

United Kingdom, G4S contracts in Israeli-occupied territories face major investigation

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A. Business and International Humanitarian Law: An introduction to the rights and obligations of business enterprises under international humanitarian law

[Source: Business and International Humanitarian Law: An introduction to the rights and obligations of business enterprises under international humanitarian law, ICRC, 11 September 2006, available at: http://www.icrc.org/eng/assets/files/other/icrc_002_0882.pdf]

[...]

[1] International humanitarian law does not just bind states, organized armed groups and soldiers – it binds all actors whose activities are closely linked to an armed conflict. Consequently, although States and organized armed groups bear the greatest responsibility for implementing international humanitarian law, a business enterprise carrying out activities that are closely linked to an armed conflict must also respect applicable rules of international humanitarian law. Moreover, whether a business enterprise operates in a context of ongoing armed conflict or whether its operations, established in a peaceful setting, are caught up by the outbreak of armed conflict does not affect its obligation to respect international humanitarian law.

[2] Determining what activities are closely linked to an armed conflict is, however, not always easy. Providing direct support to one side in a battle is clearly such an activity. But business enterprises are likely to carry out a whole range of other activities, which can be more or less connected with an armed conflict.

[3] On the other hand, a business enterprise that violates provisions of the national criminal law of a country in circumstances that are completely independent of a surrounding armed conflict does not violate international humanitarian law. However, the line between these various situations is at times difficult to draw precisely.

[4] In view of the above, business enterprises operating in zones of armed conflict should use extreme caution and be aware that their actions may be considered to be closely linked to the conflict even though they do not take place during fighting or on the battlefield. Likewise, it is not necessary for business enterprises and their managers to intend to support a party to the hostilities for their activities to be considered to be closely linked to the conflict.

[...]

B. Overseas Business Risk - Israel

[Source: Overseas Business Risk – Israel, UK Trade and Investment, 3 December 2013, available at: <http://opentoexport.com/article/overseas-business-risk-israel/>]

[1] The Overseas Business Risk report provides information on key security and political risks which UK [United Kingdom] businesses may face when operating in Israel.

Political and Economic

[...]

[2] Israel's armed forces occupied the West Bank, the Syrian Golan Heights and the Gaza Strip (along with the Sinai Peninsula) in 1967. Israel subsequently withdrew from Sinai in 1982 and from Gaza in 2005, but has formally annexed East Jerusalem and the Golan Heights. This has not been recognized by the international community, including the British Government, which considers all territory captured by Israel in 1967 as occupied and the status of Jerusalem as the capital of Israel as subject to negotiations with the Palestinians.

[...]

Settlements

[3] The UK has a clear position on Israeli settlements: The West Bank, including East Jerusalem, Gaza and the Golan Heights are territories which have been occupied by Israel since 1967. Settlements are illegal under international law, constitute an obstacle to peace and threaten to make a two-state solution to the Israeli-Palestinian conflict impossible. We will not recognize any changes to the pre-1967 borders, including with regard to Jerusalem, other than those agreed by the parties.

[4] There are therefore clear risks related to economic and financial activities in the settlements, and we do not encourage or offer support to such activity. Financial transactions, investments, purchases, procurements as well as other economic activities (including in services like tourism) in Israeli settlements or benefiting Israeli settlements, entail legal and economic risks stemming from the fact that the Israeli settlements, according to international law, are built on occupied land and are not recognized as a legitimate part of Israel's territory. This may result in disputed titles to the land, water, mineral or other natural resources which might be the subject of purchase or investment.

[5] EU citizens and businesses should also be aware of the potential reputational implications of getting involved in economic and financial activities in settlements, as well as possible abuses of the rights of individuals. [...]

[6] We understand the concerns of people who do not wish to purchase goods exported from Israeli settlements in the Occupied Palestinian Territories. It was in order to enable consumers to make a more fully informed decision concerning the products they buy that, in December 2009, the Department for Environment, Food and Rural Affairs [...] introduced voluntary guidelines to enable produce from Israeli settlements in the Occupied Territories to be specifically labelled as such. [...]

[7] Since 1 February 2005, products produced in Israeli settlements are not entitled to benefit from preferential tariff treatment under the EU-Israel Association. On 3 August 2012, the European Commission published a revised Notice to Importers [...] concerning imports from Israel into the Union, including a revised list of non-eligible locations.

[...]

C. G4S contracts in Israeli occupied territories face major investigation

[Source: G4S contracts in Israeli occupied territories face major investigation, Independent, 7 January 2014, available at: <http://www.independent.co.uk/news/business/news/g4s-contracts-in-israeli-occupied-territories-face-major-investigation-9042705.html>]

[1] G4S, the security company, which has lurched from crisis to crisis over the past two years, is facing an investigation by international authorities into its alleged activities in Israel and the occupied Palestinian territories.

[2] Sources said the Organisation for Economic Cooperation and Development's (OECD) UK staff has indicated that it will be investigating the company's work supplying Israeli security services.

[3] It is alleged that G4S provides Israel with surveillance equipment at its checkpoints in the occupied territories, although the precise nature of the equipment is not known.

[4] The OECD, which operates under the umbrella of the Department of Business in the UK, is expected to investigate whether the supply of such kit is in contravention of its guidelines for multinational enterprises – a set of Government backed recommendations for 'responsible business conduct' overseas.

[5] Given the illegality of the settlements under international law, the OECD is expected to question G4S on how it can justify, as a company from an OECD-member country, supplying or servicing kit that aids the occupation.

[...]

[6] Under rules signed up to by the British Government last year, G4S and other companies will have to include a section on their protection of human rights.

Discussion:

I. Applicability of IHL to Business Enterprises

(Document A, Paras [1]-[4])

1. Do you agree with the position of the ICRC presented in Document A, that IHL binds business enterprises? On what basis and in which situations do you think IHL applies to business enterprises? Can IHL rules directly apply to business enterprises?
2. Do you think that a business enterprise can be a party to an armed conflict? When, if ever, would it be bound by IHL if it is not

a party to an armed conflict?

3. How would you determine whether the activity of a business enterprise is 'closely linked' to an armed conflict? Must the link exist generally between the business in which the enterprise is engaged and the armed conflict, or must it instead exist between the particular conduct to be governed by IHL and the armed conflict?

4. Do you think that the entire body of IHL applies to business enterprises? Are the obligations of business enterprises under IHL the same as those of States? Non-state actors? Are business enterprises only bound by criminalized rules of IHL?

5. Does IHL oblige States to ensure that business corporations comply with IHL? If yes, does this obligation extend only to business enterprises incorporated in the State concerned or also those which are merely operating in its territory? Does IHL oblige States to enact legislation criminalizing the activities of business enterprises that violate IHL? Do you think that such legislation should cover all violations of IHL? ([GC I-IV, Common Art. 1](#); [GC I, Art. 49](#); [GC II, 50](#); [GC III, 129](#); [GC IV, Art. 146](#); [P.I, Art. 85](#))

II. Classification of the Situation and Applicable Law

(Document B, paras [2] - [4]; Document C, paras [1], [3], [6] and [8])

6. How does the Government of UK classify the situation with respect to the territories concerned in the present case? Do you agree with its position? What criteria have to be fulfilled for territory to be considered occupied? Which set of rules are applicable to occupied territories? ([HR, Art. 42](#); [GC I-IV, Common Art. 2](#))

III. Legality of Settlements under IHL

(Document B, paras [3] – [4] and [6]; Document C, paras [5])

7. Does IHL prohibit occupation of a foreign territory? Establishment of settlements in occupied territories? What specific rules of IHL do you base your answer on? (HR, [Arts 42](#) and [43](#); [GC I-IV, Common Art. 2](#); [GC IV, Art. 49\(6\)](#))

8. Do you think that business enterprises have a duty under international law not to recognize as lawful any situation created as a result of a violation of IHL rules?

IV. Activities of Business Enterprises in Occupied Territories

(Document C, paras [1] -[6])

9. Is G4S bound by IHL? By International Human Rights Law (IHRL)? Do you think that all rules of IHL and IHRL apply to G4S? What is the scope of these obligations?

10. Do you think that any activity of a business enterprise in occupied territory is always 'closely linked to the armed conflict'? Is supplying Israeli security services with surveillance equipment for use at checkpoints in the occupied territories 'closely linked to the armed conflict'?

11. Using the information provided in Document C, which rules of IHL do you think might have been violated by G4S? Do you agree that 'aiding the occupation' violates IHL? Do checkpoints in occupied territories violate IHL? The electronic surveillance of such checkpoints? What about if the checkpoints protect settlements?

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