

Human Rights Review of G4S Israel

Human Rights Report and Legal Opinion Summary of Independent Review

2 June 2014

This document sets out the key findings of two independent reports which have been produced following a human rights and legal review of G4S business in Israel. **Dr Hugo Slim** authored the human rights report, and **Professor Guglielmo Verdirame** the legal opinion. These reports were presented to the Board of G4S and the key findings are being made available and accessible to the public.

Main Findings

Legal Opinion

The Review's Legal Opinion assumes a worst-case interpretation of Israel's position in international law, and assesses G4S's activities on this basis. Even with such a cautious approach the Legal Opinion concludes that the activities of G4S business in Israel are not in breach of international law.

The Legal Opinion endorses Professor Rasmussen's previous conclusion that there is no case against G4S on the grounds of complicity with alleged war crimes committed by Israel. As for G4S's alleged non-criminal responsibility under international law, in the absence of an international legal regime governing the responsibility of private corporations, no credible case can be advanced.

Even extending to G4S the rule on complicity found in the international legal regime governing the responsibility of States, the company's activities are such that any risk of responsibility for complicity would be extremely low at worst. It is very difficult to see how the legal requirements of contribution, knowledge and intent could be met.

Obligations incumbent on the third party States, in particular the obligation not to recognise the consequences of Israel's internationally wrongful acts (like illegal settlements) and the obligation to ensure compliance with the Geneva Conventions, do not alter the above conclusions.

Human Rights Report

G4S has no causal or contributory role in human rights violations. There is nothing that the company is doing in providing and servicing equipment for the IPS, OCA, Police, MoD or commercial customers that is critical to creating adverse impacts on human rights. There is also nothing obvious that the company is failing to do that would reduce human rights risks still further.

The nature of G4S services and the company's continuing human rights due diligence is effectively limiting the risks of complicity with human rights violations. There are clearly human rights failings in some parts of Israel's security system, but G4S' role is far removed from their immediate causes and impact.

G4S remains open to genuine dialogue with its critics but public debate on this conflict will continue to be polarised and combative. The highly contested nature of the Israeli-Palestinian conflict undermines objective dialogue around human rights. Campaigns against companies form a key part of a wider strategy by the Palestinian solidarity movement to delegitimize the State of Israel. In this context, it is hard for businesses like G4S to have a reasonable public debate about carefully and responsibly crafted human rights strategies.

Purpose of the Review

The Review and its two reports were commissioned by G4S in February 2014, and carried out in April and May 2014 by Dr Hugo Slim and Professor Guglielmo Verdirame.¹ The purpose of the Review was to inform the G4S Board of any actual or potential human rights risks to its business in Israel and make recommendations for mitigating or remedying them. The review focused on G4S business with links to Palestinians in detention and transit, and with Israeli settlements.

The reports do three things. The Human Rights Report assesses G4S Israel's alignment with the Group Human Rights Policy, and evaluates the validity of human rights criticisms of G4S Israel. The Legal Opinion presents a significant new legal evaluation of the issues involved. The reports focus especially on charges of complicity with human rights violations made against G4S by several human rights organizations and activists in the boycott, sanctions and divestment (BDS) campaign against Israel.

Method and Approach

The reports are based on an extensive literature review and an intensive ten-day visit to Israel, the West Bank, East Jerusalem and Ramallah. The Review examined over one hundred human rights reports on the Israeli-Palestinian conflict, focusing particularly on NGO reports and campaigns criticising G4S. It also made a significant study of relevant legal cases. The team observed several sites along the security fence, visited several Israeli settlements, toured two crossing points, and travelled through Qalandia on Palestinian buses on three separate occasions.

The Review Team had senior meetings with a range of relevant organizations: the Israeli Prison Service (IPS); the Overland Crossings Authority (OCA) of the Ministry of Defense; the Ministry of Justice; the Ministry of Foreign Affairs; the International Committee of the Red Cross (ICRC); UNICEF; UNRWA; Addameer; Defense for Children International Palestine (DCI-P); Military Court Watch (MCW); Diakonia; B'tselem, and the Public Committee Against Torture in Israel (PCATI).

Structure of the Review

The Review produced two reports. The first report reviews G4S Israel's business practices in relation to the company's 2013 Human Rights Policy and relevant international guidance frameworks on business and human rights. These include: the UN Global Compact's Guidance for Conflict Affected Areas; the UN Guidelines on Business and Human Rights; the OECD Guidelines for Multinational Enterprises, and the Montreux Document. This report then makes an ethical analysis of the charge of complicity against G4S. The second report is a full Legal Opinion of G4S' position in relation to international law, especially international human rights law and international humanitarian law. The Legal Opinion also focuses on the specific charge of complicity.

¹ Hugo Slim is Senior Research Fellow at the Institute of Ethics, Law and Armed Conflict at the University of Oxford and carried out this Review in his private capacity as an international consultant. Guglielmo Verdirame is Professor of International Law at King's College London. He practises as a barrister from 20 Essex Street chambers.

Human Rights Report

This report describes G4S' main business activities in Israel. It then assesses G4S Israel's alignment with the Group's Human Rights Policy, looking in particular at the human rights due diligence undertaken by the company. It then outlines the main human rights criticisms of G4S and makes an ethical analysis of the company's human rights conduct in respect of relevant UN and OECD international guidance frameworks on business and human rights.

G4S Business and Services

G4S employs 8,000 staff in Israel and provides nation-wide services to 50,000 customers (35,000 of which are private individuals). The main services provided by G4S Israel are as follows:

- **Manned Security** – front desk services, security officers and patrols
- **Technology Systems** – planning, supplying, installing and maintaining fire detection and suppression systems, CCTV, access control, burglar and panic alarms, intercom and PA systems, screening and inspection machines
- **Low Voltage Systems** – provision of integrated building control systems that coordinate heating, light, locks, energy efficiency and license plate recognition
- **Monitoring** – provision and monitoring of burglar alarms, panic systems and fire detection from 24/7 monitoring centres
- **Electronic Monitoring** – the monitoring of offenders in the community
- **Policity** – the construction, operation, maintenance of a new Israeli Police Training Centre

Various departments of the Israeli government are major G4S clients. Particularly significant for this review are G4S contracts with the Israel Prison Service (IPS), the Overland Crossings Authority (OCA) of the Ministry of Defense and the Israeli Police. A number of G4S Israel's nationwide contracts include services in the settlements for government, commercial and residential clients.

The Nature of G4S Business Activity

G4S Israel has no employees based in IPS facilities or any personnel working in roles which would cause them to have any direct interaction with Palestinian people in prisons or at checkpoints and crossing points. The company simply provides and maintains equipment. It does not operate this equipment.

In prisons, G4S installs and maintains generic security systems for the IPS. These include closed circuit television, access control, public address systems and panic buttons. These systems are used to ensure that the site is secure, and to protect the security and safety of staff, detainees and visitors. IPS prisons include Israeli and Palestinian prisoners. There is currently a total prison population of 20,000. This includes 5,021 Palestinian security detainees. 196 of these detainees are children, with no child less than 14 years old in IPS facilities. Only 373 of security detainees are from Gaza. A further 1,333 Palestinians are held for illegally entering Israel and other criminal convictions.²

² Figures from B'tselem, Statistics on Palestinians in the Custody of the Israeli Security Forces, 30 April 2014 at http://www.btselem.org/statistics/detainees_and_prisoners, and Military Court

At a number of OCA crossing points and checkpoints in the security barrier, G4S maintains baggage scanning equipment and metal detectors (like those used at airports). G4S does not own the equipment. It provides services to maintain the equipment. A total of 10.9 million Palestinian people came into Israel through crossing points and checkpoints in 2013.³ At Qalandia, for example, 6000 Palestinian workers cross into Israel each day with the busiest period being between 04.00 and 06.45.

The Main Human Rights Criticisms of G4S

Criticism of G4S on human rights grounds has consistently focused on three areas and one overall charge of complicity. Seven main allegations have been gathered from NGO campaigns against G4S, from BDS websites and from direct discussions with NGOs and IGOs during this review. These allegations were the main focus of the Review.

Detention and G4S Contracts with the IPS

- Allegations that G4S's business operations with the IPS support the unlawful detention of Palestinian security detainees outside occupied Palestinian territories. This is considered in breach of Article 76 of the Fourth Geneva Convention, and also sets unreasonable limits on family visits.
- Allegations that equipment supplied and maintained by G4S is essential to an Israeli detention system that fails in due process, especially around administrative detention, the detention of children, and the maintenance of a separate legal system that discriminates unfairly between Israelis and Palestinians.
- Allegations that equipment supplied and maintained by G4S is necessary to a detention system that is responsible for the torture and ill treatment of adult and child detainees, especially in Israeli Security Agency (ISA) interrogation centres that are managed by the IPS at Petah Tikva and Jalame.

The Security Barrier and Contracts with MoD and OCA

- Allegations that scanning equipment provided and/or maintained by G4S for use in the various crossing points and check points of the security barrier support illegal and degrading restrictions on the free movement of Palestinians around the West Bank and into East Jerusalem.
- Allegations that G4S scanning equipment at the Erez crossing into Gaza supports Israel's blockade of Gaza and unduly restricts humanitarian aid.
- Allegations that G4S scanning equipment at crossing points into the West Bank and Gaza supports the search of UN staff and vehicles in breach of international law affirming UN immunity and inviolability.⁴

Watch Newsletter May 2014 at

<http://www.militarycourtwatch.org/page.php?id=9qn5qfzQLsa317634AmvqyeTIA2p>

³ Israeli Defense Forces at <http://www.idfblog.com/2013/05/06/reality-check-the-truth-behind-crossings-in-judea-and-samaria/>

⁴ 1946 Convention on the Privileges and Immunity of the United Nations at <http://www.un.org/en/ethics/pdf/convention.pdf>

Contracts in the Settlements

- Allegations that G4S contracts that provide equipment, manned security or maintenance in the settlements are sustaining illegal Israeli settlement activity.

The Overall Charge of Complicity

These accusations against G4S do not tend to allege that the company's own staff are personally responsible for direct violations of the human rights of individual Palestinians. Instead, all the allegations frame G4S business activities as being supportive of human rights violations by the State of Israel. This allegation presents G4S' role as contributory and systemic. As a result, accusations against the company are most usually argued in terms of complicity as follows:

- Allegations that G4S equipment and services are complicit with systemic human rights violations because they form a necessary and essential contribution to the Israeli government's system of human rights violations in detention facilities, crossing points/check points and settlements.

Because all allegations are presented in a wrapper of complicity, this review and its legal opinion necessarily place great emphasis on an examination of G4S' potential complicity.

G4S Human Rights Due Diligence to Date

The G4S Human Rights Policy and Guidance meets all the main requirements of the UN Guidelines and the OECD Guidelines as they are set out in Article 15 of the UN Guidelines and paragraphs 4 and 5 of Chapter IV of the OECD Guidelines. These require clear policy commitments to respect human rights and to carry out human rights due diligence.

The Group's human rights policy is well understood by senior management in G4S Israel. The principle and practice of human rights due diligence is also well understood and highly valued by G4S Israel's senior management.

There is significant evidence that G4S Israel is consistently engaged in sufficient and appropriate human rights due diligence, and was similarly engaged long before the Group policy was launched in 2013. In its human rights due diligence, G4S Israel's senior management has applied the Group's policy and guidance, and the more detailed human rights due diligence checklist.

Evidence of G4S Israel's attention to human rights due diligence is found in two forms of human rights engagement: specific due diligence activities, and a culture of continuous concern with this aspect of the company's business across the senior team.

Due Diligence Activities

A number of specific activities undertaken by senior management in Israel show the company actively evaluating the company's human rights impact in line with the Group's guidance on human rights due diligence.

The company has commissioned two legal opinions that examine the company's risks of any legal breaches that suggest violations of human rights, one in 2011 and another specifically on detention in 2013. Each of these opinions was reassuring to the company. The legal opinion in this current review is now a third opinion.

G4S plc has also commissioned two external reviews of the many reports on relevant human rights issues in the Israeli-Palestinian conflict, one in 2012 and another in 2013. These reviewed over 100 human rights reports, Israeli government responses, and key judgements of the Israeli Supreme Court.

These various activities and reports show the company conducting regular reviews and seeking expert advice in line with the Group's human rights policy. This level of human rights due diligence is well up to the international standards required in the UN and OECD Guidelines.

Focusing on Human Rights Impact

The company has made important efforts to examine the potential impact of its business by commissioning a human rights analysis of the impact of the equipment it provides in detention facilities and crossing points in 2013. This was carried out by CSR specialists from BDO Consulting, a leading international consultancy. This produced an audit of the likely human rights impact of G4S equipment, using the detailed human rights checklist from the Group Human Rights Policy.

The report gauged the impact of different G4S products against the company's core rights listed in the Human Rights Policy. It showed, for example, the potentially positive impact of scanning equipment. Scanners reduce the risks to people's dignity and privacy from invasive personal search, and also reduce the risk of discrimination from arbitrary decisions of individual soldiers selecting individuals for random searches. Similar conclusions were drawn about the use of CCTV in prisons.

These findings were not grounded in consultations with direct stakeholders (detainees and Palestinians at crossing points) but the study shows the company thinking responsibly and accurately about the human rights impact of its technology.

Tracking, Mitigating and Preventing Human Rights Risks

In line with the UN Guidelines, the G4S Human Rights policy requires the company not only to track and monitor risks but also to respond effectively to risks by mitigating or preventing them. There is good evidence to suggest that the company does act on what it knows about human rights risks in order to prevent and mitigate adverse impacts.

G4S Israel has lobbied the Israeli government on positive changes to employment law around manned security to end excessively low bids in government tenders that are only made possible by inadequate staff benefits.

In its work with the IPS and OCA, G4S is convinced that the very nature of the technology it provides and maintains works constantly to mitigate human rights risks. This view is shared by senior members of the IPS and OCA. In prisons, CCTV, remote locking systems, panic buttons and low voltage networks reduce the physical presence of IPS wardens and so minimise friction and flashpoints between detainees and staff. Panic buttons enable a faster response to potential flare-ups. Less routine intervention by IPS staff also increases the autonomy of Palestinian security detainees who are free to organise a considerable amount of their social interaction and daily routine. This de-confliction of prison space is understood to create a safer environment for prisoners and IPS staff, and so to mitigate a range of risks to human rights. CCTV also enables effective suicide watch.

The same mitigation and prevention logic is intended by G4S in its work for OCA in which scanners maintained by G4S are combined with other OCA electronic systems of inspection like facial photography and finger printing. This collection of equipment is said to reduce the need for invasive and potentially degrading personal search, reduce contact between armed personnel and Palestinian residents, and speed up the process of queuing, checking and transit to an average of seven minutes per person.

Management Culture

G4S Israel's leadership team has made a conscious and conscientious effort to familiarise itself with human rights laws, norms and risks. Senior management is actively concerned about the human rights impact of their business.

This is not a company that is ignorant, disinterested or disdainful of the links between human rights and business. Nor is it a company that is unaware of the conflict around it. On the contrary, the initial challenge from Danish politicians and civil society in 2002, and the new responsibilities arising from being part of a global company, have made G4S Israel's senior management look as objectively as possible at their national context, its conflict and their role within it. The senior team in G4S Israel and in London have taken human rights seriously and kept it under constant review.

Complicity and Non-binding International Standards

Current international soft law standards on business and human rights are vague in their definition of complicity, and set the bar of corporate complicity very imprecisely. There are no hard measures in the standards against which to judge G4S Israel. Current international guidelines simply identify business relationships, business linkages and facilitation as key areas to focus on in any analysis of complicity. Ultimately, the principles embodied in international guidance on business ethics and human rights require interpretation in each specific situation.

To apply the principles of the guidelines, the report makes its own ethical analysis of G4S' potential role in any adverse impacts on human rights. This analysis focuses on the company's intention, capacity and actions, asking two main questions. What is G4S aiming to achieve in its work in prisons, crossing points and settlements? Is G4S's role causal, contributory or non-contributory in human rights violations that may occur? Examination of the company's role evaluates acts of commission and omission that may have a direct or indirect negative effect on human rights.

Company Intention

A key element in any judgement of complicity is the intention or mental stance of the party involved. Outright complicity would require G4S to be jointly involved in the planning of violations and fully supportive of such violations. In such complete complicity, G4S would be a co-principal in planning and designing strategies of human rights violations as a matter of deliberate policy. This would require that G4S had jointly planned and supported the alleged ill-treatment of prisoners, the organisation of illegal settlement activity and the policy that placed parts of the security barrier inside the Green Line.

This level of complicity is evidently not the case. G4S neither has nor seeks a political role in policy-making in Israel. G4S has no intention to have an adverse impact on Palestinian human rights, and does not plan deliberate joint wrongdoing with Israeli authorities. Instead, the company's intention is to provide the most modern security technology to ensure that Israeli prisons and crossing points are managed humanely and efficiently, in a business relationship that generates financial returns for the company.

There is no sense in which the corporate intention and business strategy of G4S constitutes a plan or purpose of human rights violations. On the contrary, the company has invested significant time and money in making sure that it has no such impact.

Company Capacity to Violate Human Rights

Alongside intention, an analysis of complicity must weigh what G4S actually does and can do in the situations in which it is charged with complicity. Any individual, company or state can only ever be held morally responsible for what it is actually doing or what it is able to do. So what is G4S actually doing and controlling in situations related to the human rights of Palestinians?

In its prison activities, G4S is providing and servicing equipment. This includes CCTV, access systems, fire detection, electronic locking systems, inspection machines and panic buttons. At checkpoints and crossing points, the company is servicing X-Ray inspection machines that check baggage and individuals. G4S does not control the use of this equipment, and it plays no active part in the due process, detention and treatment of security detainees, or the movement restrictions on Palestinians in transit around the West Bank, Jerusalem, Gaza and Israel. In short, the capacity and agency of G4S in these situations is extremely low, and effectively non-existent. The company is not doing anything directly to security detainees or Palestinians in transit.

No Causal or Direct Role in Violations

This means that G4S is not playing any direct role in the commission of human rights violations. In its business with the Israeli Prison Service (IPS), such a direct role would involve specific acts of commission that directly bring about the ill-treatment of prisoners, that transfer people illegally or that obstruct family visits. In its business services to crossing points and checkpoints this would involve degrading treatment and harassment of Palestinians rightfully moving around the West Bank, East Jerusalem or seeking entry into Israel. G4S is doing none of this.

G4S have no staff based in IPS or OCA facilities. When they visit prisons to service equipment, G4S employees have no direct face-to-face role or contact with security detainees. The same is true in G4S operations servicing x-ray inspection machines at crossing points and checkpoints where G4S staff have no contact with Palestinian residents. Here too, G4S employees are playing no direct part in activities that may ill-treat, degrade or wrongfully restrict Palestinian people as they move around.

It is completely clear that G4S employees have no direct role in abusing the human rights of Palestinian security detainees or Palestinian residents of the oPt as they travel through the West Bank and East Jerusalem, or enter Israel. G4S staff have no direct role in any of these operations and therefore are in no way involved in any direct acts of commission that abuse or infringe Palestinian people's human rights. In a similar way, the small numbers of G4S security officers working in the settlements are not playing any frontline security role that brings them into direct contact with Palestinian residents of the oPt.

No Obvious Acts of Omission

If G4S employees are not doing things directly that hurt or harm individual Palestinians, are they failing to do things that might actually protect them? Is the company having an adverse impact on human rights by acts of omission, and not doing things they should do?

It is not clear how G4S could apply its current equipment differently, or recommend different types of equipment to the Israeli authorities, in a way that would have an improved effect on human rights risks to individual Palestinians in prisons, crossing points and settlements.

The company's critics argue that the one thing that G4S is failing to do is to withdraw from certain contracts with the IPS, OCA and MoD. They suggest that G4S should do this for two reasons. First, there is the simple moral reason that one should always refrain from a wrongful or illegal act. But this review does not find that G4S is involved in immoral or illegal actions through these contracts. Secondly, and more consequentially, critics seem to suggest that by withdrawing from these contracts and participating in a boycott, sanctions and divestment strategy, G4S would help to bring pressure on Israel that will eventually make it change its policies. This outcome is by no means clear or predictable.

G4S' Indirect Role as a Provider

If G4S employees are not directly involved in individual violations of human rights, then any conclusion about the causal or contributory nature of G4S activity depends on the nature, purpose and capability of the equipment the company provides and places into the hands of the Israeli authorities. How could this equipment be used by others to violate human rights? This question concerns G4S' indirect role as a supplier and maintainer of equipment.

The nature of the equipment provided by G4S is not such that it could be used to harm security detainees or people in transit at crossing points. There are no reports of people being ill-treated, degraded or tortured by machines like scanners, panic buttons and CCTV. On the contrary, these machines have tended to make prison life and checkpoint conditions better for people.

Human rights reports criticise G4S because they claim that the company contributes to a system, which, as a whole, abuses people's rights to free movement, self-determination, due process, liberty and humane treatment. The allegation is that G4S equipment and servicing helps to bring about and sustain an illegal and abusive system. In other words, the equipment does not constitute violations in itself, but contributes to a wrongful system and to individual violations by others within the system.

Here again, the nature of G4S equipment does not seem to involve the capability and significance that its critics claim for it. It is quite standard security equipment used in prisons and other buildings around the world and is not the central or necessary variable in bringing about the particular abuses reported by human rights organisations. Failures of due process, unfair administrative detention, excessive solitary confinement, torture and ill treatment would all be easily implemented without sophisticated equipment of the kind G4S provides. There is no evidence that this kind of equipment is in any particular way either central or necessary to the human rights violations reported by G4S' critics.

G4S Equipment is not a Necessary Condition for Abuses

These factors suggest that G4S equipment is not central, necessary or essential to the occurrence of alleged violations within the Israeli system of due process and detention. Instead, the critical factors that determine Israeli detention practices are attributable to Israeli security policy, its governing legal framework, interrogation practices, and the professionalism of those responsible for Palestinian detainees.

General prison equipment has not been identified as determining and sustaining policies and patterns of abuse and violation. G4S equipment may contribute to the prison system but its contribution is not essential or necessary to those parts of the system that actually determine the quality of due process and the treatment of security detainees within the system.

Similar conclusions can be drawn about the X-Ray machines at crossing points and checkpoints. These machines are in no way central determinants or necessary factors in legal violations that may be involved in the location of checkpoints or in alleged degrading treatment by Israeli authorities at the checkpoints.

G4S' Role in Settlements

The question of G4S complicity with illegal settlements turns similarly on the significance of G4S' contribution. There is no doubt that the establishment of settlements has involved violations of Palestinian rights, even if the process of evictions, land confiscations and population transfer were carried out within a legal framework.⁵

G4S has played no role in these violations or in actively establishing settlements. Its various activities providing security and fire detection systems for police stations, post-offices, supermarkets and kindergartens, and electronic tagging for the IPS do not amount to activities that constitute settlements or directly harm Palestinians. Indeed, a good case can be made that G4S equipment is being responsibly used to protect Israeli settlers who also have human rights as individuals, and rights to protection as civilians in an armed conflict.

No Contributory Role in Human Rights Violations

To conclude, it is clear that no G4S employees or equipment are engaged in acts of commission or omission that directly or indirectly hurt or harm Palestinian people, and so violate their human rights in prisons, crossing points and check points, and in settlements. G4S has no significant contributory role in the violation of human rights in these contexts.

⁵ See, for example, Btselem, 2009, *The Hidden Agenda: The Establishment and Expansion Plans for Ma'ale Adummim and Their Human Rights Ramifications*.

The Question of Wrongful Association with the Israeli Government

Moral judgements are not only logical but also intuitive. Driving much of the criticism of G4S is an instinctive moral sense that it is not right to associate with institutions that are doing bad things, even if you are not directly involved in the bad things yourself. If individual Palestinians are being hurt and the Palestinian people as a whole are being denied self-determination, then for some people it just feels wrong to work closely with the Government of Israel.

This may be a valid moral stance but it is not an obligatory one, and certainly not the only way to engage around political wrongdoing. There are good reasons why engagement and association with the Government of Israel is ethical for G4S.

Palestinian Responsibility for Human Rights Risks

Israel is not alone in creating the risky human rights context for G4S business in Israel. Responsibility for the systems of restricted movement and detention that create human rights risks lies jointly with Palestinian authorities and Israeli authorities. Many of G4S's critics overlook the high level of Palestinian responsibility for the conflict and its security dynamics. To argue wrongful association with only one party in this conflict is unjust and one-sided.

Israeli occupation and illegal settlement may rightly inspire Palestinian resistance but that resistance has routinely involved breaches of international humanitarian law and human rights law. Many Palestinian resistance activists have committed serious crimes, so shaping the need for a significant Israeli detention system and legitimate Israeli measures to control movement close to Israeli territory.

Israeli systems of detention and movement restrictions are essentially justifiable and properly managed. The systems may be imperfect but they are not inherently wrong and they arise partly in response to Palestinian actions. Many Palestinians in security detention are rightly there because they have planned or committed crimes that have a major impact on the human rights of Israeli citizens. The need for a detention system and a security barrier is grounded in legitimate security concerns, and the barrier has played a part in reducing the numbers of Israeli civilians killed and hurt by Palestinian attacks.

Proximity is not Complicity

Many G4S critics make the mistake of confusing proximity with complicity. Just because a company is close to something wrong or unlawful does not automatically mean that the company is somehow involved in the wrong or unlawful itself.

Several NGOs regard any business association around Palestinian security issues with the Israeli Government as a sign of bad political judgement and a moral failing of some kind by G4S. This report does not share this view. A business relationship with the Israeli government does not involve an irresponsible level of complicity in itself. On the contrary, G4S work with Israeli Government clients often involves business relationships that are highly responsible, protective of human rights and that manifest an active commitment to good government and the safety of Israeli and other citizens.

Activists cannot simply criticize companies for having business relationships with their enemy. A relationship in itself does not amount to complicity in war crimes and human rights violations. If it did, then the EU and USAID would be complicit with the ill treatment of detainees in Palestinian prisons, simply because they work with the Palestinian Authority on detention facilities. Complicity is not determined by the fact of a relationship but by the intentions and actions involved in that relationship.

In short, there is no ethical case for claiming wrongful association with the Government of Israel in general or with its particular departments dealing with detention and security. It may feel morally uncomfortable at times, but such moral intuition is a prompt to a heightened discernment of risk, and not an imperative for a complete withdrawal of services.

It is not possible to say in any meaningful way that G4S has responsibility for any human rights violations allegedly being carried out by the State of Israel in detention, crossing points or settlements.

The Legal Opinion

The second report is an extensive legal opinion on “Issues of International Law in relation to G4S’s Activities in Israel and Occupied Palestinian Territories”.

Political Background and Legal Context

The Legal Opinion begins with a brief summary of the historical-political background, which is largely based on the Advisory Opinion of the International Court of Justice in the case *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*.⁶

The Legal Opinion then provides an overview of the legal context focusing on the main findings of the International Court of Justice in the *Wall* case, and the constitutional protection of fundamental rights under Israeli law, with particular regard to prisons and prisoners’ rights.

G4S Activities

The following section of the Opinion summarises the activities of G4S in Israel and the Occupied Territories. Most controversial for the purposes of the Opinion is the provision of equipment and services to the Israel Prison Service and the Overland Crossings Authority. The Israel Prison Service is responsible for detention centres in both Israel and the Occupied Territories. The Overland Crossings Authority manages the various crossing points that have been established along the Wall built by Israel (which Israel describes as a security barrier). G4S does not provide security officers who work at or within these sites. The equipment it supplies and maintains generally consists of CCTV cameras, screening machines and metal detector systems, panic alarms, and building control systems.

Applicable International Law

The next section of the Opinion examines the applicable international law. It is observed at the outset of this section that States are the principal addresses of international law, but that some rules of international law oblige States to regulate private conduct while others confer rights and duties on private subjects. Another important preliminary point concerns the distinction in international law between primary rules, which contain the substantive obligations of the State, and secondary rules (or rules of responsibility), which govern the consequences of a breach of those obligations. International law has not developed a comprehensive system of secondary rules that apply to *all* subjects. There are rules on the responsibility of States, on the responsibility of international organisations, and on individual criminal responsibility for certain crimes. But there are no secondary rules of international law governing corporate responsibility for breaches of international law.

The section on applicable international law proceeds to discuss two specific obligations that are particularly relevant in this context: the obligation not to recognise the illegal situation that derives from the construction of the *Wall* (as well as other potentially relevant illegal situations), and the obligation to ensure respect for the 1949 Geneva Conventions. This section concludes with an analysis of corporate complicity in international law with war crimes and with other breaches of international law.

⁶ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, I.C.J. Reports 2004, p. 136.

The above analysis of applicable international law considers a number of international and domestic legal authorities. It mirrors a similar analysis developed by Professor James Crawford in his Opinion on “Third Party Obligations with respect to Israel Settlements in the Occupied Palestinian Territories”.⁷ On all questions of common interest the two Opinions reach the same conclusions.

Consequences for G4S Activities

In the following section the Opinion considers the consequences of the above analysis for G4S’s activities in Israel. The case against G4S comprises three steps: *first*, Israel is in occupation of the West Bank and East Jerusalem; *second*, Israel is in breach of a number of obligations under international humanitarian law and international human rights law, particularly through the establishment of settlements and the construction of the security barrier; *third*, G4S is an accomplice to these breaches.

The Israeli Government would dispute the first two propositions. However, the Opinion proceeds on the assumption that there is merit to them. This way of proceeding is appropriate in these circumstances. Corporations in these situations should at first examine the legal nature of their ties with the State and any potential for responsibility. When their activities are such as to all but exclude any responsibility, they should not be expected to embark upon in-depth investigations of the abuses alleged against governments. In other words, the Opinion proceeds on the basis of a worst-case scenario of the context in which G4S operates. For the avoidance of any doubt, it must be stressed that this assumption is made because it is appropriate for the purposes of examining G4S’s position, and not because the author of the Opinion has made any findings on questions that would depend on highly disputed facts (such as, for example, the legality of Israel’s detention policy).

In examining G4S’s position, the Opinion stresses the importance of four factors. *First*, G4S is a company, not a State. The idea that obligations incumbent on States under international law can be automatically bestowed upon companies or individuals is misplaced. It is similarly an error to assume that the international law of State responsibility can be transposed to corporations.

Second, on any plausible analysis of the facts, the equipment and services provided by G4S in Israel cannot be said to have substantial effect on the perpetration of the war crimes and other violations of international law of which the State of Israel is accused. As a US court put it in a recent case concerning the provision of software by Cisco to China, G4S’s equipment is also “*a neutral product that can be used in innumerable non-controversial ways*”.⁸ In fact, the potential for dual use of G4S’s equipment, i.e. metal detectors, luggage scanners and CCTV cameras, is distinctly more limited than in the *Cisco* case.

Third, the equipment provided by G4S to Israel’s Overland Crossings Authority may even facilitate the pursuit of aims recognised as important by the international community and by the parties themselves. For example, the 2005 Agreement on Movement and Access between the Government of Israel and the Palestinian Authority referred specifically to Israel’s obligation to install “*a new and additional scanner*” in one of the Israel-Gaza crossing

⁷ <http://www.tuc.org.uk/sites/default/files/tucfiles/LegalOpinionIsraeliSettlements.pdf>

⁸ *Daobin et al. v. Cisco Systems Inc. et al.*, U.S. District Court for the District of Maryland, Case number [8:11-cv-01538](#).

points. The improvement of movement and access has also been identified as a key objective by the Representative of the Middle East Quartet (EU, UN, US and Russia). At the very least G4S's equipment has a mitigating effect on the breaches by expediting movement and access.

Fourth, as a result of the judgment of the High Court of Israel against the privatisation of prisons,⁹ there is not much more a private company like G4S could do in Israeli prisons even if it chose to. Israeli law currently prevents corporations from exercising the governmental functions associated with concerns about the human rights of prisoners.

Conclusion

In light of these factors, and of the analysis of the relevant international law, the *main conclusion in the Opinion is that the case that G4S is in breach of international human rights law and/or international humanitarian law is manifestly unfounded.*

In particular:

- The Opinion endorses Professor Rasmussen's view on there being no plausible case against G4S on the grounds of complicity with alleged war crimes committed by Israel.
- It finds that, in the absence of an international legal regime governing the responsibility of private corporations for breaches of international law, no plausible case of generic (rather than criminal) complicity can be advanced against G4S.
- Even if one were to extend to G4S the rule on complicity found in the international legal regime governing the responsibility of States, the facts about G4S's activities in Israel and the Occupied Palestinian Territories are such that any risk of responsibility for complicity would be extremely low at worst. It is very difficult to see how, given the kind of services which G4S provides, the requirements of significant contribution, knowledge and intent could be met.
- Obligations incumbent on third party States, in particular the obligation not to recognise the consequences of Israel's internationally wrongful acts and the obligation to ensure compliance with the Geneva Conventions, are inapplicable and, in any event, would not be breached in the circumstances.

⁹ *Academic Center of Law and Business v Minister of Finance*, HCJ 2605/05