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A STUDY ON CORPORATE COMPLICITY PRINCIPLES UNDER INTERNATIONAL CRIMINAL LAW

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ABSTRACT

Corporate complicity in international crimes is an emerging area of concern under international criminal law. This study examines the principles and frameworks governing corporate accountability for their involvement in crimes such as genocide, war crimes, and crimes against humanity. It traces the historical evolution of the concept from the Nuremberg Trials, explores key international instruments like the Rome Statute, and analyzes notable cases such as Kiobel v. Royal Dutch Petroleum. The study also highlights the challenges in prosecuting corporate entities, including jurisdictional issues, evidentiary hurdles, and the complexities of the corporate veil. Recent developments, including universal jurisdiction expansions and negotiations for a binding treaty on business and human rights, demonstrate progress in addressing these gaps. The article concludes by recommending strengthened legal frameworks, enhanced due diligence mechanisms, and the establishment of specialized tribunals to ensure justice and accountability.

Keywords: Corporate Complicity, International Criminal Law, Principles

1. INTRODUCTION

Corporate complicity in international crimes has become a critical area of study within international criminal law. As multinational corporations expand their operations globally, their activities sometimes intersect with human rights violations, environmental degradation, and even acts of genocide, war crimes, and crimes against humanity. The principles governing corporate complicity under international criminal law aim to hold corporations accountable for their role in such crimes.

This article explores the legal framework of corporate complicity, its evolution, and its application under international criminal law. It delves into key cases, international instruments, and the challenges in implementing corporate accountability mechanisms.

The concept of corporate complicity in international crimes dates back to the post-World War II era, particularly during the Nuremberg Trials. The tribunal examined the role of industrialists and corporations, such as IG Farben, in aiding and abetting the Nazi regime. These cases established the principle that corporate entities and their executives could be held accountable for their contributions to international crimes.

2. ORIGINS OF CORPORATE CULPABILITY UNDER INTERNATIONAL LAW

Since WWII, non-state actors have been more recognized as subjects of international law. This pattern is also seen in the subfields of HR and international humanitarian law. The recognition that powerful non-state actors cannot be adequately controlled by limiting responsibility to individuals or states has led to ongoing changes in the area of human rights legislation. When governments are unstable, corporations are often associated with criminal behavior and harsh regimes. When does a corporation become legally liable for such acts?

As seen in the Nuremberg war crimes trials, international law has evolved from a "no criminal liability" foundation to one that allows corporations to engage in criminal activity. "United States v. Krupp" was the case number of the Nuremberg Military Tribunals' war crimes proceedings. The company's ties to the misconduct of its directors are plain to see. The tribunal reasoned that the Krupp Corporation's plan to use forced labor indicated criminal intent, even though the court did not officially label the corporation as a criminal organisation. Several corporations were implicated as criminal actors in the case of United States v. Krauch, including Farben. In Farben, the court sees the corporation as a weapon in the criminal case and alludes to corporate responsibilities. In addition, the state security service (SD)161 was named as a corporate organization whose potential criminal behavior was recognized at Nuremberg. Incorporating non-state actors as subjects of international law is a trend that mirrors the general consensus that legal personhood is more of a tool for practical law than a fixed concept. The ICJ said in the Reparations for Injuries Case 162 that "the subjects of law in any legal system are not necessarily identical in their nature or in the extent of their rights, and the nature depends on the needs of the community." For example, according to the ICJ's decision in Barcelona Traction 163, the local laws of the country where a company is based are the only ones that may establish its worldwide legal status. A more contemporary view holds that for an actor to have international legal personality, they must be able to do two things: first, take on international responsibilities and rights; and second, defend those rights in international lawsuits.

The connections, privileges, and obligations of nations are regulated by public international law, which is often called "classical" or "traditional" international law. The main focus of criminal law is on limitations placed on individuals by the state and the consequences that may be imposed for violating these limitations. Because it draws from international law and imposes sanctions on individuals, international criminal law incorporates both criminal law and international law.

3. INTERNATIONAL CONFLICTS AND INTERNATIONAL CRIMINAL LAW

International criminal law did exist prior to World conflict I, but the concept of a truly global criminal court to try perpetrators of crimes committed during that era did not emerge until after the conflict had ended. A result of this was the Treaty of Versailles, which established an international court to try King Wilhelm II of Germany. After World War II, the Allied powers established an international tribunal to investigate Nazi atrocities. When the collective sanctity of humanity is violated in any setting, not just in actual conflict zones, the international community recognizes the gravity of the violation as a "crime against humanity." The international tribunal did more than just provide the groundwork for international criminal prosecution (as per the London Charter); it also expanded the scope of international crimes to include non-war related actions. First constituted in 1945, the Nuremberg Tribunal delivered its verdicts on September 30 and October 1, 1946. The Japanese government also established a similar tribunal to try war crimes[1]. The first international criminal court was established after a successful prosecution of war crimes and crimes against humanity. The Nuremberg and Tokyo trials laid the groundwork for international criminal law, which had not been created before.

While first formed on an as-needed basis to handle specific crimes in specific situations, international criminal tribunals were later enlarged to include future military conflicts that threatened international peace and security. Despite the Rome Statute's restricted application, these international courts remain relevant due to the special authority they were given by separate legislation that is now part of international criminal law. However, universal principles of international criminal law, including concurrent criminal responsibility and trial detention, will remain in effect. In 1993, after the commencement of hostilities in Bosnia, the International Criminal Tribunal for the Former Yugoslavia (ICTY) was formed by the United Nations Security Council. In 1994, following the genocide in Rwanda, the International Criminal Tribunal for Rwanda (ICTR) was founded. The United Nations has finally set up a tribunal to look into the

[1] But because the Kaiser had already been given shelter in the Netherlands, the planned trial of Wilhelm II could never have begun.

atrocities perpetrated by Bangladeshi forces during the Liberation War, including the massacre of Chakma refugees. The most significant development in international criminal law was the creation of a permanent international criminal court, which the International Law Commission began initial preparations for in 1993. The International Criminal Court was established with the signing of the Rome Statute at the 1998 Rome Diplomatic Conference.

Both international law and international criminal law have their roots in the same canonical texts. Treaties, customary law, and universally accepted legal concepts are the main pillars upon which international law rests. The most famous legal treatises and judicial decisions augment these main sources, as indicated in Article 38(1) of the International Court of Justice Statute of 1946.[2] Given that the concept of individual criminal liability and national criminal laws form the basis of international criminal law, it is noteworthy that international criminal law often alludes to national criminal law systems. Legal systems are adept at dealing with this issue. Thus, international criminal law has borrowed the concept of crime from domestic statutes in order to further international law[3]. Public international law deals with the rights of different states.

The permanent tribunal that has the authority to prosecute individuals for aggression, genocide, crimes against humanity, war crimes, and comparable acts is now the most significant body of international criminal law (ICC)[4]. After the International Criminal Court's (ICC) mandate was formally revoked on July 1, 2002[5] the Rome Statute, which created the ICC, took force. It may only be used by prosecutors to file charges for crimes that happened after that date. There are typically three conditions that must be met before the court may become involved:(1) the accused must be a citizen of one of the state parties,(2) the alleged crime must have occurred on the territory of a state party, or(3) the matter must have been raised by the UN Security Council. Its principal role is to act as an additional judge in cases when domestic courts are unable or unwilling to investigate or prosecute cases involving similar offenses. As a result, local governments are primarily responsible for conducting investigations and bringing criminal charges[6].

After the Rwandan Genocide and other serious violations of international law occurred in Rwanda or by Rwandan nationals residing in neighboring states between January 1, 1994, and December 31, 1994, the International Criminal Tribunal for Rwanda (ICTR) was established by Resolution 955 of the United Nations Security Council in November 1994. War crimes, crimes against humanity, and genocide are under the purview of the tribunal according to the Geneva Conventions' Additional Protocol II and Common Article Three, which deal with crimes perpetrated during internal conflicts.

4. PRINCIPLES OF LIABILITY UNDER INTERNATIONAL CRIMINAL LAW

The International Criminal Law (ICL) power that the ICC presently has is based on Article 25, commonly called the Principle of Individual Criminal Liability, of the Rome Statute. Most local criminal justice systems operate on this general legal principle. Criminals and those in charge of armed or belligerent groups are both held to the same standard of accountability under international criminal law. Because of this shift in focus, the focus is no longer on prosecuting states

[2] Dr. H.O. Agarwal, A Concise Book On International Law And Human Rights; Central Law Publications 2007, New Delhi, p. 14

[3] The International Military Tribunal for the Far East. It operated from 1946 – 48.

[4] The United Nations has established a number of significant ad hoc tribunals. Examples include the following: the Special Court for Sierra Leone (which investigates crimes committed during the Sierra Leone Civil War), the International Criminal Tribunal for Rwanda, the Extraordinary Chambers in the Courts of Cambodia, and the Special Tribunal for Lebanon (which investigates the assassination of Rafik Hariri)

[5] As of April 2012, 121 governments have become parties to the Statute of the Court. This includes every country in South America, almost every country in Europe, and around half of Africa's nations. Russia is one of thirty-two nations who have signed the Rome Statute but have not yet ratified it [9]. Côte d'Ivoire is the only one of these nations that has acknowledged the Court's authority. The United governments, Israel, and Sudan are three of these governments that have "unsigned" the Rome Statute, meaning they do not intend to become state parties and are therefore exempt from any legal duties that may have arisen from the signatures of their representatives. As far as Treaty Based Law is concerned, this "unsigning" is unprecedented. Forty-one member states of the UN have not joined the Rome Statute, and some of these governments, like India and China, are against the Court. Despite not being or representing a UN member state, the Palestinian National Authority has legally acknowledged the Court's authority. Regarding Palestine's status as a "state" under the Rome Statute, the ICC Prosecutor stated his inability to do so on April 3, 2012.

[6] Seven African countries the Democratic Republic of the Congo, Uganda, the Central African Republic, Darfur, Sudan, Kenya, Libya, and Côte d'Ivoire have been subject to investigations launched by the Court so far. Three of these seven cases were brought to the attention of the Court by the respective nations (Uganda, the Democratic Republic of the Congo, and the Central African Republic); two were referred by the UN Security Council (Darfur and Libya), and the Prosecutor itself initiated two cases (Kenya and Côte d'Ivoire).

but on people who, notwithstanding their official status, may be held criminally liable for actual crimes committed. This idea was recognized in both the Nuremburg and Tokyo Trials. Subsequently, it became a part of the Statute that put the ICTR and ICTY into existence.

The Individual Criminal Culpability idea makes it easier to establish criminal guilt in cases involving natural persons. But when we start talking about "legal persons," things start to become tricky. To begin with, a legal person is not considered a "individual" since the word is more often used to describe a single natural person[7]. Furthermore, a corporate crime is never the product of the actions of a single person; rather, it is often the outcome of the top officers' and board of directors' collective judgements. Investigations in the corporate labyrinth seldom identify a single officer or director as the guilty party. However, it is arguable that in this case a company is, in reality, an individual entity, granted that status by legislation. Therefore, the Corporation itself must be tried in its individual capacity, and the Officers or Corporation directors should face charges of aiding and abetting.[8] This becomes an obstacle to the current state of ICL when looking at the case law of the ICC and other ad hoc international tribunals. As far as the crimes that may be brought to justice by the aforementioned Tribunals, not a single one of them acknowledges the responsibility of "legal persons." They are only able to exert control on living, breathing humans. Beyond the concept of individual criminal responsibility, there are other concepts from international criminal law that are relevant to the present investigation. Nullum Crimen, the Leadership/Superintendence Principle Nullum Peona Sine Lege and Sine Lege are the names of these plants. What follows is an analysis of these concepts:

Crimea Nullum Sine Lege, sometimes called the moral basis of law, posits that law is necessary for the existence of crime.To rephrase, unless the act in question is expressly made unlawful by applicable law, it cannot be used as a basis for a criminal accusation. According to Art. 22 of the Rome statute, in order for a person to face criminal charges, the act in issue must simultaneously fulfill the conditions for a crime within the jurisdiction of the Court.

The second tenet, Nullum Peona Sine Lege, which asserts that punishment cannot exist apart from law, is reflected in Article 23 of the Rome Statute. Only upon proved conviction may a person be punished in line with this law, as stated in Article 23. To rephrase, crime cannot be punished unless it is expressly banned by law. To summarize, the action in question must be specifically criminalized or outright outlawed by law for the Indian Penal Code to have the authority to bring charges against an individual. After weighing these two principles in relation to corporate criminal liability, it becomes clear that transnational corporations (TNCs) cannot be successfully prosecuted under international criminal law unless corporate criminality, or the acknowledgment of legal persons' responsibility for their actions, is recognized by this system.

According to Article 28 of the Rome Statute, which lays out the Principle of Command/Superior Responsibility, the Superior is assumed to have an active duty to step in and prevent violations of the law. International humanitarian law imposes a duty on commanders to ensure compliance with the laws of war by their troops. According to this theory, a person's level of responsibility for a crime is directly proportional to the level of authority that commands its performance, regardless of whether the person in question is a superior or subordinate. By way of illustration, the Principle of Command Responsibility may be enlarged to include Corporate Crimes, often known as TNC crimes. The following are the duties that are laid forth for commanders and superiors in Article 28:

United Kingdom: Section 51 of the International Criminal Court Act of 2001 specifies the penalty for "crimes against humanity" and genocide perpetrated in the UK or by British nationals living abroad (1). Criminal liability for certain acts committed outside of the jurisdiction can be enforced by several statutes affecting both citizens and non-citizens of the United Kingdom. However, these statutes can only be invoked when the offender is physically present in the country or makes a visit there. In other instances, the extradition request from the offender's home state would be necessary. In this context, the word "person" might mean a collection of individuals, whether they are corporations or not, and the concept of a "legal person's" criminal liability is used accordingly, unless anything clearly indicates otherwise. The criminal code of the United Kingdom has long acknowledged corporate criminal responsibility. Businesses may now be held criminally liable for manslaughter defined as the willful and wanton disregard of a duty of care that causes the death of an employee thanks to a new precedent established by the Corporate Homicide and Corporate Manslaughter Act of 2007 under British law.

[7] Article 25 of the Rome Statute which lays down the principle of Individual Responsibility, in any case makes it very clear that jurisdiction of the Court is over natural persons.

[8] A company has separate existence than its shareholders and management.

5. CORPORATIONS AS CRIMINALS UNDER INTERNATIONAL CRIMINAL LAW

While businesses may be considered "persons" in some legal settings, it is difficult for them to act criminally. It has been difficult to prosecute companies for offences requiring mens rea, or "specific intention." The law has made an effort to link corporate criminal culpability to the intentions of individual members of the business for these types of crimes. Nonetheless, because many corporate actions may never be linked to the intention of a single person, organisational theory of corporate decision making affirms that it may not be beneficial to take intent cues from individual corporate actors. This offers a framework to take the place of the customary practice of explicitly attributing criminal intent from people to the company. Stated otherwise, a theory must be established via the application of whose principles, in a particular instance, it may be reliably determined, that the Corporation/legal person itself had the criminal intent to commit the act against which it is being accused. This strategy would be consistent with the claim that corporations and other legal entities may be found guilty of a crime in their own right in addition to being held vicariously accountable for the actions of their officials. This chapter will spend some time listing the concepts that may be used to establish criminal responsibility via a corporation's "intent." The criteria used to establish corporate and individual guilt are quite different. In the event that both are to face prosecution in the same court (such as the International Criminal Court), the standards for determining guilt must be as explicit and straightforward as feasible.

Section 51 of the International Criminal Court Act of 2001 specifies the penalty for "crimes against humanity" and genocide perpetrated in the UK or by British nationals living abroad (1)[9] are especially noteworthy. In the Krupp case, Alfred Krupp and nine other executives of the Krupp industrial company were tried and found guilty on several counts, including using slave labour in WWII. The tribunal determined that the company had been integral to German strategy for occupied France, Norway, and Poland during World War II, having played a significant role in wartime operations. Notably, the tribunal ordered the seizure of all of Krupp's assets private and public as part of its sentencing. Twenty four directors and officials of the Farben business entity were engaged in the I.G. Farben case. Along with other illegal acts, the charges included the exploitation of slave labour and the creation and manufacture of the deadly gas used in the German regime's concentration camps. In all of these cases, the trial judges included reasoning that indicated the development of a realisation of the corporate entity's criminal potential, even if the business was ultimately not deemed to be a criminal organisation. In the end, the tribunal in the Krupp trial maintained the rigors doctrine of individual accountability, ruling that the defendants could only be held accountable if they had "actually and personally" committed the alleged crime. The panel did point out that using a business identity should not be a means of avoiding criminal responsibility. The Krupp Corporation was found to have criminal intent by the tribunal, even though the company was not officially declared to be a criminal organisation due to its exploitation of slave labour. In a similar vein, the I.G. Farben case exposed the company's criminal responsibility overall due to its constant examination of the business as a criminal tool and its explicit allusions to corporate obligations[10]. Therefore, the extensive talks about corporate wrongdoing in these cases signal the start of the shift from the idea that there is "no corporate criminal liability" to the realisation that companies may be liable for crimes under international criminal law.

5.1. CORPORATE CRIMINAL INTENT

Using the methodology of US courts, Andrew Weissmann228 has attempted to pave a new path in determining corporate criminal intent. In order to establish corporate intent, the author develops a three-part test that asks whether a corporate practice or policy broke the law, whether it was reasonably foreseeable that such a policy would cause a corporate agent to break the law, or if the corporation accepted the law breaking behaviour of that agent. The author asserts that this method allows for a more exact identification of criminal guilt inside complex organizational structures. Presented below is an analysis of Andrew Weissmann's key arguments: Under current U.S. federal common law, an employer is liable for an employee's actions taken while on the clock so long as those actions contribute to the company's

[9] United States V. Krauch, et. al. (I. G. Farben) 8 Trials of War Criminals before the Nuremberg Military Tribunals Under Control Council Law No. 10 (1952).

As in the case of Satyam Computers

[10] I.G. Farben, above n 84 ("While the Farben organisation, as a corporation, is not charged under the indictment with committing a crime and is not the subject of prosecution in this case, it is the theory of the prosecution that the defendants individually and collectively used the Farben organisation as an instrument by and through which they committed the crime enumerated in the indictment")

bottom line. Since it is not a living, breathing human being, a company can only take action via its employees, to whom it must answer. Convictions based on vicarious criminal corporation responsibility have been upheld by federal common law courts, even when there was evidence of a valid compliance program in place and the agent violated stated company policy. This provision has been interpreted widely with regard to the limitation that employees must act within the scope of their actual or perceived authority. According to the existing law, it "is not necessary that the employee be primarily concerned with benefiting the corporation, because courts recognise that many employees act primarily for their own personal gain." The need that an employee behave in a manner that helps the organization has also been loosening as a result of interpretation. No matter how hard corporate managers try to keep their employees from breaking the law, federal law holds them liable for the actions of their agents, no matter how high up the corporate ladder those agents fall. This is all because of the current theory of vicarious criminal corporate liability.

Prosecutors have an excessive amount of power due to the present application of the vicarious liability principle. If even one person commits a crime, the whole organization might be held criminally responsible. There is usually never enough money to pursue criminal cases where there is a possibility of liability233 since even the smallest employee action could lead to blame. Prosecutors have substantial sway due to the fact that criminal charges can have devastating consequences for a company and raise the probability that the market would impose what amounts to a corporate death sentence. After Arthur Andersen LLP rejected a deferred prosecution agreement offered by the government in the winter of 2002, Wall Street saw the effects firsthand. As a result, many companies that had been involved with Enron were eager to sign stringent deferred prosecution agreements to avoid indictment. Rethinking the standard for criminal corporate liability to require the government to demonstrate that the company lacked a legitimate compliance programme to identify the criminal conduct will address power imbalances between the government and a corporation facing potential prosecution for the actions of an errant employee. The government has almost unlimited latitude in imposing fines and internal changes via deferred prosecution agreements, which businesses may be coerced into signing. A significant increase in prosecutorial authority over these companies is anticipated as a result of the planned amendment to the criminal corporate responsibility regulations. Another advantage of the new vicarious liability standard is that it will encourage corporate management to build a strong compliance program in order to protect the company from criminal liability, which means that such criminality is less likely to take root in the first place.

Criminal Corporate Liability - Deterrence and Retribution: The application of agency principles of vicarious responsibility in situations when a company has taken all reasonable steps to ensure that its workers behave themselves legally is not supported by any of the traditional aims of criminal law. The objectives of the criminal law are met when a business may be held only accountable for the conduct it has already committed.

This tactic has some sense and is backed by logic. Stated differently, the Deferred Prosecution Agreement kicks in even when the DOJ determines that the Corporation is sufficiently guilty of a crime to warrant a criminal court prosecution. In essence, this is an offer to the Corporation to tidy up the internal organisation. This is usually achieved by imposing obligations on the Corporation to carry out compliance initiatives and, to some degree, by making payments of fines. Therefore, if the Corporation has already put in place compliance processes or systematic inspections to dissuade criminal action by its officers and personnel, there is very little rationale for trying to prosecute the Corporation and force it to sign a DPA.

Traditionally, there are two types of deterrence: both broad and specific. In general, specific deterrence means preventing the offender from engaging in the same behavior in the future. A real person who experiences such incapacitation would often be imprisoned with limited freedom or put under supervised release. Naturally, no business wants to end up in prison. Conversely, specific deterrence for a corporation can mean the company's dissolution, a temporary or permanent injunction that forbids it from doing a certain business, or, similar to an individual, putting the corporation through a probationary period where the court monitors and restricts its actions. The impact that a particular defendant's sentencing will have on other members of society who could be persuaded to engage in similar activities is known as general deterrence. In the context of corporate criminal behavior, broad deterrence is especially relevant. The criminal law has a retributive purpose as well. What society defines as "criminal" behavior is behavior that is seen to go beyond the limitations of acceptable behavior. If a company crosses that line, the consequences might be the same as for a person. However, personal vengeance and corporate revenge are not the same thing. We must first ascertain what the corporation did or did not do that justifies criminal repercussions before we may take retaliatory action against a company that is proven legally responsible for an employee's illegal activities. The process is straightforward in cases when the company urged an employee to commit the crime. However, what about the business

that made every effort to stop this kind of behavior? It is not in the best interests of the criminal law to hold corporations accountable when they have taken every precaution to prevent and identify illegal behavior by their employees. If anything, organizations with sophisticated compliance procedures would receive the reverse message from the idea that no good act goes unpunished.

A company has either intentionally encouraged or tolerated criminal activity when senior management engages in illegal activity to meet Wall Street expectations for earnings, as was the case with Enron or WorldCom, or when an executive falsifies financial statements while management does nothing. In these situations, the business must take accountability for the actions of its workers because it did not put in place the appropriate measures to identify and stop similar crimes. Suppose that many of her subordinates are instructed by a lower-level executive to destroy documents that they consider to be potentially harmful to the company or to the executive. Assume further that despite the company's stringent policies and initiatives to deter this kind of behavior, the employees committed the crime, were apprehended by the police right away, and were turned over by the corporation. There is no advantage to permitting criminal responsibility to attach since the company has taken every precaution to stop and identify such illegal activity by its employees. However, without exceptional circumstances, such as a total lack of screening, it is hard to understand why hiring a criminal would be against the criminal code.

A company differs from an individual in that it has a basic need for punishment and deterrence. Unlike most people, businesses are not always in control of other people's actions that could lead to criminal charges. In fact, the DOJ has acknowledged that businesses cannot keep an eye on every action taken by their staff members and should not be held accountable for every employee's behavior. The defendant corporation swears to a statement of facts and guarantees that none of its employees or representatives will dispute those facts under the provisions of the standard post-Enron deferred prosecution agreements. A statement made by an employee that deviates from the agreed-upon facts might be attributed to the defendant business and seen as a violation of the contract. Notably, though, the company has a set period of time, usually 48 to 72 hours, to address any transgression by contesting the employee's claim if the employee contests the facts. This type of disclaimer acknowledges the fundamental difference between an organization and an individual in terms of the imposition of criminal culpability: an organization frequently has less control over the actions of its employees than an individual does over her own. The DOJ has therefore added a clause to these agreements that states that an organization has a limited capacity and that it is improper to hold a business criminally liable when it has taken all necessary steps to regulate the behavior of its employees. The objectives of criminal corporate law are met when an organization has previously put in place efficient processes that logically discourage and identify illegal behavior by its employees.

5.2. CORPORATE COMPLICITY

Apart from the aforementioned principles that can facilitate a company's prosecution in the most impartial way possible particularly in cases where mens rea is a significant component of the alleged offense the Geneva-based International Commission of Jurists[11] has carried out a groundbreaking investigation into the criteria that must be met in order to determine whether a corporation has knowingly engaged in criminal activity. The value of this research report cannot be overstated, since it focused primarily on the role of corporations accused of giving aid and assistance to armed organisations accused of international crimes such as genocide and egregious human rights violations. Notably, one of the study's goals was to persuade the businesses to evaluate their behaviour against the standard it established so that they would know when to stop short of going too far in a conflict scenario. Should the Rome Statute be amended to allow for the prosecution of companies for international crimes, this research would be very beneficial. This is due to the fact that armed groups are more prone than businesses to commit the present basic international crimes as specified by the Rome Statute. It is more probable that companies are involved in these crimes as accomplices or enablers. The pertinent section of the previously stated research is reproduced below.

[11] The International Commission of Jurists is a non-governmental organization devoted to promoting the understanding and observance of the rule of law and the legal protection of human rights through the world. It is headquartered in Geneva, and has 85 national sections and affiliated organisations. It enjoys consultative status in the UNESCO, The Council of Europe and the African Union.

5.3. BUSINESS COMPLICITY AND ACCOUNTABILITY IN THE 21ST CENTURY 12- COMPANY CONDUCT AND THE CALL FOR ACCOUNTABILITY

Sixty years ago, senior business executives were convicted of willfully assisting the Nazi regime in committing some of the most heinous war crimes imaginable. In addition to actively seeking out slave labor for their factories, these businessmen—who often operated through their corporations—also supplied poisonous gas to concentration camps knowing that it would be used to exterminate human beings, gave money to support the criminal S.S., and profited greatly from the looting of property in occupied Europe. They also consented to or assisted in the deportation, killing, and mistreatment of slave laborers. The entire community has been shocked by reports from every continent that companies have purposefully assisted governments, armed rebel groups, or others in carrying out heinous human rights atrocities. Oil and mining companies have been charged of giving money, weapons, vehicles, and air support to rebel or government armed forces so they may attack, kill, and "disappear" people. These businesses want security and concessions. It has been alleged that businesses have sold specialized computer technology that enables a government to discriminate against minorities and earthmoving equipment used to demolish homes in violation of international law. Some are accused of buying conflict diamonds to finance rebel groups that flagrantly disregard human rights.

- **The ICJ Expert Legal Panel – Complicity in Gross Human Rights Abuses**

"It is in this context that the ICJ established the Expert Legal Panel on Corporate Complicity in International Crimes (the Panel). The Panel was mandated to consider in what situations companies and/or their individual representatives could be held legally responsible under criminal and/or civil law when they are "complicit" with governments, armed groups, or other actors in gross human rights abuses."

- **Clarifying the Legal and Policy Meaning of Complicity**

For many years, the term "complicity" has been used to characterize the many ways in which one person inadvertently becomes involved in another's actions. It is common to hear accusations that firms have partnered with another actor to violate human rights, even though there are many examples when companies and their representatives are the direct and immediate perpetrators of human rights crimes. In these circumstances, human rights organizations and activists, international policy makers, government experts, and businesses themselves are more likely to use the phrase "business complicity in human rights abuses" to characterize what they perceive to be undesirable corporate involvement in such crimes. What does it mean for a company to be complicit? What consequences may complicity have? How can businesses avoid turning become complicit parties? How will they be held accountable for their collaboration? Even though the phrase is widely used, there is still a lot of confusion and misunderstanding on what it means, particularly when it comes to circumstances where complicity might lead to criminal or civil liability. The Panel aims to clarify this in its report.

- **Applying Civil and Criminal Laws to Gross Human Rights Abuses**

The Panel's report focuses on two areas of law—criminal law (mainly international criminal law, supplemented by national criminal law concepts) and the law of civil remedies, which is found in both common law and civil law jurisdictions—instead of analyzing international human rights law as a tool for accountability. As the basis for enforcing criminal culpability, the paper has focused on joint intent, superior responsibility, and aiding and abetting. Even at the time of its establishment after World War II, corporate action was subject to international criminal law, and corporate executives were held legally liable for Nazi atrocities committed during their commercial activities. Furthermore, when national legal systems incorporate international criminal law into their domestic legislation, they often identify companies and other legal entities as potential offenders.

- **A Zone of Legal Risk**

The Panel lists the conduct that a company should avoid if it want to avoid being linked to serious human rights abuses and facing legal repercussions. Avoiding Complicity: When Could a Company Be Held Legally Responsible for Its Role in Serious Human Rights Violations? In addition to helping businesses identify behaviors they should avoid, the Panel believes that its approach—which it developed through research, consultations, and the personal experiences of

[12] Corporate Complicity & Legal Accountability, Volume 1: Facing the Facts and Charting a Legal Path, Report of the International Commission of Jurists Expert Legal Panel on Corporate Complicity in International Crimes, Geneva 2008

the Panel members—will help any business, non-governmental organization (NGO), or other relevant actor determine whether a company may be held legally liable for its involvement in egregious violations of human rights.

The approach poses several questions in three areas of study:

1) Cause/Contribution: Did the company's actions cause, worsen, or make the egregious violations of human rights possible?
2) Knowledge & Foreseeability: Did the business know—or should it have known—that its actions would probably be a contributing factor to the egregious violations of human rights?
3) Proximity: Was the corporation near the victims or the main offender of the human rights violations, either geographically or in terms of the length, frequency, and/or intensity of encounters or relationships?

6. CONCLUSION

Corporate complicity in international crimes poses significant challenges to the global legal order. While progress has been made in holding corporations accountable, significant gaps remain in the legal and institutional framework. Strengthening international legal standards, promoting due diligence, and fostering collaboration among states, international organizations, and civil society are critical steps in ensuring justice and accountability. The evolving jurisprudence in this field reflects a growing recognition of the need to balance corporate interests with the imperatives of international justice and human rights protection.

CONFLICT OF INTERESTS

None.

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None.

REFERENCES

Clapham, A. (2006). *Human Rights Obligations of Non-State Actors*. Oxford University Press.

De Schutter, O. (2011). *Corporate Accountability and Human Rights*. United Nations Office of the High Commissioner for Human Rights.

Nuremberg Trials Proceedings. (1945-1946). *Trial of the Major War Criminals Before the International Military Tribunal*. Nuremberg.

International Criminal Court (1998). *Rome Statute of the International Criminal Court*.

United Nations (2011). *Guiding Principles on Business and Human Rights*. United Nations Office of the High Commissioner for Human Rights.

OECD (2011). *Guidelines for Multinational Enterprises*. Organisation for Economic Co-operation and Development.

Kiobel v. Royal Dutch Petroleum Co., 569 U.S. 108 (2013).

Zerk, J. A. (2006). *Multinationals and Corporate Social Responsibility: Limitations and Opportunities in International Law*. Cambridge University Press.

Ratner, S. R. (2001). "Corporations and Human Rights: A Theory of Legal Responsibility." Yale Law Journal, 111(3), 443-545.

Taylor, M. B. (2017). The Business and Human Rights Landscape: Moving Forward, Looking Back. Cambridge University Press.