefors & van Riemsdijk, *supra* note 25, at 22. The blue ID provides access to both Israel and the West Bank, while the green ID does not give access to Jerusalem or Israel. See Linah Alsaafin, *The Colour-Coded Israeli ID Systems for Palestinians*, ALJAZEERA (Nov. 18, 2017), <https://www.aljazeera.com/news/2017/11/18/the-colour-coded-israeli-id-system-for-palestinians> [<https://perma.cc/9Q7G-VGYR>].

37. Karpefors & van Riemsdijk, *supra* note 25, at 22.

38. *Id.*

39. *Id.*

40. KRETZMER & RONEN, *supra* note 26, at 233.

41. *Anti-Terrorist Fence Cuts Samaria-Based Attacks by 90%*, ISRAELI MISSIONS AROUND THE WORLD (July 5, 2004), <https://embassies.gov.il/MFA/FOREIGNPOLICY/Terrorism/Palestinian/Pages/Anti-terrorist%20fence%20cuts%20Samaria-based%20attacks%20by%2090%20percent.aspx> [<https://perma.cc/P3GR-Q54X>].

42. KRETZMER & RONEN, *supra* note 26, at 234.

“to frustrate, disrupt and prevent entry of terrorist activities from the Judea and Samaria area into Israel.”⁴³

Although construction has not concluded, Israel has already seen a decrease in terrorist attacks. Palestinian terrorists have admitted that the barrier serves as a deterrent.⁴⁴ Between August 2003 and June 2004, only three terrorist attacks were successful, and they all occurred in the first half of 2003 when construction had just begun.⁴⁵ More generally, the number of terrorist attacks has declined by ninety percent, and the number of Israelis killed and injured has decreased by around seventy percent after construction began.⁴⁶

C. *The Clash of Two Courts*

The International Court of Justice (ICJ), the principle judicial organ of the United Nations (UN), and the Israeli High Court of Justice (HCJ), the Supreme Court in Jerusalem, both released opinions regarding the construction of the separation barrier.⁴⁷ Although the ICJ’s advisory opinion is not binding, the HCJ still attempted to accredit it with appropriate weight.⁴⁸ Both statements rely on a similar foundation but reach different conclusions. Both courts agree on the premise that “the harm to the Palestinian residents would not be a violation of international law if it served a military need, national security or public order.”⁴⁹ However, the ICJ proposed the separation barrier to be looked at in its entirety, while the HCJ stressed that each segment of the barrier should be looked at individually.⁵⁰ The main differences between the opinions will be discussed below.

The HCJ first considered at the legality of the separation barrier in *Beit Sourik* in which the land of eight villages was seized to build the barrier.⁵¹ In looking at the history of the events, the HCJ analyzed this issue as one of Israeli safety, citing the death and injury toll on its citizens.⁵² However, it made significant strides toward progress, away from its tendency to adjudicate claims brought by Palestinians.⁵³ In

43. *Id.* (quoting H CJ 2056/04 Beit Sourik Village Council v. Government of Israel, 58(5) PD 807 (2004) (Isr.)).

44. Mitchell Bard, *West Bank, Gaza and Lebanon Security Barriers: Background & Overview*, JEWISH VIRTUAL LIB., <https://www.jewishvirtuallibrary.org/background-and-overview-of-israel-s-security-fence> [<https://perma.cc/H6JR-G2RP>]. Abdullah Ramadan Shalah, Islamic Jihad leader, stated, “[T]here is the separation fence, which is an obstacle to the resistance, and if it were not there the situation would be entirely different.” *Id.*

45. See ISRAELI MISSIONS, *supra* note 41.

46. *Id.*

47. See generally H CJ 2056/04 Beit Sourik Village Council v. Government of Israel, 58(5) PD 807 (2004) (Isr.); see also H CJ 7957/04 Mara’abe v. Prime Minister of Israel (2005) (Isr.).

48. GROSS, *supra* note 1, at 303 (stating that the ICJ’s opinion was “an interpretation of international law, performed by the highest judicial body in international law” that “should be given its full appropriate weight”) (quoting H CJ 7957/04 at ¶ 56).

49. KRETZMER & RONEN, *supra* note 26, at 249 (quoting H CJ 7957/04 at ¶ 57).

50. See GROSS, *supra* note 1, at 303–04.

51. *Id.* at 277–78; see also H CJ 2056/04.

52. GROSS, *supra* note 1, at 279.

53. *Id.* at 288.

its decision, the HCJ acknowledged the injuries to Palestinians and offered an alternative route.⁵⁴ Instead of solely striking down the Palestinian village's claim, the court analyzed different considerations, such as security needs and the rights of local populations, when making its decision.⁵⁵

On July 9, 2004, the ICJ issued an advisory opinion stating that Israel's separation barrier is illegal and ordered a stop to the construction.⁵⁶ Additionally, the ICJ demanded that Israel make reparations for all damage caused.⁵⁷ In a fourteen-to-one majority, the ICJ found the barrier to be a breach of international law and a violation of the principles of the UN Charter.⁵⁸ Overall, the court found that the construction "alters the demographic composition of the occupied Palestinian territory and impedes the Palestinians' right to self-determination."⁵⁹ Additionally, voting thirteen-to-two, the court decided that states should not recognize this illegal situation or give any assistance to maintain the current situation.⁶⁰

The HCJ went further to incorporate the ICJ advisory opinion into its next case: *Mara'abe v. The Prime Minister of Israel*.⁶¹ In this case, the barrier cut off several Palestinian villages from the rest of the West Bank.⁶² Overall, the HCJ recognized that the decrease in the number of terrorist attacks after the construction of the separation barrier proves that it is effective as a security measure.⁶³ In other words, it explained that if the barrier fulfills military needs, then the military commander can take possession of the land. The court also stressed the temporary nature of the occupation.⁶⁴ However, even though the HCJ found the barrier justified on security grounds, it asked respondents to reconsider the existing route and the possibility of alternatives that will result in less injury.⁶⁵

As displayed above, the courts' decisions provide a clear example of clashing narratives, mainly caused by the vast complexities of a deep-rooted conflict. In accordance with the Hague Convention and the Fourth Geneva Convention, the ICJ determined that Israel must protect the human rights of those in the occupied territory, and the building of the separation barrier infringes on many of those rights.⁶⁶ Conversely, the HCJ focused more on the harm to the Palestinians. Using a proportionality analysis in both landmark cases, the HCJ found that Israeli security

54. *Id.*

55. *Beit Sourik Village Council v. The Government of Israel et. al.*, H CJ 2056/04, Supreme Court, 20 June 2004, INT'L COMM. OF THE RED CROSS, <https://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/46707c419d6bdfa24125673e00508145/09d47365bd007706c12575c20046ec2a> [<https://perma.cc/ZE8B-Y46J>].

56. *International Court of Justice Finds Israeli Barrier in Palestinian Territory Is Illegal*, UN NEWS (July 9, 2004), <https://news.un.org/en/story/2004/07/108912-international-court-justice-finds-israeli-barrier-palestinian-territory-illegal> [<https://perma.cc/KU2C-CLUY>].

57. *Id.*

58. *Id.*

59. *Id.*

60. *Id.*

61. GROSS, *supra* note 1, at 289; *see also* H CJ 7957/04.

62. GROSS, *supra* note 1, at 289.

63. *Id.* at 291.

64. *Id.*

65. H CJ 7957/04 ¶ 115–16.

66. *See* H CJ 2056/04 ¶ 67.

concerns did not outweigh the harms caused.⁶⁷ The courts' differing opinions have opened a gateway for discourse regarding the legality of the separation barrier and the factors that should be used in legal analysis.

III. A CASE STUDY: ISRAEL'S TREATMENT OF PALESTINE IN RELATION TO THE OSLO ACCORDS

Part III of this Note provides an example of the inability of current legislation to solve a modern question of occupation—the restriction of the freedom of privacy. This Part also poses that, like the immediate harms felt by the Palestinians after the erection of the separation barrier, Palestinian development has been hindered due to Israel's control over its ICT sector.

A. The Development of the Oslo Accords

After obtaining control in 1949, Israel built Jewish settlements in the newly occupied Palestinian territories (oPt), which includes the West Bank and the Gaza Strip.⁶⁸ However, in 1993 the Oslo Accords were formalized, which gave partial control of the West Bank to Palestine.⁶⁹ The Oslo Accords are a set of two agreements signed by Israel and the Palestine Liberation Organization (PLO), in which the PLO agreed to formally recognize Israel as a state, and Israel allowed Palestine a form of limited self-governance in the West Bank and Gaza Strip.⁷⁰ The Oslo Accords were ratified twice: Oslo I in Washington, D.C. in 1993 and Oslo II in Taba, Egypt in 1995. Oslo II divided the West Bank into Areas A, B, and C. As shown in Figure 1, Area A is under Palestinian control. Palestinian and Israeli authorities share control over Area B. Lastly, Area C, which covers around sixty percent of the West Bank, is under complete Israeli control.⁷¹ In Oslo I, the parties established an interim period with parameters of Israel's withdrawal from Gaza, which was set to end in 1999. However, the Accords are still used to govern daily relations between the two parties.⁷²

The Oslo Accords are particularly relevant in reference to Israel and the PLO's telecommunications sectors. Article 36 of Annex III sets out provisions for the telecommunications sector within oPt.⁷³ The Joint Technical Committee (JTC) was

67. See H CJ 7957/04.

68. *Id.*

69. ANAN ABUSHANAB, CONNECTION INTERRUPTED: ISRAEL'S CONTROL OF THE PALESTINIAN ICT INFRASTRUCTURE AND ITS IMPACT ON DIGITAL RIGHTS 10 (Alison Ramer ed., Muna Abu Baker, trans., 2018).

70. *Oslo Accords*, HISTORY (Feb. 16, 2018), <https://www.history.com/topics/middle-east/oslo-accords> [<https://perma.cc/W7AD-N73M>].

71. *What Are Area A, Area B, and Area C in the West Bank*, ANERA, <https://www.anera.org/what-are-area-a-area-b-and-area-c-in-the-west-bank/> [<https://perma.cc/FV74-DJPN>].

72. Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, Annex III, Isr.-Palestinian Liberation Organization, art. 36(A), Sep. 28, 1995 [hereinafter *Oslo Accords*].

73. *Id.*

established to preside as technical experts in the event of any issues; however, it has proven to be inadequate and ineffective.⁷⁴ Instead of acting in accordance with the stated provisions, Israel has tightened its control over the ICT sector, further limiting Palestinians' access to services as well as hampering the industry's development.⁷⁵

Figure 1: Map displaying the division of land per the Oslo Accords



B. Analysis of Article 36 Governing the ICT Sector

Oslo II granted the Palestinians direct control over their ICT sector, but certain conditions within the agreement restrict any actual progress being made.⁷⁶ Each of the subsections outlined below provide Palestine with certain rights; however, they each have their own problems.⁷⁷

74. ABUSHANAB, *supra* note 69, at 13–14.

75. *Id.* at 14.

76. MASHHOUR ABUDAKA, THE EFFECT OF THE PA'S DISSOLUTION OR COLLAPSE ON TELECOMMUNICATION AND POSTAL SERVICES 3 (2013); *see also* Oslo Accords, *supra* note 72, art. 36(D)(2) (“The equipment will be used only when the independent Palestinian network is operational.”).

77. *See* Oslo Accords, *supra* note 72.

1. “Israel recognizes that the Palestinian side has the right to build and operate separate and independent communication systems and infrastructures including telecommunication networks, a television network and a radio network.”⁷⁸

Under the Oslo Accords, the Palestine Telecommunications Company (“Paltel”) was granted a twenty-year license “to build, operate and own landlines, data communications, paging services, public telephones, satellite communication services, lease lines, sell telecommunications equipment (peripheral devices), Value-Added Services (VAS) and deploy and operate a mobile network.”⁷⁹ With this license, Paltel established Jawwal, Palestine’s first mobile operator, in August 1999. Unfortunately, even after this establishment, there have been strong constraints over these companies.⁸⁰

Around ten years after the first request was made, Israel finally agreed to allow Palestine access to Third Generation (3G) in the West bank.⁸¹ The Israeli government mainly attributed this long denial of access to “security issues,” explaining the need to ensure Israeli safety.⁸² Israel also claimed that it did not have enough frequency to allow for 3G networks. Overall, the Oslo Accords only allow Palestine limited access to its own frequencies, which Israel has been able to take advantage of to maintain its hold over the Palestinian ICT sector.⁸³

Additionally, in 2006, Wataniya Mobile Palestine (“Wataniya”) was granted access to a 2G and 3G mobile license in Palestinian territories.⁸⁴ The license was granted in March 2007, but Wataniya could not launch its services until November 2009 due to a delay caused by Israeli authorities. Until 2009, the Palestinian mobile market was one of the few markets in the world with a single national mobile operator.⁸⁵ Until 2017, Wataniya did not have the authority to operate in the Gaza Strip.⁸⁶ Therefore, before this development, a monopoly continued to exist in

78. *Id.* at 36(B)(1).

79. WORLD BANK GRP., *THE TELECOMMUNICATION SECTOR IN THE PALESTINIAN TERRITORIES: A MISSED OPPORTUNITY FOR ECONOMIC DEVELOPMENT* 15 (2016) (citation omitted).

80. *See* Arafah et al., *supra* note 22.

81. ABUSHANAB, *supra* note 69, at 15, 24.

82. Saed Bannoura, *Israel Agrees to Allow Palestinian Telecommunication Companies Access to 3G*, IMEMC (Nov. 20, 2015), <https://imemc.org/article/73932/> [<https://perma.cc/F4DS-SALA>].

83. *Id.*

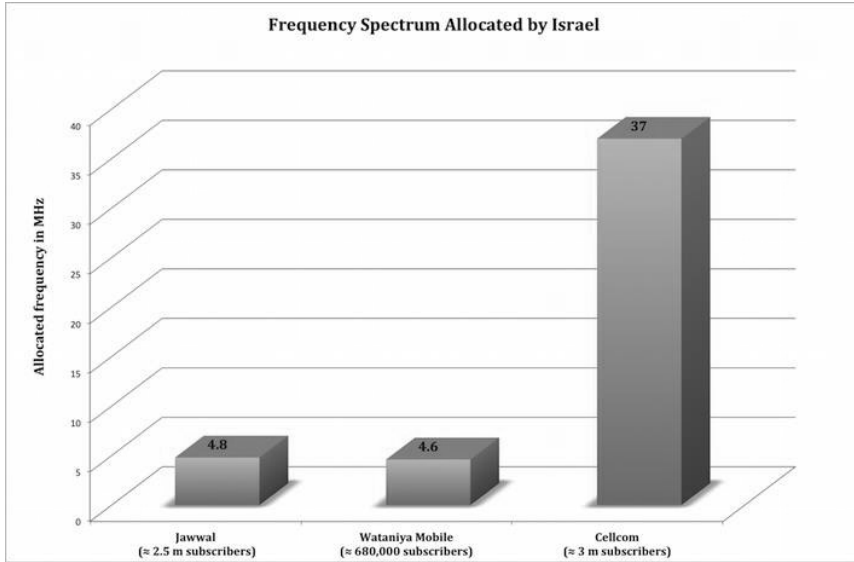
84. The “G” stands for generation. 2G devices have data speed up to 64 kilobytes, while 3G devices have data speed up to 8 megabits. *See What Are the Differences Between 2G, 3G, 4G LTE, and 5G Networks?*, RANTCELL, <https://rantcell.com/comparison-of-2g-3g-4g-5g.html> [<https://perma.cc/H3P2-KD2B>]. 1 megabit is 1000 times faster than 1 kilobyte. *What is the Difference Between Mbps and Kbps?*, VERIZON, <https://www.verizon.com/about/blog/mbps-vs-kbps> [<https://perma.cc/GD3C-6CV8>].

85. WORLD BANK GRP., *supra* note 79, at 16.

86. Nidal al-Mughrabi, *Second Palestinian Mobile Operator Launches in Gaza*, REUTERS (Oct. 24, 2017, 7:17 AM), <https://www.reuters.com/article/palestinians-gaza-mobilephone/second-palestinian-mobile-operator-launches-in-gaza-idUSL8N1MX0CO> [<https://perma.cc/23WH-5PLF>].

Palestine.⁸⁷ Additionally, customers of the West Bank did not have access to 3G services through a Palestinian company until 2018.⁸⁸

Figure 2: Frequency Allocated Between Cellular Providers



2. “Without prejudice to subparagraph D.5.c of this section, the Palestinian side has the right to establish satellite networks for various services, excluding international services.”⁸⁹

Israel’s control has most significantly impacted Palestine’s electromagnetic spectrum, specifically relating to its mobile network opportunities. Generally, if a telecommunications bandwidth operator has more spectrum bandwidth, then it can serve more subscribers.⁹⁰ More specifically, a lower band frequency, such as 800 to 900 megahertz (MHz), is more desirable than a higher band frequency of 1800 to 2100 MHz. The major problem exists in how the spectrum is divided because it must be balanced between military, science, government, and private companies.⁹¹ When Jawwal was established, Israel licensed the operator access to 4.8 MHz in the 900 MHz band for 120,000 subscribers.⁹² Jawwal now caters to more than 2.5 million

87. Helga Tawil-Souri, *Digital Occupation: Gaza’s High-Tech Enclosure*, 41 J. PALESTINIAN STUD. 27, 27–43 (2012).

88. Ali Sawafta, *Palestinians Get 3G Mobile Services in West Bank*, REUTERS (Jan. 24, 2018, 7:33 AM), <https://www.reuters.com/article/israel-palestinians-telecom/palestinians-get-3g-mobile-services-in-west-bank-idUSL8N1PJ3FW> [<https://perma.cc/368H-ZUEB>].

89. Oslo Accords, *supra* note 72, art. 36(B)(2).

90. ABUDAKA, *supra* note 76, at 5.

91. *Id.*

92. Arafah et al., *supra* note 22.

customers with the same access. In comparison, in 2009, Israel's primary cellular company, Cellcom Isr, had access to 37 MHz for its nearly 3 million subscribers.⁹³ Additionally, Israel also limited Wataniya's access: Israel granted it 1.8 MHz in the 900 MHz band and 2.8 MHz in the 1800 MHz band. It was also unable to start its operations for two years due to delays in these licensing agreements.⁹⁴

Israel also denied the deployment of Worldwide Interoperability for Microwave Access ("WiMax") systems, which "provide access to wireless broadband networks and allow for the high-speed transmission of data across networks and applications."⁹⁵ Around the world, most countries now use LTE and 4G systems instead of WiMax; however, Palestinians do not have access to these either, while Israeli customers do. Overall, these restrictions violate the Oslo Accords, since Article 36(b) allows Palestine the right to establish satellite networks.

3. "The Palestinian side has the right to establish its own telecommunications policies, systems and infrastructures. The Palestinian side also has the right to choose any and all kinds of communication systems (including broadcasting systems) and technologies, suitable for its future in, inter alia, basic and value added services (including cellular telephony)."⁹⁶

Along with Israel maintaining strict control over Palestine's mobile networks, Israel also has established significant control over Palestinians' access to radio.⁹⁷ There was a transmitter located in Ramallah, Palestine; however, Israel damaged it in 2000 and destroyed it and its transmitter room in 2002.⁹⁸ Israel has now limited Palestinians' radio access to FM frequencies. Resultingly, Palestinians are less able to broadcast throughout the region due to hills and other built-up areas blocking most FM coverage.⁹⁹ Lastly, Israel also continues to use Palestine's medium wave radio frequency to broadcast its own messages.¹⁰⁰ Since Article 36(c) gives Palestine the right to choose its own communication systems, Israel's control seems to contradict the Oslo Accords.

4. "Operators and providers of services, presently and in the future, in the West Bank and the Gaza Strip shall be required to obtain the necessary approvals from the Palestinian side. In addition, all those operating and/or providing services, presently and in the future, in the West Bank and the Gaza Strip who wish to operate and/or provide services in Israel, are required to obtain the necessary approvals from the Israeli Ministry of Communications."¹⁰¹

93. *Id.*

94. *Id.*

95. ABUSHANAB, *supra* note 69, at 16.

96. Oslo Accords, *supra* note 72, art. 36(B)(3).

97. Arafah et al., *supra* note 22.

98. *Id.*

99. Phil Reeves, *Israel Blows Up Palestinians' Radio Station*, INDEPENDENT (Jan. 20, 2002, 1:00 AM), <https://www.independent.co.uk/news/world/middle-east/israel-blows-up-palestinians-radio-station-9270443.html> [<https://perma.cc/WB4A-W3QX>].

100. *Id.*

101. Oslo Accords, *supra* note 72, art. 36(B)(4).

Palestine's inability to gain Israel's approval to obtain the necessary equipment to build its independent network has drastically inhibited development, mainly due to unnecessary delays.¹⁰² In the early 2000s, it would take around one to two months to gain approval for the ICT equipment; however, the process has been cut down to around thirty days. Despite the shorter time frame for approval, the process is still complex because of the various documents that Palestinians must provide, such as: "a certificate of origin; an invoice; an air waybill; a packing list with details on the quantities imported and their standards, which should comply with Israeli standards; explanation of the need of the product and information regarding the end-user."¹⁰³ Therefore, Palestinian shippers endure severe time delays.¹⁰⁴ Additionally, this request must go through many different agencies, including the Coordination of Government Activities in the Territories (COGAT), the Israeli Ministry of Communications, and the Standards Institution of Israel.¹⁰⁵

Each shipment must also get its own approval. For example, two shipments of the same product require approval for each shipment. Another restriction imposed on Palestinian shippers is the Israeli-defined "dual-use items" list.¹⁰⁶ Dual-use items refer to products that can be used for both military and civilian purposes. These items are either prohibited or subject to even lengthier security measures. Ironically, most of these products can be purchased off-the-shelf within Israel.¹⁰⁷

Palestinian operators also face constraints in the approvals needed for infrastructure development. More specifically, these operators are not able to build infrastructure within Area C, which means a loss of around 100,000 Palestinian customers who reside there as well as the 2.5 million Palestinians who use roads through Area C to travel.¹⁰⁸ Although the Israeli authorities have changed the process, it continues to be lengthy and unpredictable. For example, out of the fifty-seven sites requested by Jawwal, only one has been installed since 2014.¹⁰⁹ Therefore, most households in Area C are forced to rely on Israeli companies instead.¹¹⁰

5. "Both sides shall refrain from any action that interferes with the communication and broadcasting systems and infrastructures of the other side."¹¹¹

Since Israel has only approved the necessary infrastructure for 2G and 3G systems throughout Palestinian territories, networks are fragmented. This results in customers relying on Israeli companies because they cannot talk when traveling between cities

102. See Arafah et al., *supra* note 22.

103. *Id.*

104. *Id.*

105. *Id.*

106. *Id.*

107. *Id.*

108. WORLD BANK GRP., *supra* note 79, at 32.

109. *Id.* at 33.

110. ABUSHANAB, *supra* note 69, at 27–28.

111. Oslo Accords, *supra* note 72, art. 36(B)(5).

or living in isolated areas.¹¹² Israel has also restricted the construction of switches—equipment that connects multiple devices to the same network.¹¹³ Therefore, cellular providers have resorted to building switches in other countries, which has led to greater costs and longer routing of calls.¹¹⁴

Although Israel maintains a certain amount of control over both the West Bank and the Gaza Strip, Gaza’s infrastructure is completely dependent on Israel.¹¹⁵ More specifically, Gaza’s situation has been described as “a regime of digital occupation.”¹¹⁶ All telephone calls are routed through Israel, and all internet switches used are located outside of the Gaza Strip, which leads to the similar high costs experienced by Jawwal and Wataniya. In 2009, between twenty and forty percent of people living in Gaza used Israeli cellular services because of the cheaper prices.¹¹⁷ Despite the cheaper prices, a Gazan user must pay about twice as much as an Israeli customer using the same plan.¹¹⁸ Additionally, the Israeli cellular providers provide much stronger signals than provided by Jawwal.¹¹⁹ It has been estimated that between 2008 and 2009, the damage to the Gazan economy was around \$10 million USD.¹²⁰

Because Israel has control over Gaza’s ICT sector, it has also increased its dominance over citizens individually. For example, Israel can and has shut down or interrupted Gaza’s telecommunications networks for various reasons.¹²¹ During Israel’s military offenses, the Israeli military sent messages to warn Gazans of the attack.¹²² In 2008–09, it also used radio broadcasts, phone calls, and text messages to warn Palestinians to evacuate areas before an attack; however, the military still did not give them enough time to evacuate or take the necessary precautions.¹²³

6. “A joint committee of technical experts representing both sides shall be established to address any issue arising out of this section including the growing future needs of the Palestinian side (hereinafter referred to as “the Joint Technical Committee” or JTC). The JTC shall meet on a regular basis for the purpose of solving all relevant problems, and as necessary in order to solve urgent problems.”¹²⁴

As previously stated, the JTC has proven to be unsuccessful in aiding Palestine’s development under the Oslo Accords. The JTC was intended to be made up of the Israeli Ministry of Communications (MoC), the Palestinian Ministry of

112. ABUSHANAB, *supra* note 69, at 17.

113. *What Is a Network Switch? Switch vs. Router*, CLOUDFLARE, INC., <https://www.cloudflare.com/learning/network-layer/what-is-a-network-switch/> [<https://perma.cc/W52Z-V8DM>].

114. ABUSHANAB, *supra* note 69, at 17.

115. *Id.*

116. Tawil-Souri, *supra* note 87, at 28.

117. *Id.* at 33.

118. *Id.* at 36.

119. *Id.* at 33.

120. *Id.* at 36.

121. *Id.*

122. ABUSHANAB, *supra* note 69, at 18.

123. *Id.*

124. Oslo Accords, *supra* note 72, art. 36(B)(6).

Telecommunications and Information Technologies (MTIT), and COGAT with additional occasional observers.¹²⁵ Although the accords require that the JTC meet regularly, the meetings have been rare. Palestinians argue that the lack of meetings is due to Israel and vice versa. Israel made the decision to refrain from scheduling JTC meetings because Palestine was thought to be “actively seeking solutions outside of the Oslo framework.”¹²⁶

C. Israel's Interpretation of Article 36(D)(1)

The Oslo Accords were a step by both parties to alleviate some aspects of the current conflict. Although Article 36 of Annex III of the Oslo Accords provides Palestine with various rights and controls of its ICT sector, it has proven to be inadequate, causing developmental problems for the country without much hope for progress.

However, despite the rights listed above, a stipulation exists that requires Palestine's independence before any of these controls are granted.¹²⁷ Article 36(D)(1) outlines that the rights are “[p]ending the establishment of an independent Palestinian telephone network.”¹²⁸ Since Israel continues to control the majority of Palestine's ICT sector, Israel has made it impossible for Palestine to reach a point of independency to build its own system.¹²⁹ More specifically, Israel has only granted Palestine access to build three fiber optic cables and two microwave links between the West Bank and the Gaza Strip, which makes it impossible to build an independent network.¹³⁰

Although Israel recently granted access to Wataniya to operate in the Gaza Strip and for 3G networks to operate in the West Bank, it continues to deny other Palestinians' requests for new ICT technologies in these areas.¹³¹ Israel has specifically continued to deny requests for 4G networks but has granted approval of these networks for six Israeli companies based on data from January 2015.¹³² Resultingly, Palestinian companies have not been able to provide quality services to their customers. For example, GPS, PayPal, and other applications are not accessible on these networks, which forces Palestinians to rely on Israeli internet providers.¹³³

125. Carlo Maria Rossotto, Xavier Stéphane Decoster, Anat Lewin & Ihab Jabari, *The Telecommunication Sector in the Palestinian Territories: A Missed Opportunity for Economic Development* 26 (The World Bank Grp., Working Paper No. 104263, 2016).

126. *Id.* An analysis conducted in May 2015 found that the last meeting was held in March 2014. Palestinians hope that these meetings become more frequent. *Id.*

127. ABUDAKA, *supra* note 76, at 3.

128. Oslo Accords, *supra* note 72, art. 36(D)(1).

129. ABUDAKA, *supra* note 76, at 3.

130. Arafef et al., *supra* note 22.

131. ABUSHANAB, *supra* note 69, at 15–16.

132. Arafef et al., *supra* note 22.

133. *Id.*

D. The Financial Impact of Palestine's Lack of Development Progress

In 2014, the ICT sector was the least-contributing sector in the Palestinian economy.¹³⁴ It contributed 8% to the GDP in the West Bank and 0.4% in the Gaza Strip.¹³⁵ However, Figure 3 highlights that the industry has made some progress and now surpasses both the “Transportation and Storage” and the “Households with Employed Persons” sectors.¹³⁶ The sector’s lack of contribution can be attributed to political unrest and the fluctuations in available foreign aid.¹³⁷

The Palestinian ICT sector employs around 5000 people in 250 companies in the West Bank and Gaza.¹³⁸ Around 40% of these companies export to international markets. Based on a 2022 report, the total contribution of the ICT sector to the Palestinian economy is about \$493 million and accounted for about 3% of Palestine’s GDP.¹³⁹ The clear growth and development occurring within this sector called for a higher demand of technology products and services. Jawwal and Wataniya have a total of 4.3 million mobile subscribers.¹⁴⁰

Between 2013 and 2015, Palestine has suffered a total revenue loss of \$436 to \$1150 million USD.¹⁴¹ Additionally, the loss directly attributed to the absence of a 3G network is estimated to be between \$339 and \$742 million USD.¹⁴² Overall, this represents an impact of about 3.0% of Palestine’s GDP.¹⁴³

134. Hasan Z. Nuseibeh, Alan R. Hevner & Rosann W. Collins, *What Can Be Controlled: Actionable ICT4D in the Case of Palestine*, 25 INFO. TECH. DEV. 390, 399 (2019).

135. *Id.*

136. PALESTINIAN CENT. BUREAU OF STATS., PALESTINE IN FIGURES 2020, at 62 (2021).

137. Nuseibeh et al., *supra* note 134.

138. INT’L TRADE ADMIN., *supra* note 24.

139. *Anera on the Ground: The Tech Ecosystem in Palestine*, ANERA (June 27, 2022), <https://www.anera.org/blog/tech-ecosystem-palestine/> [<https://perma.cc/363K-U2HC>].

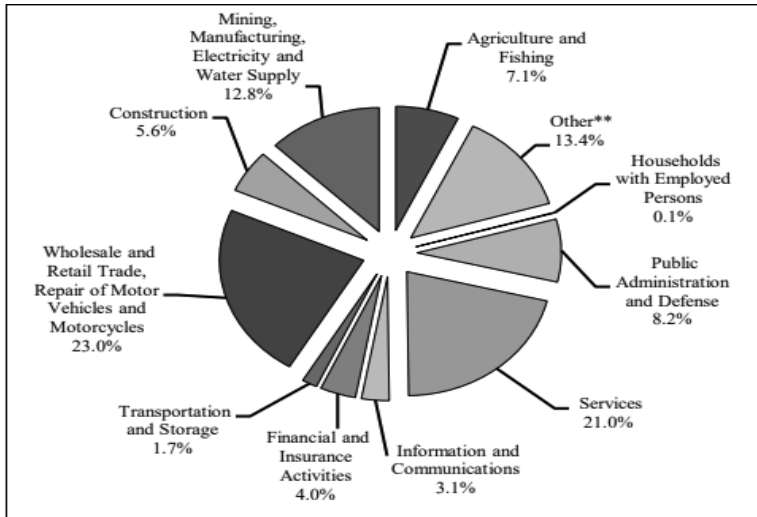
140. INT’L TRADE ADMIN., *supra* note 24.

141. Rossotto et al., *supra* note 125, at 8.

142. *Id.*

143. *Id.*

Figure 3: Percentage Contribution to GDP by Economic Activity in Palestine at Current Prices, 2019



PayPal, specifically, has contributed to Palestine's difficulty to develop economically.¹⁴⁴ PayPal is considered one of the leading online payment services around the world, and it is unavailable for the approximately six million Palestinians that reside in the West Bank and the Gaza Strip. However, the app provides services to Israelis, including those living in illegal Israeli settlements in the West Bank, proving the continued existence of discrimination. By providing these services to Israelis, PayPal contributes to the economic sustainability of these areas while indirectly contributing to the violation of international law. Additionally, by refusing to extend its services to the West Bank and the Gaza Strip, it makes it difficult for the creation of new business opportunities in the Palestinian market, thereby further hindering Palestinian development.¹⁴⁵

1. Israel's Reliance on Civil and Military Law to Discriminate Against Palestinians

Although the Oslo Accords plays a significant role in the legal framework governing the ICT sector, Israel technically has obligations under the law of occupation and international human rights law toward Palestinians.¹⁴⁶ In 1966, Israel signed the United Nations' International Covenant on Civil and Political Rights (ICCPR) and ratified it in 1991; however, it has maintained that this legislation does

144. See HASHTAG PALESTINE 2020, 7AMLEH 1, 22 (E.M., Alison Carmel, trans., 2021).

145. *Id.*

146. MARWA FATAFTA & DIMA SAMARO, ACCESS NOW, EXPOSED AND EXPLOITED: DATA PROTECTION IN THE MIDDLE EAST AND NORTH AFRICA 22 (2021).

not extend to oPt because it does not apply extraterritorially.¹⁴⁷ Resultingly, Israel instead relies on its civil and military laws to control the Palestinian population.

Israeli authorities “have deprived the nearly 2.5 million Palestinians they rule over in the West Bank of their basic rights—rights enjoyed by the more than 400,000 Israeli settlers living in illegal settlements in the same territory.”¹⁴⁸ Specifically with reference to social media, Israel uses its laws to discriminate against Palestinians.¹⁴⁹ In the West Bank and the Gaza Strip, the Israeli government has tried Palestinians with “incitement” in military courts under the Military Order 1651 sections 251(b) and 199(c).¹⁵⁰ In East Jerusalem, Israel has been more likely to apply its civil laws, such as the “Law on Authorities for the Prevention of Committing Crimes Through Use of an Internet Site,” which allow the district courts to fully or partially block access to internet websites.¹⁵¹ Despite the different application, Israel looks to the equivalent civil laws, specifically relying on Article 144 of the 1977 Penal Code on “incitement to violence and terrorism.”¹⁵²

2. Surveillance Concerns

Legislative bodies did not begin addressing surveillance legislation until the UN Human Rights Committee did so in 2014.¹⁵³ Nonetheless, Israel has mass surveyed Palestinians for decades.¹⁵⁴ Since the 1950s, Unit 8200, the Israeli army’s largest unit, has been tasked with performing data collection and intercepting communication signals.¹⁵⁵ The extent of surveillance was detailed in a letter signed in September 2014 by forty-three Israeli soldiers, which cited “‘widespread surveillance of innocent civilians’ that the Israeli army used for ‘political persecution’ and to recruit informants.”¹⁵⁶

Israel has long used oPt as a laboratory for testing surveillance technologies.¹⁵⁷ For example, the NSO Group recently began one such surveillance project, known as the Pegasus Project, which allowed the surveillance of Palestinians to mark them as potential targets.¹⁵⁸ However, this serves as just one example of Israeli surveillance of Palestinians. The Israeli army has also recently deployed Blue Wolf facial recognition technology, which has incentivized Israeli soldiers to take pictures

147. *Id.*

148. *Id.*

149. ABUSHANAB, *supra* note 69, at 36.

150. *Id.*

151. *Id.*

152. *See* 7AMLEH, *supra* note 144, at 15.

153. Lubin, *supra* note 2, at 468.

154. FATAFTA & SAMARO, *supra* note 146, at 24.

155. ABUSHANAB, *supra* note 69, at 29–30.

156. *Id.* at 30.

157. Nadim Nashif, *How Israel Turned Palestine into a Surveillance Tech Dystopia*, MIDDLE EAST EYE (Dec. 10, 2021, 12:17 UTC), <https://www.middleeasteye.net/opinion/israel-palestine-surveillance-tech-dystopia> [<https://perma.cc/V3DX-R72P>].

158. Daniel Estrin, *What to Know About the Spying Scandal Linked to Israeli Tech Firm NSO*, NPR (Aug. 25, 2021, 8:03 PM), <https://www.npr.org/2021/08/25/1027397544/nso-group-pegasus-spyware-mobile-israel> [<https://perma.cc/3WYQ-ED9G>].

of Palestinian civilians and install Pegasus spyware onto Palestinian human rights workers' phones by offering rewards.¹⁵⁹

Israel continues to tighten its hold on Palestinians, now using surveillance technology to control their daily lives.¹⁶⁰ In turn, this leads to violations of digital rights, such as internet security, privacy, and freedom of expression.¹⁶¹ Similar to Israel's reasoning for data collection, the purpose of the cameras has been attributed to advancing the scheme referred to as "Google Ayosh" to search and find Palestinians to prevent terror attacks using data.¹⁶²

An Israeli whistleblower recently revealed that any mobile device imported into Gaza through the Kerem Shalom crossing is implanted with an Israeli bug, allowing the government to listen to any phone conversation in the West Bank and Gaza Strip.¹⁶³ Israel has also enhanced its use of video surveillance and facial recognition software, which even allow the government to see into private homes.¹⁶⁴ For example, in early October 2019, Palestinians discovered a camouflaged camera, manufactured by an Israeli company, Anyvision, used to monitor movements of Palestinians.¹⁶⁵ Resultingly, Palestinians no longer feel safe, leading women to sleep in their hijabs and refusing to let their children play outside.¹⁶⁶

3. Data Collection Concerns

Israel also uses national security as a reason to collect data from Palestinians.¹⁶⁷ Within the last several years, the Israeli army has begun collecting Palestinian data at checkpoints to add to its anti-terror database.¹⁶⁸ The project's motivation was described as a way "to deepen the occupation and protect the settlements."¹⁶⁹ Palestinian men must fill out forms with detailed information: "name, age, telephone number, identification number, type of vehicle and license number."¹⁷⁰ They must also submit a photograph of their ID and provide information about the origin and destination of the trip that led them to the checkpoint.¹⁷¹ The Israeli soldiers are required to submit 100 completed forms for each shift, exemplifying the immense quota that they must meet.¹⁷²

159. Nashif, *supra* note 157.

160. *Id.*

161. ABUSHANAB, *supra* note 69, at 5.

162. FATAFTA & SAMARO, *supra* note 146, at 27.

163. Nashif, *supra* note 157.

164. *Id.*

165. FATAFTA & SAMARO, *supra* note 146, at 27.

166. Nashif, *supra* note 157.

167. Yaniv Kubovich, *Israeli Army Setting Up Extensive Database with Personal Details of Palestinians Collected at Checkpoints*, HAARETZ (Mar. 8, 2018), <https://www.haaretz.com/israel-news/premium-idf-info-we-collect-on-palestinians-meant-for-anti-terror-database-1.5886616> [<https://perma.cc/97Y2-PBUJ>].

168. *Id.*

169. *Id.*

170. *Id.*

171. *Id.*

172. *Id.*

Not only does the Israeli government collect Palestinian information from the checkpoints, but it has also asked Palestinians to download an application—“Al Munasiq” or “The Coordinator” in Arabic—onto their phones that allows the military to access their data.¹⁷³ This application allows the army to track the user’s location and “access any notifications they receive, files they download or save, and the device’s camera.”¹⁷⁴ The terms of service also indicate that the data is to be used with the sole discretion of the Israeli authorities.¹⁷⁵ The Israeli government has attributed this collection to security purposes.¹⁷⁶ More specifically, the Israeli Coordination of Government Activities in the Territories (COGAT) claimed that “the app was developed for the benefit of the Palestinian public.”¹⁷⁷ However, lawyers associated with Hamoked, an Israeli-based human rights organization, disputed this fact, stating, “[t]he connection between clarifying the status of the permits and revealing private information is unclear.”¹⁷⁸ Israel continues to successfully collect data from Palestinians without any repercussions for these human rights and privacy violations.

4. The Impact of International Social Media Companies

International social media companies also contribute to Palestine’s lack of development.¹⁷⁹ In 2015, the Israeli government developed the Cyber Unit and tasked it with overseeing social media.¹⁸⁰ Between May 6 and May 19, 2021, there were 500 cases of digital rights violations of Palestinians documented.¹⁸¹ There were several types of violations: “content takedown, closing accounts, hiding hashtags . . . reducing the reachability to specific content, deleting of archived content, and restricting access and removing accounts.”¹⁸² Among the various social media platforms, 50% of violations stemmed from Instagram, 35% from Facebook, 11% from Twitter, and 1% from TikTok.¹⁸³ Although these social media companies have removed much of this content without repercussions, Israelis are still able to use

173. MEE & Agencies, *The Coordinator: Israel Instructs Palestinians to Download App That Tracks Their Phones*, MIDDLE EAST EYE (Apr. 8, 2020, 14:51), <https://www.middleeasteye.net/news/coordinator-israel-instructs-palestinians-download-app-tracks-their-phones> [https://perma.cc/47NM-DMFU].

174. *Id.*

175. FATAFTA & SAMARO, *supra* note 146146, at 25.

176. *Id.*

177. *Id.*

178. MEE & Agencies, *supra* note 173 (“Placing these requirements as the sole default for a person to use the application is extremely unreasonable, and cynically exploits public distress and panic in these grim times for the inappropriate purpose to invade one’s privacy in a manner that damages human dignity.”).

179. *See* 7AMLEH, *supra* note 144, at 26–36.

180. ABUSHANAB, *supra* note 69, at 31 (“The unit has developed a ‘predictive policing system’ to monitor Palestinians’ social media posts.”).

181. 7AMLEH, *THE ATTACKS ON PALESTINIAN DIGITAL RIGHTS*, 3 (2021).

182. *Id.*

183. *Id.*

social media as a way to voice their negative opinions toward the Arabs.¹⁸⁴ Between 2019 and 2020 there was a 16% increase in violent discourse.¹⁸⁵

a. Instagram

The most prominent digital rights violation seen within Instagram is the removal of stories from accounts, which makes up 45% of all violations reported.¹⁸⁶ Most content removal was not followed by any reason or notice of the deletion.¹⁸⁷ However, if a reason was given, Instagram primarily described the content as “hate speech” or “against community standards.”¹⁸⁸ Overall, out of the 250 violations reported, only 12 cases saw restored content.¹⁸⁹

b. Facebook

Facebook has been working with Israeli authorities since 2016 to censor content.¹⁹⁰ For example, in October 2017, a Palestinian worker was arrested for posting “good morning” in Arabic on his Facebook account because it was mistakenly translated to “attack them” in Hebrew and “hurt them” in English.¹⁹¹ In the first half of 2018, Facebook received 624 requests from Israeli authorities to remove content and granted 73% of these requests.¹⁹² Facebook’s algorithm deletes posts containing specific words without any check for context, such as the algorithm checks for the words “ Hamas, Jihad, Saraya, and Jabha Sha’bya,” which all refer to Palestinian political groups.¹⁹³ In total, there were 370 documented violations on Facebook, resulting in the largest number of removals of Palestinian content from any social media platform.¹⁹⁴

c. Other Discrimination Within Media Sources

Other companies also contribute to Israel’s economic progress while indirectly inhibiting Palestine’s development.¹⁹⁵ YouTube has removed Palestinian accounts and channels.¹⁹⁶ Additionally, Google Maps follows an Israeli narrative by neither

184. See *Racism and Incitement Index 2020: The Increase in Racism and Incitement Against Palestinians and Arabs During the Pandemic*, 7AMLEH – THE ARAB CENTER FOR THE ADVANCEMENT OF SOCIAL MEDIA (Mar. 8, 2021), <https://7amleh.org/2021/03/08/racism-and-incitement-index-2020-the-increase-in-racism-and-incitement-against-palestinians-and-arabs-during-the-pandemic> [https://perma.cc/886V-28PV].

185. *Id.*

186. 7AMLEH, *supra* note 144, at 4.

187. *Id.* at 5.

188. *Id.*

189. *Id.*

190. 7AMLEH, *supra* note 144, at 26.

191. ABUSHANAB, *supra* note 69, at 31.

192. 7AMLEH, *supra* note 144, at 26.

193. TAHA, *supra* note 147, at 8.

194. 7AMLEH, *supra* note 144, at 26.

195. *Id.* at 27–30.

196. *Id.* at 30.

including Palestinian areas that are not recognized by Israeli authorities nor using terms related to Palestine or oPt.¹⁹⁷ However, illegal Israeli settlements are featured on the app and are falsely labeled as part of Israel. Lastly, checkpoints, roadblocks, and Israeli settler bypass roads are not displayed, and Israeli routes are used rather than Palestinian ones. These facts further show Google's discrimination toward Palestinians.¹⁹⁸

IV. RECOMMENDATIONS TO POSITIVELY REINFORCE PALESTINE'S FUTURE DEVELOPMENT IN THE ICT SECTOR

A. Legislative Approach

Unfortunately, legislation has not been successful in providing a framework for the Israeli-Palestinian conflict, specifically regarding the ICT sector. Although the Hague Convention and the Fourth Geneva Convention both govern the rights of occupied territories, occupation comes in many different forms.¹⁹⁹ When the current legislation was written, technology was not a concern; therefore, expansion or clarification is necessary.

Article 42 of the Hague Convention specifically states: "Territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation applies only to the territory where such authority is established, and in a position to assert itself."²⁰⁰ Due to the statute's vagueness, Yuval Shany developed a three-prong test to determine whether a territory is occupied: "(a) hostile troops are physically present in the area; (b) troops are capable of exercising effective powers of government; (c) the legitimate government is incapable of exercising effective powers of government."²⁰¹ However, neither of these frameworks acknowledges the role that technology plays in occupation.

Technology's newfound role in occupation pressures policymakers to enact a new framework to avoid further ambiguity.²⁰² Colin Picker developed thirty-two questions that policymakers should be asking when confronted with technological pressures.²⁰³ Regarding the Israeli-Palestinian conflict, the main questions to be considered include the following:

- "Is the technology developing or changing rapidly?,"²⁰⁴
- "Is the technology sufficiently mature for policy makers to consider?,"²⁰⁵

197. *Id.*

198. *Id.*

199. *See generally* GROSS, *supra* note 1.

200. Convention with Respect to the Laws and Customs of War on Land (Hague Convention II), at 42, 1899.

201. GROSS, *supra* note 1, at 127.

202. *See* Colin B. Picker, *A View From 40,000 Feet: International Law and the Invisible Hand of Technology*, 23 CARDOZO L. REV. 149, 203 (2001).

203. *Id.* at 203–05.

204. *Id.* at 203.

205. *Id.*

- “Would an international institution be better able to handle the dynamism of the technology than individual states acting pursuant to a treaty?”²⁰⁶ and
- “Are all participating countries equally informed about the technology?”²⁰⁷

Although all of the questions that Picker poses provide a level of importance, those listed above seem to provide an opportunity for discourse on the most controversial issues of Israel’s control over Palestine’s ICT sector. To provide further guidance, Professor Asaf Lubin identified five recurring principles that govern one’s right to privacy: (1) the principle of legality; (2) the principle of necessity; (3) the principle of proportionality; (4) the principle of adequate safeguards; and (5) the principle of access to remedy.²⁰⁸ These five principles provide a further framework for courts to consider when deciding if one’s right to privacy has been breached.

B. International Support

Additionally, it is crucial for Palestine to receive support from the international community.²⁰⁹ International institutions, such as the European Union, and other countries, like the United States, have certain influence that could help create more awareness and bring enforcement to Palestinian claims.²¹⁰ For example, the government of Japan has already committed to helping Palestine in their quest for further development.²¹¹ In May 2019, Japan donated \$32,983,034 USD to Palestine. This donation was targeted toward many areas of development, one being ICT sector development. Japan is determined to provide financial and technological means to assist Palestine’s national development plan. In total, Japan has contributed around \$1.9 billion USD since 1993.²¹² Japan’s contributions prove the impact that international players can have on Palestine’s development.

Support can also come from organizations in the private sector that invest in Palestine’s ICT sector.²¹³ Companies currently investing in an “apolitical” way have prolonged the situation of Israel controlling this sector for its own benefit.²¹⁴ Those in the private sector must invest in ways that will allow Palestine to develop its industries and challenge the dominance that Israel has over it. Additionally, the private sector may further Palestine’s development by outsourcing projects to it, or by supporting start-up companies. These opportunities would allow Palestine to establish secure relationships with various members of the international community and continue to promote foreign investment into its ICT sector.²¹⁵

206. *Id.*

207. *Id.* at 204.

208. Lubin, *supra* note 2, at 468–70.

209. Arafah et al., *supra* note 22.

210. *Id.*

211. *Japan’s New Assistance to Palestinian People (USD 32,983,034)*, RELIEFWEB (Mar. 14, 2019), <https://reliefweb.int/report/occupied-palestinian-territory/japan-s-new-assistance-palestinian-people-usd-32983034> [<https://perma.cc/EX56-J4DG>].

212. *Id.*

213. Arafah et al., *supra* note 22.

214. *Id.*

215. *Id.*

C. Trending Hashtags

International actors, however, must first be made aware of the human rights violations occurring for Palestine to receive any desired support. One way to achieve this awareness may be by using hashtags.²¹⁶ The use of hashtags has already sparked controversy, creating an avenue for potential change in areas experiencing violations. For example, Palestinians protested inhuman Israeli prison conditions for Palestinian political prisoners through “#DignityStrike” that was used in April 2017.²¹⁷ A compromise was then reached between Israeli and Palestinian authorities.²¹⁸

The use of hashtags has also been seen to promote awareness of human rights violations within the private sector.²¹⁹ Hyundai was known to provide machinery to Israeli authorities that was used in destroying the homes of Palestinians in various Israeli villages. The use of “#BoycottHyundai” called Hyundai “to end its involvement in Israel’s “ethnic cleansing of Palestinian communities in Jerusalem and the Naqab.”²²⁰ By using this hashtag, the campaign sought to cut Hyundai sales while calling on Korean labor unions to pressure Hyundai into ending its involvement in these violations.²²¹ Overall, with the increased use of social media, hashtags can be used as a tool to implement change in both the public and private sectors.

D. Steps at the Local Level

While working to ensure progress in these other areas, Palestine could most quickly make progress at the local level without waiting for help from international actors.²²² In the areas under its direct control, it could ensure that certain technology is installed to guarantee better coverage and ensure citywide Wi-Fi. An additional solution lies with mesh wireless networks, which are not dependent on centrally located towers, and can bypass obstacles, such as the hills that currently cause

216. Peter Suciú, *#PalestinianLivesMatter Trending – Will It Bring Change to the Middle East?*, FORBES (May 11, 2021, 2:26 PM), <https://www.forbes.com/sites/petersuciu/2021/05/11/palestinianlivesmatter-trending--will-it-bring-change-to-the-middle-east/?sh=38e19db e6670> [https://perma.cc/4RKR-XWCC].

217. Yates McKee, *As Palestinian #DignityStrike Passes One-Month Mark, New York Artists Illuminate the Struggle*, HYPERALLERGIC (May 17, 2017), <https://hyperallergic.com/379046/dignity-strike/> [https://perma.cc/4MUJ-XF2D].

218. Prisoners were convinced to end the hunger strike through Israel’s compromise to improve prisoner visitation rights. Peter Beaumont, *Mass Palestinian Hunger Strike in Israeli Jails Ends After Visitation Deal*, GUARDIAN (May 27, 2017), <https://www.theguardian.com/world/2017/may/27/mass-palestinian-hunger-strike-israel-ends> [https://perma.cc/47BM-ZHH3].

219. See generally 7AMLEH, *supra* note 144.

220. Ali Abunimah, *Palestinians Call for Boycott of Hyundai*, ELECTRONIC INTIFADA (Feb. 7, 2017), <https://electronicintifada.net/blogs/ali-abunimah/palestinians-call-boycott-hyundai> [https://perma.cc/5ZYF-KP89].

221. See *id.*

222. See 7AMLEH, *supra* note 144.

problems with the networks.²²³ By working on local solutions, Palestine can create change without waiting for other countries or entities to contribute.

It has also been argued that Palestinian university graduates do not frequently enter into the ICT sector for various reasons.²²⁴ More specifically, it can be attributed to travel restrictions, unawareness of post-graduation ICT jobs, lack of innovative skills, outdated teaching methods, and lack of resources.²²⁵ In order to continue Palestinian development, the education system must also meet modern-day demands by “maintaining a harmonious relationship with advances in science, technology, and information and implanting the tools to ensure the continuance of knowledge-building.”²²⁶

CONCLUSION

The story of occupation has historically been told by analyzing the restriction of people’s ability to travel when living in an occupied territory. Although the construction of the Israeli-Palestinian separation barrier proves that the conflict continues to exist in this traditional definition of occupation, the modern-day story of occupation should be told through a different lens: the violation of one’s right to privacy.²²⁷ Under multiple sources of international law, including the Oslo Accords, Israel is required to grant Palestine, the occupied territory, certain rights. Examples of this legislation, although contested, include the Hague Convention and the Fourth Geneva Convention.²²⁸ However, according to customary international law, the occupier is generally allowed to act in anticipatory self-defense if an attack is imminent.²²⁹ Resultingly, Israel’s motives and the harms to Palestinians must be balanced.²³⁰

The differences in situations that trigger questions of occupation law and the distinct cultures around the world lead to difficulties to enact a universal statute to handle controversies related to technology and data privacy in occupied territories. Rather, many factors, including those listed above, should be used to provide courts with the opportunity to decide consistently with their own cultures and societies. It may also be beneficial to consider possible explanations for differences in data privacy concerns, which are not limited to but could include differences in: (1) cultural values; (2) internet experiences; and/or (3) the role of political institutions.²³¹

223. Arafah et al., *supra* note 22.

224. *See* Nuseibeh et al., *supra* note 134, at 403.

225. *Id.*

226. Tremaine Tucker, *The ICT Sector in Palestine: Current State and Potentials*, PALESTINE ECON. POL’Y RSCH. INSTITUTE 39 (2012).

227. *See generally* ABUSHANAB, *supra* note 69 (emphasizing Israel’s control over Palestine’s ICT sector, specifically conducting mass surveillance and monitoring Palestinians’ online content and activity).

228. *See generally* GROSS, *supra* note 1, at 258.

229. *Anticipatory Self-Defence*, INT LAW (June 17, 2018), <https://intl.wco.uk/selfdefence> [<https://perma.cc/SCH6-MEKZ>].

230. GROSS, *supra* note 1, at 265 (explaining that the HCJ has developed a proportionality test to balance Israel’s motives with Palestinian harms).

231. Steven Bellman, Eric J. Johnson, Stephen J. Kobrin & Gerald L. Lohse, *International*

The HCJ has already expressed its willingness to use a proportionality structure in relation to occupation law through its separation barrier case decisions.²³² In order to make any progress in the conflict regarding Israel's control over Palestine's ICT sector, the questions developed by Picker, the factors provided by Lubin, and the possible explanations for differing cultures' varied data privacy concerns should all be considered by the courts in future cases.²³³ As Israel continues to tighten its hold around this sector as a result of the ongoing conflict, it is time for those, both internationally and locally, to enact a solution to protect both Palestine's and future occupied territories' freedom to control their own ICT sectors.

Differences in Information Privacy Concerns: A Global Survey of Consumers, INFO. SOC'Y 313, 313 (2010).

232. See HCJ 2056/04 Beit Sourik Village Council v. Government of Israel, 58(5) PD 807 (2004) (Isr.); see also HCJ 7957/04 Maraabe v. Prime Minister of Israel, 60(2) PD 477 (2006) (Isr.).

233. See *supra* Section IV.A.