



CORPORATE AND INDIVIDUAL CRIMINAL LIABILITY FOR INTERNATIONAL CRIMES: TRENDS AND CHALLENGES

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INTRODUCTION: Crime knows no borders in our increasingly interconnected world (Keith, 2010).

What is Corporate and Individual Criminal Liability for International Crimes?

Corporate criminal liability for international crimes - The term "corporate criminal liability for international crimes" describes a company's legal responsibility for crimes like crimes against humanity, war crimes, and genocide. This newly developed field of law deals with the accountability of companies for their direct or indirect participation in the commission of such crimes. It brings up difficult issues about human rights, corporate governance, and the worldwide confluence of ethics and business. An important aspect of this trend is the role of corporations in white-collar criminality and the consequences it has on the punishment of this particular wrongdoing, a logical reaction to this phenomenon seems to be, as has happened for that matter in torts law, to sanction corporations for the wrongdoing for which they are responsible, logical thought to this solution may be may be that it does not take into account the traditional hesitation of criminal law and criminal lawyers with regard to change²⁵³⁰. Determining the extent of accountability and guaranteeing efficient enforcement procedures across jurisdictions continue to be difficult tasks, nonetheless.

GRASP - EDUCATE - EVOLVE

²⁵³⁰ Stessens, G. (1994) 'Corporate Criminal Liability: A comparative perspective', *International and Comparative Law Quarterly*, 43(3), pp. 493-520. doi:10.1093/iclqaj/43.3.4 Burton, B.P. (2014) *Corporate Criminal Liability: Federal law and prosecutorial discretion issues*. New York: Novinka.



Individual criminal liability for international crimes - Individual criminal culpability for international crimes is the legal accountability of people for serious crimes such as crimes against humanity, war crimes, and genocide. International responsibility is required since these crimes violate fundamental human rights and cross-national boundaries. Individual liability, which was established by international tribunals such as the ICC, customary international law, and treaties, guarantees that those who commit crimes would be held accountable for their conduct, irrespective of their nationality or official capacity. It promotes justice, prevents crimes in the future, and upholds the rule of law everywhere. Nonetheless, obstacles still exist in guaranteeing successful prosecution, extradition, and collaboration between nations, underscoring the continuous requirement for enhanced global collaboration and legal structures.

Overview: In recent years, the problem of holding businesses and individuals liable for transnational crimes has grown more complicated. Among the most horrible crimes are international crimes including aggression, war crimes, crimes against humanity, and genocide; those responsible must be held accountable. However, there are several obstacles to overcome in the prosecution of businesses and individuals for these crimes, such as jurisdictional problems, the need for substantial evidence, and accountability. This article will look at the difficulties in prosecuting foreign crimes, the theories of corporate and individual criminal culpability, the difficulties in holding corporations and individuals accountable for these crimes, and the latest developments and issues in this field. The complicated topic of corporate criminal liability for international crimes necessitates a thorough comprehension of the definition and categories of international crimes. According to international law, the most serious transgressions are those that are committed against the entire international community. These are referred to as international crimes. To

hold businesses liable for crimes committed abroad, theories of corporate criminal liability, such as vicarious culpability, attribution, and direct liability, have been established. However, jurisdictional problems, the need for supporting documentation, and responsibility make it difficult to prosecute businesses for these offenses. Establishing jurisdiction can be challenging when firms, for instance, have their headquarters in one nation but conduct business in another. Furthermore, it can be difficult to compile evidence to establish corporate criminal liability since firms sometimes have intricate organizational structures and convoluted decision-making procedures that make it hard to assign blame. The idea of holding people responsible for their acts forms the foundation of individual criminal culpability for transnational crimes. Genocide, crimes against humanity, war crimes, and aggression are the four categories of international crimes recognized by international criminal law. To bring criminal charges against individuals for these offenses, international criminal tribunals have been established, such as the International Criminal Court (ICC). However, problems like complementarity, extradition, and immunity make it difficult to prosecute people for crimes committed abroad. For instance, some people may assert immunity because of their official positions, which makes it challenging to bring legal action against them. Additionally, if the subject is located in a nation that does not cooperate, extradition could be challenging. If national courts are reluctant or unable to prosecute, complementarity—which mandates that they take the lead in pursuing international crimes—may provide difficulties. The landscape of international criminal prosecutions is dynamic, with new trends and obstacles emerging every day. Due diligence, corporate social responsibility, and extraterritorial jurisdiction are new developments in the legal framework for holding businesses responsible for transnational crimes. While due diligence mandates that corporations take precautions

to stop foreign crimes from happening, extraterritorial jurisdiction enables nations to prosecute corporations for crimes committed outside of their boundaries. Holding corporations responsible for their activities is aided by corporate social responsibility. Complementarity, extradition, and immunity provide difficulties in the prosecution of individuals for transnational crimes. In order to address these issues and guarantee that those who commit international crimes are held accountable, effective international collaboration and coordination are required.

Corporate Criminal Liability for International Crimes: Trends

Corporate criminal responsibility for transnational crimes is a developing legal field characterized by a number of noteworthy developments that show how businesses are increasingly acknowledged for their roles in committing or aiding in the commission of serious crimes abroad. These trends include changes in corporate governance practices, legal rulings, and legislative developments that have the goal of encouraging responsibility and preventing corporate complicity in international crimes. The growing enactment of laws to combat corporate involvement in international crimes at both the national and international levels is one notable trend. Laws that specifically hold companies liable for their involvement in crimes including genocide, war crimes, and crimes against humanity are being passed by nations all over the world. These regulations frequently set up procedures for holding companies accountable and levying heavy fines when they engage in these kinds of offenses. Furthermore, there is growing agreement on the significance of holding businesses accountable under international law as evidenced by the provisions of international agreements like the Rome Statute of the International Criminal Court (ICC) that address corporate culpability in international crimes. In addition, courts and legal academics are increasingly interpreting corporate accountability for transnational crimes in

broader ways. Corporate criminal responsibility was traditionally interpreted narrowly, emphasizing the acts of specific employees or agents. Nonetheless, there has been a change in the understanding that companies' organizational designs, rules, and commercial strategies can make them complicit in foreign crimes. Even in cases when corporate executives or employees are not directly involved in the violation, courts are becoming more and more inclined to hold corporations liable for their cooperation in these kinds of crimes. The increasing focus on corporate accountability and responsibility for abuses of human rights, including participation in transnational crimes, is another trend. International frameworks that specify the obligations of enterprises to uphold human rights across their supply chains and operations include the United Nations Guiding Principles on Business and Human Rights. In 2014, following a proposal by Ecuador and South Africa, the UN Human Rights Council established an open-ended intergovernmental working group with the mandate to "elaborate an international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises"²⁵³¹. As a result of this trend, corporate policies and actions are being scrutinized more closely, and efforts are being made to hold companies responsible for their effects on human rights, including their involvement in transnational crimes. In addition, there is a tendency toward increased cooperation in combating corporate involvement in transnational crimes among governments, international organizations, and civil society. Cooperation between national authorities, international tribunals, and non-governmental groups in the investigation and prosecution of corporations for their involvement in such violations is a common component of efforts to promote accountability.

²⁵³¹ Bernaz, N. (2020) 'Conceptualizing corporate accountability in international law: Models for a business and Human Rights Treaty', *Human Rights Review*, 22(1), pp. 45–64. doi:10.1007/s12142-020-00606-w.

This cooperative strategy makes sure that companies are held responsible for their activities wherever they do business and helps to overcome jurisdictional obstacles. Even with these encouraging developments, there are still big obstacles in the way of properly combating corporate involvement in transnational crimes. One difficulty is establishing corporate criminal responsibility, especially when there are several participants and intricate organizational systems involved. Obtaining substantial evidence and legal knowledge are frequently necessary to demonstrate corporate culpability, which presents difficulties for investigators and prosecutors. It is also challenging to guarantee uniform accountability for corporate involvement in international crimes due to the lack of consistency in legal standards and enforcement systems between jurisdictions. States' varying degrees of political will and divergent legal philosophies can make it more difficult to punish businesses for their involvement in these kinds of crimes. In conclusion, there is a rising understanding of the significance of holding corporations accountable for their involvement in serious crimes, as evidenced by the trends in corporate criminal responsibility for international crimes. Even though there has been progress in addressing the role that corporations play in these crimes, there are still issues with consistently enforcing the law, appropriately attributing guilt, and encouraging corporate responsibility for human rights breaches. To establish accountability procedures and stop corporate culpability in international crimes, governments, international organizations, and civil society will need to continue working together to address these concerns.

Individual Criminal Liability for International Crimes: Trends

Changes in the criminal responsibility of individuals for transnational crimes demonstrate a global commitment to justice, accountability, and the avoidance of grave human rights and humanitarian law violations. These trends include changes in international

conventions, advancements in the law, and the emergence of procedures meant to hold people accountable for crimes that cross national boundaries. The growing importance of international tribunals and courts in punishing people for their roles in international crimes is one noteworthy trend. Ensuring accountability for those responsible for genocide, war crimes, and crimes against humanity has been made possible in large part by institutions like the International Criminal Court (ICC) and ad hoc tribunals like the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR). Regardless of an individual's official role or nationality, these tribunals reflect a community effort to hold people accountable for their crimes, abolish impunity, and grant victims' justice." The attribution of criminal responsibility to individuals does not exclude that states can be held responsible for the violations of international law that also potentially amount to international crimes; however, individual criminal responsibility under international law possesses the same legal nature as the criminal responsibility under domestic law, whereas the responsibility of states is of an international/civil nature²⁵³². The concept of universal jurisdiction, which enables nations to bring criminal charges against individuals for transnational crimes carried out by foreign nationals or outside their borders, is also gaining acceptance. This pattern shows a dedication to making sure that those who conduct horrible crimes are not exempt from punishment just because they operate in different legal jurisdictions. More and more states have passed laws and signed agreements to make it easier to prosecute those who commit transnational crimes, even if they don't have a direct link to the state that is bringing the case. The emphasis on the complementary nature of national and international jurisdictions when it comes to

²⁵³² meloni, chantal, Individual criminal responsibility, oxfordbibliographies. Available at: <https://www.oxfordbibliographies.com/view/document/obo-9780199796953/obo-9780199796953-0215.xml> (Accessed: 15 April 2024).

prosecuting individuals for international crimes is another noteworthy trend. The Rome Statute of the International Criminal Court (ICC) upholds the principle of complementarity, which provides that national courts should have primary jurisdiction over such crimes and that the ICC should only intervene when governments are unwilling or unable to prosecute. In order to establish efficient accountability procedures for international crimes, this trend emphasizes the significance of fortifying national legal systems and promoting collaboration between states and international organizations. In addition, there is an increasing emphasis on prosecuting those guilty of sexual and gender-based violence in war settings to reduce impunity for these crimes. Sexual violence has been recognized by international tribunals and courts as a distinct and serious international crime, and attempts have been made to punish those who commit these crimes accountably. This pattern indicates a wider understanding of the disproportionate harm that sexual violence caused by conflicts does to women and girls, as well as the necessity for focused actions to reduce impunity and give survivors justice. Even with these encouraging developments, it is still very difficult to hold people accountable for crimes committed abroad. One obstacle is obtaining witness testimony and assembling evidence, especially in places affected by war where access may be restricted or security is a top priority. It frequently takes substantial resources and collaboration from a variety of parties, such as governments, international organizations, and civil society, to establish an individual's criminal culpability. It is also difficult to guarantee consistent responsibility for those accountable for transnational crimes due to the inconsistency of legal norms and enforcement practices throughout nations. Various legal strategies and varying degrees of political determination among states might impede attempts to bring offenders to justice and get convictions. In summary, worldwide efforts to ensure justice, accountability, and the

avoidance of grave breaches of human rights and humanitarian law are reflected in the patterns of individual criminal culpability for transnational crimes. Even while there has been progress in holding those responsible for these crimes accountable, there are still issues with acquiring evidence, getting past jurisdictional barriers, and making sure international law is consistently enforced. To overcome these obstacles, nations, international organizations, and civil society must continue to collaborate to bolster accountability frameworks and advance global respect for human rights and the rule of law.

Corporate Criminal Liability for International Crimes: Challenges

In the context of legal accountability, corporate criminal culpability for transnational crimes poses a complicated and multidimensional difficulty. Addressing corporations' involvement in heinous crimes including genocide, war crimes, and crimes against humanity presents particular challenges because these companies operate internationally and can hold substantial economic and political clout. These difficulties are caused by the complicated nature of corporate structures, the shortcomings of the current legal systems, and the difficulties associated with international collaboration and enforcement. A corporation is criminally liable for the federal crimes its employees or agents commit in its interest: Corporate officers, employees, and agents are individually liable for the crimes they commit, for the crimes they conspire to commit, for the foreseeable crimes their co-conspirators commit, for the crimes whose commission they aid and abet, and for the crimes whose perpetrators they assist after the fact²⁵³³. We can learn more about the obstacles to holding companies responsible for their involvement in transnational crimes by examining these issues. Assigning blame within intricate corporate systems is one of the main obstacles to

²⁵³³ Burton, B.P. (2014) *Corporate Criminal Liability: Federal law and prosecutorial discretion issues*. New York: Novinka.

addressing corporate criminal liability for transnational crimes. Since corporations are made up of many people with different levels of control, it can be difficult to determine who in the company is accountable for illegal activities. Corporations operate through a network of employees, executives, and subsidiaries, blurring the boundaries of accountability, unlike people who can be prosecuted directly for their acts. At the corporate level, proving the necessary mens rea or criminal intent can be more difficult because decision-making processes often involve several actors with varying degrees of engagement and awareness. Moreover, the complexity of business structures makes it more difficult to assign criminal liability as they sometimes include layers of affiliates, subsidiaries, and subcontractors who operate in various jurisdictions. To avoid taking responsibility for their activities, multinational firms may take advantage of legal gaps and inconsistent jurisdictions. Prosecutors and investigators looking to compile evidence and construct cases against companies involved in foreign crimes may encounter difficulties as a result of this intricacy. Furthermore, variations in the laws and methods of enforcement throughout jurisdictions might make it difficult to bring meaningful charges against a corporation, giving them the opportunity to take advantage of regulatory loopholes and jurisdictional arbitrage to evade responsibility. The narrow breadth of current legal frameworks is a major obstacle in resolving corporate criminal culpability for crimes committed abroad. Although the concept of corporate criminal culpability is acknowledged by international law, each jurisdiction has rather different requirements and standards. There are gaps in accountability and enforcement due to the lack of comprehensive laws in many nations addressing corporate responsibility in international crimes. Even on a global scale, organizations like the International Criminal Court (ICC) mainly concentrate on the criminal responsibility of the individual, putting

corporations mostly outside the purview of prosecutorial jurisdiction. Moreover, corporate entities might not be easily subject to legal principles like the doctrine of command responsibility, which holds military or civilian commanders accountable for crimes committed by subordinates under their supervision. Business organizations, in contrast to military hierarchies, are frequently diffuse and fragmented, making it difficult to establish the appropriate degree of control to hold business executives accountable for illegal acts. This restriction emphasizes the necessity of specialized legal frameworks and guidelines in order to successfully combat corporate involvement in transnational crimes. Furthermore, there exist obstacles with the implementation of significant fines and the execution of verdicts against multinational enterprises convicted of transnational offenses. Corporations are not subject to imprisonment like individuals are, and monetary fines might not be adequate to stop wrongdoing or give victims substantial compensation. It may be challenging to apply alternative sanctions, such as asset forfeiture or corporate dissolution, in situations involving multinational firms with substantial global activities and assets. Furthermore, even for companies operating in sectors with little public oversight or control, the threat of bad press or reputational harm might not always be a sufficient deterrent. In addition, there are issues with international coordination and collaboration when it comes to the prosecution of businesses that have committed transnational crimes. Cross-border evidence collection, suspect extradition, and judgment enforcement can be hampered by jurisdictional disputes, diplomatic issues, and disparate legal systems. Mutual legal assistance treaties (MLATs) and other international cooperation procedures have the potential to be slow and unwieldy, which could hinder the efficacy of accountability initiatives and prolong the prosecution of corporate criminals. Furthermore, states may be reluctant to assist in the prosecution of corporations involved in

international crimes due to political concerns and diplomatic sensitivities, especially if those corporations are thought to be compromising national interests or economic links. In summary, resolving corporate criminal liability for transnational crimes is a difficult task that calls for a concerted effort from the international community to take many different approaches. It takes a mix of improved international collaboration, increased enforcement procedures, and legal reforms to overcome the difficulties that come with holding businesses accountable for their involvement in heinous offenses. Policymakers and practitioners can strive towards a more equitable and successful system of responsibility for corporate culpability in international crimes by tackling the issues of attribution, legal frameworks, enforcement, and international cooperation.

Individual Criminal Liability for International Crimes: Challenges

Because it is difficult to investigate, prosecute, and hold people accountable for crimes that cross national borders, individual criminal culpability for transnational crimes presents substantial obstacles. The crimes committed by an individual at an international level and the affixing the liability on such wrongdoers so that he or she must not be let free could be achieved with the help of International Criminal Court which is in the process of development and has provided the teeth to the provisions of the Rome statute by punishing the accused of war crimes, crimes against humanity and genocide²⁵³⁴. This could be achieved with the help of International Criminal Court which is in the process of development and has provided the teeth to the provisions of the Rome statute by punishing the accused of war crimes, crimes against humanity and genocide. These obstacles underline the inherent difficulties in securing justice and accountability for those who commit atrocities including genocide, war

crimes, and crimes against humanity. They are caused by legal, jurisdictional, evidential, and practical issues. The question of jurisdiction is one of the main obstacles to addressing individual criminal culpability for crimes committed abroad. It is challenging to establish jurisdiction over offenders of international crimes since these acts frequently take place in conflict zones or places with inadequate or nonexistent legal systems. Complicating efforts to bring offenders accountable is the possibility that they are foreign nationals or that they operate in areas outside the jurisdiction of national authorities. Regardless of the location of the offenses, the victim's or offender's nationality, or both, governments are permitted to prosecute persons for international crimes under the doctrine of universal jurisdiction. Not all states are able or willing to exercise jurisdiction over international crimes committed outside of their borders, and the implementation of universal jurisdiction is subject to political and legal restrictions. The collection and preservation of evidence in insecure or conflict-affected areas presents a considerable additional barrier. Crime scenes may be inaccessible or damaged, witnesses may be reluctant to come forward out of fear of retaliation, and access to evidence is sometimes restricted in situations involving international crimes. The gathering of documentation evidence, witness accounts, and forensic evidence may be impeded by logistical difficulties, security issues, and evidence modification or destruction by offenders. Furthermore, the reliability and availability of evidence might be weakened over time, making it more challenging to establish the facts and compile evidence against offenders. Furthermore, to guarantee a fair trial, the prosecution of individuals for transnational crimes must comply with stringent legal requirements and procedural safeguards. Due process rights, such as the right to a defense, the assumption of innocence, and the opportunity to question witnesses, must be granted to defendants. Ensuring these rights,

²⁵³⁴ (2023) Individual Criminal Liability at ICC: A Case Study, 12(5). doi:10.21275/SR2351700

however, can be difficult in practice, especially in situations involving mass atrocities or intricate legal procedures. The trauma endured by survivors and witnesses, linguistic obstacles, and cultural disparities may make it more difficult to handle the legal system and guarantee that defendants get a fair trial. In addition, there exist obstacles with the implementation of significant punishments and the execution of judgments against those convicted of transnational crimes. International tribunals and courts, in contrast to domestic criminal justice systems, rely on governments to carry out arrest warrants, enforce rulings, and impose penalties because they lack their own enforcement powers. But other states might not be able or ready to comply with international tribunals, especially if it goes against their political or national interests. Moreover, the absence of extradition agreements, tense diplomatic relations, or state refusals to transfer their citizens for prosecution abroad may make it more difficult to apprehend fugitives and carry out arrest orders. Concerning individual criminal culpability for international crimes, there are further difficulties in the coordination and collaboration of states, international organizations, and civil society. Investigating, prosecuting, and holding offenders accountable can necessitate cooperation between several agencies, legal systems, and countries. Extradition agreements, mutual legal assistance treaties (MLATs), and other international cooperation procedures are crucial for obtaining evidence, extraditing suspects, and guaranteeing the successful prosecution of offenders. Nevertheless, there may be delays and barriers in the application of these processes due to their delayed, bureaucratic, and political nature. In conclusion, tackling individual criminal responsibility for transnational crimes is a difficult task that calls for a well-thought-out, multipronged response from the international community. It is imperative to address the obstacles related to jurisdiction, gathering evidence, equal trial rights, enforcement, and global collaboration in

order to guarantee responsibility for those who commit crimes against humanity and advance victim justice. Policymakers and practitioners can work towards a more equitable and effective system of accountability for those guilty of international crimes by tackling these issues through law reforms, capacity-building programs, and more international cooperation.

Conclusion: The analysis of criminal responsibility for international crimes for corporations and individuals reveals a complicated environment full of obstacles but also notable advancements and trends. It becomes clear as we traverse this complex terrain that dealing with these difficulties necessitates a multimodal strategy that includes legal changes, more international collaboration, and a dedication to protecting human rights and the rule of law. The complex nature of corporate structures and the shortcomings of existing legal frameworks provide special obstacles for corporate criminal culpability for international crimes. To hold companies responsible for their role in crimes against humanity, war crimes, and genocide, it is necessary to overcome barriers pertaining to attribution, legal requirements, enforcement procedures, and international cooperation. Despite these obstacles, positive developments are being seen, such as the expanding legal acknowledgment of corporate responsibility in both domestic and international arenas, the changing definition of corporate complicity, and the rising collaboration between governments, international organizations, and civil society. However, additional work is required to overcome jurisdictional discrepancies and legal loopholes, as well as to ensure uniform enforcement and meaningful punishments for corporate malfeasance. Comparably, there are numerous obstacles to individual criminal responsibility for transnational crimes, such as those pertaining to jurisdiction, gathering evidence, the right to a fair trial, the implementation of court orders, and international collaboration. Even while attempts have been made to establish accountability

through international tribunals and courts, there are still obstacles to be overcome, especially in conflict-affected countries, in order to ensure that victims have access to justice, gather enough evidence, and hold offenders accountable. Positive improvements exist despite these challenges, such as the rising acceptance of universal jurisdiction and the classification of gender-based and sexual assault as major international crimes. To develop legal frameworks, advance investigative methods, and improve cooperation channels, nations, international organizations, and civil society must continue to collaborate in order to overcome these obstacles. In summary, tackling corporate and individual criminal responsibility for transnational crimes necessitates an all-encompassing and well-coordinated strategy that involves national, regional, and global partners. This entails bolstering legal frameworks to hold businesses accountable, improving investigative and prosecution capabilities, guaranteeing individuals' rights to a fair trial, and encouraging global collaboration to get over obstacles related to jurisdiction and enforcement. Additionally, initiatives should be taken to give victims' rights—including those of survivors of gender-based and sexual abuse—priority and to give them substantial access to the legal system and financial compensation. As we move forward, maintaining human rights, preventing impunity, and promoting responsibility for international crimes must be the top priorities for policymakers, practitioners, and the international community. Through the resolution of the issues mentioned in this research study and the advancement of the encouraging patterns noted, we can strive toward a more equitable and safe society in which those responsible for horrible crimes are held accountable, victims obtain the justice they are due, and the law prevails. We cannot accomplish these fundamental objectives and fulfill our joint responsibility to defend human rights and advance global peace and justice

unless we work together and with steadfast determination.