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Corporate Complicity in International Crimes: Legal Challenges and the Evolving Role of Transnational Corporations

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ABSTRACT

This article reviews the developing area of corporate liability for international crimes in light of the increasingly influential and active role that transnational corporations are now playing in many aspects of the "world community" and their impact on both human rights and environmental law. While the robustness of international law has usually rested on promoting state responsibility, in its newer legal frameworks, it has begun to take a shift toward corporate accountability in such crimes or issues as human rights, environmental degradation, and complicity in atrocities. Despite salient developments—the Special Tribunal for Lebanon and the Malabo Protocol, among others—there are yet significant legal lacunae in, among others, the Statute of Rome of the International Criminal Court, which still excludes corporations. Put differently; this is an argument for a comprehensive approach to corporate criminal responsibility, for harmonization concerning national and international legal standards while closing existing regulatory gaps facing any issue that involves holding corporations accountable at the global level.

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1. Introduction

Public international law was devised originally to govern the relations between states. As such, states were established as the prime subjects (Glahn & Taulbee., 2015). States negotiate and sign treaties, establish international customs, and therefore establish international law in all its aspects, but states are not the only significant subjects in this arena. Hence, the realm of participation by multitudes of actors includes individuals, collectives, NGOs, international bodies, and corporations that play a critically important role in helping shape human rights and environmental law, among others. The notion of international legal personality assumes the capacity of an entity to be recognized as a subject of international law, thus having rights and obligations resulting from international law, and being able to file legal claims on the international plane (Giorgetti 2018).

Although the view that individuals, as well as other non-state actors, have rights and duties in international law has long been accepted, more traditional statist thinking by several scholars resists granting true international legal personality to non-state actors and especially corporations. The International Court of Justice has said that non-state entities can have international rights and duties, but neither their status nor the duties imposed on them are on the same footing as those of states (Hernández, 2011).

Various contemporary legal systems make it obvious that international rights or obligations can bind entities other than state governments. International organizations, for example, enjoy privileges and immunities seen as crucial to performing their functions and can be held responsible under international law for violations of their duties. International human rights law has long acknowledged individual and group rights and their direct responsibility for infractions of certain fundamental tenets—such as bans on slavery, piracy, forced labor, genocide, and war crimes (d'Amato, 2017). Also, those individuals engaged in particular criminal activity, most substantially terrorism, may be subjected to special penalties by the United Nations Security Council, including asset freezes and travel restrictions.

International human rights law indirectly adjudges states responsible for violations committed by non-state actors, with the implication of perpetuating a conservative state-centred view that states' responsibility is paramount in human rights protection issues (Glahn & Taulbee., 2015). This works on the assumption that states are better placed in the protection against violations, including the violation of rights by private actors.

The phenomenon of corporate criminal responsibility for international crimes is fairly new, given the complexity of questions of jurisdiction and proof of corporate involvement across borders. Well into the 21st century, national courts began addressing the issue of corporate liability for crimes against humanity. Some states, such as Switzerland and the Netherlands, have sought to prosecute companies for involvement in such crimes (Wilt, 2013). Nevertheless, in most instances, it has not been possible so far to collect and put enough evidence before the courts, and civil liability has often remained the only means of finding corporations accountable. A good example is the United States Alien Tort Claims Act, allowing foreigners to recover damages in American courts for torts committed in violation of international law or treaties. Examples include the $30 million settlement by Union Oil Company of California (UNOCAL) for its reliance on Myanmar's military to provide security for a pipeline and the charges filed against Shell for complicity in the torture and killing of Nigerian activists who opposed the company's operations (Kielsgard, 2005).

Corporate influence has grown significantly over the past few decades, even rivaling the influence of states in some cases. TNCs exhibit their strength often through involvement in and lobbying within international organizations. Their impact on the economy, at times greater than the gross domestic product of smaller countries, only underscores their place in terms of global influence. Indeed, in some instances, the lure of foreign investment has left host governments at the mercy of TNCs, convincing these governments to adopt practices that amount to basic human rights abuses for corporate gain. Environmental degradation, child and forced labour, and worker exploitation in the developing world underscore this sad reality.

While these corporations bear no responsibilities as would states, they are accorded extensive rights in most international legal regimes. Corporations have been accorded standing in cases before bodies like the ECtHR. They can also generally initiate arbitration against states under direct investment treaties, whose awards can be enforced against states (Kube & Petersmann,2018). These situations often transfer powers from states to transnational corporations, impacting states' sovereignty and human rights.

TNCs are, accordingly, powerful professionals on the international stage, with wide-ranging rights and considerable influence but relatively little comparative responsibility under international law (Mahmood, 2017). This asymmetry creates a regulatory gap whereby much of their international activity is not thoroughly subject to international regulation. A remedy would involve examining the means available to prosecute corporations responsible for international crimes.

Present law places corporations at the frontier of new duties and potential sanctions in many sectors, from environmental and consumer protection to occupational safety and finance—actions that align with rising expectations for businesses to address social and stakeholder concerns. Recent, albeit limited, developments in international criminal law related to corporate liability merit detailed analysis to help refocus interest in this area. While corporate accountability remains one of the most elusive aspects of international criminal law, it also opens pathways for alternative solutions. A legal regime based largely on individual responsibility could be retrofitted to recognize and accommodate the vital role played by corporations. This research will explore the involvement of corporations in international crimes, examine the legal challenges of holding them accountable, and discuss the evolving legal framework regarding the status of transnational corporations.

2. Literature Review

Soft law and voluntary principles, rather than contractual and enforceable duties, are presently the focus of international pressure on business and international human rights norms (Salam, 2019). Many think this strategy sends the wrong message to governments and corporations by suggesting that international human rights law responsibilities are optional. This is why many feel that the normative stance on corporate responsibility and human rights does not go far enough in demanding accountability on a global scale. It is well-documented how business and human rights norms have progressed to their present level. Hart (2010) emphasizes that the 1970s is characterized by self-regulation through corporate social responsibility initiatives. These firm-level actions may have addressed or indirectly influenced an ambiguous global standard about corporate adherence to international human rights that permeated numerous institutional entities. Landrum & Ohsowski (2018) underline that in the 1980s and 1990s, after many corporate disasters, efforts were launched to control unethical businesses and rehabilitate the reputations of industries. Despite indications from business sector-led initiatives that firms may endorse the monitoring and enforcement of global human rights standards and the advocacy of human rights proponents for such international accords, voluntary methods predominated.

Hillemanns (2003) stated in his study that, “the UN Global Compact (1999) and the UN Draft Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises regarding Human Rights (the Norms) (2003) were the most significant steps toward establishing global standards for corporate complicity.” The Global Compact tells businesses that they need to ensure their plans and actions align with basic human rights standards. As many as 60% of the world's biggest companies and almost every country in the world say they follow it. The Norms underscored universal human rights and responsibilities, encompassing enterprises' obligatory and enforceable duties to “promote, ensure the fulfillment of, respect, uphold, and safeguard human rights.” United Nations member states and industry players dismissed the obligatory character of the Norms (Heyer, 2012). The ensuing debate prompted the UN to forsake them, thereby forfeiting an opportunity to generate international pressure over responsibility for corporate culpability. Rather, as highlighted by Faracik (2017), “the UN Commission

on Human Rights—later the Human Rights Council— unanimously approved the 2011 Guiding Principles on Business and Human Rights (hereinafter the Guiding Principles). Unlike the Norms, the Guiding Principles—written by Special Representative John Ruggie—were embraced by governments, corporations, and international governmental agencies with great enthusiasm."

Similar to the Norms, they expressly acknowledge the obligation of corporations to uphold human rights. Conversely, the Guiding Principles rely on voluntary compliance and soft law, as opposed to coercive and obligatory responsibilities, to direct enterprises' human rights conduct. Human rights advocates and legal experts extensively critique the Guiding Principles (Giuliani, 2015). Despite acknowledging that soft law may have been the sole or most efficient means of establishing corporate human rights responsibilities, critics continue to urge the Guiding Principles to elucidate the precise responsibilities and criteria that states and businesses must adhere to comply with international human rights legislation.

As Paul & Schonsteiner (2014) point out, "the Guiding Principles had the opposite effect by producing "sometimes inaccurate representations of international law regarding certain aspects of states' obligation to protect; the lack of clarity on some aspects of the substantive dimension of the corporate responsibility to respect; and the absence of recommendations for effective enforcement mechanisms and of limits set for private reparations initiatives." Horrigan characterizes the voluntary and non-binding application of international law to the private sector as a feeble kind of accountability. Other researchers extend their critiques of the Guiding Principles. The Guiding Principles inadequately increase the financial repercussions for firms engaging in human rights breaches, hence failing to prevent such abuses. Corporations may insincerely endorse corporate social responsibility, industry-led initiatives, and Global Compact–Guiding Principles without any genuine desire to alter their conduct.

Ford (2016) emphasizes that, in alignment with the treaty compliance literature of Hathaway (2002) and Neumayer (2005), supporting these global initiatives may furnish corporations with the necessary rationale to sustain or intensify human rights breaches. These experts consider dependence on soft law and voluntary principles to be improbable in ensuring enhancements in corporate human rights conduct, and they instead recommend imposing concrete penalties for corporate human rights violations.

Social science deterrence theory would concur with these claims in legal scholarship. That theoretical approach assumes that tangible costs associated with behaviours will likely change them (Payne & Pereira, 2016). So, according to deterrence theory, businesses would be more reluctant to violate human rights if they knew they may face serious legal consequences if they did so. Research on the efficacy of voluntary principles is severely lacking. Those who agree that these systems aren't enough to advance human rights. Among the 99 companies that have joined the Global Compact researched by Lim and Tsutsui (2012), they discovered "organized hypocrisy" rather than a strong dedication to human rights promises.

Two studies utilizing Olsen and Payne's Corporate Human Rights Database conclude that voluntary principles are inadequate in addressing or rectifying business-related human rights violations. In their research, Payne & Pereira (2016) discovered that Global Compact signatories were as susceptible to accusations of human rights abuses as non-signatories; furthermore, they were similarly unlikely to address these violations. Rather than voluntary ideals, government pressure seems to encourage firms' favorable human rights practices. Bernal-Bermudez (2016) also discovered little behavioral differences regarding human rights among enterprises in Colombia that adhered to voluntary principles compared to those that did not.

Transnational support networks put pressure on good human rights results, as shown by both statistical and qualitative case study analysis. To sum up these real-world results, at best, volunteer principles haven't helped people understand their responsibilities under international human rights law as much as they could have (Kube & Petersmann, 2018). In the worst case, they send the message to companies and governments that these duties are not required, which weakens attempts to make the world a better place for protecting human rights. The world has realized that relying on private principles to change how companies treat human rights will only have limited if any, positive effects (Ford, 2016).

Perhaps in reaction, in 2014 the United Nations Human Rights Council began working on a legally

enforceable mechanism to hold multinational companies and other businesses accountable for human rights violations. An open-ended international working group and a multi-stage process of intergovernmental discussions were established in resolution 26/9 (Meyer, 2017).

In his research, Darrow (2012) stated that the working group's inaugural meeting in June 2015 and subsequent follow-up processes had failed to deliver a blueprint. This initiative's slow growth may indicate the formation of norm bandwagons or norm cascades, which might result in worldwide pressure for corporate human rights accountability. At present, the voluntary and soft-law principles may impede the efforts of domestic judiciaries to promote corporate accountability and civil society mobilization. The unresolved condition of international law regarding corporate accountability for human rights abuses further compromises international pressure.

3. Exploring Corporate Criminal Responsibility in International Law

International criminal jurisprudence has a long history of addressing corporate involvement. A definition of aiding and abetting as "knowingly providing substantial assistance to the principal perpetrator of the offence" has been upheld in post-Nuremberg case law and decisions rendered by both ad hoc and hybrid tribunals. For example, the Zyklon B case, the Krupp Nuremberg trials, and the IG Farben trials were some of the earliest efforts by the world community to bring corporate executives to justice for their roles in war crimes (Baar, 2019).

The subsequent logical step is to view the Rome Statute as a framework for holding business executives liable for their involvement in war crimes. The Rome Statute acknowledges many sorts of secondary culpability. Two clauses are especially important. The first is Article 25(3)(c), which says that someone is responsible if they "aids, abets, or otherwise assists" in the conduct of a crime "to facilitate" it. Second, Article 25(3)(d) makes it illegal to knowingly help a group of people who are working together to commit a crime (Hamilton, 2019).

In international criminal law, secondary liability has been developed a great deal. However, it seems that the complicity standard has mostly been used for the actions of political and military leaders rather than corporate officials unless you count the Nuremberg trials and other similar cases. It is only very lately that private citizens and non-governmental organizations (NGOs) have tried to make corporate executives answer for egregious abuses of humanitarian law and human rights.

Several non-governmental organisations (NGOs) have accused businesses of aiding in the commission of war crimes in Yemen in a letter they submitted to the International Criminal Court (ICC) in 2019 (Maalouf, 2022). The NGOs implicated several European armament suppliers in war crimes perpetrated by the coalition led by the UAE and Saudi Arabia. These European countries include German, Italian, Spanish, French, and British companies. It is crucial to remember that individual liability is the focus of recent advances in international criminal law rather than corporate culpability.

As highlighted by Aksenova (2020) that, “Since March 2015, the UAE/Saudi-led coalition has been using fighter jets and other military equipment indiscriminately in attacks against civilians, which may violate Articles 8(2)(c)(i) and 8(2)(e)(i), (ii), (iii), and (iv) of the Rome Statute.” Since the first war trials following World War II, international criminal law has emphasized individual criminal culpability, even if numerous domestic laws allow corporate criminal liability. Twenty-three Specifically, when the Rome Statute was commemorated in July 1998, a French suggestion to incorporate corporate criminal responsibility was turned down. The International Criminal Court was established under Article 1 of the Rome Statute with "the power to exercise its jurisdiction over persons for the most serious crimes of international concern" (Salam, 2019).

This clause's reference to "persons" sparked discussion because of an unresolved issue about the Court's jurisdiction over natural persons or corporate entities—a matter addressed in favour of natural persons only—during the last meeting in Rome (Fischer-Lescano, 2020). Tradition drove some of this outcome as many states did not hold businesses criminally accountable as opposed to civil responsibility.

The complementarity principle of the Rome Statute mandates that member nations maintain domestic criminal laws aligned with the Rome Statute, so precluding the ICC from exercising jurisdiction over businesses. Notwithstanding this apparent constraint, the Rome Statute has two comprehensive sections on modes of liability—Article 25 and Article 28—that empower prosecutors to assign culpability to people, even those working on behalf of businesses (Jung, 2023).

4. The Function and Meaning of Complicity

A clear understanding of complicity is essential for comprehending the ICC's criteria for assisting and abetting criminal conduct. Complicity assigns criminal liability to individuals who do not directly execute the offence. The primary purpose of this legal concept is to establish a connection between the accomplice and the illegal act of another individual.

Historically, international criminal law has concentrated on human accountability, but the potential for legal entities to be prosecuted for international crimes has largely been overlooked. Despite the notable expansion of corporate criminal responsibility at the regulatory level in several nations in recent decades, its incorporation into the jurisdiction of international criminal courts has consistently been rejected. Article 25(1) of the Statute of the International Criminal Court (ICC) explicitly states that the Court possesses jurisdiction solely over natural beings, a stipulation mirrored in the statutes of ad hoc courts (Galand, 2019).

This legal instrument is essential as damage may arise from coordinated activities undertaken by several persons with differing physical and temporal closeness levels to the resultant effect. Certain actors may be directly implicated in committing the crime. Others may participate by offering culpable help or encouragement to the primary perpetrator.

The degree and scope of aid criminal contributors provide vary, rendering complicity a broad phrase that may include many behaviours. These behaviors encompass assisting, abetting, inciting, directing, facilitating, soliciting, and/or encouraging criminal conduct. Global jurisdictions possess diverse legal definitions regarding the nature of complicity. Nevertheless, these varying rules preserve the practical essence of the concept: assigning accountability to those other than the direct physical offender of the crime.

The complicity concept and its counterparts are present in several jurisdictions globally, both domestically and internationally, underscoring its functional importance. The Rome Statute is not an exception. Article 25(3) explicitly addresses complicity, holding an individual accountable for a crime and subject to punishment if that person directs or incites the crime, enables its execution, or helps to its conduct in any other manner (Heyer, 2012).

The current state of affairs allows for the investigation and prosecution of people - corporate officials and business leaders - accountable for such crimes. Therefore, businesses' role in international crimes' conduct may only be indirectly significant.3 No reforms, including the punishment of companies, are being considered, and no such reforms appear to be imminent.

The inquiry, meanwhile, is far from uncontentious. The disparity between the feasibility of prosecuting corporations under domestic law in various jurisdictions and the explicit prohibition of such actions in international criminal law, coupled with the recent emergence of the business and human rights movement that has fostered a more robust accountability framework, has ignited a vigorous scholarly discourse on the issue. In this field, two opposing viewpoints have developed: first, the advocates of a 'liberal' interpretation, which asserts that international criminal law relates to 'individual agency and separates individual misconduct from collective action'; second, the 'romantic' theory, which recognizes that 'international crimes are fundamentally committed within collectives' and therefore associated with collective intent.

5. International Pressure for Corporate Accountability

The notion of transitional justice originated from the Nuremberg Trials, emphasizing the accountability of state officials, the rectification of injustices, and the commitment to preventing future mass atrocities. Transitional justice has failed to integrate the insights from the Allied trials known as the industrialist cases. Tribunals in the US, UK, and France prosecuted more than 40 businesspeople for enforced slave labour, the looting of Jewish assets, and for funding or aiding in mass slaughter (Bachmann & Fatić, 2015).

The Allied troops thought that without business cooperation, the Third Reich's aggressive war, and its crimes in concentration camps, would not have been feasible. Trials, therefore, provide the tools to address victims' rights and denounce corporate breaches so, preventing them from going forward.

Modern attempts to hold corporations accountable for their role have sparked scholarly discussion over the industrialist trials' lasting impact. Some academics argue that the industrialist instances don't apply to later situations since corporations committed unimaginable crimes in Nazi Germany. Some contend that the prosecution's failure to establish that the defendants knew about the mass murder or were involved in an "aggressive war" also led to their acquittals in this instance.

Conversely, others contend that the influence of industrialist cases is visible in the legal principles of regional human rights accords and the arguments and rulings of current corporate culpability trials. If this legacy were to exist, it would manifest in global demands for responsibility regarding corporate complicity. However, scant evidence substantiates this perspective. Conversely, in alignment with the concept of "transnationalism reversed," international pressure, assessed through the normative legal framework and its implementation in civil and criminal proceedings, may be regarded as detrimental to domestic accountability initiatives (Alvarez, 2000).

Such an impact is unexpected given the successful international push to hold heads of state accountable for previous human rights abuses. The unresolved character of this area of international law contributes to the detrimental impact of international pressure on corporate responsibility or historical violations of human rights. Relatively strong corporate veto actors operating in both local and foreign governmental and legal spheres may, therefore, cause it.

6. Recent Developments in the Current International Criminal Law Practice

Corporate criminal responsibility should not be evaluated solely in the context of the Rome Statute, notwithstanding its centrality to the framework of international criminal law. This issue has recently come to light due to certain intriguing developments in the practice of international criminal law. The verdicts made in 2014 by the Special Tribunal for Lebanon (STL) are one of the most noted examples in this regard; in it, corporations and the relevant individuals were charged with obstruction of justice and contempt of court (Alkhawaja, 2019).

Consequently, these rulings are most notable because they represent the inaugural instance in which a hybrid criminal tribunal has held a company legally accountable for the aforementioned offenses. The matter presented before the Court involved two media entities, a news station and a daily newspaper, disclosing the identities of undercover witnesses in previous STL proceedings. Specifically, in the Al-Jadeed case, the Appeals Chamber reversed the Contempt Judge’s ruling that the Tribunal had jurisdiction over legal entities, asserting that businesses can be held accountable for contempt charges under the STL (Alkhawaja, 2019).

It is essential to elucidate the terminology of this intricate issue. Considering that the STL's authority extends solely to natural persons, as stipulated in Article 3 of the STL Statute regarding 'individual criminal responsibility,' the primary discourse in this instance has centered on obstruction offenses. It has been asserted that to safeguard the Court's proper functioning, it possesses the 'inherent power' to effectively avert such offences that could impede the administration of justice, even when involving legal entities.

This presumption is grounded on Rule 60 bis of the Court's Procedural Rules ('Contempt and Obstruction of Justice'), which, by referencing 'those' who knowingly and willingly obstruct the administration of justice by the Special Tribunal (Robert, 2021), should also encompass legal entities. This ruling is undoubtedly significant within the realm of international criminal law, which, as previously noted, is 'reluctant' to acknowledge the accountability of legal entities. The scholarly reception of this case reflects two contrasting perspectives: some view the STL's conclusions as a progressive advancement, while others downplay its importance, categorizing it as yet another instance of international criminal law's 'dream factory.' It should be noted, however, that the Court's reasoning does not extend beyond the crimes listed above; as a result, these decisions may only serve as "precedents establishing corporate criminal responsibility in general international law," rather than addressing international crimes in their broadest sense. In reviewing the current status of corporate criminal responsibility for international crimes, it is pertinent to include the 2014 approval of the so-called "Malabo Protocol" by the African Union as an additional example (Chernor Jalloh, 2017). Along with its general matter and human rights jurisdiction, the Protocol gives the African Court of Justice and Human Rights extra criminal authority. Such an important addition, as it includes more types of crimes than any other foreign or joint court's rules did before.

The Annex to the Malabo Protocol delineates individual criminal liability (art. 46B) from corporate criminal liability (art. 46C), thereby introducing the concept of 'legal persons' as subjects of international criminal law (Chernor Jalloh, 2017). This inclusion addresses the impunity often experienced by foreign corporations regarding human rights violations in Africa and acknowledges the 'devastating impact' of corporate malfeasance on the continent. Article 46C(1) explicitly specifies that 'the Court shall have jurisdiction over legal entities, except specifies.' ‘By expanding the authority to adjudicate legal entities, This section recognizes 'corporate criminal culpability for international and transnational crimes', elevating international criminal law 'to a new level' (Kyriakakis, 2017).

This section encompasses several points of interest, including the imputation criterion for assigning culpability to the collective unit, and it differentiates between the attribution of mental states of purpose and knowledge. Initially, it is important to observe that, among the potential models for assigning liability to legal entities, the one endorsed by the pertinent article appears to align with the organizational model: the emphasis is not on the individual who perpetrates the predicate crime (and, consequently, on the act and mens rea of the individual), but rather on the culpability of the corporation itself.

The company and its workers are seen as two separate things. This method, which doesn't care if a real person is held guilty of the crime or not, is the opposite of what was suggested at the Rome Conference. To prove that a company is meant to perform a crime, art. 46C(2) says that it must be "established by proof that it was the policy of the corporation to do the act which constituted the offence." (Kyriakakis, 2017).

The defining aspect of corporate aim is explicitly outlined in the 'policy of the corporation,' prompting researchers to concentrate on interpreting the term 'policy.' The Court should not restrict its consideration to formal written regulations but rather adopt a substantive approach encompassing the organization's informal, everyday practices. Article 46C(3) states that a policy may be ascribed to a business if it offers the best plausible explanation for the organization's behaviour. Implementing the 'reasonableness' criterion necessitates addressing what is commonly seen as reasonable, which might be viewed as a strategy to limit responsibility (Fry, 2014).

Section 4 pertains to corporate knowledge, which can be ascribed to the corporation through evidence that the actual or constructive knowledge of pertinent information resides within the corporation. Section 5 elucidates that such knowledge may exist within a corporation even if the relevant information is dispersed among corporate personnel. This represents the consolidation of knowledge, a recognized idea in some common law countries that adopt a comprehensive approach to corporate criminal culpability (Kyriakakis, 2017). Australia, where the organizational model is incorporated into Federal corporate criminal responsibility statutes, can be referenced; nevertheless, UK courts have also critically examined the notion

of aggregation inside the corporate framework in some instances (Nana, 2009). Corporate criminal responsibility, a longstanding aspect of the US and other common law jurisdictions, has recently proliferated in Europe and Latin America. At the same time, national legal systems exhibit significant divergence in their methodologies.

7. European and International Perspectives

Corporate responsibility is an evolving domain, with ongoing efforts occurring in several contexts. Recently, some of the most ambitious efforts have been undertaken within the UN. In 2014, the Human Rights Council adopted Resolution 26/9, establishing an open-ended intergovernmental working group on transnational corporations and other business enterprises concerning human rights, tasked with formulating an international legally binding instrument to govern the activities of transnational corporations and other business enterprises within the framework of international human rights law (Meyer, 2017).

The United Nations Draft Norms, approved in 2003, was the first attempt to create a legally enforceable convention and represented a giant leap forward in the regulation of corporate responsibility (Backer, 2011). In July 2015, the working group met for a session "dedicated to conducting constructive deliberations on the content, scope, nature and form of the future international instrument." This was the only meeting the group has had thus far.

Case Regarding the Factory at Chorzów (Germany v Poland), supra note The preliminary report of the inaugural session indicates that multiple delegations voiced apprehension that the UN Guiding Principles "fail to address the fundamental issues of optimal human rights protection and access to remedies," asserting that supplementary international standards are necessary to "enhance national capacities for safeguarding human rights within the domestic context" (Krisch et al., 2023). The working group's success in formulating an effective international legal framework for business and human rights is uncertain; nonetheless, it is anticipated that several years will elapse before a draft treaty is available for presentation.

In 2014, the EU passed the rule 2014/95/EU, which says that certain big businesses and groups must share non-financial and diversity information (Majerowska et al., 2018). The directive says that "public interest entities" with more than 500 employees on average during the financial year must include a non-financial statement in their management report. This statement should include information about human rights, the environment, workers' rights, corruption, and bribery.

The information that needs to be provided contains a rundown of the company's policies about the pertinent matters, how those policies have been developed, the results of those policies, and details about the risks and the measures taken to mitigate them. Any group of companies whose combined revenue is more than the reporting level must comply with the same regulations; in such cases, the reporting parent must provide all of the non-financial data for the whole group. Though it is not required, the reporting might be based on national, union-based or worldwide frameworks such as the OECD Guidelines, the Global Compact, or the UN Guiding Principles (Meyer, 2017).

Member states are urged to develop effective measures to ensure corporations comply with their reporting requirements. The European Commission's plan to regulate corporations' supply chain due diligence and reporting obligations for using conflict minerals is another current topic in the EU. Critics have pointed out that the responsibilities would be optional, fueling the fire.

Several large European banks were implicated in the South African Apartheid Litigation for allegedly providing funding to the Argentine junta and the apartheid governments in South Africa (Jalloh, 2017). The threshold of assisting and abetting was not met in this case because the United States District Court for the Southern District of New York did not recognize causation between the paid monies and the crimes the recipient regimes committed. The challenges in proving corporate criminal culpability worldwide are shown by the latter two examples. Corporations have an inherent right to engage in private economic activity within the bounds of the public realm, as demonstrated in the first case, and they have the right to

expect the state to safeguard this right (d'Amato, 2017).

The second case demonstrates that the contribution to illicit activities must be substantial. The relevant district court, which, as a federal court of the United States, ultimately determined that there was insufficient causality between the offences committed by the respective administrations and the provision of funds, in each instance. The Lafarge case is a positive development in the current international context, where there is a growing propensity to hold corporations criminally liable for their involvement in international crimes and crimes against humanity (Gordian, 2014).

In this regard, the ruling of the Court of Cassation is indisputably a landmark in at least three aspects. Firstly, it introduces corporate criminal accountability for crimes against humanity, rather than only individual criminal liability or civil liability. Secondly, it employed an innovative methodology to define intention in establishing mens rea and responsibility. Thirdly, unlike the US federal courts, it recognized the financing of a terrorist organization as adequate to prove actus reus. The French precedent was promptly succeeded by the indictment of Lafarge by the United States Department of Justice for conspiring to furnish material assistance to international terrorist organizations. Lafarge admitted guilt in conspiring to furnish material assistance to international terrorist organizations and was ordered to pay $778 million in penalties and forfeiture (Gordian, 2014).

This was the first time the United States sanctioned corporations for aiding and abetting a foreign terrorist organization, similar to what happened in France. Another ongoing case serves as another example of the growing readiness of domestic courts to prosecute similar cases to establish corporate criminal culpability for involvement in crimes against humanity. To keep its lucrative hold on Colombia's banana-growing areas, Chiquita is charged in the Doe v. Chiquita Brands International case of "funding, arming, and otherwise supporting terrorist organizations in Colombia in their campaign of terror against the population.." (Bonilla, 2021).

Claiming to have collaborated with paramilitary organizations like the United Self-Defense Forces of Columbia (AUC), it reportedly provided support and approval and even took part in this illicit operation. As highlighted by Branson (2011), "Following a settlement in a tort dispute based on the Alien Tort Claims Act, the corporation acknowledged funding the AUC, which is responsible for several atrocities, including genocide, torture, forced disappearances, and crimes against humanity." This sets the stage for the criminal proceedings.

The case of Nicaragua against the USA is easily compared. The International Court of Justice found that American support for the anti-Sadinista "Contras" in the rebellion against the Nicaraguan government violated the obligation of customary international law not to intervene in the affairs of another State or use force against another State.

The distinction lies in the fact that Chiquita is a company, not a state. Moreover, it just acknowledged supporting the AUC, which the ATCA previously determined was inadequate to establish a direct link between the corporation's actions and the crimes against humanity perpetrated by the Argentinian junta and the South African apartheid regime (Jalloh, 2017). The inquiry is to whether US criminal courts would see the French ruling in Lafarge as significantly compelling enough to alter their decision and hold Chiquita accountable for its involvement in these offenses. The French ruling may impact enterprises that engage in commerce with or finance the Russian government or entities directly participating in the conflict against Ukraine, which the UN General Assembly has already designated as terrorist acts (Giuliani, 2015).

Facilitating crimes against humanity perpetrated by the Russian state may therefore advance corporate criminal culpability. In light of Lafarge and perhaps Doe v. Chiquita Brands International, even minimal financial support may suffice to render businesses liable, so underscoring the significance of the French ruling in the broader evolution of corporate criminal accountability and the pursuit of justice (Taylor, 2020).

8. Conclusion

In conclusion, the implication of corporate complicity in international crimes shows the legal framework's balance with existing legal gaps. The conventional scepticism regarding the accountability of multinational corporations in serious international crimes such as war crimes and crimes against humanity borders on the traditional focus of international criminal law on states and individuals. While the Nuremberg Trials laid some foundation regarding individual culpability, it excluded corporate liability from its prosecutorial scope. More recently, legal precedents and developments have been reached, meaning an evolving recognition of corporate responsibility exists. The STL marked a milestone when it ruled that corporations could be held liable for obstruction offenses, reflecting the inherently increasing move toward accountability given the particular procedural provisions such as Rule 60 bis. The 2014 Malabo Protocol, adopted by the African Union, is another in that explicit inclusion of legal persons within its jurisdiction for international and transnational crimes. Article 46C is more of a theoretically accountable liability resting on the grounds of corporate policy and collective knowledge, deviating from other models of accountability that have rested more on an individualistic platform.

Notwithstanding these developments, significant legal lacunae persist and prevent full corporate accountability. Even the Statute of the ICC—the keystone of international criminal law today—excludes corporations from its jurisdiction. Such a prospect is fraught with major political and technical difficulties, not least the challenge of a two-thirds majority among States Parties. The additional complication in transposing the domestic corporate criminal liability models onto the international plane is further enhanced by the rich diversity of national legal approaches, ranging from vicarious and derivative liability to organizational fault models and many others.

Whereas the Malabo Protocol, amongst others, holds promise, such efficacy remains a matter of speculation as, to date, the same has not been ratified by member states and/or lacks specifics on key areas, such as the definition of "legal person" and the articulation of definite punitive measures against a corporate entity. A way forward would be to fill such legal lacunae through coordinated, policy-based, and academic efforts to create a common platform of national and international standards to hold transnational corporations liable for complicity in international crime.

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