

# Securing Injustice:

Legal Analysis of  
G4S Israel Operations  
in Occupied Palestinian Territory

Diakonia International Humanitarian Law Resource Centre  
November 2013



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PEOPLE CHANGING THE WORLD

# Securing Injustice:

## Legal Analysis of G4S Israel Operations in Occupied Palestinian Territory



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## 1. Introduction

### Abstract

This publication examines the key legal issues raised by the operations of G4S Israel, a Private Security Company (PSC) operating in the Occupied Palestinian Territory (OPT). It includes an overview of the activities and status of the company as such, as well as its proximity to and involvement in established violations of international law on the part of the Occupying Power, Israel. It also outlines the responsibilities of the State that hired it, Israel, and those of the States in whose territory it is incorporated, the United Kingdom and Denmark.

G4S defines itself as an international security solutions group, specializing in governmental outsourced security processes and facilities. This publication will further contribute to the understanding of the functioning of G4S as a Commercial Conflict-Dependent Actor, and the impact of policies and practices associated with outsourcing occupation on G4S's business activities. Such policies and practices include the internment of persons, restrictions on movement of the local protected population, and markedly, the transfer into and the presence of the population of the Occupying Power in occupied territory, in the form of settlements.

### Brief History and Classification of Conflict

Ever since the outbreak of an international armed conflict in the area in June 1967, when Israel gained effective control over the West Bank (including East Jerusalem) and the Gaza Strip, these territories have constituted Occupied Palestinian Territory (OPT). The laws applicable to the Occupied Palestinian Territory are the laws of belligerent (hostile) occupation, which are a central part of International Humanitarian Law (IHL). The primary legal instruments regulating occupation are the Hague Regulations and the Fourth Geneva Convention. These laws are binding on Israel, according to the legal text and confirmed by the international community, including judicial bodies. According to Israel, however, none of the territory captured had a prior legitimate sovereign, thus the area cannot be considered as occupied by it under international law, an assertion authoritatively contradicted by the International Committee of the Red Cross (ICRC),<sup>1</sup> the UN Security Council (in Resolution 242 and Resolution 338), and the International Court of Justice (ICJ).<sup>2</sup>

### About G4S

G4S Israel, a subsidiary of G4S plc, is a private business entity that has been contracted by the government of Israel and its qualified organs, as well as private actors, to provide security services in the OPT, including armed guarding and protection of persons and objects within Israeli settlements in the West Bank; provision and maintenance of checkpoints associated with the Wall and its related systems throughout the OPT; and the provision of systems and personnel directly related to the detention or imprisonment of Palestinians, within and outside occupied territory. Services provided by G4S in the OPT, or related to the occupation, may have been carried out in violation of international legal norms.

ISRAEL G4S could be characterized as a Commercial Conflict-Dependent Actor (CCDA). The term CCDA as used throughout this publication refers to the following cascaded criteria: actors who benefit financially from the conflict, and who have altered their activities in order to gain from it financially, without taking into consideration the role they play in the conflict.

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<sup>1</sup> Conference of High Contracting Parties to the Fourth Geneva Convention, Statement by the International Committee of the Red Cross, Geneva, 5 December 2001: 'the ICRC has always affirmed the de jure applicability of the Fourth Geneva Convention to the territories occupied since 1967 by the State of Israel, including East Jerusalem. This Convention, ratified by Israel in 1951, remains fully applicable and relevant in the current context of violence. As an Occupying Power, Israel is also bound by other customary rules relating to occupation, expressed in the Regulations annexed to the Hague Convention respecting the Laws and Customs of War on Land of 18 October 1907'.

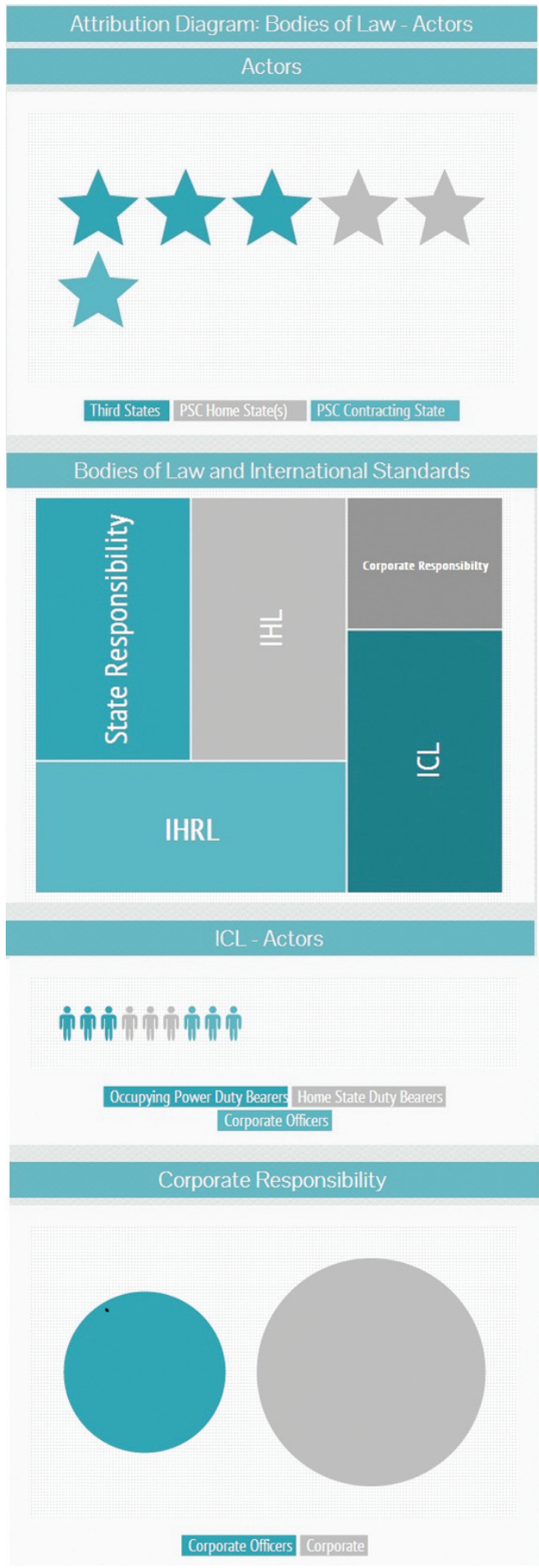
<sup>2</sup> Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. 2004.

CCDAs have a vested interest in the prolongation of conflict, as it allows them to maximize their profits. Thus, in the context of the Palestinian–Israeli conflict, CCDAs would potentially profit from occupation and its prolongation.

Finally, we set out to elaborate on the legal implications for all actors related, directly or indirectly, to the operations of G4S in the OPT, as articulated in different bodies of law and related standards, including IHL, International Human Rights Law (IHRL), International Criminal Law (ICL), Corporate Social Responsibility standards (CSR), and general principles of public international law.

## 2. The Normative Framework

At the outset of this analysis we will clarify the broad normative framework as well as the interplay and overlap with the regulatory environment applicable to Private Security Companies (PSCs), like G4S, operating in the OPT. This section will stress that all actors, from states to corporations, must adhere to IHL, IHRL, and international standards of CSR.



## i. International Humanitarian Law

### *Jus ad bellum and jus in bello*

When discussing International Humanitarian Law (IHL), we wish to distinguish between two legal terms of art: *jus ad bellum* (the legal authority to wage war) and *jus in bello* (law of war). While *jus ad bellum* regulates the legality of the use of force by a state outside its borders, *jus in bello* concerns the legality of the manner in which any force is to be used when in a situation of armed conflict. The distinction means that the rules of *jus in bello* apply irrespective of questions of legality under *jus ad bellum* and consequently, the belligerents are subject to the same rules of *jus in bello*, whatever their position under *jus ad bellum*, namely the determination as to whether forcible action was permissible in the first place.

In contrast to IHRL, which applies at all times, both during peace, emergency situations, and armed conflict, IHL is a legal regime that only applies to armed conflicts, including occupation. Hence it must be established that it is applicable. Following the international armed conflict that took place in June 1967, the provisions of International Humanitarian Law (IHL), namely the Hague Regulations of 1907, and the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 1949—both of which constitute customary international law binding on all<sup>3</sup>—are applicable to Palestinian territory occupied by Israel.

As stated earlier, Israel’s claim that occupation law—applied when during an international armed conflict, a territory comes under the effective control of a foreign power—does not apply to the OPT, has been consistently rejected by the international community, including the High Contracting Parties to the Fourth Geneva Convention,<sup>4</sup> the UN Security Council (in Resolution 242 and Resolution 338), and the International Court of Justice, the highest legal authority on international law.<sup>5</sup>

### *The Missing Reversioner Doctrine*

While it is generally agreed that the law of occupation is the IHL regime applicable to the OPT, its applicability is consistently disputed by the government of Israel. In July 2012, the Edmond Levy Committee, appointed by the Israeli government to explore the legalization of settlement outposts, published findings that contradicted the assertion that IHL applies to acts by Israel with respect to the territories occupied in 1967. Retired Israeli Supreme Court Justice Edmond Levy and other committee members (retired District Court Justice Techia Shapiro, and Adv. Alan Baker, former Legal Counsel to the Ministry of Foreign Affairs) upheld the legal doctrine of the “Missing Reversioner” (or Missing Sovereign)<sup>6</sup>, claiming that the provisions of the aforementioned Fourth Geneva Convention do not apply in the case of Israeli occupation of Palestinian land and people: ‘The fact that there were no established sovereigns in the West Bank or Gaza Strip prior to the Six Day War means that the territories should not be viewed as “occupied” by Israel. When territory without an established sovereign comes into the possession of a state with a competing claim – particularly during a war of self-defence – that territory can be considered disputed’.<sup>7</sup>

<sup>3</sup> Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J., 1996.

<sup>4</sup> Conference of High Contracting Parties to the Fourth Geneva Convention, Statement by the International Committee of the Red Cross, Geneva, 5 December 2001.

<sup>5</sup> Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. 2004.

<sup>6</sup> The Missing Reversioner: Reflections on the Status of Judea and Samaria, Yehuda Z. Blum, *Israel Law Review* 3. 279, 1968.

<sup>7</sup> Disputed Territories: Forgotten Facts about the West Bank and Gaza Strip, Israel Ministry of Foreign Affairs, February 2003.



According to the Levy Committee, the Geneva Conventions apply only to the sovereign territory of a High Contracting Party, and therefore do not apply in this case, since neither Jordan nor Egypt exercised sovereignty over the region in question. Nevertheless, under customary international law as reflected in Article 42 of the Hague Regulations of 1907, **‘territory is considered occupied when it is actually placed under the authority of the hostile army’.**

Consequently, the aforementioned Missing Reversioner doctrine stands in direct opposition to the ICJ’s Advisory Opinion on the Wall (2004): **‘Under customary international law, the Court observes, these were therefore occupied territories in which Israel had the status of occupying power. Subsequent events in these territories have done nothing to alter this situation. The Court concludes that all these territories (including East Jerusalem) remain occupied territories and that Israel has continued to have the status of occupying power.’** Furthermore, numerous resolutions of the UN Security Council (UNSC 242 and UNSC 338) and the General Assembly consistently repeated the de jure applicability of the Fourth Geneva Convention to the Palestinian Territories and consider the OPT to be under belligerent occupation.

## Legal Consequences

Whenever a rule of international law is violated there are clear consequences for states under the rationale that states are responsible for such violations, hence the term ‘State responsibility’. As the Articles on State Responsibility for Internationally Wrongful Acts set out, there are two levels of responsibility, the first being the central consequences or demands on states violating any rule of international law. These are firstly the obligation to take steps to cease the action or omission which results in a violation of international law, and secondly, to make appropriate reparation.<sup>8</sup> These rules apply to direct acts committed by a state but also those activities outsourced.

## Applicability to Outsourced Security Activities

Having established that IHL is applicable, the next step is to demonstrate and clarify that Israel as the Occupying Power is still bound to respect such laws, even when it outsources certain functions to a private security company in order to administer the occupation.

It is important to note that international law does not prohibit states from hiring PSCs to carry out certain activities related, directly or indirectly, to belligerent occupation. Yet, it will be made evident hereafter that when they do so, they remain responsible for meeting their obligations under international law, and that they may not externalize or outsource their legal obligations.

It is important to affirm that the wrongful acts of a State organ (its armed forces) are clearly attributable to the State. Nevertheless, and as stipulated by the International Law Commission (ILC) Articles on the Responsibility of States for Internationally Wrongful Acts of 2001: **‘The conduct of a person or entity which is not an organ of the State under article 4 but which is empowered by the law of that State to exercise elements of the governmental authority shall be considered an act of the State under international law, provided the person or entity is acting in that capacity in the particular instance.’** Moreover, conduct which is not attributable to a State **“shall nevertheless be considered an act of that State under international law if and to the extent that the State acknowledges and adopts the conduct in question as its own.”**

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<sup>8</sup> Restitution in kind, compensation, satisfaction and assurances and guarantees of non-repetition. Article 42 Articles on State Responsibility.

The responsibility under IHL of PSCs, their corporate officers, and staff, exists alongside and is derived from that of the State that hires them, pursuant to rules relating to the responsibility of States for the acts of their agents under general public international law. Thus, the conduct of any organ of a State, or that of its agents acting in their official capacity, must be regarded as an act of that State.

Moreover, when a state hires a corporation in order to carry out functions normally assigned to governmental authority, its conduct is attributable to the State, as articulated by the commentary of the ILC on the Articles on State Responsibility, which cites as examples private security firms that run prisons and thus have powers of detention or discipline: ‘. . . **the wide variety of bodies which, though not organs, may be empowered by the law of a State to exercise elements of governmental authority. They may include public corporations, semi-public entities, public agencies of various kinds and even, in special cases, private companies. ...For example in some countries private security firms may be contracted to act as prison guards and in that capacity may exercise public powers such as powers of detention and discipline pursuant to a judicial sentence or to prison regulations.**’<sup>10</sup> Therefore attributable conduct extends IHL obligations to both the State and the involved corporation. As alluded to in the Commentary of the International Law Commission’s Articles on State Responsibility, attribution of the conduct of a corporation to a State is based on a legal criterion and not the mere recognition of a link of factual causality. Attribution is distinguishable from the characterization of a conduct as internationally wrongful. For a conduct by a private actor (e.g. corporation) to be attributed to a State, the actor must exercise elements of governmental authority (Article 5), and where the actor is acting on the instruction, under direction, or control of a State (Article 8).

## From Obligations of Occupying Power to Third State Obligations under IHL

Common Article 1 of the 1949 Geneva Conventions sets out the obligation of the parties involved in an armed conflict to respect the law, and the additional obligation for all High Contracting Parties (HCP) to ensure respect of the Geneva Conventions in all circumstances. Hence both during times of conflict and outside of conflict all states must take steps to ensure respect and refrain from taking any measure to undermine respect of the cornerstone convention of modern international humanitarian law.

Since States are under an obligation to ensure respect for IHL by all, this is specifically relevant with regard to the PSCs they hire. It should be noted that the legal consequences set out above could also apply to a third State, if it fails to adhere to its legal obligation to ensure respect of Common Article 1.<sup>11</sup>

Moreover, States in whose territory PSCs are domiciled (to be discussed in detail below) have a similar responsibility, as stated in the ILC Articles on the Responsibility of States for Internationally Wrongful Acts of 2001 Articles 7 and 8: **‘The conduct of a person or group of persons shall be considered an act of a State under international law if the person or group of persons is in fact acting on the instructions of, or under the direction or control of, that State in carrying out the conduct ...even if it exceeds its authority or contravenes instructions.’**<sup>12</sup> In this regard, States where PSCs are domiciled and where such corporations possess national legal personalities are also under a legal responsibility to ensure respect for IHL through their national implementation mechanisms.

<sup>9</sup> Difference Relating to the Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights, Advisory Opinion, I.C.J.1999.

<sup>10</sup> Ibid.

<sup>11</sup> It is important to note that ‘the terms “ensure” and “secure” require governments to take positive actions so that respect actually occurs’. For more see Louise Doswald Beck, *Human Rights in Times of Armed Conflict and Terrorism*, Oxford 2011, p. 32.

<sup>12</sup> Draft Articles on Responsibility of States for Internationally Wrongful Acts, adopted by the International Law Commission at its fifty-third session, in 2001, and submitted to the General Assembly as a part of the Commission’s report covering the work of that session (A/56/10).

In addition, Article 16 deals with the situation where one State provides aid or assistance to another with the intent to facilitate the commission of an internationally wrongful act by the latter. Such situations arise when a State voluntarily assists or aids another State in carrying out conduct which violates the international obligations of the latter; therefore the Articles maintain that **‘A State which aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible for doing so.’**<sup>13</sup>

Hence breaches of international humanitarian law committed by a PSC and its employees could be attributed directly to the State in which the PSC is incorporated or registered (also known as the ‘home State’), provided the State exercises effective direction or control over it. Article 8 of the above-mentioned Articles on Responsibility of States defines the criteria for attribution of the conduct (or misconduct) of a PSC to the home State, ranging from action on the part of the State (issuing instructions), to the very link to the State (directing or controlling).

## Grave Breaches

When dealing with the most serious violations of international law it is important to set out the additional consequences and obligations for such violations, both specifically under IHL but also more broadly under public international law (IPL).

It is also important to note the very clear obligations set out with regard to the more serious violations of IHL, those violations which form part of the grave breaches regime.<sup>14</sup> All States are under the obligation to take measures necessary for the suppression of grave breaches of IHL, including to search for, investigate, and accordingly bring before their courts any persons alleged to have committed grave breaches.<sup>15</sup>

What is more, Article 41 of the ILC Articles on the Responsibility of States for Internationally Wrongful Acts sets out the particular consequences and legal obligations of States faced with the commission of a serious breach of an obligation arising under a peremptory norm<sup>16</sup> of general international law by another State : **‘States shall cooperate to bring to an end through lawful means any serious breach ... No State shall recognize as lawful a situation created by a serious breach ...nor render aid or assistance in maintaining that situation.’**<sup>17</sup>

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<sup>13</sup> Articles on Responsibility of States for Internationally Wrongful Acts, 2001.

<sup>14</sup> Grave breaches, as defined by Article 147 of the IV Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, ‘shall be those involving any of the following acts, if committed against persons or property protected by the present Convention: willful killing, torture or inhuman treatment, including biological experiments, willfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power, or willfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention, taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.’

<sup>15</sup> As defined by Article 49 of the First Geneva Convention, Article 50 of the Second Geneva Convention, Article 129 of the Third Geneva Convention, Article 146 of the Fourth Geneva Convention and Article 85 of Additional Protocol I.

<sup>16</sup> In accordance with Article 53 of the 1969 Vienna Convention, a peremptory norm of general international law is one which is: ‘accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.’

<sup>17</sup> Articles on Responsibility of States for Internationally Wrongful Acts, 2001, Article 41.

## ii. International Human Rights Law

### Applicability

While IHRL conceptually applies at all times, the question concerns who is responsible to respect, ensure, and secure IHRL obligations. Traditionally States are responsible with regard to those living in their territory. However, this notion is expanded to include situations where a State has effective control over a foreign territory.<sup>18</sup> Hence, from the inception of the Israeli occupation of Palestinian Territory some forty–five years ago, UN Bodies have consistently rejected the Israeli assertion that IHRL does not apply extraterritorially in the OPT, most notably rejecting Israel’s claim that it can lawfully discriminate between Israelis and Palestinians in the OPT on the basis of citizenship.<sup>19</sup>

### Human Rights Violations and Legal Consequences

When assessing Israeli conduct, UN Treaty Bodies have concluded that its practices in the OPT violate not only the provisions of IHL, but further violate Palestinians’ economic, social, cultural, civil, and political rights enshrined in several bodies of international human rights law (IHRL). Specifically, these include human rights outlined, inter alia, in the Universal Declaration of Human Rights of 1948; the International Covenant on Economic, Social, and Cultural Rights of 1966 (ICESCR); the International Covenant on Civil and Political Rights of 1966 (ICCPR); the International Convention on the Elimination of All Forms of Racial Discrimination of 1969 (ICERD); the Convention on the Rights of the Child of 1990 (CRC); and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984.

Just as is the case with violations of IHL, whenever a statute of international human rights law is violated there are clear consequences under public international law (see ‘Legal Consequences’ above). There is firstly the obligation to take steps to cease the action or omission which results in a violation of international law, and secondly to make appropriate reparation.<sup>20</sup> Once again these rules apply to direct acts committed by a State but also to those activities outsourced and attributable to the State.

### iii. The Montreux Document

The application of IHL and IHRL to the activities of States, as set out above, has helpfully been clarified and consolidated in a more practical form through the recent adoption of the 2008 Montreux Document on Pertinent International Legal Obligations and Good Practices for States Related to Operations of Private Military and Security Companies during Armed Conflict.

<sup>18</sup> It should further be noted that the unequivocal ruling of the ICJ on this matter joins a series of decisions by the European Court of Human Rights, which established the test of ‘effective domination’ as determining the geographic boundaries of the application of the European Covenant on Human Rights and Basic Liberties. Notably the Court recognized in the *Loizidou v. Turkey* judgment of 23 March 1995 (preliminary objections), Series no. 310, p. 19, § 44 that “... the responsibility of Contracting Parties can be involved because of acts of their authorities, whether performed within or outside national boundaries, which produce effects outside their own territory ...when as a consequence of military action – whether lawful or unlawful – it exercises effective control of an area outside its national territory. The obligation to secure, in such an area, the rights and freedoms set out in the Convention derives from the fact of such control whether it be exercised directly, through its armed forces, or through a subordinate local administration.”

<sup>19</sup> IHRL is applicable in situations of peace and armed conflict, including occupations, as expressed by numerous UN Treaty Bodies and, most notably, the ICJ Advisory Opinion on the Wall (2004). Moreover, it is not permissible for Israel to justify its discriminatory treatment of Palestinians on the basis that they have a different status in international law as ‘protected persons’, while in fact the protection afforded to Palestinians as a matter of international law is more extensive. Discrimination against persons under the control of the State on the basis of nationality or ethnicity is prohibited by the International Convention on the Elimination of all Forms of Racial Discrimination, and international human rights law should be applied according to a test of ‘effective control’, from which jurisdiction flows the enjoyment of full rights under human rights treaties. Accordingly, the UN Committee on the Elimination of Racial Discrimination recommended that Israel ensures that Palestinians enjoy full rights under the Convention “without discrimination based on ethnicity, citizenship, or national origin.”

<sup>20</sup> Restitution in kind, compensation, satisfaction, and assurances and guarantees of non–repetition. Article 42 of the Articles on State Responsibility.

The 2008 Montreux Document, a joint initiative of the Swiss Federal Department of Foreign Affairs and the ICRC, currently has more than forty signatory States, including Denmark and the United Kingdom, and excluding Israel. The Montreux Document reaffirms the existing legal obligations of States with regard to PSCs and recommends an array of good practices for the implementation of existing legal obligations to assure compliance with IHL and IHRL. Accordingly, Montreux signatory States commit to taking appropriate measures to redress the unlawful activities of their corporate nationals through the introduction of effective regulatory measures to ensure compliance with international law, including the proper licensing of companies as well as the licensing of specific contracts through a regulatory authority.<sup>21</sup>

#### iv. International Criminal Law

In addition to the legal obligations arising for a State when it is responsible for serious violations of IHL, there is also individual criminal responsibility attached to such acts.<sup>22</sup> Moreover, the international community has deemed such behavior to be so serious that it entails a shared international responsibility to hold such perpetrators individually accountable.<sup>23</sup> Depending on the jurisdiction of the relevant court or tribunal, those aiding and abetting, ordering, supervising, and jointly perpetrating can also be held individually accountable.<sup>24</sup>

Not every violation of international humanitarian law is a war crime; rather, war crimes are serious violations of international humanitarian law.<sup>25</sup> There is no fixed list of what does and does not constitute a war crime under international law, however the Statute of the International Criminal Court encompasses the most accepted and significant codified regime concerning war crimes (it specifically sets out a non-exhaustive list of thirty-eight war crimes) intended to, but which does not fully reflect existing customary international law at the time of drafting. The reason why there is no set list is that international law is constantly evolving and it may be that certain conduct may become a war crime in time if it meets the criteria of: (i) being a serious breach of international law, (ii) having grave consequences for the victim, and (iii) having been criminalized by treaty or custom.

War crimes are most regularly prosecuted through domestic systems of law enforcement, such as court-martials or national courts with criminal jurisdiction. In addition, there are international fora where such crimes have been and are being prosecuted, which include the International Criminal Tribunal for the Former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR), and most recently the International Criminal Court (ICC).

With a general framework of substantive international criminal law, established under various treaties and customary international law, the next question to address is what are the duties incumbent on States in order to put this criminal framework into practice? In order for International Criminal Law (ICL) to be a functioning criminal code it authorizes States, or sometimes imposes upon them,<sup>26</sup> the obligation to investigate, if there is sufficient evidence, prosecute, and if found guilty, punish the perpetrator.

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<sup>21</sup> Montreux Document on Pertinent International Legal Obligations and Good Practices for States Related to Operations of Private Military and Security Companies during Armed Conflict. The Government of Switzerland and the International Committee of the Red Cross (2008).

<sup>22</sup> Such acts include war crimes as defined by customary international law and codified by various fora including the Nuremberg Military Tribunal's Charter, the International Criminal Court's Statute, and the Jurisprudence of the International Criminal Tribunal for Former Yugoslavia and the International Criminal Tribunal for Rwanda.

<sup>23</sup> Depending on the jurisdiction, individual accountability relates to legal persons; generally a natural person (e.g. corporate officer) is required to perpetrate a crime, while legal persons (e.g. corporations) may commit a crime.

<sup>24</sup> "Modes of Liability: Commission & Participation International Criminal Law Services," United Nations Interregional Crime and Justice Research Institute.

<sup>25</sup> As defined by the Geneva Conventions of 12 August 1949 (GC 1 Art. 50, GC 2 Art 51, GC 3 Art 130, GC 4 Art. 147, AP 1 Article 11, AP 1 Article 85); and the Rome Statute of the International Criminal Court, Article 8: "For the purpose of this Statute, "war crimes" means: (a) Grave breaches of the Geneva Conventions of 12 August 1949 ... Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law [...] In the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949 ... Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law."

<sup>26</sup> In accordance with Article 147 of the Fourth Geneva Convention.



The responsibility to investigate has been covered by several treaties, including the Geneva Conventions, and was also recently adeptly addressed by the Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (Van Boven Principles) adopted in 2005 by the UN General Assembly. These Principles set out that there is the duty to, inter alia: **‘investigate violations effectively, promptly, thoroughly and impartially and where appropriate, take action against those allegedly responsible in accordance with domestic and international law.’**

## Remedy and Reparations

While the focus on legal consequences is often centered on State responsibility<sup>27</sup> and individual criminal responsibility, it is important not to forget the obligations concerning remedies and reparations.

The Theo van Boven Principles stipulate that in cases of gross violations of international human rights law and serious violations of international humanitarian law, States have the duty to investigate, and if appropriate, submit to prosecution the person allegedly responsible for the violations, and if found guilty, the duty to punish her or him. The Principles also declare **‘adequate, effective and prompt reparation is intended to promote justice by redressing gross violations of international human rights law or serious violations of international humanitarian law. ... In cases where a person, a legal person, or other entity is found liable for reparation to a victim, such party should provide reparation to the victim or compensate the State if the State has already provided reparation to the victim.’**<sup>28</sup>

## v. Corporate Responsibility

The notion of corporate self-regulation is increasingly integrated into business models and activities, and addressed by international law, referred to as Corporate Social Responsibility (CSR).<sup>29</sup> In addition to the Montreux document discussed above, the following are self-regulating mechanisms by which a business may monitor and ensure its compliance with ethical standards, domestic, and international law:

The **United Nations Global Compact (UNGC)**, a United Nations initiative to encourage businesses worldwide to adopt sustainable and socially responsible policies, adopted in 2000. The Global Compact is a principle-based framework for businesses, stating ten principles in the areas of human rights, labour, the environment, and anti-corruption.

Consequently, **The United Nations Guiding Principles on Business and Human Rights (UNGPs)**, a global standard for preventing and addressing the risk of adverse impacts on human rights linked to business activity, was adopted in 2011. The UNGP encompass three principles<sup>30</sup> outlining how states and businesses should implement the framework, emphasising the corporate responsibility to respect human rights. The UNGP enjoys vast support from states and civil society organizations, as well as from the private sector.

<sup>27</sup> With respect to potential claims under international law, Article 3 of Hague Regulations states that: “A belligerent party which violates the provisions of the said Regulations shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces.” Further, Article 51 of the 1949 Geneva Convention I, Article 52 of the 1949 Geneva Convention II, Article 131 of the 1949 Geneva Convention III, and Article 148 of the 1949 Geneva Convention IV state: “No High Contracting Party shall be allowed to absolve itself or any other High Contracting Party of any liability incurred by itself or by another High Contracting Party in respect of [grave breaches of these Conventions].”

<sup>28</sup> UN General Assembly, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law. Resolution adopted by the General Assembly, 21 March 2006, A/RES/60/14.

<sup>29</sup> CSR is a broad concept stemming from the need for corporations to give back to the community. This report is focused on the IHRL and IHL aspects of self-regulation.

<sup>30</sup> Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework, 21 March 2011, A/HRC/17/31.

Finally, the **International Code of Conduct for Private Security Service Providers (ICoC)** is a set of principles for private security providers, created through a multi-stakeholder initiative convened by the Swiss government and the International Committee of the Red Cross (ICRC). The Code reinforces and articulates the obligations of Private Security Providers, particularly with regard to international humanitarian law and human rights law. More recently, agreement has been reached on the Charter for the Oversight Mechanism of the International Code of Conduct for Private Security Service Providers (ICoC).<sup>31</sup> A group of representatives from signatory companies, civil society, and governments were involved in negotiating an independent governance and oversight mechanism to ensure the effective implementation of the ICoC through the certification and monitoring of private security providers, as well as through the adoption of a complaint procedure. The formal launch and establishment of the oversight mechanism is expected at a later date in 2013.

### 3. Activities of G4S in Occupied Palestinian Territory

The outsourcing of duties previously performed by the armed forces of the Occupying Power to PSCs (including G4S), is part of a platform of policy prescriptions (including the privatization of other governmental services and labour deregulation) promoted by those who emphasize the role of the private sector in stimulating economic activity. On 16 February 2000, Israeli Deputy Minister of Defence Efraim Sneh announced in the Israeli Parliament (the ‘Knesset’) that for the first time, private security companies will take the place of the Israeli Defence Forces (IDF) in guarding settlements, citing a budgetary constraint: **‘following an additional one billion ILS cut in the defence budget, the Israeli Defence Forces have cut 40% of forces allocated to secure settlements ... residents, if they so wish ... may hire guards from security companies.’**<sup>32</sup> In response to a question from Member of Knesset Avraham Ravitz stating that **‘the reality is that an alternative to the IDF has been established: Private militias that are unregulated and lack experience,’** the Deputy Minister of Defence assured members of Parliament that **‘If we thought this would adversely affect security we would not have undertaken the budget cut ... it’s not just security; it’s the comfort of residents of Judea and Samaria.’**

G4S was founded in 2004 as a result of a merger between Securicor plc (UK) and Group 4 Falck (Denmark). The company had an annual revenue of (approx.) £7.50 billion in 2012, operations in over 125 countries, and 620,000 employees worldwide.<sup>33</sup> G4S plc is considered one of the largest private security companies in the world. Its stocks are exchanged as a primary listing in the London Stock Exchange (LSE) FTSE100 share index of companies with high market capitalization, and as a secondary listing in the Copenhagen Stock Exchange (CSE/OMX). In 2002, Group 4 Falck bought the majority of the shares of Hashmira, and currently G4S plc owns 91% of Hashmira (an Israeli PSC), which it renamed G4S Israel, and thus could effectively assume control and direction over it and its activities. Subsidiaries of G4S Israel include: Hashmira Security Technologies, Moked 99, Integral, Hotelo, Hashmira Capital Markets, Otzar Hashmira Hi-Tech Investments, Aminut Moked Artzi, and Moran Electronic Industries.<sup>34</sup>

G4S Israel has been providing a range of security-related equipment and services to different Israeli government institutions, as well as to private entities, in both Israel and the Occupied Palestinian Territory. For this reason the analysis of G4S activities in this publication is relevant to the administration of the Occupied Territory and occupied protected persons vis-à-vis the responsibilities and obligations of Israel as the Occupying Power.

<sup>31</sup> International Code of Conduct for Private Security Service Providers – consensus on oversight mechanism: <http://www.eda.admin.ch/eda/en/home/recent/media/single.html?id=47889>

<sup>32</sup> 86th Session, 15th Knesset, 16 February 2000.

<sup>33</sup> See: <http://www.g4s.com/~media/Files/Investor%20Relations%20documents/FINAL%20%20Preliminary%20Results%20Announcement%20130313.ashx>

<sup>34</sup> Coalition of Women for Peace, “The Case of G4S: Private Security Companies and the Israeli Occupation”, *Who Profits*, March 2011. [WP]

This section aims to provide a summary of G4S Israel’s activities related to the unlawful imprisonment of Palestinian detainees outside of the OPT in contravention of IHL,<sup>35</sup> the equipment and services it provides to checkpoints in the West Bank (a regime associated with the impediment of freedom of movement of protected persons and the Wall in the Occupied Palestinian Territory), and other security-related goods and services it provides to Israeli settlements in the Occupied West Bank in alleged contravention of IHL and IHRL.

G4S activities in the OPT exemplify the characteristics of a Commercial Conflict-Dependent Actor (CCDA), as its core business activity requires, and is dependent on, direct ties to Israel as the Occupying Power and its prolongation of the occupation, and clear dividends are derived from a situation where violations of international law consistently occur. Commercial actors that operate in conflict or occupation zones must ensure, with heightened managerial care, that their respective activities are in compliance with International Humanitarian Law and International Human Rights Law<sup>36</sup>, with the welfare and well-being of the local population in mind. The use of the term ‘heightened care’ in relation to G4S stresses the fact that PSCs need to use extra vigilance and care in managing the heightened risks encountered in conflict zones. The Organization for Economic Co-operation and Development (OECD) defines ‘heightened care’ as consisting of: extra efforts in board-level involvement; gathering information about the operational environment; record keeping and documentation; management practices for relevant staff, associates, and business partners; and monitoring, and where necessary, taking corrective measures.<sup>37</sup>

G4S, and the coercive services it provides as a PSC, appear to be at odds with that obligation. G4S bases and adjusts its business activities to a prolonged occupation in such a way as to benefit financially from it. Moreover, the services provided by G4S, dominating the PSC market in the OPT, could also be seen to have an adverse impact on the conflict, as it has allowed for the externalization and economic rationalization of possible grave breaches of IHL and gross abuses of human rights law by Israel as the Occupying Power, and G4S Israel acting as its agent, in certain circumstances.

## i. Prisons

The Israel Prison Service (IPS) facilities of Ktziot, Meggido, Damon, Abu Kabir, Kishon (‘Al Jalameh’), and Jerusalem (‘Russian Compound’), incarcerate Palestinian detainees including minors.<sup>38</sup> All of these facilities are inside Israel, contrary to an expressed protection against the transfer of civilians outside of the OPT.<sup>39</sup> According to publicly available reports and communications of UN Bodies asserting that Palestinian detainees are held, interrogated, and in some situations subjected to different forms of torture and ill-treatment, in violation of international law,<sup>40</sup> G4S Israel nevertheless provides the above-mentioned IPS facilities with crucial security services and equipment, including control rooms and peripheral security systems.<sup>41</sup>

<sup>35</sup> Geneva Convention relative to the Protection of civilian Persons in Time of War of 12 August 1949, Article 49.

<sup>36</sup> Business and International Humanitarian Law: an introduction to the rights and obligations of business enterprises under international humanitarian law, ICRC, 2006.

<sup>37</sup> OECD Glossary of Statistical Terms: <http://stats.oecd.org/glossary/detail.asp?ID=7247>

<sup>38</sup> UK Foreign Common Office; ‘Children in Military Custody’, June 2012. Permanently available at <http://alturl.com/c23o6> (Last accessed 5/7/2013).

<sup>39</sup> Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949, Article 49.

<sup>40</sup> See for example: Concluding Observations of the Committee against Torture, ISRAEL, CAT/C/ISR/CO/4

23 June 2009; Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, A/HRC/16/52/Add.1, 1 March 2011.

<sup>41</sup> Coalition of Women for Peace, “The Case of G4S: Private Security Companies and the Israeli Occupation”, *Who Profits*, March 2011, p.7.



The IPS, and Israeli authorities in general, have been criticised by a number of human rights organizations and UN Bodies (including Treaty Bodies and Special Procedures of the Human Rights Council<sup>42</sup>) for their ill-treatment of Palestinian prisoners, as well as their policy of transferring Palestinian detainees into incarceration facilities (including interrogation and detention facilities) outside of the OPT—a practice that constitutes a grave breach of the Fourth Geneva Convention (Art. 76). However, it should be made clear that the scope of G4S Israel activities relating to the unlawful imprisonment of Palestinian detainees outside of the OPT is limited to equipment and services the company provides to the Israeli Prison Service (IPS).<sup>43</sup>

According to a recent investigation by the Coalition of Women for Peace research project, ‘Who Profits’, the company installed the entire security system of Ktziot Prison. In addition, it installed the central control room of Meggido prison and provides general security services for the Damon prison.<sup>44</sup> The company likewise installed and maintains ‘peripheral defense systems’ for the Ofer prison and the control room of the entire Ofer military compound.<sup>45</sup> The compound is located in the Occupied West Bank near the settlement of Givat Ze’ev; however, its incarcerated Palestinian detainees are judged by military courts that do not take into consideration most aspects of fair trial rights.<sup>46</sup> For instance, Israeli military courts consider admissible confessions that are extracted through methods that constitute forms of torture.<sup>47</sup>

## ii. Checkpoints

Israel maintains a complex regime of control that restricts access and movement of Palestinian people in its administration of the OPT.<sup>48</sup> The International Court of Justice, in its 2004 Advisory Opinion on the Wall case, determined that the Wall, in as much as it is constructed in Occupied Territory, and its associated regime, are contrary to international law,<sup>49</sup> including checkpoints, because they impede movement-related rights without proper justification based on international law.<sup>50</sup>

The equipment and services necessary for the maintenance and operation of checkpoints, provided by G4S Israel, contribute to the prevention of Palestinians from accessing main transportation routes, basic services, and their farmland.<sup>51</sup> G4S Israel has provided Rapiscan and L-3 Safeview full-body and luggage scanners to the checkpoints at Qalandia, Bethlehem and Irtah, along the route of the Wall in Occupied Territory, deemed illegal by the ICJ in its 2004 Advisory Opinion.<sup>52</sup> The company also provides on-site maintenance services for these security systems in some of the above-mentioned checkpoints.<sup>53</sup>

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<sup>42</sup> For Treaty Bodies see: <http://tb.ohchr.org/default.aspx?country=il> For Special Procedures see: [http://ap.ohchr.org/documents/dpage\\_e.aspx?c=89&su=95](http://ap.ohchr.org/documents/dpage_e.aspx?c=89&su=95).

<sup>43</sup> Ibid.

<sup>44</sup> Coalition of Women for Peace, ‘The Case of G4S: Private Security Companies and the Israeli Occupation’, Who Profits, March 2011 <http://whoprofits.org/sites/default/files/WhoProfits-PrivateSecurity-G4S.pdf>.

<sup>45</sup> Coalition of Women for Peace, ‘The Case of G4S: Private Security Companies and the Israeli Occupation’, Who Profits, March 2011

<sup>46</sup> See for example: Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967, A/HRC/20/32, 25 May 2012.

<sup>47</sup> HCJ 5100/94, *Public Committee Against Torture in Israel v. Government of Israel*, 6 September 1999. PCATI, ‘Accountability Denied: The Absence of Investigation and Punishment of Torture in Israel’, December 2009, p. 93.

<sup>48</sup> OCHA, ‘Restrictions on Movement and Access: Fact Sheet’, May 2012, available at [http://www.ochaopt.org/annual/documents/ochaopt\\_accessmovements\\_fast\\_facts.pdf](http://www.ochaopt.org/annual/documents/ochaopt_accessmovements_fast_facts.pdf)

<sup>49</sup> ICJ *Wall* case para. 163(3)(a).

<sup>50</sup> An example would be the Qalandia Check Point, which aims to isolate East Jerusalem from the rest the West Bank and the physical implementation of the unlawful annexation of East Jerusalem. See also ICJ *Wall* case para. 134.

<sup>51</sup> This practice results in widespread violations of the right to freedom of movement (Article 12, ICCPR), affecting several other rights, including the right to family life, home, and work. See OCHA, ‘Barrier Update: Seven years after the Advisory Opinion of the International Court of Justice on the Barrier, 11 July 2011. [http://www.ochaopt.org/documents/ocha\\_opt\\_barrier\\_update\\_july\\_2011\\_english.pdf](http://www.ochaopt.org/documents/ocha_opt_barrier_update_july_2011_english.pdf). See also OCHA, ‘Restrictions on Movement and Access: Fact Sheet’, May 2012, available at [http://www.ochaopt.org/annual/documents/ochaopt\\_accessmovements\\_fast\\_facts.pdf](http://www.ochaopt.org/annual/documents/ochaopt_accessmovements_fast_facts.pdf).

<sup>52</sup> Coalition of Women for Peace, ‘The Case of G4S: Private Security Companies and the Israeli Occupation’, *Who Profits*, March 2011

<sup>53</sup> Response by G4S to the Business and Human Rights Resource Centre, ‘G4S Update – April 2012’, available at [http://www.business-humanrights.org/media/documents/company\\_responses/g4s-israel-apr-24-2012.pdf](http://www.business-humanrights.org/media/documents/company_responses/g4s-israel-apr-24-2012.pdf)

### iii. Settlements

The position of international law regarding settlements is well established<sup>54</sup>. According to the Fourth Geneva Convention, foreign belligerent occupations were envisaged to be temporary, and thus the rules regulating occupations were designed to prevent permanent changes in Occupied Territory. The law of occupation aims to strike a balance between the genuine security needs of the Occupying Power and ensuring the welfare of the occupied protected population, while maintaining, as much as possible, the status quo in the occupied territory. The establishment of settlements for the Occupying Power’s citizens is therefore inherently illegal. The Commentary to Article 49 of the Fourth Geneva Convention clearly established the origins of the prohibition in the practice of Occupying Powers **‘which transferred portions of their own population to occupied territory for political and racial reasons or in order, as they claimed, to colonize those territories’**.

Consequently, Article 49(6) states that any kind of transfer of the Occupying Power’s population to the occupied territory is prohibited, regardless of whether the transfer was voluntary or forced. This express prohibition includes voluntary settlement of citizens of the Occupying Power in the occupied territory. Therefore, the establishment of Israeli settlements in the OPT is an example of a clear breach of Israel’s legal obligations as the Occupying Power in the OPT. This position was expressed by the United Nations Security Council Resolution 446 (1979). Additionally, the ICJ determined that the Israeli settlements in the OPT (including East Jerusalem) were established in breach of international law.<sup>55</sup>

In a statement (2012) by G4S plc regarding G4S Israel’s activity in the OPT, the company confirmed that Hashmira, a Group 4 Falck subsidiary in Israel (prior to the merger), provided a number of security services termed ‘protection services’ to Israeli settlements in the West Bank.<sup>56</sup> In the same statement, the G4S plc reiterated that in 2002, ‘the then CEO of Group 4 Falck made a statement saying that the group felt those particular contracts were not in line with the company’s policies and that Hashmira would be exiting the contracts which protected the perimeter of the settlements.’<sup>57</sup> The statement continues to affirm that this process of exiting from the settlements was completed in 2002.<sup>58</sup> However, in the same statement G4S contradicts what it has stated before and admits that G4S Israel is providing security services in the form of ‘security officers within retail and banking outlets’ as well as security systems maintenance in a police station. The latter was recently confirmed by a statement sent to Diakonia according to which G4S provides a ‘small number of security officers working at retail and banking locations’ within the West Bank.<sup>60</sup> The Who Profits study reveals that the above-mentioned activities refer to security services (equipment and personnel) provided to businesses in Israeli settlements in the OPT, as well as the Barkan industrial zone (also in the OPT), while the above-mentioned police station was the ‘Machoz Shai’ police headquarters located in the settlement zone E1 near the Ma’ale Adumim settlement.<sup>61</sup>

The United Nations Human Rights Council (HRC) recently dispatched an independent international fact-finding mission to investigate the impact of the Israeli settlements on the civil, political, economic, social, and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem. In March 2013 the HRC endorsed the report of the independent international fact-finding mission, and demanded that all parties concerned, including United Nations bodies, implement and ensure the implementation of the

<sup>54</sup> GCIV Article 49(6): ‘The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.’

<sup>55</sup> ICJ Wall case, Para. 120.

<sup>56</sup> G4S Statement.

<sup>57</sup> Ibid.

<sup>58</sup> Ibid.

<sup>59</sup> Ibid.

<sup>60</sup> Letter from G4S plc to Diakonia, 24th October 2013.

<sup>61</sup> Coalition of Women for Peace, ‘The Case of G4S: Private Security Companies and the Israeli Occupation’, *Who Profits*, March 2011

recommendations made. Those conclusions and recommendations stipulate that regarding the settlements **‘Israel is committing serious breaches of its obligations under the right to self-determination and certain obligations under international humanitarian law, including the obligation not to transfer its population into the Occupied Palestinian Territory. Ratification of the Statute [of the International Criminal Court] by Palestine may lead to accountability for gross violations of human rights law and serious violations of international humanitarian law and justice for victims. ... Israel, in compliance with Article 49 of the Fourth Geneva Convention, is to cease all settlement activities without preconditions. In addition it should immediately initiate a process of withdrawal of all settlers from the Occupied Palestinian Territory. The mission also urges Israel to ensure adequate, effective and prompt remedy for all Palestinian victims for the harm suffered as a consequence of human rights violations that are a result of the settlements ....’**<sup>62</sup>

The Mission further called upon all Member States to comply with their obligations under international law and to assume their responsibilities in their relations with a State breaching peremptory norms of international law, and specifically not to recognize an unlawful situation resulting from Israel’s violations.

Moreover, **‘Private companies must assess the human rights impact of their activities and take all necessary steps – including by terminating their business interests in the settlements – to ensure that they do not have an adverse impact on the human rights of the Palestinian people, in conformity with international law as well as the Guiding Principles on Business and Human Rights.’**<sup>63</sup> Therefore, Third States and corporations are under the obligation not to provide any form of assistance to the furtherance of such violations, present and future. Referring directly to the impact of businesses in settlements, the Mission demonstrated that business enterprises have **‘directly and indirectly, enabled, facilitated and profited from the construction and growth of the settlements. ...a number of business activities and related issues that raise particular human rights violations concerns. They include: The supply of surveillance and identification equipment for settlements, the wall and checkpoints directly linked with settlements ...The supply of security services, equipment and materials to enterprises operating in settlements.’**

The operations of G4S in the OPT come within the scope of international human rights law and international humanitarian law, and the inherent nature of PSCs operations entail a potential for human rights and humanitarian law breaches. Nevertheless, the State is under an obligation and accordingly must exercise its duty to respect, protect, and fulfill human rights enshrined in human rights treaties, conventions, and covenants. In precise terms, Israel is to abstain from committing human rights violations and breaches of IHL directly or indirectly through a third party, pursuant to the law of state responsibility as codified in the Articles on Responsibility of States for Internationally Wrongful Acts of 2001, Articles 4, 5, 8, 9, and 11: **‘The conduct of a person or entity which is not an organ of the State under article 4 but which is empowered by the law of that State to exercise elements of the governmental authority shall be considered an act of the State under international law ...Conduct which is not attributable to a State under the preceding articles shall nevertheless be considered an act of that State under international law if and to the extent that the State acknowledges and adopts the conduct in question as its own.’** Thus, Israel carries a vested responsibility for the actions of G4S, and cannot exonerate itself from such responsibility.

<sup>62</sup> Report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social, and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem, (A/HRC/22/6).

<sup>63</sup> Ibid.

## 4. Modes of Accountability

Having first set out the legal framework, and then the scope and nature of activities conducted by G4S, it is now important to specifically address the legal implications and consequences for the various actors. The discussion will touch on the modes of accountability that are rooted in both law and precedent, and recognized under customary international law, which allow for the appropriate mode of liability or form of assignability to be established. Notwithstanding, the implementation and enforcement gaps can only be addressed through the determined action of Israel to ensure compliance in good faith.

The following section of this publication addresses the unique nature of private security services used within the context of occupation; the body or bodies of law that regulate the activities of PSCs ;and the responsibilities of the State that contracts them, the state in which they operate (known as the ‘host State’), and the state in which they are domiciled or incorporated (the ‘home State’).

For the purpose of this publication, we shall define a contracting State as a State that directly contracts the services of a Private Security Company (PSC), including where such a PSC subcontracts another company to perform respective duties. In the case of G4S, the contracting State, Israel, correlates with the State on whose territory the PSC operates, the host State (also referred to as the ‘territorial State’), following the logic of effective control by Israel of Occupied Palestinian Territory (OPT), and the extraterritorial applicability of its obligations under international law, discussed in detail above. Finally, we shall address the States where G4S is registered or incorporated, known as the home States, namely the United Kingdom and Denmark.

### i. Contracting and Host State – Israel

As discussed above, G4S has been hired by Israel to provide services, including guarding and protection of persons and property, and provision and maintenance of check points and detention facilities, acting as an agent of Israel in the context of the belligerent occupation and administration of occupied territory. As previously stated, nothing under international law prohibits Israel, *ex ante*, from externalizing certain, limited functions to G4S. However, it categorically cannot outsource responsibility, and may not absolve itself of its obligations under international law by contracting G4S, as it remains responsible for ensuring that international law is respected, protected, and fulfilled. In exact terms, it is Israel’s responsibility to prevent abuses of IHL and IHRL possibly committed by G4S. Moreover, Israel is obligated to investigate, prosecute, and provide remedies to victims of alleged violations of international human rights law committed by G4S, and ensure that mechanisms exist for holding accountable the staff of G4S suspected of violating international humanitarian law.

At the outset, we should note that while self-regulation through multilateral initiatives or codes of conduct (discussed in greater detail below) is a positive step towards allowing G4S to realize its human rights responsibilities and take voluntarily action to respond to concerns, including terminating its business in the OPT, the implementation and enforcement gaps can only be addressed through the determined action of Israel. Given that Israel has consistently failed to demonstrate a commitment to the application of international law in good faith in the course of nearly five decades of occupation, a detailed discussion of liability is imperative.<sup>64</sup>

<sup>64</sup> See UN Treaty Bodies Concluding Observations and Special Procedures reports: <http://www.ohchr.org/EN/countries/MENARegion/Pages/ILIndex.aspx>

## Accountability under International Humanitarian Law and International Criminal Law

G4S has been shown to engage in activities that were previously performed by regular military forces and have since been outsourced to PSCs. While G4S employees have not been de jure or de facto incorporated into the armed forces, their tasks suggest activity in contravention of IHL provisions on the administration of occupied territory, notably the forcible transfer of protected persons outside occupied territory, the transfer of the Occupying Power's own civilian population into occupied territory, and the undertaking of permanent changes in the occupied territory, not due to military needs in the narrow sense of the term, or for the benefit of the local population. Consequently, the State that has hired them, Israel, may be responsible if the violations can be attributed to it as a matter of international law, especially if G4S acted under instructions or control of State authorities.

Israel's responsibility vis-à-vis the activities of G4S entails the obligation to comply with the international norms breached, to offer proper guarantees of non-repetition, and to provide full reparation for all damages, including restitution, compensation, and satisfaction, pursuant to Articles 29–39 of the ILC Articles: **'The State responsible for the internationally wrongful act is under an obligation: (a) to cease that act, if it is continuing; (b) to offer appropriate assurances and guarantees of non-repetition, if circumstances so require. ...to make full reparation for the injury caused by the internationally wrongful act ... take the form of restitution, compensation and satisfaction.'**

Additionally, wrongdoings committed by G4S as a business entity, and those of its employees, as duly hired agents of Israel, and attributed to the State, can in turn invoke responsibility and liability under international criminal law.

It is important to recall that Resolution 177(II) of the UN General Assembly directed the International Law Commission to formulate the principles of the International Military Tribunal (IMT) judgment as principles of international law; (since then known as the 'Nuremberg Principles') as follows: **'Any person who commits an act which constitutes a crime under international law is responsible and liable to punishment for that act; The fact that a person who committed an act which constitutes a crime under international law acted as a Head of State or responsible government official does not relieve him from responsibility under international law; The fact that a person acted pursuant to an order of his Government or of a superior does not relieve him from responsibility under international law, provided a moral choice was in fact possible to him.'**

Article 147 of the Fourth Geneva Convention defines grave breaches of the Convention as those involving, among others, any of the following acts, if committed against persons or property protected by the Convention: torture or inhuman treatment; unlawful deportation, transfer, or confinement of a protected person; and extensive destruction or appropriation of property, not justified by military necessity and carried out unlawfully and wantonly. According to the Rome Statute of the International Criminal Court (ICC), Article 8, all grave breaches constitute war crimes and give rise to individual criminal responsibility. Even states, such as Israel, that have not acceded to the Rome Statute, might still be subject to an obligation to cooperate with the ICC in certain cases.<sup>65</sup> Consequently, Israel's policies and practices, prevalent in the OPT, may very well constitute international crimes, including those listed under Article 8(2)(a)(iv), and Article 8 (2)(a)(vii) of the Rome Statute of the ICC.

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<sup>65</sup> Zhu, Wenqi (2006), On Co-Operation by States Not Party to the International Criminal Court, *International Review of the Red Cross* (International Committee of the Red Cross) (861): 87–110.



## Accountability and Responsibility under International Human Rights Law

Israel is under an obligation to protect and fulfill human rights by enacting legislative and administrative measures to positively fulfill its human rights commitments. It is also obligated to protect persons from acts that impair the enjoyment of human rights. Thus, Israel must regulate the activities of G4S, take all appropriate measures to prevent any activities that could impair human rights, and ensure effective remedies and access to justice in the case of abuses.

Israel is a State party to the International Covenant on Civil and Political Rights (ICCPR; concluded 1966, ratified by Israel in 1991). The ICCPR commits its parties to respect the civil and political rights of individuals (including the right to life), to prohibit torture and cruel, inhuman, or degrading punishment, to guarantee freedom of movement, and to recognize the right of all peoples to self-determination.

Particularly, the ICCPR codifies a wide range of rights and liberties, and provides that every human being has the inherent right to life, and shall not be subjected to torture or to cruel, inhuman, or degrading treatment or punishment. And while the prevalent legal regime or lex specialis in belligerent occupation (pursuant of Hague Conventions of 1907 Article 42, 43; and the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War Section 3), is arguably IHL, the Human Rights Committee (HRC) established in relation to the ICCPR that: **‘...the Covenant applies also in situations of armed conflict to which the rules of international humanitarian law are applicable. ...both spheres of law are complementary, not mutually exclusive.’**<sup>66</sup>

It is worth noting that the aforementioned ICCPR provisions are non-derogable, even in times of armed conflict, pursuant to Article 4 of the ICCPR, and it is the authoritative position of the Human Rights Committee (HRC) that they imply positive obligations extended to the conduct of all actors: **‘...whether committed by public officials or other persons acting on behalf of the State, or by private persons’**.<sup>67</sup>

The right to a remedy for a violation of a human right is protected and guaranteed under all international instruments that Israel has signed and ratified, and is expressly guaranteed by the same instruments, and in the case of fundamental human rights, it has been recognized as non-derogable. Moreover, human rights instruments guarantee both the procedural right to effective access to a fair hearing, and the substantive right to reparations (such as restitution, compensation, and rehabilitation).

Several UN human rights treaties establish monitoring bodies with jurisdiction to review alleged breaches of States’ treaty obligations. The Human Rights Committee (HRC), the body in charge of monitoring the implementation of the International Covenant on Civil and Political Rights (ICCPR), and the Committee against Torture (CAT), the body of independent experts in charge of monitoring compliance with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), will both be discussed below.

Notably, the HRC concluded in 2012 that Israel must: **‘ensure the full application of the covenant in Israel as well as in the occupied territories, including the West Bank, East Jerusalem, the Gaza Strip and ... ensure that all persons under its jurisdiction and effective control are afforded the full enjoyment of the rights enshrined in the Covenant.’**

Specifically regarding activities undertaken by G4S in settlements and checkpoints, the HRC expressed concern at the ‘restrictions to freedom of movement imposed on Palestinians [...]’. The State party should comply with the Committee’s previous concluding observations

<sup>66</sup> CCPR, General Comment No. 31. This position was also affirmed in *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, ICJ Report (9 July 2004), at para. 106–113.

<sup>67</sup> CCPR, General Comment No. 20.

and take into account the Advisory Opinion of the International Court of Justice and stop the construction of a **“Seam Zone” by means of a wall, seriously impeding the right to freedom of movement, and to family life. It should cease all construction of settlements in the occupied territories.**<sup>68</sup> More recently, in August 2012 the HRC adopted a list of issues prior to the submission of the next State report by Israel.<sup>69</sup> Those include yet another reference to the full application of the Covenant in Israel, as well as in the Occupied Palestinian Territory, and inquiry as to whether Israel **‘has launched credible and independent investigations into all allegations of excessive use of force by the Israeli forces against Palestinian civilians at checkpoints in the Occupied Palestinian Territory’.**

Israel is also a State party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (concluded 1984, ratified by Israel in 1991). The Convention requires states to take effective measures to prevent torture within their borders, and in any territory under its jurisdiction. This prohibition is absolute and non-derogable, and forbids states to transport people to any country where there is reason to believe they will be tortured.

In relation to G4S activities in prisons, the CAT concluded in 2009 regarding the imprisonment of Palestinians **‘that administrative detention does not conform to article 16 of the Convention because, among other reasons, it is used for inordinately lengthy periods ... Detention orders under this law can be renewed indefinitely; evidence is neither made available to the detainee nor to his lawyer and, although the detainees have the right to petition to the Supreme Court, the charges against them are also reportedly kept secret.’**<sup>70</sup>

Like with any other violation of international law, Israel’s responsibility vis-à-vis the activities of G4S entails the obligation to comply with the international norms breached, to offer proper guarantees of non-repetition, and to provide full reparation for all damages, including restitution, compensation, and satisfaction, pursuant to Articles 29–39 of the ILC Articles: **‘The State responsible for the internationally wrongful act is under an obligation: (a) to cease that act, if it is continuing; (b) to offer appropriate assurances and guarantees of non-repetition, if circumstances so require. ...to make full reparation for the injury caused by the internationally wrongful act ... take the form of restitution, compensation and satisfaction.’**

## ii. Third States and Home States – UK and Denmark

All States have a responsibility to respect and ensure respect for international law, including by PSCs and their employees. Moreover, States in whose territory PSCs are incorporated are in an advantageous position to affect their behavior through domestic legislation and regulation.

More precisely, States have an obligation to ensure respect for IHL under Common Article 1 to the 1949 Geneva Conventions, which declares that they should not recognise unlawful acts by third states or render aid or assistance to them, and that they should cooperate to bring them to an end.<sup>71</sup> In addition, the Montreux Document provides that all states are obliged to ensure respect for international human rights and humanitarian law by taking the necessary administrative and legislative measures, including the enactment of universal jurisdiction legislation, to allow for the prosecution of international crimes.<sup>72</sup>

<sup>68</sup> Concluding observations of the Human Rights Committee, Israel, CCPR/C/ISR/CO/3, 3 September 2010.

<sup>69</sup> Human Rights Committee, List of issues prior to the submission of the fourth periodic report of Israel, CCPR/C/ISR/Q/4, 31 August 2012.

<sup>70</sup> Concluding Observations of the Committee against Torture, ISRAEL, CAT/C/ISR/CO/4, 14 May 2009.

<sup>71</sup> Art 40–41 ILC Draft Articles; Principle 18, Montreux Document. In addition to Articles 146–7 of the IV Geneva Convention.

<sup>72</sup> Principle 18–21, Montreux Document.

## Home State Due Diligence

As home States understood to be the State in which the company was constituted by way of incorporation and registration as a legal person, or the State in which the company houses its main management centre—both the UK and Denmark are obliged, pursuant to the Montreux Document to which they are signatory, to **‘take measures to suppress violations of international humanitarian law committed by the personnel of [private military and security companies]’** through appropriate administrative and legislative measures.<sup>73</sup> Such measures could include **‘measures to prevent, investigate and provide effective remedies for relevant misconduct’** by companies and their personnel.<sup>74</sup> It is imperative to note that the latter should be subject to investigation and prosecution, where appropriate, under domestic law and regulation.

As previously noted, as High Contracting Parties to the 1949 Geneva Conventions, the UK and Denmark have a duty to ensure respect for international humanitarian law. To comply with this duty each state must take appropriate measures to redress the unlawful activities of its corporate nationals. Separately, the extent of G4S’s contribution to Israel’s international law violations should concern the UK and Denmark for the potential effects these activities might have on their human rights record and reputation, as well as their ability to uphold their foreign policy objectives.<sup>75</sup> Effective regulatory measures taken by home states to ensure compliance with international law include the proper licensing of companies, as well as the licensing of specific contracts through a regulatory authority. The authorisation procedure should take into account the ‘inherent risk associated with the services to be performed’, including the company’s previous contracts.<sup>76</sup>

While home States are under a due diligence obligation to prevent conceivable abuses by PSCs, as illustrated above, they have a further obligation to remedy abuses, should they occur. Contingent on the nature of the wrongful acts by G4S, the UK and Denmark are obligated to investigate and possibly prosecute G4S employees and to suspend or revoke the licencing of G4S. Furthermore, as home State the UK and Denmark must guarantee alleged victims of G4S access to their domestic courts, and to appropriate civil remedies, including reparation for damages.<sup>77</sup>

### iii. Corporate and Corporate Officers’ Accountability

With the increased role of corporate actors, nationally and internationally, in conflict and post-conflict environments, and the extended roles played by PSCs in these environments, the issue of corporations’ impact on the enjoyment of human rights and their protection during armed conflict has raised the attention of numerous stakeholders, including global civil society, governments, and intergovernmental organizations.

<sup>73</sup> Principle 14(c), Montreux Document.

<sup>74</sup> Principle 15, Montreux Document.

<sup>75</sup> See, e.g., UK Foreign and Commonwealth Office (FCO), *Private Military Companies: Options for Regulation*, pp. 20–21.

<sup>76</sup> Principle 57, Montreux Document. Criteria for granting authorization should include the company’s record of involvement in serious crime – like the provision of personnel for guarding settlements in the past – and the way the company has dealt with these violations; Principle 60(a), Montreux Document.

<sup>77</sup> Ibid.



## Liability under International Criminal Law

Both the ICTY and ICTR Statutes, as well as the Statute of the International Criminal Court, have incorporated modes of criminal liability that are recognized under customary international law. The Statutes cover those persons who plan, instigate, order, directly perpetrate a crime, or otherwise aid and abet in its planning, preparation, or execution. Case law has shown that corporate officers have successfully been prosecuted for international crimes.<sup>78</sup>

The nature of Israel’s policies and practices in the OPT and the abundance of documentation in the public domain issued by UN bodies (including Treaty Bodies, the Human Rights Council, the Economic and Social Council, the Security Council, and the General Assembly, as discussed above) are sufficient to substantiate G4S’s knowledge of the risk of being involved in Israel’s unlawful practices.

G4S and its employees may be seen to contribute to specific gross human rights abuses and grave breaches of IHL by enabling, exacerbating, or facilitating the specific abuses. Moreover, G4S and its employees could be seen to be—even without desiring such an outcome—aware of the risk that their conduct will contribute to human rights abuses and IHL breaches, and wilfully blind to that risk.

Finally, G4S and its employees are proximate to the perpetrator of the gross abuses and breaches, the State of Israel, because of the nature of the connection, interactions, and services required from a PSC. It is likely that the company knew or should have known of the risk and possible liability.

## Corporate Social Responsibility

While the relevant obligations are derived first and foremost from international humanitarian and human rights treaties and customary law, international standards can also play a role in delineating the obligations of corporate actors vis-à-vis international law. Accordingly, several international initiatives have been undertaken to clarify and develop international legal standards regulating the activities of PSCs, and in particular, to ensure their compliance with standards of conduct reflected in IHL and IHRL. And while the documents mentioned below, which recall the legal obligations of both States and corporations (and their employees), do not form legally binding instruments, they are indeed instructive of obligations under customary international law, treaties to which States are party, and general obligations under the Charter of the United Nations. Clarity of the respective roles and responsibilities of governments and corporations with regard to protection and respect for human rights comes from the UN ‘Protect, Respect and Remedy’ Framework for human rights and business.<sup>79</sup> The Framework was composed by the Special Representative of the UN Secretary-General on the issue of human rights and transnational corporations and other business enterprises, building on major research and extensive consultations with all relevant stakeholders, including States, civil society, and the business community. In 2011, the UN Human Rights Council endorsed the Guiding Principles on Business and Human Rights, providing a global standard for preventing and addressing the risk of adverse impacts on human rights linked to business activity.

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<sup>78</sup> With respect to the criminal responsibility under international law (both IHL and IHRL) of corporate executive officers, the seminal case is that of Radio Television Libre des Mille Collines (RTL) executive officers who were tried in front of the International Crimes Tribunal for Rwanda (ICTR). And while there are substantial differences between the local contexts and violations attributed, the RTL ruling is sufficiently instructive. The ICTR prosecutors sought life sentences against the directors of the radio station, Ferdinand Nahimana and Jean Bosco Barayagwiza, who were found guilty of genocide and crimes against humanity. The Chamber considered the individual criminal responsibility of Ferdinand Nahimana and Jean Bosco Barayagwiza for RTL broadcasts, by virtue of their respective roles in the creation and control of RTL, and while recognizing that Nahimana and Barayagwiza did not make decisions in the first instance with regard to each particular broadcast of RTL, the Chamber ruled that ‘these decisions reflected an editorial policy for which they were responsible. The broadcasts collectively conveyed a message of ethnic hatred and a call for violence against the Tutsi population. ...As board members responsible for RTL, including its programming, Nahimana and Barayagwiza were responsible for this message [...] and failed to exercise the authority vested in them as office holding members of the governing body of RTL, to prevent the genocidal harm that was caused by RTL programming.’

<sup>79</sup> The Framework comprises three core principles: the State duty to protect against human rights abuses by third parties, including business; the corporate responsibility to respect human rights; and the need for more effective access to remedies.

The Guiding Principles declare that corporations should comply with applicable international law and respect human rights. Indeed, they are to **‘respect ... internationally recognized human rights – understood, at a minimum, as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organization’s Declaration on Fundamental Principles and Rights at Work. ... Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur; seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.’** Subsequently, an economic actor carrying out activities that are linked to an armed conflict must also respect applicable rules of international humanitarian law. Negligence to do so may indicate that the latter is a Commercial Conflict-Dependent Actor (CCDA), and expose such an actor to the risk of being deemed complicit in grave abuses, including war crimes, crimes against humanity, and genocide.

Principle 15 of the UN Guiding Principles on Business and Human Rights stipulates that a company that has made a policy commitment to human rights should also set up a due diligence process and provide a mechanism to remedy any adverse human rights impact: **‘In order to meet their responsibility to respect human rights, business enterprises should have in place policies and processes appropriate to their size and circumstances, including: ... A human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights; [and] processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute.’**

To satisfy its due diligence duty, G4S should be able to demonstrate the measures it is undertaking to address the risk of having a negative human rights impact on the situation in the OPT, namely through its various contributions to Israeli violations, including business activities that might entail the company’s complicity, according to Principle 21: **‘In order to account for how they address their human rights impacts, business enterprises should be prepared to communicate this externally, particularly when concerns are raised by or on behalf of affected stakeholders. Business enterprises whose operations or operating contexts pose risks of severe human rights impacts should report formally on how they address them.’**

And while a company is not required to divest, or not invest in the first place, in a country that violates human rights, it is expected to ensure that its engagements with state authorities do not encourage or facilitate the state’s unlawful practices, pursuant to Principle 19: **‘Appropriate action will vary according to whether the business enterprise causes or contributes to an adverse impact, or whether it is involved solely because the impact is directly linked to its operations, products or services by a business relationship.’** Once more, neglect to do so is indicative of a CCDA behaviour designed to economically rationalize the prolongation of conflict.

Recalling certain existing international legal obligations and drawing from various international humanitarian and human rights agreements and customary international law, the Montreux Document affirms the obligations of G4S, pursuant to Articles 22–26, to **‘comply with international humanitarian law or human rights law imposed upon them by applicable national law ...and specific regulations on private military or security services. The personnel of PMSCs are obliged, regardless of their status, to comply with applicable international humanitarian law ...to the extent they exercise governmental authority, have to comply with the State’s obligations under international human rights law; are subject to prosecution if they commit conduct recognized as crimes under applicable national or international law.’**

Moreover, G4S (through G4S plc, the UK–Denmark listed parent company of G4S Israel) signed the International Code of Conduct for Private Security Service Providers<sup>80</sup> in 2010, reaffirming its support and endorsement of the above–mentioned Guiding Principles and the Montreux Document, and has further affirmed that it is responsible to **‘...respect the human rights of, and fulfil humanitarian responsibilities towards, all those affected by their business activities’**.

More precisely, G4S committed itself, in relation to detention and imprisonment, pursuant to Article 33, to **‘treat all detained persons humanely and consistent with their status and protections under applicable human rights law or international humanitarian law, including in particular prohibitions on torture or other cruel, inhuman or degrading treatment or punishment’**. Likewise, in respect to checkpoints (and related apprehension and detention) it committed itself, pursuant to Article 34, to **‘not take or hold any persons except when apprehending persons to defend themselves or others against an imminent threat of violence, or following an attack or crime committed by such persons against Company Personnel, or against clients or property under their protection ... consistent with applicable national or international law and ...their status and protections under applicable human rights law or international humanitarian law, including in particular prohibitions on torture or other cruel, inhuman or degrading treatment or punishment’**.

More recently, in January 2012 G4S signed the United Nations Global Compact, a policy initiative for businesses that are committed to aligning their operations and strategies with ten universally accepted principles in the areas of human rights, labour, the environment, and anti–corruption, including a commitment to **‘support and respect the protection of internationally proclaimed human rights ...and make sure they are not complicit in human rights abuses’**.

Regarding the UN Global Compact, G4S stated that it takes a **‘strategic approach to respecting human rights, recognising the potential positive and negative impacts of our operations: the particular nature of our business as a security company’**.<sup>81</sup> Consequently, allegations about G4S’s involvement in serious human rights violations can be made to the UN Global Compact, and could result in the company’s removal from the list of participants or its status being marked as ‘non–communicating’, resulting in its being unable to use the UN Global Compact name or logo. This step conforms to the Global Compact’s Integrity Measures endorsed in 2005 by the UN Secretary–General.

In light of this analysis, G4S is encouraged to avoid any conduct that enables, exacerbates, or facilitates grave breaches of international humanitarian law and gross human rights abuses committed by Israel. G4S should avoid not only situations where the gross human rights abuse would not occur in the absence of its involvement, but also where its conduct is commercially dependent on the conflict and its prolongation; aggravates the situation by causing a wider range of abuses to be committed by Israel or increasing the harm suffered by Palestinians; as well as aggravates situations where its contribution changes the way the human rights abuses are carried out, including the methods used and their efficiency.

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<sup>80</sup> Signed Code of Conduct document, 9 November 2012, available at: <http://snipurl.com/26y4c3m>.

<sup>81</sup> UN Global Compact: Communication on Progress 2012, Nick Buckles, CEO, G4S, 2 January 2012.

## 5. Conclusions and Recommendations

G4S's alleged contribution or facilitation of violations of international law in the OPT suggests the invocation of different mechanisms, international and national, judicial and quasi-judicial. Regardless of the type of accountability mechanism invoked, it is imperative to thoroughly establish the nature of the company's contribution to the unlawful acts perpetrated by Israel.

When a company's conduct is used directly by the perpetrator to commit the abuses—as could be the case for G4S—the involvement of the company is often very tangible and the link between its conduct and the ability of the perpetrator to carry out the wrongdoings is relatively clear. The proximity of PSCs, in physical space and business relationship, to perpetrators of wrongful acts, to the victims, and to the harm inflicted on the victims, is highly relevant in determining legal responsibility, complicity, and liability. The nature of services provided by G4S entails considerable control, influence, and knowledge, and may lead to shared decision-making and close coordination between the G4S and Israel. Consequently, if the requirement of causation is met, G4S is at risk, when and where grave abuses of IHL and gross human rights abuses transpire, and it is likely to face allegations of complicity. It is important to distinguish between cases in which the company contributes to inherently unlawful operations, such as the Israeli prisons holding Palestinians inside Israel and checkpoints associated with the Wall regime, and cases where the company's actions indirectly result in the maintenance of an unlawful regime that perpetrates international law violations, as in the case of settlements. **Regardless, Israel may not absolve itself of its obligations under international law by contracting G4S, and it remains responsible for ensuring that international law is respected, protected, and fulfilled.**

In response to a petition of nineteen non-governmental organizations from Egypt, Lebanon, Jordan, and Palestine that called on Arab nations and the European Union to stop dealing with G4S, dated 21 April 2012, G4S announced that it has **'conducted a review in 2011, [and] concluded that, to ensure that G4S Israel business practices remain in line with our own business ethics policy, we would aim to exit the contracts which involve the servicing of security equipment at a small number of barrier checkpoints, a prison and a police station in the West Bank area.'**

Notwithstanding its recent statement, and repeatedly expressed commitment to withdraw from controversial activities, allegedly in violation of international law, G4S has failed to demonstrate a genuine commitment to comply with international law in good faith. It maintains its precarious activities in the OPT and continues to financially benefit from the prolongation of the occupation of Palestinian territory, further entrenching policies and practices which deny Palestinians their inalienable rights.

Finally, G4S was provided with an opportunity to comment on an advance copy of this publication. In a letter to Diakonia (see Addendum <sup>82</sup>) G4S plc referred to a legal review of operations in the OPT undertaken in 2011 by law professor Hjalte Rasmussen, based on his previous legal opinion for G4S in 2002. Rasmussen had claimed that G4S did not violate any national or international law. However, concern as to the validity of claims made by G4S was previously raised by Dan Church Aid (DCA) and Amnesty International Denmark. They have expressed their discontent with the poor quality of Rasmussen's report, the former describing it as 'shameful' because it contains so many errors. The Secretary General of DCA, Stubkjær, reportedly said 'It is shameful that one can find so many factual errors in a man who signs as professor. The credibility of his investigation may be very limited.' The Secretary General of Amnesty International Denmark, Lars Normann Jorgensen, said that 'a case as serious as this one requires more thorough observations in the areas concerned than Hjalte Rasmussen has done.'<sup>83</sup>

<sup>82</sup> The letter refers to an advance copy of this publication, which slightly differs from the final version.

<sup>83</sup> <http://electronicintifada.net/content/security-firm-g4s-partly-withdraws-w-bank/9273> ; <http://modkraft.dk/node/14852>

## Recommendations

Following are recommendations to the relevant parties—including the company, the UK and Denmark as home states, and Israel as a contracting state—to consider undertaking so as to bring G4S’s conduct into compliance with international law.

**Israel**, the Occupying Power, must meet its obligations as such, and further respect, protect, and fulfil Palestinians’ rights, as prescribed by international law, including their inalienable right to self-determination. **Israel** should cease all violations of international law forthwith, and bring Israeli policy and practice into compliance with its obligations. Israel should refrain from using corporate actors, G4S and others, to abet or economically rationalize its violations of international law.

**Third states** should take measures to bring their corporate nationals into compliance with international law through national and regional mechanisms, pursuant to Common Article 1 to the 1949 Geneva Conventions, to respect and ensure respect for international humanitarian law. In view of their state responsibility in international law (including the ILC Draft Articles on Responsibility of States for Internationally Wrongful Acts; and the Montreux Document on Private Military and Security Companies) they should: (a) Press Israel to comply with its international law obligations by repressing unlawful activities by G4S against the protected population in the OPT; (b) Ensure that third State domicile is not being abused by G4S to participate in unlawful conduct abroad; (c) Undertake measures to pressure G4S to bring its services that amount to unlawful complicity in Israeli violations to an immediate end; (d) Take measures to ascertain G4S’s level of complicity, and if appropriate, ensure the proper investigation and prosecution of G4S and its officials; (e) Exclude corporations that are complicit in violations of international law from public tenders and procurements.

**UK and Denmark**, as G4S’s home States, are under a legal obligation to take all possible measures to bring the company into compliance with its obligations under international law, through implementing domestic legislation and enforcement of IHL, in line with the UN Guiding Principles, the Montreux Document, and GCIV Articles 146 and 147 in particular. In doing so the **UK and Denmark** should (a) Ensure that necessary measures are taken to review the company’s business activities in the OPT, to ensure its respect for international law, and to bring the company to amend or withdraw from its potential complicity in unlawful acts through its services in the OPT; (b) Require corporations to report on their human rights impact; (c) Ensure that victims of the conduct facilitated by the company are afforded an effective remedy; (d) Undertake the necessary measures to implement and uphold all other responsibilities as home States of the company as elaborated in the UN Guiding Principles and the Montreux Document, to which they are signatories.

**G4S plc (and G4S Israel Ltd.)** should carefully review and reconsider their entire activities in the OPT, in particular those associated with alleged violations of international law, so as to fully comply with its obligations under national and international law, including the UN Global Compact, the UN Guiding Principles and the Montreux Document, among others. Investors should ensure transparency and supervision in the selection of tenders by G4S, and further adopt quality indicators relevant to ensuring respect for national law, international humanitarian law, and human rights law. **Potential investors** in G4S plc and its subsidiaries should contemplate the liabilities it may incur while operating in the OPT, the precarious nature of investing in a PSC involved in coercive activities in occupied territory, and the unparalleled risk to their investment in a business activity whose profit model is conflict-dependent and potentially illegal.



## 6. Addendum



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24<sup>th</sup> October 2013

Dear Joakim Wohlfel

Thank you for your email of 7<sup>th</sup> October to John Connolly, Ashley Almanza and Clare Spottiswoode, and for giving us the opportunity to review and respond to your ‘Legal Analysis of G4S Operations in Occupied Palestinian Territory’.

Having reviewed the report in some detail, I would like to correct a number of factual inaccuracies regarding the service provision of G4S Israel which are contained in the current report draft:

Page 3	<ul style="list-style-type: none"> <li>▪ G4S does not operate checkpoints within the West Bank Barrier</li> </ul>
Page 13	<ul style="list-style-type: none"> <li>▪ G4S does not provide services which were previously performed by regular military forces.</li> <li>▪ G4S has no interaction with detainees and does not facilitate the transfer of detainees within the West Bank or Israel.</li> </ul>
Page 14	<ul style="list-style-type: none"> <li>▪ G4S provides and maintains electronic security systems to Israeli Prison Service. While some of these systems may be located within the prison control rooms, it would be incorrect to state that G4S provides the control room.</li> </ul>
Page 15	<ul style="list-style-type: none"> <li>▪ G4S has no interaction with detainees and does not facilitate the transfer of detainees within the West Bank or Israel.</li> <li>▪ G4S does not operate the security system, nor the control room at any Israeli prison facilities, including those at Ktziot, Meggido, Damon and Offer.</li> <li>▪ G4S provides and maintains electronic security systems to Israeli Prison Service. While some of these systems may be located within the prison control rooms, it would be incorrect to state that G4S provides the control room.</li> </ul>



Page 16	<ul style="list-style-type: none"> <li>▪ Prior to 2002, Hashmira provided “protective services” to Israeli settlements in the West Bank, which included armed perimeter patrols of the settlements. The company exited these contracts in 2002 as they were not in line with the company’s policies.</li> <li>▪ A small number of security officers protect retail and banking outlets within the West Bank. These current operations cannot be compared to those contracts which were exited in 2002.</li> </ul>
Page 18	<ul style="list-style-type: none"> <li>▪ G4S has no interaction with detainees and does not provide services which include interrogation and detention to the Israeli government.</li> </ul>
Page 19	<ul style="list-style-type: none"> <li>▪ G4S does not provide services which were previously performed by regular military forces. G4S has no interaction with detainees and does not facilitate the transfer of detainees within the West Bank or Israel.</li> </ul>
Page 21	<ul style="list-style-type: none"> <li>▪ G4S does not have any involvement with the Israeli prison regime or interact in any way with detainees</li> </ul>
Page 22	<ul style="list-style-type: none"> <li>▪ G4S does not provide security duties at the West Bank Barrier checkpoints.</li> </ul>
Page 26	<ul style="list-style-type: none"> <li>▪ G4S has no interaction with detainees in Israel or the West Bank.</li> </ul>

In Israel, G4S provides security systems installation and maintenance services (for example, intruder alarms, CCTV cameras, access control equipment) to the Israeli Prison Service (IPS). As you may know, the IPS is not involved in the judicial process, it receives convicted prisoners or those awaiting trial and is responsible for their custody and care – the IPS has no role in trial, conviction or sentencing.

Within the West Bank, we currently provide:

- Maintenance of electronic security systems at Ofer prison and a police station
- Servicing of scanning equipment at a small number of checkpoints
- Electronic monitoring of offenders in the community
- Home and small business alarm monitoring services
- Small number of security officers working at retail and banking locations

G4S does not:

- Provide personnel or perform security duties at checkpoints in the West Bank Barrier
- Manage control rooms or security systems at Israeli Prison Service facilities
- Have any involvement with the Israeli Prison Service regime or interact in any way with detainees



We take our responsibilities in relation to standards of business ethics and human rights extremely seriously and the G4S Board takes a very active and keen interest in ensuring that our standards of ethics are applied appropriately across our global operations.

You may be aware that in March 2011, we undertook a legal review of our business in Israel by engaging Professor Hjalte Rasmussen, from the University of Copenhagen, a well-known and leading authority in international law, to review our business in Israel and provide a legal opinion. After visiting the region and carrying out an extensive review, Professor Rasmussen concluded that G4S did not violate any national or international law.

G4S operates to a number of core standards, the details of which are outlined below:

UN Guiding Principles on Business and Human Rights:

In April of this year, we launched a global human rights policy and framework which aims to align the company's human rights practices with the UN Guiding Principles on Business and Human Rights and to introduce additional global guidelines for areas not currently covered by existing standards. Co-authored by Dr Hugo Slim, an internationally recognised human rights expert, the policy and guidance is being communicated to employees across the group.

UN Global Compact:

G4S plc has been a signatory of the UN Global Compact since February 2011 and is active within the UNGC UK Network, participating in Working Groups and as a member of the governing Advisory Committee. We have been pleased to confirm our on-going commitment and support for the aims of the Compact in our 2012 and 2013 Communications on Progress.

International Code of Conduct for Private Security Providers:

G4S is a founder signatory of the International Code of Conduct for Private Security Providers and has been a key member of the steering committee during the development of the oversight and compliance mechanism for the Code. At its launch in September, G4S Risk Management became a founder member of the ICOC Association.

I wish to reassure you we keep our operations in Israel under constant review as we do with all of our businesses. Such matters are the focus of regular discussion and review by the G4S group executive committee, CSR committee and Board. We consult with individuals and organisations regarding our operations in the region on an on-going basis, including human rights experts, ethical investment groups, members of the British Foreign & Commonwealth Office, members of the Israeli Prison Service and members of the International Corrections and Prisons Association.

Thank you once again for the opportunity to comment on your report. We trust that the amendments outlined above will be incorporated into the final version and we look forward to receiving a copy of the finished report.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Nigel Lockwood'.

Nigel Lockwood  
Group CSR Manager  
G4S plc

Securing Your World





# WEST BANK ACCESS RESTRICTIONS

DECEMBER 2012



## PHYSICAL CLOSURES

- Internal Checkpoint (fully staffed)
- Green Line Checkpoint\*
- Internal Partial Checkpoint

## WEST BANK BARRIER

- Constructed
- Under Construction
- Planned Route
- Planned Re-routing
- Barrier Gate

## CLOSED AND RESTRICTED AREAS

- Israeli military base
- Israeli firing zone and Jordan Valley Military Buffer Zone
- Access is prohibited
- Existing and projected 'closed areas' defined by the Barrier
- Access is limited to permit holders

- ### PALESTINIAN COMMUNITIES
- Governor's Capital
  - Governor's Boundary
  - Build-up
  - Community
  - < 1000 Residents
  - 1000 - 10,000
  - > 10,000
- ### ISRAELI SETTLEMENTS
- Settlement built-up, outer limit and municipal area
  - Land released by settlers
  - Israeli Settlements within Palestinian residential area
  - Israeli Nature Reserve

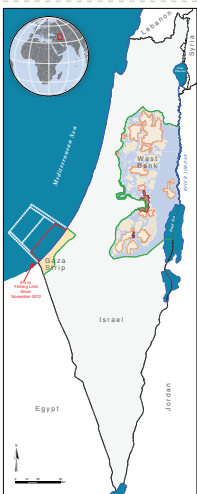
## ROADS

- Prohibited Palestinian vehicle use
- Main road
- Other road

## OSLO INTERIM AGREEMENT (1994-1999)

- Area A'
  - Area B'
  - Special Case (H2)
  - Intended Nature Reserve
  - Area C'
- Full Palestinian civil and security control
  - Full Palestinian civil control and joint Israeli-Palestinian security control
  - Hebron Agreement
  - Full Israeli control over security, planning and construction

## OCCUPIED PALESTINIAN TERRITORY

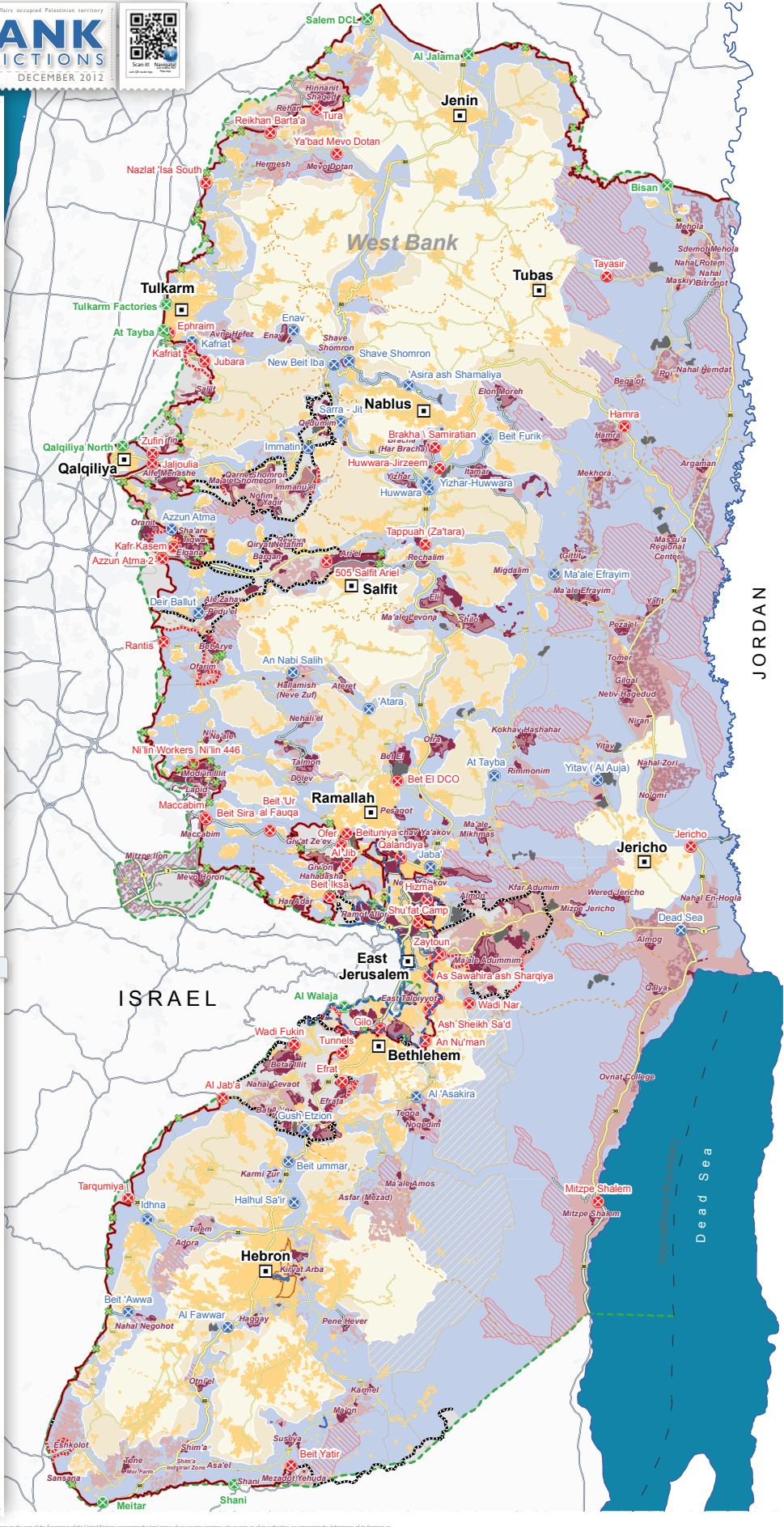


## WEST BANK BARRIER

A complex series of concrete walls, electronic fences, and other obstacles to control Palestinian pedestrian and vehicular movement. Construction of the Barrier within the West Bank including East Jerusalem continues, contrary to the advisory opinion of the International Court of Justice.



Controls movement through the West Bank Barrier. Permits, or prior coordination, are required for Palestinians to access their lands.



JORDAN

Dead Sea

ISRAEL

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#### What is Diakonia?

Diakonia is a Swedish development organisation working together with local partners for a sustainable change for the most vulnerable people in the world. We support more than 400 partners in nearly 30 countries and believe in a rights-based approach that aims to empower discriminated individuals or groups to demand what is rightfully theirs. Throughout the world we work toward five main goals: human rights, democratisation, social and economic justice, gender equality and sustainable peace.

#### *Diakonia International Humanitarian Law Resource Centre*

The goal of Diakonia International Humanitarian Law Resource Centre is to increase the respect for and further implementation of international law, specifically international humanitarian law (IHL), in the Israeli–Palestinian conflict. We believe that addressing violations of IHL and international human rights law tackle the root causes of the humanitarian and protection crisis in the oPt, in a sustainable manner. Our Centre makes IHL expertise available by providing:

- Briefings to groups and organisations on IHL and its applicability to Israel and the oPt;
- Tailored in-depth trainings on specific issues and policies relating to IHL;
- Legal analyses and ongoing research on current IHL topics; and
- Legal advice, consultation and legal review of documents for other actors in the oPt, to support policy formulation and strengthen advocacy with an IHL perspective.

Do you or your organisation want to learn more about IHL and its applicability to the oPt? Visit our website 'An Easy Guide to International Humanitarian Law in the occupied Palestinian territory' at: <http://www.diakonia.se/ihl> – or contact us to set up a general or specialised legal briefing by our legal advisors.

Contact us at: [ihl@diakonia.se](mailto:ihl@diakonia.se)