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CORPORATE COMPLICITY IN CONFLICT ZONES: LEGAL IMPLICATIONS OF GOOGLE'S ACQUISITION OF WIZ UNDER INTERNATIONAL CRIMINAL AND HUMANITARIAN LAW

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I. ABSTRACT

This article investigates the evolving doctrine of corporate complicity in international law through the lens of Google's $32 billion acquisition of Wiz, an Israeli cybersecurity firm with reported ties to military intelligence. Amid allegations of international humanitarian law (IHL) violations, the article seeks to inquire whether such a corporate transaction could constitute a crime under International Criminal Law (ICL). While the Rome Statute currently excludes corporate entities from direct prosecution, this paper argues that despite the Rome Statute's exclusion of corporate entities from direct prosecution, a framework for indirect corporate liability can still be established under existing principles of aiding and abetting. Further, an amendment to the Statute could change the entire scenario. It analyses actus reus, mens rea, and proximity to assess proximity. The analysis synthesizes ICL, IHL, and the UN Guiding Principles on Business and Human Rights (UNGPs) to outline the legal obligations of businesses in conflict with laws. It further evaluates the varied types of complicity via case laws and soft law instruments. Applying this framework to the Google-Wiz case, the article identifies the areas of potential legal exposure and moral risk. It critiques the gaps in the Rome Statute and legally binding Zero Draft Treaty, proposing reforms to strengthen the current legal framework. Ultimately, this paper underscores the urgent need for a more enforceable legal regime for corporate complicity.

II. KEYWORDS:

Acquisition (Google- Wiz), Corporate Complicity, Rome Statute, UNGPs, Human Rights Due Diligence.

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III. INTRODUCTION

Transnational Corporations have been increasingly entangled in global conflict economies. Despite this, their legal accountability for complicity remains underdeveloped. This is particularly concerning in the wake of transactions like Google's takeover of Wiz.[2] On March 10, 2025, Google acquired Wiz, one of Israel's preeminent software conglomerates, for $32 billion. The acquisition has sparked controversy due to Wiz's ties to Israel's military intelligence.

The Israeli cloud security firm was founded by Unit 8200,[3] an elite Israeli cyber espionage and surveillance unit. All 4 co-founders, Yinon Costica, Assaf Rappaport, Ami Luttwak, and Roy Reznik, were leaders in this Unit 8200. Further, a study [4]noticed that almost 50 percent of the current employees are Unit 8200 veterans. This comes after Google and Amazon's deal in 2021, a $1.2 billion contract called "Project Nimbus,[5]" to supply the Israeli government with cloud services. The agreement was made to deliver cloud services to all government entities across the state, including ministries, authorities, and government-owned companies.

An investigation by The Intercept[6] In 2022 reveals startling details. Google is providing the Israeli government a full suite of advanced machine learning and AI tools. Even Google workers were petrified of Israel's surveillance and Google's transactions. Amid global condemnation of Israel [7]over its ongoing conflict, critics fear

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[2] 'Google Announces Agreement to Acquire Wiz' (*Google Cloud Blog, 18 March 2025*) <https://cloud.google.com/blog/products/identity-security/google-announces-agreement-acquire-wiz> accessed 6 July 2025.

[3] Alan Macleod, 'Wiz Acquisition Puts Israeli Intelligence in Charge of Your Google Data' (*MintPress News*, 17 April 2025) <https://www.mintpressnews.com/google-wiz-cybersecurity-data-deal/289413/> accessed 20 July 2025.

[4] Nate Bear, 'The Former Israeli Spies Building AI Systems At Global Tech Companies' (*Do Not Panic,* 2 July 2025) <https://www.donotpanic.news/p/the-former-israeli-spies-building> accessed 20 July 2025.

[5] 'Google Cloud Selected to provide cloud services to digitally transform the State of Israel' (*Google Cloud Blog, 26 May 2021*) <https://cloud.google.com/blog/topics/inside-google-cloud/google-cloud-selected-to-provide-cloud-services-to-the-state-of-israel> accessed 20 July 2025

[6] Sam Biddle, 'Documents Reveal Advanced AI Tools Google Is Selling to Israel' (*The Intercept*, 24 July 2022) <https://theintercept.com/2022/07/24/google-israel-artificial-intelligence-project-nimbus/> accessed 20 July 2025.

[7] UN Security Council, Resolution 2735, UN Doc S/RES/2735 (10 June 2024)

that it could render Google complicit in violations of international law. Israel has already been in the news for quite a few years for its apartheid against Palestinians and the war. In 2021, both Human Rights Watch[8] and Amnesty International[9] accused Israel of crimes against humanity. On a surface note, this move may seem apolitical. However, the legal implications are profound, considering Google's previous transaction with Israel: ***can such a transaction constitute complicity in international crimes?***

This article examines the legal accountability of corporations for their involvement in conflict economies, focusing on the intersection of International Criminal Law (ICL), specifically the modes of liability under the Rome Statute of the International Criminal Court, and International Humanitarian Law (IHL). Alongside, it also places reliance on the UN Guiding Principles on Business and Human Rights (UNGPs). Using the Google Wiz case as a focal lens, it interrogates the liability of businesses dealing in countries of war, using varied existing doctrines. While ICL traditionally imposes criminal liability only on natural persons, and IHL binds primarily states and armed actors, this article argues that the evolving jurisprudence indeed brings corporate actors within the legal responsibility, either directly or indirectly.

Drawing on the doctrinal elements of actus reus, mens rea, and proximity, this article explores whether Google's action satisfies the threshold for aiding and abetting under Article 25(3) of the Rome Statute. It further assesses the company's obligation under the UNGP framework to avoid contributing to violations of the laws of armed conflict. Ultimately, the article argues that the current international legal architecture remains insufficient to address such forms of corporate complicity and proposes targeted reforms to close this accountability gap.

A. Research Objectives

[8] 'Israeli Apartheid: "A Threshold Crossed" | *Human Rights Watc*h' (19 July 2021) <https://www.hrw.org/news/2021/07/19/israeli-apartheid-threshold-crossed> accessed 20 July 2025.

[9] 'Israel's Apartheid against Palestinians' (Amnesty International, 1 *February,2022)*<https://www.amnesty.org/en/latest/campaigns/2022/02/israels-system-of-apartheid/> accessed 20 July 2025.

1. To evaluate whether the current international law frameworks (ICL and IHL) can address corporate complicity in conflict zones
2. To identify the gaps in existing international instruments and propose reforms for corporate accountability
3. To explore the gaps in existing international instruments and propose reforms for corporate accountability

B. Research Questions

1. Can corporate executives be held liable for aiding and abetting international crimes committed in conflict zones?
2. Can Google's acquisition of Wiz, given its reported ties to Israeli military intelligence, potentially meet the actus reus and mens rea elements for aiding and abetting under Article 25(3) of the Rome Statute?

C. Research Methodology

The study adopts a doctrinal legal research methodology. It uses both primary legal sources (the Rome Statute, the Geneva Conventions, Additional Protocols) and secondary materials (cases from tribunals, journals, and commentaries) to construct a framework. At the same time, a case study approach is used to apply this framework to the Google Wiz acquisition, examining potential liability under aiding and abetting standards and human rights due diligence

IV. WHAT IS CORPORATE COMPLICITY?

To explore this further, it's important to understand "corporate complicity.". Complicity is a derivative form of responsibility that links an accomplice to wrongdoing by a principal actor.[10] Despite the simplicity of the definition, complicity is highly complex. The reason is that it is difficult to ascertain the moral intention behind the perpetrator's act.

[10] Miles Jackson, *Complicity in International Law (*OUP 2015)

Simply, it refers to corporations' involvement in human rights abuses committed by others. Specifically, there are primarily four features in this.[11]

1. **Transnational**: A corporation operates across borders
2. **Extraterritoriality:** Abuses occur outside the home jurisdiction
3. **Impunity:** The host state is unable or unwilling to act
4. **Complicity:** The corporation plays a direct or indirect role in human rights abuses committed by others

Legally,[12]It refers to knowingly helping or encouraging a crime, including by providing support that substantially contributes to it.

Non-legally, complicity may also encompass deriving advantage from or remaining tacit amidst egregious human rights violations. This can also be done in the absence of formal legal culpability.

Human rights, as used here, refer to the rights outlined in the "International Bill of Human Rights." They involve the economic, social, cultural, civil, and political rights of civilians.

V. FORMS OF CORPORATE COMPLICITY

In 2009, the International Panel of Jurists at the ICJ examined corporate complicity in human rights abuses. Historically, this includes "aiding and abetting" of businesses. Aiding and abetting, as defined under Article 25(3)(c) of the Rome Statute, refers to knowingly providing assistance that substantially contributes to crime. It is a form of secondary criminal liability. A person or company "aids or abets" when they knowingly help someone commit a crime, even if they do not directly commit it themselves. Other forms involve conspiring, superior responsibility, and all accounting for corporate liability. Accordingly, they concluded that corporations can

[11] Jonathan Clough, "Punishing the Parent: Corporate Criminal Complicity in Human Rights Abuses", (2008) 33 Brook J Int'l L

[12] Andrew Clapham and Scott Jerbi, 'Categories of Corporate Complicity in Human Rights Abuses' (2001) 24 Hastings Int'l & Comp L Rev 339 https://repository.uclawsf.edu/cgi/viewcontent.cgi?article=1541&context=hastings_international_comparative_law_review accessed 19 June 2025.

be held liable only if they take part in "gross human rights abuses" that threaten the peace, security, and well-being of the nation. These can be categorized as follows:

1. ***Crimes against humanity –*** Inhumane and persecutory acts committed on political, racial, national, ethnic, cultural, religious, or gender grounds, both at peace and in armed conflict
2. ***War crimes –*** war crimes include serious violations of laws and war customs. A single act of unlawful killing or taking part in hostilities is enough. Article 3 of the Geneva Conventions and Protocol II hold companies liable in case of war crimes.
3. ***Other human rights abuses amounting to crimes –*** Genocide, slavery, torture, and more.

In a broader sphere, they can be grouped into three types:

1. Direct corporate complicity:[13]

It occurs when a company knowingly assists in the commission of human rights violations. It requires knowledge of the assistance being provided to those committing the abuse. Further, the intention to harm is not necessary; just mere awareness that aid contributes to violations is sufficient evidence. The support can either be tangible (resources, logistics) or intangible (moral support). Drawing from the UN Tribunal for Rwanda's Akayesu case the court affirmed that accomplices may be held liable even without the conviction of the main perpetrator.[14] In Akayesu, the accused, a local mayor, was found complicit in acts of sexual violence. His words and authority encouraged the act. This reasoning also applies to corporate actors. If a corporation knowingly aids or facilitates abuses (such as forced relocation or surveillance), it may be directly complicit under international law.

2. Indirect corporate complicity:

[13] 'Business & Human Rights: Clapham-Jerbi Paper on Corporate Complicity in Human Rights Abuses' (2008) <https://media.business-humanrights.org/media/documents/files/reports-and-materials/Clapham-Jerbi-paper.htm> accessed 13 July 2025.
[14] The Prosecutor v Jean Paul Akayesu (Appeals Chamber), Judgment, ICTR-96-4-A, 1 June 2001

It arises when a company benefits from human rights abuses committed by others (such as governments or contractors) even if it did not directly participate. There's a focus on indirect involvement and awareness of abuses linked to the company's operations. Moral and legal questions arise when a business profits from actions like forced labor. For example, in the Furundzija case before the UN International Criminal Tribunal for the Former Yugoslavia, the court held that moral support or presence, especially when combined with authority, could amount to aiding and abetting.[15]

Aiding and abetting forms a core part of criminal law and is a crime recognized in myriad countries, including India, under the Bharatiya Nyaya Sanhita (BNS). Transposing this logic, a company that supplies equipment and funding to a regime known for human rights violations and continues to do so despite clear evidence of abuse, may be indirectly complicit.

3. Silent corporate complicity

It happens when a company is aware of ongoing human rights abuses and fails to speak out or act. It involves inaction in the face of systematic abuse. Further, there is a failure of moral responsibility and corporate social responsibility. Companies are expected to raise concerns, engage in advocacy, or withdraw support in abusive contexts. The Danish Human Rights and Business Project combines the Confederation of Danish Industries, which published a report 'Defining the Scope of Business Responsibility For Human Rights Abroad' in 2000, which describes silent and indirect complicity. In Chris Avery's report and supported by Sir Geoffrey Chandler of Amnesty International UK, silence or inaction in the face of oppression can be perceived as implicit endorsement. "Silence is not neutrality. To do nothing is not an option".

This notion places a moral expectation on corporations to use their influence, particularly in countries where trust in government and law enforcement is weak. Increasingly, stakeholders and ethical investors, and shareholders expect companies not only to avoid direct involvement but also to raise concerns. The Amnesty

[15] Prosecutor v Anto Furudzija, (Appeals Chamber), Judgment, 10 December 1998, IT-95-17/1-T, 74, ¶234.

International and Prince of Wales Business Leaders Forum Guide, "Human Rights – Is it any of your business?"[16] emphasizes that while the scope of responsibility may vary by company and context, firms should engage with authorities, either alone or collectively.

It is crucial to note how the idea of corporate complicity has evolved so far. The foundation of corporate complicity was first laid down after the Second World War[17], when the United States Military Tribunal (USMT) tried several German industrialists. Persuant to Germany's defeat in World War II, the Americans established 6 military trials within the American Zone of Occupation and conducted twelve trials, 3 of which held the industrialists liable. One of the earliest cases is The Farben case.[18] 23 employees of IG Farben in 1947 were held liable for plunder, aggression, and mass murder. The USMT examined the role of Farben as a corporate entity. The tribunal noted that where private individuals are involved, the evidence must be beyond a reasonable doubt. Further, it should establish that a transaction occurred involuntarily. When private individuals or juristic persons become a party to the unlawful confiscation of property, the acquisition remains in violation of international law. Thus, they are liable.

Previous remnants of corporate complicity could further be found in ICTY (International Criminal Tribunal for the former Yugoslavia (ICTY),[19] established in 1993 but dissolved in 2017. The doctrine of Joint Criminal Enterprise (JCE) emerged here in the initial framework of the Tadic case.[20] This doctrine recognized that individuals could be held liable for crimes within a common plan even indirectly. Further, leaders who led the plan can be held liable.

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[16] Peter Frankental and Frances House, *Human Rights, Is It Any of Your Business?* (London : Amnesty International UK : Prince of Wales Business Leaders Forum 2000) <http://archive.org/details/humanrightsisita00pete> accessed 13 July 2025.

[17] Anita Ramasastry, '*Corporate Complicity: From Nuremberg to Rangoon – An Examination of Forced Labor Cases and Their Impact on the Liability of Multinational Corporations*, (2002) 20 Berkeley J Intl L 91

[18] The United States of America vs Carl Krauch, et.al, Nuremberg Trials

[19] Giulia Bigi, 'Joint Criminal Enterprise in the Jurisprudence of the International Criminal Tribunal for the Former Yugoslavia and the Prosecution of Senior Political and Military Leaders' (2010) 14 *Max Planck UNYB* 153.

[20] The Prosecutor v Tadic (Appeals Chamber) IT-94-1-AR72, 2 October 1995

In the aforesaid case, Dusko Tadic was a Bosnian Serb who held a political position during the Bosnian conflict. He was accused of participating in the persecution, beatings and killings of Bosnian Muslims. Early cases like Prosecutor v Anto Furundzija[21] made a distinction between JCE and other forms of liability, like aiding and abetting.

The case was based on similar grounds. Anto Furundzija was a commander of the Jokers, a Croatian Defence Council operating in central Bosnia. He was held guilty of torture and outrages against personal dignity. The tribunal here noted that two separate categories of liability for criminal participation have been crystallized in international law – co-perpetrators who participate in a joint criminal enterprise, and, on the other hand, aiders and abettors. The liability in the former is based on participation in the common purpose, such as planning, coordinating. In the latter, the liability is based on practical assistance or moral support.

However, the scope was widened in the Brdanin judgment,[22] where the appellant was involved in forcefully removing Bosnian Muslims from Bosnian-held territory. Herein, the court decreed that JCE may even consist only of members who do not materially commit the crimes agreed upon, but also include those who use others to carry on the crimes. The actual perpetrator shall not necessarily be a member of the common criminal design. Herein, an overlap between JCE and aiding and abetting was seen, and this broadened JCE's scope. Finally, in the Krajisnik [23]trial, JCE was firmly consolidated in leadership cases. It decreed that a high-ranking official can be held liable for orchestrating a widespread campaign despite his distance from the crime scene.

VI. APPLICABILITY OF IHL ON CORPORATE ENTITIES

A. INTERNATIONAL HUMANITARIAN LAW AND THE ROLE OF NON-STATE ACTORS ON CORPORATE ENTITIES

[21] Prosecutor v Anto Furundzija (Appeals Chamber), IT-95-17/1-T, 10 December 1998
[22] Prosecutor v Radoslav Brdjanin (Trial Chamber II), IT-99-36-T, 1 September 2004
[23] Prosecutor v Momcilo Krajisnik (Trial Chamber I), IT-00-39-T, 7 September 2006

International Humanitarian Law, also known as the law of armed conflict or the law of war, aims to limit the effects of armed conflict for humanitarian reasons. It protects those who are not participating in hostilities (civilians, wounded soldiers, prisoners of war) and restricts the means and methods of warfare. While IHL primarily binds states and armed groups, its principles nonetheless impose functional responsibilities on businesses operating in or contributing to armed conflict. The rules of IHL prohibit targeting civilians, even in cyber operations supported by private companies.

Corporations generally do not possess international legal personality in the same way states do, meaning they are not direct subjects of international humanitarian law (IHL) in the same manner. However, their actions and the actions of their personnel can trigger obligations under IHL. The personnel and assets of businesses, unless they directly participate in hostilities, retain their civilian character and are protected by IHL. This protection also implies a responsibility to respect IHL. Corporate actors are obligated not to aid or facilitate violations such as indiscriminate attacks, forced displacement, collective punishment, or targeting of civilians.

Similarly, these principles also find a pathway in the ***Geneva Convention*** and its Additional Protocols. One of the peculiar relevance is "***Principle of distinction.***[24]**"** – Enshrined in Articles 48 to 52 of Additional Protocol 1 to the Geneva Conventions. This provision clarifies who may be lawfully attacked in scenarios of war, particularly combatants and military objects. Further, it notes that any attack on civilians is void and a violation of IHL. They can be categorized as war crimes. The principle of distinction is universally regarded as a cardinal and intransgressible cornerstone of IHL.[25]

It requires belligerents to distinguish between the 'civilian population and combatants' and between 'civilian and military objectives'. This is in line with Article

[24] 'Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol 1)' (*OHCHR*) <https://www.ohchr.org/en/instruments-mechanisms/instruments/protocol-additional-geneva-conventions-12-august-1949-and> accessed 13 July 2025.
[25] International Committee of Red Cross, '*Principle of Distinction*' <https://www.icrc.org/sites/default/files/wysiwyg/war-and-law/> accessed 19 July 2025

48, [26]Additional Protocol. Simply, only combatants and military objectives may lawfully be targeted. Further, civilians are protected unless they take direct part in hostilities. There is a range of debate about the status of participating war civilians taken as war criminals. On one side, a small minority claims that these persons are outside any international humanitarian law protection. Another believes that the civilian fighters are underprivileged combatants who need protection. They can get so if they fulfill the nationality criteria provided for in the 4th Geneva Convention as 'protected person'[27], Article 52 of Additional Protocols[28], lays down guidelines for the general protection of civilian objects. International Humanitarian Law does not prohibit civilians from fighting for their country. It is not a war crime if they take part directly. Intriguingly, it states that the civilian infrastructure can lose protection, a stark exception to Article 51 under Additional Protocols.[29] Nevertheless, it can only be in two situations-

1. The infrastructure effectively contributes to military action
2. The destruction offers a definitive military advantage

Article 51 (5) (b) of the same further delves into the principle of "proportionality". Simply, this indicates that excessive harm to civilians is prohibited. A disproportionate attack as defined under this provision refers to 'an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive to concrete and direct military advantage'.

Herein, the words 'concrete' and 'direct' bear prime significance. In other words, it indicates that the advantage should be substantial and relatively immediate. Further,

[26] Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of the International Armed Conflicts (Protocol 1) adopted 8 June 1977, entered into force 7 December 1978, 1125 UNTS 3, Article 48
[27] Geneva Convention relative to the Protection of Civilian Persons in Time of War (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 287
[28] Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of the International Armed Conflicts (Protocol 1) adopted 8 June 1977, entered into force 7 December 1978, 1125 UNTS 3, Article 52
[29] Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of the International Armed Conflicts (Protocol 1) adopted 8 June 1977, entered into force 7 December 1978, 1125 UNTS 3, Article 51

it is difficult to ascertain what it would appear to be in the long term. They reiterate the core principle of customary international law, where civilians should remain unaffected by the consequences of the war. Iterations are also found in the 4th Geneva Convention of 1949, also known as the cornerstone of civilian protection in armed conflict. While these provisions are directed primarily at states, corporations whose products or services are into military operations may be implicated directly under IHL. In addition to this, Article 57[30] lists several precautionary measures that need to be observed to minimize incidental civilian harm.

While the principles exist in theory, modern challenges like the civilisation of conflict, where the line between civilians and combatants becomes blurred. Further, dual-use objects[31], infrastructure serving both civilian and military purposes, like power systems, bridges, or communication networks, poses significant interpretation challenges to the principle of distinction. The ICRC warns that dual use alone does not strip protection.

It is only when civilian systems effectively contribute to military action. However, such risks include legal and ethical erosion, including the underestimation of civilian harm. Another layer of principle of distinction is cyber operations.[32] Digital networks are deeply interconnected with civilian and military systems. Cyber attacks are subject to the same distinction principle. However, their anonymity and automatic propagation complicate lawful targeting.

Another body of key significance has reiterated the same, i.e., *the International Committee of the Red Cross.* It has been confirmed that businesses involved in conflict zones must assess whether their conduct, support, or relationships create a material

[30] Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of the International Armed Conflicts (Protocol 1) adopted 8 June 1977, entered into force 7 December 1978, 1125 UNTS 3, Article 57

[31] Oona A Hathaway, 'The Dangerous Rise of "Dual-Use" Objects in War' (2025) 134(8) *Yale LJ*(2025)<https://www.yalelawjournal.org/article/the-dangerous-rise-of-dual-use-objects-in-war> accessed 20 July 2025.

[32] 'The Application of the Principle of Distinction in the Cyber Context: A Chinese Perspective' (*International Review of the Red Cross*, 1 March 2021) <http://international-review.icrc.org/articles/principle-of-distinction-cyber-context-chinese-perspective-913> accessed 20 July 2025.

risk of contributing to IHL breaches. Such conduct includes the provision of surveillance infrastructure and many more.

VII. INTERNATIONAL CRIMINAL LAW

A. LEGAL BASIS: THE ROME STATUTE AND THE LIMITS OF JURISDICTION

International Criminal Law (ICL) is centred on individual criminal responsibility, which means only natural persons can be prosecuted for crimes such as genocide, cruel human abuses, and war crimes. Corporate entities are artificial persons, for they exist only on paper and theory. However, they are run by real people. In a way, the criminal liability of their executives, managers, or employees can be ascertained. This principle is explicitly stated in Article 25(1)[33] of the Rome Statute of the International Criminal Court: "the court shall have jurisdiction over natural persons under this Statute". Consequently, the ICC and the other international tribunals do not have the authority to prosecute corporations directly.

However, corporate actors such as executives, managers, and employees can be held personally accountable under ICL if they have been found to have played a role in the commission of international crimes. For instance, individuals who authorize financial support to armed groups for committing crimes or who oversee operations that result in war crimes may face prosecution. These individuals can be charged under the various modes of liability detailed in Article 25(3) of the Rome Statute[34] which covers acts like ordering, aiding, and abetting, or otherwise contributing to criminal conduct. When it comes to holding people accountable, the Rome Statute lists the following under the same.

[33] Rome Statute of the International Criminal Court, 17 July 1998, 2187 UNTS 90, Article 25(1)
[34] Rome Statute of the International Criminal Court, 17 July 1998, 2187 UNTS 90, Article 25(3)

Sr. No	Mode of Liability	Rome Statute Article	Explanation
(a)	Direct Perpetration	Article 25 (3)(a)[35]	The person physically or directly commits the crime themselves. For instance, if a boss orders the destruction of a village, they can be prosecuted directly.
(b)	Co-perpetration or Joint Criminal Enterprise	Article 25 (3) (a)[36]	The person commits a crime together with others, sharing a common plan. For instance, a corporate executive teaming up with a military heard to extract illegal resources.
	Indirect Perpetration	Article 25 (3)(b)[37]	The person uses someone else (even if not criminally liable) to commit a crime, often seen in hierarchical organizations.
(c)	Ordering, Soliciting, or including	Article 25 (3)(b)[38]	The person gives instructions or encourages someone else to commit a crime, which is then carried out or attempted.

[35] Rome Statute of the International Criminal Court, 17 July 1998, 2187 UNTS 90, Article 25(3)(a)
[36] Ibid
[37] Rome Statute of the International Criminal Court, 17 July 1998, 2187 UNTS 90, Article 25(3)(b)
[38] Ibid

(d)	Contributing to a Group Crime	Article 25 (3)(d)[39]	The person intentionally helps a group that is committing a crime, knowing the group's plan or purpose.
(e)	Superior Responsibility	Article 28[40]	A leader (e.g., military or civilian superior) fails to prevent or punish crimes committed by their subordinates under their effective control.

While these are the potential ways in which a corporation can be held liable under the Rome Statute, there is still no direct enforcement of the same. As aforesaid, the Rome Statute only recognizes natural persons, not artificial persons like corporations. Nevertheless, corporate officers can still be *indirectly* investigated and prosecuted for their company's criminal conduct. The ICC will entertain individual criminal responsibility or superior responsibility (Article 28)[41] if their actions are part of a larger ICC investigation of atrocity crimes. For instance, in 2016, Kenya's Kass FM faced [42] prosecution at the ICC as an indirect co-perpetrator for three atrocious crimes against humanity.

This is not the first time that the inclusion of corporations' direct liability inthe Rome Statute has popped up.[43] In 1998, the French Delegation in the UN Diplomatic Conference in Rome proposed the same. However, it was rejected. There were primarily two reasons: first, there was insufficient time to consider. Secondly, an inadequate number of steps had provisions for corporate criminal liability in that

[39] Ibid
[40] Rome Statute of the International Criminal Court, 17 July 1998, 2187 UNTS 90, Article 28
[41] Ibid
[42] The Prosecutor v William Samoei Ruto and Joshua Arap Sang (Trial Chamber), April 5, 2016, ICC-01/09-01/111
[43] Joe DelGrande, Corporate Accountability: Prosecuting Corporations for the Commission of International Crimes of Atrocity, (2021) (Volume 3) *NYU J Int l L & Pol*

epoch. This was considered a violation of the principle of complementarity (Article 17(1) of the Rome Statute).[44] This principle dictates that national courts have the primary responsibility for investigating and prosecuting crimes within their jurisdictions. The ICC (International Criminal Court) has secondary jurisdiction.

However, the dynamics have changed, with an increasing number of corporate complicity crimes since the beginning of the 21st century. More countries have started recognising the importance of the same and have introduced domestic legislation. For instance, the Malabo Protocol in the African Union.[45] Article 46C of this Protocol establishes corporate complicity for 14 crimes (4 core international crimes and 10 transnational crimes) and grants jurisdiction over legal entities by the African Court of Justice and Human Rights. Other examples include the Special Tribunal for Lebanon for corporations.[46]

At present, there are 18 international legislations[47] dealing with corporate complicity, with the Rome Statute being the key legislation. This evolving landscape makes it crucial to amend. Due to the absence of this provision in the Rome Statute, there exists an accountability gap. No international body can adjudicate corporate criminal responsibility for international crimes. This gap further arises because current international instruments are often soft law and non-binding on corporations. Domestic jurisdictions are often reluctant or ill-equipped to prosecute corporations for myriad reasons, often a lack of resources, economic, and political reasons. Thus, the inclusion is now relevant than ever. However, this is not free from hurdles.[48]

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[44] Rome Statute of the International Criminal Court, 17 July 1998, 2187 UNTS 90, Article 17(1)
[45] Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights (Malabo Protocol), Article 46C (adopted June 27, 2014, not yet in force).
[46] See also, Osama Alkhawaja, In Defense of the Special Tribunal for Lebanon and the Case of International Corporate Accountability, Vol. 20, REV 465 (2020) (Discussing Special Tribunal)
[47] Leigh A. Payne, Gabriel Pereira, Corporate Complicity in International Human Rights Violations, Vol 12:63-84, Annual Review of Law And Social Science (2016)
[48] Advisory Service on International Humanitarian Service, ICRC, Report on Issues Raised about the Rome Statute of the International Criminal Courts, by National Constitutional Courts, Supreme Courts and Councils of State (2003) available at /https://www.icrc.org/sites/default/files/external/doc/en/assets/files/otherissues_raised_with_regard_to_the_icc_statute.pdf (Last visited on May 11, 2025)

Firstly, amending the Rome Statute requires a two-thirds majority vote of the State Parties as per Article 121(3)[49] and further ratification by seven-eighths of the State Parties to come into force (Article 121 (4)).[50]

Secondly, obtaining approval for an amendment to extend the ICC's jurisdiction over juridical persons would be extremely difficult. This can be linked to the nations with economies fueled by multinational corporations. They are likely to oppose the amendment for the potentially devastating economic impacts.

Thirdly, other aspects need careful introspection. These include, production of evidence, the exercise of due process rights for corporations, determining which natural person would represent the corporation in proceedings, and available and enforceable penalties against the corporations.

Instead of this complicated structure, a principle of opt-in could perhaps be introduced. Each State Party could choose whether or not to agree to and be bound by this specific protocol. However, it is still difficult as a two-thirds majority is still required.

B. ELEMENTS OF COMPLICITY: ACTUS REUS AND MENS REA

1. Actus Reus – The Act of Complicity

Under customary international law and the Rome Statute's aiding and abetting standard, liability requires both – "**Actus reus" and "Mens Rea**". In classical criminal law, actus reus denotes the physical act of committing a crime. In corporate complicity, however, it becomes elusive. A company rarely pulls a trigger or tortures a victim. But it might provide materials such as guns, fuel, and logistics that make such violence possible. A recent instance could be Sudan's case against the UAE for military, political, and financial backing.[51] The ICJ itself has noted the same. Such cases have become increasingly prominent since the Nuremberg Trials held after

[49] Rome Statute of the International Criminal Court, 17 July 1998, 2187 UNTS 90, Article 121(3)
[50] Rome Statute of the International Criminal Court, 17 July 1998, 2187 UNTS 90, Article 121(4)

[51] 'Sudan Files Case against UAE for "Complicity in Genocide" ' (BBC News, 6 March 2025) <https://www.bbc.com/news/articles/c3w1nzpg5dgo> accessed 13 July 2025.

World War II. The trials explored the role of corporate entities in facilitating those crimes. Articles 9 to 11 of the Nuremberg Charter, developed after the incident, delve into the criminal responsibility of individuals and organisations. However, the word "corporates" is not directly mentioned. The International Court of Justice (ICJ) Panel notes that providing assistance or moral support with a significant impact can meet the threshold for actus reus.[52] However, it seemingly overlooks a major problem – a seemingly benign agreement, such as a shipment contract or a loan, can become deadly during wars.

More specifically, here, actus reus lies in structural decisions, such as where to invest, whom to partner with, and which markets to serve. In 2021, investigators found out that the Uyghur minority.[53] Western China was dragged into forced labor in Germany. High-profile brands have directly or indirectly abetted those practices. To clarify the corporate complicity, ICJ primarily follows *three principles* to hold a corporation liable: Causation, Knowledge, and Proximity.[54]

CAUSATION (If a company *enables, exacerbates, or facilitates* the abuse)

The framework appropriately recognizes that complicity does not require intent to harm but may arise from indirect contributions that have substantial effects. However, despite the gradation of terms, ambiguity shrouds the international framework. How much support counts as "enabling" and what is the causal link? Nevertheless, the case discussed below can clarify this ambiguity.

KNOWLEDGE - Regarding mental state, this criterion pierces the shield of "plausible deniability". Corporations cannot rely on formal ignorance. It extends liability to scenarios where a company "knew or should have known" of the abuses. This framework, however, fails to specify an adequate risk assessment.

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[52] ICJ Expert Panel et al., ICJ, Report of the ICJ expert legal panel on corporate complicity in international crimes, 2009, available at https://www.icj.org/resource/report-of-the-icj-expert-legal-panel-on-corporate-complicity-in-international-crimes/ (Last visited on 27 May, 2025)

[53] Human Rights Watch, 'Break Their Lineage, Break Their Roots' [2021] <https://www.hrw.org/report/2021/04/19/break-their-lineage-break-their-roots/chinas-crimes-against-humanity-targeting> accessed 13 July 2025.

[54] Eric Colvin, Causation in Criminal Law, (1989) 1(2), Bond L Rev 264

PROXIMITY TO THE ABUSE - Additionally, the legal risks increase with the proximity to the abuse:

- Geographical (operating in the conflict zone or nearby)
- *Relational* (close to the perpetrators)
- *Operational* (intensity, frequency, or duration of business)

2. Mens Rea: The Mental Element of Complicity

In criminal law, mens rea is the mental state required to be found guilty, like intent, knowledge, or recklessness. In Latin, it refers to "guilty mind". The ICJ takes two key aspects into account.[55]

> *Knowledge* that assistance would contribute to crime, this could be equated to the three principal tests promulgated by the ICJ.
>
> *Purpose* where the aid is given with the intent to facilitate the crime.

However, corporations often thrive in plausible deniability. It is difficult to ascertain if they did have the mens rea. Emails and other forms of communication may use euphemisms to hide whether they are the real perpetrator. The mens rea is not of hatred or cruelty. Rather, it is of moral indifference. The intent of the market actor who sees a crime as a cost of doing business.

Case study

To explain this further, one can take the instance of "Doe v Unocal Corp[56]", where a corporation was held indirectly liable for violence. The defendant (Unocal) partnered with the Burmese military to build a gas pipeline. The villagers were forced to finish the same. Rape and murder were rampant in the process. Importantly, the Burmese army was not a direct party, and another nation experienced the matter; Unocal was held liable. The actions indeed had a substantial effect on the crime, showcasing the

[55] Johan Van der Vyver, 'The International Criminal Court and the Concept of Mens Rea in International Criminal Law' (Social Science Research Network, 15 June 2004) https://papers.ssrn.com/abstract=1940084 accessed 13 July 2025.
[56] John Doe l, et al., v Unocal Corp., et al. 395 F.3d 932 (9th Cir. 2002) 149 (United States Court of Appeals for the Ninth Circuit)

mental element of "knowledge." Consequently, this case established the precedent that corporate actors cannot shield themselves from liability through wilful ignorance.

The ICJ Panel notes that willful ignorance is a tactic employed by myriad companies to avoid due diligence, fact, or risk assessments, essentially a "don't ask, don't tell approach.[57] The Panel emphasizes that this often backfires, for courts do search for mens rea. Companies are judged by a standard of reasonability, like a 'reasonable company'.

Another type of ignorance to avoid culpability is "strategic ignorance".[58] Companies here actively suppress, avoid, or make taboo information that could expose harmful practices. Information is strategically kept secret so that profitable but potentially harmful activities can continue unhindered. In 2024, a multinational company in Colombia, Chiquita[59] was held liable for human rights violations in Colombia. The court noted that Chiquita did not act like a 'reasonable business person' when it was funding the AUC, a violent paramilitary group.

While we have analysed this, actus reus could be said to be legal complicity.[60] Whereas mens rea is moral complicity. There lies the significant difference between them. Firstly, legal complicity requires specific actions and direct participation. Comparatively, moral complicity encompasses a much broader range of behaviors, including passive responses, for instance, silent complicity as described in the introduction. Secondly, there are specific scenarios where they diverge in 5 key areas.

1. *Inaction* – While the law generally does not prosecute for failing to prevent or report crimes, moral complicity includes silence. This is evident in the Lori Lathrop case[61], where she knew her brother Kris Thompson planned

[57] See Id., ¶ 28.
[58] Meghan Van Portfliet and Mahaut Fanchini, How to study strategic ignorance in organizations: A material approach, Ephemera Journal Vol 23(1), (2023)
[59] Colombia: The Chiquita Case shows it's possible to hold Corporations Accountable for Human Rights Abuses (CIVICUS, 27 June 2024), https://www.civicus.org/index.php/media-resources/news/interviews/7266-colombia-the-chiquita-case-shows-its-possible-to-hold-corporations-accountable-for-human-rights-abuses, accessed 10 June 2025
[60]International Commission of Jurists Expert Legal Panel, CORPORATE COMPLICITY AND LEGAL ACCOUNTABILITY: REPORT OF THE INTERNATIONAL COMMISSION OF JURISTS, 156, (Horacio Verbitsky, Juan Pablo Bohoslavsky, Oxford University Press, 2015)
[61] See more, State v Lathrop, 783 N.E.2d 1057 (Ohio Ct.App. 2002)

to murder Troy Tyo, but only faced legal consequences when she actively gave him a cell phone after the murder.

2. *Post-wrongdoing support* – Legal prosecution requires specific acts like being "an accessory after the fact," but moral complicity includes any approval, such as hypothetically baking a cake and praising the murder.
3. *Principal's awareness*- Law typically requires the wrongdoer to know of accomplice involvement, but moral complicity exists even when unaware. A specific instance could be in the case of "State ex rel Tally[62]" Tally prevented a warning telegraph without the murderers' knowledge, yet was legally complicit. Further in Larkin v Police, Larkin planned to aid burglars who did not know of his intent.
4. *Plan Deviation* – Legally, accomplices are not liable for unforeseeable actions, such as in State v Lucas[63], where the accomplice was not liable for an unplanned guard robbery. But morally, 'approving silence' towards the act creates complicity.
5. *Unintentional aid* – While the law requires recklessness or negligence, as in State v Mc. Vay's defective boiler case[64], moral complicity can arise from one's response to the unintended consequence. For instance, perverse delight when child thieves accidentally injure themselves while stealing firearms.

VIII. UNITED NATIONS GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS

The "***UN Guiding Principles on Business and Human Rights (UNGPs)***"[65] establish a normative framework that complements and reinforces the expectations under international humanitarian law (IHL). It emphasizes that companies have a

[62] See more, State ex rel. Attorney General v. Tally, 15 So. 722 (Ala. 1894)
[63] See more, State v Lucas, 152 P. 279 (Kan. 1915).
[64] See more, State v McVay, 148 N.E. 867 (R.I. 1925).
[65] UN Human Rights Council, 'Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework' (21 March 2011) UN Doc A/HRC/17/31

responsibility to respect all internationally recognized human rights, including IHL, wherever they operate. "*Principle 11*"[66] first mentions that businesses have the foundational duty to "respect human rights". This obligation lies independently of state compliance and beyond mere legal compliance. Merely promoting human rights (Through Corporate social responsibility and philanthropy) is not a substitute for respecting them. Similarly, "*Principle 13*"[67] lays down how one can hold businesses responsible.

1. Through their actions (direct cause/ contribution). Contribution implies shared responsibility, even if the business was not the principal actor, it enabled or facilitated the abuse in a *substantial* or f*oreseeabl*e way.
2. Through links via business relationships. This is more nuanced. The key point here is "direct linkage," not causation or contribution. Even without intent, companies are expected to prevent or mitigate the impact.

We can read this principle in conjunction with the due diligence of Principles 15[68] and 17, which will be elaborated further. Companies must map their value chains, assess risks, and take action before harm occurs. The OECD Guidelines[69] for Multinational Enterprises, define "Business relationships" as contractual and non-contractual ties, at all levels of value, and state entities (e.g, military partnerships). Principle 15 [70]emphasizes that companies must implement

1. A policy commitment to human rights
2. A due diligence process to identify, prevent, and mitigate harm
3. A remediation mechanism

This requires conducting "heightened human rights due diligence" in conflict-affected and high-risk areas to identify, prevent, mitigate, and account for how they address adverse human rights and IHL impacts. Failure to conduct adequate due diligence can

[66] See UNGPs, supra note 64, Principle 11.
[67] See UNGPs, supra note 64, Principle 13.
[68] See UNGPs, supra note 64, Principle 17
[69] The Organisation for Economic Co-Operation and Development (OECD) Guidelines for Multinational Enterprises and Responsible Business Conduct ¶ 17, https://doi.org/10.1787/81f92357-en (August 10, 2023)
[70] See UNGPs, supra note 64, Principle 15.

expose a company to reputational damage, civil claims, and potentially criminal liability for its personnel. The same is reiterated in "*Principle 17*"[71] of the same.

However, before we delve forward, it is crucial to understand the importance of "human rights due diligence".

A. WHAT IS HUMAN RIGHTS DUE DILIGENCE?

HRDD is a risk management tool, as showcased here, that businesses undertake to identify, respond to, mitigate, and prevent their adverse human rights impacts in their own operations and supply chains. The UN Working Group on Business and Human Rights notes that companies can integrate a bunch of interrelated processes in a broader enterprise risk management system with a major focus on human rights impact, aligned to UNGPs.[72] It involves 4 steps that companies should integrate into their management systems.[73]

1. ***Assessing Human Rights Risks*****:** Identifying both human and potential adverse human rights impacts linked to the company's activities. An "human rights risk" occurs when an action removes or reduces the ability of an individual to enjoy their rights. Actual impact indicates that it has occurred or is in the process. Potential indicates that it could occur soon.

2. ***Integrating and Acting on Findings***: Implementing measures to prevent or mitigate identified risks. It can be both via contribution and linkage. How much did the company enable or encourage the harm? However, no difference exists between the two. To figure out if the business falls on the spectrum, stakeholders could ask a few questions, as per UNGP Principle 22.[74]

(a) How much did the company know or should have known?

[71] See UNGPs, supra note 64, Principle 17
[72] U.N. Human Rights Council, Report of the Working Group on Business and Human Rights, /HRC/RES/53/3 (March, 2023).
[73] OHCHR, HumanRights Due Diligence: Interpretive Guide, https://www.ohchr.org/documents/publications/hr.pub.12.2_en.pdf (April 26,2023).
[74] See UNGPs, supra note 64, Principle 22

(b) What steps did the company take to prevent the harm? Nevertheless, one could say that the player could take the basic steps depending on how they were.

Caused it ---------- Stop and fix it

Contributed ---------- Stop, influence others, and help fix it

Just Linked ---------- Try to prevent future harm, but no need to remedy past harm

3. Beyond this model, UNGP 29,[75] UNGP 30,[76] and UNGP 31[77] provide further clarity. UNGP 29 and 30 provide grievance mechanisms both as a preventive and remedial tool. UNGP 29 urges companies to establish or participate in operational-level grievance mechanisms. Companies could establish formalized systems to allow individuals affected by their operations to report concerns and seek redress outside of formal judicial processes. UNGP 30 takes a step further by encouraging industry-level or multi-stakeholder grievance systems to ensure broader access. UNGP 31, on the other hand, lists the criteria for effective redressal.

4. ***Tracking Responses***: The UNGP Principle 20 emphasizes the idea that "what's measured gets managed." In other words, businesses must track whether their efforts to handle human rights risks are working. This tracking should use both quantitative indicators (number of safety violations) and qualitative indicators (e.g., stakeholder feedback, interviews)

5. ***Communicating How Impacts Are Addressed*:** Reporting on due diligence efforts to stakeholders, ensuring transparency and accountability. Seemingly, UNGP 21 states that businesses must be ready to communicate their efforts. Communication can range from private engagement with stakeholders to formal public reporting, especially for severe impacts. However, they do not need to disclose every detail, withholding some. This

[75] See UNGPs, supra note 64, Principle 29
[76] See UNGPs, supra note 64, Principle 30
[77] See UNGPs, supra note 64, Principle 31

could include confidential commercial information, legally protected data, and information that could harm stakeholders if disclosed. Nevertheless, it is still unclear what qualifies as "severe" or "legitimately confidential." However, despite these, the ground reality persists. Implementation is rather an arduous task. So far, about 35 countries [78]have made a national action plan on business and human rights.

Further, 4 countries have included a Business and Human Rights chapter in their Human Rights action plans. Nevertheless, implementation remains a major issue for the following reasons:

1. Low Awareness and Limited Capacity

As aforesaid, only a limited number of countries [79]have laid down the implementation of National Action Plans. Many ministries still do not see business and human rights as their mandate. For instance, trade or investment departments may not be familiar with human rights frameworks. Inter-ministerial coordination is often weak. In Nigeria[80] and Uganda[81], governments announced NAP processes but stalled because there were no dedicated budgets or staff with technical expertise. Consequently, without sufficient awareness and trained personnel, the policy just remains an ambitious dream on paper. As for companies, the European Union Agency for Fundamental Rights reports[82] that only 18% of Small and Medium enterprises have integrated human rights into risk management processes. This is indicative of the fact that smaller firms lack staff, expertise, and financial resources to implement robust HRDD.

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[78] Office of the United Nations High Commissioner for Human Rights, 'National Action Plans on Business and Human Rights' (OHCHR, 10 March 2024) https://www.ohchr.org/en/business/national-action-plans-on-business-and-human-rights accessed 13 July 2025.

[79] United Nations Human Rights Council, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework* (21 March 2011) UN Doc A/HRC/17/31.

[80] 'Nigeria – National Action Plans on Business and Human Rights' (Global NAPs) https://globalnaps.org/country/nigeria/ accessed 23 July 2025.

[81] Uganda – National Action Plans on Business and Human Rights' (Global NAPs) https://globalnaps.org/country/uganda/ accessed 23 July 2025

[82] European Union Agency for Fundamental Rights, *Business and Human Rights – Access to Remedy* (Publications Office of the European Union 2019).

2. *Geopolitical Pressure*

At the 2016 UN Forum[83], Kenya's Department of Justice explained that raising labor standards could drive investors to neighboring countries with lower requirements. Implementation is shaped by regional dynamics. States are often unwilling to act alone if they think competitors will undercut them

3. *Limited Stakeholder Engagement*

In some countries, NAP discussions are often driven by a few civil society organisations with minimal resources. Without widespread engagement of business associations, trade unions, it cannot bring a transformative change for practicality

4. *Resistance by Companies*

Large companies do not follow the rules for fear of sanctions. According to the 2023 Corporate Human Rights Benchmark report,[84] 52% of companies have a formal human rights policy. On the other hand, only 17% provide evidence of effective human rights due diligence. For instance, Apple and Samsung b[85]oth pledge strong labor standards. However, investigations reveal that they show excessive overtime and wage theft in supplier factories. The reasons for this gap are varied. Scholars and practitioners note cost concerns, regulatory uncertainty, and weak enforcement frameworks, rather than solely fear of sanctions.

In sum, these barriers persist from deep structural factors rather than mere lack of willingness. Thus, nations must balance human rights with competitiveness and investment climates. Further international framework gaps like UNGPs are non-binding. As a result, strong implementation of national action plans in the countries is quintessential.

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[83] United Nations, *UN Forum on Business and Human Rights 2016: Summary Report of Sessions, Panel on National Action Plans and Regional Dynamics (Statement by Kenya's Department of Justice)* (Office of the United Nations High Commissioner for Human Rights 2016).
[84] GRRR.nl, 'Corporate Human Rights Benchmark WBA' (*World Benchmarking Alliance*) <https://www.worldbenchmarkingalliance.org/publication/chrb/> accessed 24 July 2025.
[85] Samsung Lawsuit (Re Misleading Advertising & Labour Rights Abuses)' (Business & Human Rights Resource Centre) https://www.business-humanrights.org/en/latest-news/samsung-lawsuit-re-misleading-advertising-labour-rights-abuses/ accessed 24 July 2025.

B. CASE STUDY OF SAP AND GERMAN SUPPLY CHAIN DUE DILIGENCE ACT

To understand these steps better, we could take the instance of the recent German Supply Chain Due.[86] Diligence Act (LkSG), which came into effect on January 1, 2023. Businesses of all sizes. SAP, a multinational enterprise, has taken due steps in this regard as enumerated below.

Steps	***Steps taken by SAP***	***How is it effective?***
(i) Assessing Human Risks	SAP conducted a comprehensive risk analysis across its global operations and supply chains. During this assessment, the companies identified six employees who were earning wages that did not meet the company's standard for a decent living wage.	It underscores the importance of *assessing* the actual and potential impacts. It was able to identify the gap.
(ii) Integrating and Acting on Findings	Upon analysing the fault, SAP's Human Resources department took immediate action to adjust the salaries of the affected employees during the next compensation review cycle.	Integrating findings into company processes is crucial for effective HRDD. SAP's prompt response demonstrates a *commitment to aligning internal policies* with

[86] Lksg, German Due Diligence Act, 2024 (Germany)

		human rights standards, ensuring that identified issues are systematically addressed.
(iii) Tracking responses	SAP continued to monitor compensation practices across its operations to ensure ongoing compliance with living wage standards. The company utilized methodologies by the Value Balancing Alliance (VBA) to assess and adjust compensation as needed.	Tracking the effectiveness of the measures allows the companies to *evaluate* the impact of their actions and make necessary adjustments. SAP's use of standardized methodologies ensures consistency and accountability
(iv) Communicating with the stakeholders	SAP reported its findings, actions taken, and ongoing monitoring efforts in its annual sustainability reports and other communications.	This transparency allowed stakeholders, including employees, investors, and the public, to understand the company's commitment to human rights.

This case study of SAP illustrates how companies can operationalize human rights principles through systematic steps. By proactively addressing human rights concerns, SAP ensures compliance with the legal standards.

IX. SECTOR-SPECIFIC DUE DILIGENCE IN HIGH-RISK AREAS

A. FINANCIAL INSTITUTIONS AND CONFLICT ZONE EXPOSURE

The case study in the previous section explores how companies can implement due diligence. However, it is not free from flaws. Additionally, a significant area of concern is corporate complicity in violations carried out by others. This can occur when a company provides support (financial, logistical, material) to a state or armed group that is committing IHL violations, or when it benefits from such violations. For instance, a company exploiting natural resources in an occupied territory in violation of IHL or using abusive security forces that commit abuses could be deemed complicit. Under the UNGPs, HRDD should cover 'all adverse human rights impact'. Now delving back into the scenario of Israel and Palestine, the UN notes that all financial institutions should stop supplying to the war. For a bank, its "potential and actual adverse human rights impacts all roles," including owning business operations, lending, and investment operations. However, various clients engage with banks. In such a scenario, where should the priority lie? According to the general principle, Financial Institutions should i*dentify "general areas" of greatest risk* first by assessing:

1. Client operating context
2. Industry
3. Business Model
4. Geography

Consequently, Principle 14 of UNGP [87]describes that the severity" can be judged based on three factors.

1. Scale – How *serious* is the harm?

[87] See UNGPs, supra note 64, Principle 14.

Example – A person being unlawfully detained or tortured is more serious than a minor breach of labor standards.

2. **Scope –** How *many people* are affected?

Example – If hundreds or thousands of workers are underpaid or exposed to unsafe conditions, the scope is wide

3. **Irremediability –** Can we *undo or repair* the harm?

This means how hard or impossible it is to return the affected persons to the original state.

Example – Death, permanent injury, or psychological trauma are often irremediable.

Given the high-risk nature of the Israel-Palestine conflict, expectations lie upon banks to prioritize clients or sectors operating in or profiting from this context.

1. Israeli defence, cyber-surveillance, and infrastructure firms tied to the conflict should be subject to heightened due diligence.
2. Palestinian clients operating in humanitarian or occupied territories may need special consideration to avoid discriminatory de-risking, which can further entrench inequality

B. UNDERSTANDING THE ESG

While promising, it remains unclear whether banks are scrutinizing such matters. To ensure this, boards and executives (the top-level management) should proactively manage the risks. Nevertheless, it is quite noteworthy that each country has proactively adopted the UNGPs, setting them apart from other international legislations. Additionally, the key stakeholders use Environmental, Social, and Governance factors (ESGs) to predict [88]a business's sustainable performance.

S – Social factor densely focuses on human rights, and the alignment of businesses with UNGPs.

[88] Alexander S. Gillis et.al, 'What is ESG (environmental, social and governance)', (TechTarget, 3 October 2024), available at https://www.techtarget.com/whatis/definition/environmental-social-and-governance-ESG/ (Last visited on June 06,2025)

E – Environmental factor places prime importance on the company's respect for human rights. In 2021, the UN resolution majority voted to recognise the right to a decent environment as a human right.

G - Governance Factor, which states that human due diligence should be a core part of a company's policies.

Where ESG metrics are used merely as reputational tools or marketing devices, they risk obscuring legal exposure. However, when the ESG is integrated with mandatory due diligence laws (e.g., France's Duty of Vigilance, Germany's LkSG), ESG frameworks can serve as enforcement gateways. Companies that fail to align their investment decisions and corporate governance can face civil liability along with indirect exposure to complicity claims under international criminal law.

C. APPLYING FOR THE FRAMEWORK IN GOOGLE'S ACQUISITION OF WIZ

This is just a hypothetical instance of the current scenario for better understanding. No such conclusive proof has been determined.

Wiz operates within Israel's cyber intelligence ecosystem, providing technology that may be integrated into digital surveillance. If Wiz's technologies are applied to support targeting, logistics, or surveillance systems that violate the core IHL principles (for example, targeting civilian infrastructure) the Google, as its parent company, assumes legal and reputational risk of failing to prevent or mitigate IHL breaches.

Notably, IHL does not require proof of criminal intent. A company can be implicated based on effect- that is, whether its actions or omissions contribute to unlawful consequences. Even in the absence of formal legal liability, Google could make a strong case of functional complicity if Wiz indeed facilitates the war. It triggers corporate responsibility under both customary IHL and emerging hybrid legal norms.

Given this background, it may raise another question of introspection. Does the acquisition of Wiz exhibit any elements of crime? This is harder to prove. Yes, if military operations use Wiz's software directly, for example, surveillance, targeting. Moreover, one can consider Google's acquisition that expands the capacity as a guilty

act. Mens rea would require Google to know or intend that the acquisition would contribute to human rights abuses or war crimes. Applying the *three-tier test* of the ICJ

1. ***Causation***: The acquisition may not cause harm per se. But it could enable or amplify operations already under scrutiny for violating international law. The International Court of Justice (ICJ) in Bosnia and Herzegovina v Serbia [89]and Montenegro held that aiding and assisting liability requires acts having a 'substantial effect' on crime commission. Further, it should be within the perpetrator's specific intent. To elaborate this further, the court explicitly referred to Article 16 of the International Law Commission's Articles on Responsibility for Internationally Wrongful Acts[90]. The bare text of the act reads:

   "*A state which aids or assists another State in the commission of an intentionally wrongful act by the latter is internationally responsible for doing so if:*

   i. *That State does so with knowledge of the circumstances of the internationally wrongful act*
   ii. *The act would be internationally wrongful if committed by that State."*

   In other words, there must be a causal link between the conduct of the State accused of complicity and the internationally wrongful act itself. The same principle was applied to the case of Lafarge SA, a French multinational cement company, which operated a plant in northern Syria during the armed conflict. To keep the plant running, Lafarge's local subsidiary paid millions of dollars in security fees and purchased raw materials from intermediaries tied to terrorist groups like ISIS and al-Nusra Front. They were held liable for war crimes and crimes against humanity. French judges held that there was sufficient evidence to indirect Lafarge SA. [91]Complicit in crimes against humanity, and that they had a substantial effect. The payments (conduct) to armed groups established a potential

[89] Bosnia and Herzegovina v Serbia and Montenegro, ICJ GL No 91, 26 February 2001
[90] International Law Commission, 'Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries'(2001) UN Doc A/56/10
[91] 'Lafarge Can Be Charged with "Complicity in Crimes against Humanity", French Court Says (Reuters, 16 January 2024)<https://www.reuters.com/business/lafarge-can-be-charged-with-complicity-crimes-against-humanity-over-syria-plant-2024-01-16/> accessed 20 July 2025.

causal contribution. In the case of Wiz and Google. While there is no publicly available evidence that Wiz's technologies have been directly used in operations violating IHL, this paper explores, as a hypothetical scenario, how the acquisition of a company embedded in a defense technology system could raise questions of complicity under international law. The acquisition could have a substantial effect on those operations. The Lafarge proves that the focus is not on whether the acquisition itself commits harm. Rather, if it provides the means for carrying out the harm.

i. **Knowledge:** Given the reports linking Wiz to Israel's military tech sector, it is arguable that Google's acquisition involved a degree of awareness of potential reputational and ethical risks. The analysis does not assert proven knowledge of specific violations, but rather considers whether constructive knowledge could satisfy the mens rea element in principle
ii. **Proximity:** Relational and operational proximity is high, as Wiz is embedded in Israel's defense tech ecosystem.

That said, the legal liability for human rights abuses remains unproven. Without concrete evidence, such intent remains speculative. Article 30 [92]The Rome Statute defines the mental element, which includes 'intent' (dolus) and 'knowledge'(scientia). Article 30 (2) further breaks down intent into two distinct scenarios:

1. ***About conduct:*** A person is deemed to have intent concerning their action if they "mean to engage in the conduct". This is a direct form of intent, where the individual's conscious objective is to perform the act in question regardless of the desire.
2. ***About consequence***: This is rather a broader definition of intent. This could be further broken down into two parts.
3. ***Direct Intent (dolus directus):*** This is where the person aims to bring about the specific prohibited result. For instance, a person shoots another with the direct aim of causing their death.

[92] See generally, Rome Statute Article 30

4. ***Oblique intent* (*dolus indirectus***): This applies when the person does not necessarily desire the outcome but is aware that it is a virtually certain consequence of their actions. An example would be blowing up a vehicle to kill a specific individual. The death of the other passengers in the process is not a primary goal. However, the perpetrator is aware of the consequences of the process.

In December 2024, the [93]UNSC (United Nations Security Council) released a statement that strengthens the concern. It notes that arms, ammunition, military vehicles, fuel, and surveillance technology are critical enablers of the Israeli military operations across land, sea, and air. Numerous companies headquartered in Third States – notably in the United States and Germany are actively supplying these materials with knowledge that they are being used in a conflict already widely condemned for violating International Humanitarian Law (IHL). This somewhat indicates actus reus. United Nations, on myriad occasions, has showcased its distress upon the broader international concern over alleged IHL violations. It has called for an immediate, durable, and sustained humanitarian truce leading to a cessation of hostilities.[94]

Further reiterated its call for respect for IHL, particularly the protection of civilians. In this context, one could hypothetically argue that supplying technology which contributes to such violations could satisfy the actus reus element. This, however, remains a theoretical interpretation, not a judicial finding. Where such support is systemic and substantial, it could meet the threshold for complicity in war crimes or genocide under customary international law. Public information and media documentation may infer the mens rea or mental state that makes the consequences of these transactions foreseeable. However, the stance is still not clear. As elaborated before, legal liability requires concrete evidence of direct causation and intent, which is currently lacking.

[93] S.C. Res, 2761, U.N. Doc. S/RES/2761 (December 06,2024)
[94] United Nations General Assembly, *Protection of civilians and upholding legal and humanitarian obligation*s (27 October 2023), UN Doc A/RES/ES-10/21

Now, the question may arise: Wiz is a tech industry, even though used for military operations. In the face of growing scrutiny, they put forth varied defenses. For instance, statements such as "we do not control how end users use the software". The website is solely used for general-purpose infrastructure. However, these defenses are insufficient; they are just rhetorical power.

Under Article 25(3)(c) of the Rome Statute, a person may be held liable for aiding and abetting crimes if they knowingly provide assistance that has a substantial effect. In the case of dual-use technologies, like cybersecurity or AI-based surveillance, liability may still arise if the provider knows or is willfully blind to the fact. Wiz's tools may fall under what international law considers 'dual-use infrastructure'- systems that can serve both commercial and military purposes. An instance could be taken of the Telegram CEO[95], who was imprisoned on similar charges.

Further obligations are mentioned in UNGPs to conduct due diligence, a continuing obligation. Additionally, international law recognizes the concept of willful blindness. Willful blindness, the deliberate avoidance of knowledge does not excuse companies under international law. Putting forth the framework in use, public reporting has highlighted Wiz's connection to Israeli cyber-intelligence and deep involvement in national infrastructure and military systems. The foreseeability that these tools may be used for ongoing operations raises red flags.

Delving further, what happens if tech infrastructure is given blanket immunity on the grounds of neutrality or general purpose functionality? This creates a risk for legal blind spot. Warfare today is increasingly digital and data-driven. Exempting tech companies from scrutiny would invite weaponized neutrality where firms claim ignorance while profiting from misuse. The passive bystander is no longer tenable. Given the high-risk nature of the Israel-Palestine conflict, for example, financial institutions funding Israeli cyber defense firms or surveillance technologies without conducting due diligence could find themselves in proximity to IHL violations.

[95] Aurelien Breeden, 'Telegram Founder Charged With Wide Range of Crimes in France' (*The New York Times*, 28 August 2024).

Conversely, blanket withdrawal from the religion could disproportionately harm Palestinian civil society and humanitarian operations. Therefore, legal frameworks and regulatory mechanisms must evolve to incorporate the evolving standards of corporate complicity.

X. GAPS IN THE CURRENT INTERNATIONAL LEGISLATION

In the past year, as per the latest UN data, over 625 human rights defenders were killed or disappeared.[96] The regions of Western Asia and Northern Africa, and Central Asia and Southern Asia had the highest proportion of countries with recorded cases of detentions of human rights defenders. Defenders are protecting people and the environment from corporations. Furthermore, with the intersection of businesses and globalisation, a robust framework for accountability is the need of the hour. The current framework is not free from flaws. The gaps are mentioned below:-

A. Key Gaps in Current Legislation:

1. Lack of Direct International Criminal Liability for Corporations:

The Rome Statute of the International Criminal Court (ICC) primarily holds individuals, not legal entities like corporations. This means that while a CEO could theoretically be prosecuted, the corporation itself often evades direct international criminal liability. However, many domestic and regional legal systems have adopted the concept of corporate criminal liability. The Al-Khayat case involved a journalist who interfered with the administration of justice (contempt of court) was the first case that brought the question of corporate complicity into the limelight.

Despite these advances, enforceable mechanisms have not been adopted so far. This legal gap, as highlighted before, allows corporations to evade prosecution. Attempts to address this have been taken, such as naming corporations as unindicted co-conspirators. Such a bold step has been taken in the US criminal law; this label allows the prosecution to introduce evidence under the legal theory that all the members of

[96] 'UN Data Shows Surge in Civilian Deaths in Conflict Globally, Highlights Pervasive Discrimination' Office of the United Nations High Commissioner for Human Rights, 18 June 2025) <https://www.ohchr.org/en/press-releases/2025/06/un-data-shows-surge-civilian-deaths-conflict-globally-highlights-pervasive> accessed 24 July 2025.

a conspiracy are jointly responsible. This is too present in India, effective in the cases of terrorist attacks.

However, this practice is controversial because the unindicted co-conspirator is publicly named without being given a chance to defend themselves. This, in a way, defeats the basic principle[97] of criminal law, 'audi alteram partem' –' hear the other side'. This further raises legal and ethical concerns regarding fairness and the right to a fair trial, especially in institutions like the ICC that are bound by strict due process standards.

2. Jurisdictional Challenges and "Forum Shopping":

Forum shopping[98] refers to the practice of selecting the most favourable jurisdiction or court for initiating legal action. Often, they are seen as a pessimistic idea and a tactic appointed by rich and influential parties to evade liability. Multinational corporation for complicity often involves complex jurisdictional issues. The harmful activity may occur in a country with a weak or corrupt judicial system, while the corporation is headquartered in a nation with laws that do not adequately cover extraterritorial corporate misconduct. This allows companies to engage in "forum shopping," structuring their operations to minimize legal risk. This presents several issues that may be exploited by corporations.

One major issue is decisional disharmony, where similar cases receive inconsistent judgments across jurisdictions due to differences in the laws. So they might exploit this by shifting this to more lenient laws and lower compliance thresholds. Another concern that may arise via this is procedural inefficiency; companies may intentionally burden plaintiffs with high litigation costs or complex foreign procedures, forcing them to drop cases. Thirdly, it may trigger a race to the bottom, as courts may compete to attract business-related litigation by adopting favorable rules for corporations. This further shields them from accountability.

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[97] David Scheffer, 'The Ethical Imperative of Corporate Accountability in War Zones', Vol. 11 (2), Harv. Int'l L.J., 203 (2019).

[98] 'Forum Shopping: A Legal Loophole or a Strategic Advantage? A Glance at the Italian Experience' (International Bar Association, 4 April 2025) https://ww'w.ibanet.org/forum-shopping-Italian-experience accessed 13 July 2025.

3. The "Veil of Incorporation":

It is a core principle in corporate law. This acts as a shield for shareholders [99]from personal liability for the company's actions. This often acts as a shield for the multinational companies via their subsidiaries. Using the subsidiary companies, they effectively escape liability. Further, the lack of harmonization creates additional problems. For instance, the judgment may be unenforceable in one country where the assets are located. By creating complex corporate structures and deliberately under-capitalizing foreign subsidiaries, foreign companies can shield their core assets. If a subsidiary faces significant liability, it can simply declare bankruptcy, leaving claimants with little to no legal recourse against the wealthier entity

4. High Evidentiary Standards for Complicity

It establishes corporate complicity; it is often necessary to prove that the company had "knowledge" of the primary crime and "substantially contributed" to it. Meeting this high threshold, especially when dealing with complex corporate structures and decision-making processes, can be exceedingly difficult for victims and prosecutors. The problem could be divided into two main parts. *Firstly,* it is difficult to prove 'mens rea. 'International tribunals have struggled to define the precise state of mind an accomplice must have. It's not enough to show that they were merely negligent. Prosecutors must typically prove that the accomplice knew their actions and would assist in the commission of a specific crime.

Some interpretations have gone even further. They suggest that the accomplice must share the same intent as the principal perpetrators. This is a very high bar, as it can be extremely difficult to prove that a person is supplying money or goods, has the specific goal of facilitating genocide. *Secondly*, problems arise with the 'specific direction' standard, which was established by the International Criminal Tribunal for the former Yugoslavia (ICTY). This standard requires prosecutors to prove 'substantial assistance directed towards the commission of crimes'. This poses an

[99] Gower & Davies, *Principles of Modern Company Law*, 11th ed. (Sweet & Maxwell, 2021), pp. 86-72.

immense challenge in cases involving neutral assistance such as providing fuel, weapons, or technology.

A corporate executive could provide means for atrocities but be acquitted if it couldn't be proven beyond a reasonable doubt that the deal was for a general, seemingly legitimate purpose. This standard has been heavily criticized and does not form part of the Rome Statute, which establishes the International Criminal Court (ICC).

Further, a look can be taken at the 'beyond a reasonable doubt' of Article 66 of the Rome Statute[100], which mandates that conviction can only be imposed if the guilt is proven beyond a reasonable doubt. This was further reiterated in "Prosecutor v Katanga." [101]Where the Trial Chamber stressed that a guilty verdict requires not only proof of the legal elements of the crime but also of all indispensable facts as are necessary for conviction. The Chamber also clarified that an acquittal does not necessarily equate to a finding of innocence.

In her powerful dissenting opinion, Judge Wyngaezt criticized the majority's findings, arguing that serious evidentiary gaps rendered any conviction beyond a reasonable doubt problematic. This highlights the enduring challenge in international law: when the standard of proof is so exacting, especially for secondary actors (corporate executives or suppliers), any deficiency in the prosecution's case can prevent justice from being served.

5. Prevalence of "Soft Law" and Voluntary Frameworks:

Much of the current landscape is dominated by non-binding "soft law" instruments, most notably the United Nations Guiding Principles on Business and Human Rights (UNGPs) While the UNGPs have been influential in raising awareness and establishing a framework for corporate responsibility to "respect" human rights, their voluntary nature means that companies can choose to ignore them without legal consequence.

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[100] Rome Statute of the International Criminal Court, Art.28, 2187 U.N.T.S. 90 (entered into force July 1, 2002)

[101] The Prosecutor v Germain Katanga (ICC Trial Chamber II), Decision, June 25, 2014, 1198,ICC-01/04-01/07,¶764

Other initiatives like the OECD Guidelines for Multinational Enterprises and the UN Global Compact also lack robust enforcement mechanisms. With the introduction of these laws and guidelines, other nation states have introduced their national action plans. Even the author of UNGPs, John Ruggie[102], has remarked that UNGPs will soon be a binding treaty universally. Nevertheless, it is only a partial answer to the negative externalities of conduct. It merely articulates a corporate responsibility to respect human rights grounded in social expectations rather than legal obligations, often described as part of a company's social license to operate.

B. Steps Taken to Bridge the Gap:

Despite these significant challenges, there has been a growing movement to close the accountability gap. Several key steps have been taken to strengthen the legal framework for corporate complicity:

1. The Push for a Binding UN Treaty:

A significant development[103] is the ongoing negotiation of a legally binding international treaty on business and human rights. This treaty aims to create clear legal obligations for transnational corporations to respect human rights and to establish mechanisms for holding them accountable for abuses. While progress has been slow due to resistance from some states and corporate lobbies, it represents a crucial step towards a more robust international legal framework.

The UN's Intergovernmental Working Group (IGWG) on business and human rights has met 10 times to negotiate a legally binding instrument since the Human Rights Council Resolution in 2014. In December 2024, 74 states participated in discussions. The treaty called Zero Draft has undergone three revisions so far. The details of the treaty are mentioned in the next section, and the flaws that need to be addressed for proper implementation are discussed.

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[102] John Roggie, 'UN Guiding Principles' (*Harvard Kennedy School,* March 2020) https://johnruggie.scholars.harvard.edu/un-guiding-principles accessed 24 July 2025.
[103] Anita Ramasastry, 'Corporate Complicity: From Nuremberg to Rangoon- An Examination of Forced Labor Cases and Their Impact on the Liability of Multinational Corporations, (2002) 20 (1) Berkeley J. Int'L., 91

2. Landmark National-Level Prosecutions:

Several countries have started to use their domestic laws to prosecute corporations for their involvement in overseas human rights abuses. A groundbreaking example is the Lafarge case in France. In this case, French multinational Lafarge[104] has been prosecuted domestically for complicity in crimes against humanity due to payments and logistical cooperation with ISIS during 2013-14 at its Syrian plant.

Internal emails indicate executives were aware, and the Paris Court of Appeal confirmed the charges. In May 2022, the first time. Lafarge also pleaded guilty in US federal court in 2022 to providing material support to designated terrorist organisations and faced a $778 million fine. This case demonstrated that national courts can play a vital role in holding corporations accountable, even for crimes committed abroad.

3. Rise of Mandatory Human Rights Due Diligence Legislation:

A growing number of countries, particularly in Europe, are enacting laws that require companies to conduct human rights due diligence throughout their supply chains.

i. ***French Duty of Vigilance Law (2017):*** It requires large French companies to publish and implement vigilance plans addressing human rights and environmental risks across their global operations.

ii. ***Germany's Supply Chain Due Diligence Act (LkSG, 2023*)**: It mandates risk management systems, preventive and remedial measures, and reporting for large companies.

[104] Samanth Subramanian, The cement company that paid millions to ISIS: was Lafarge complicit in crimes against humanity?, The Guardian, September 17, 2024, (New York)

iii. ***EU Corporate Sustainability Due Diligence Directive (CSDDD):*** Adopted in July 2024, it requires major companies to identify and mitigate human rights and environmental impacts.

4. Increasing Shareholder and Investor Activism:

There is a growing trend of shareholders and investors using their leverage to pressure companies to adopt more ethical practices and improve their human rights records. This includes filing shareholder resolutions, divesting from companies with poor human rights records, and demanding greater transparency and accountability from corporate boards. In particular, shareholders have taken due note of ESG factors. The Harvard Law School[105] Further reports a rise in such activism, with 250 such campaigns.

XI. LEGAL REFORM: TOWARDS BINDING INTERNATIONAL OBLIGATION

A. ZERO DRAFT TREATY: AN OVERVIEW AND KEY ARTICLES

In 2014, the UN Human Rights Council first published the Zero Draft Treaty [106](Legally Binding Instrument on Transnational Corporations and Other Business Enterprises). It underwent three revisions. The latest one was in 2023. Key provisions are as follows-

B. CRITIQUES

Despite this, it is not free from flaws[107]

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[105] Harvard Law School Forum on Corporate Governance, 2024 Proxy Season Review, available at https://corpgov.law.harvard.edu (Last visited on: June 4, 2025).

[106] United Nations Human Rights Council, *Addendum to the Report of the Working Group on the Issue of Human Rights and Transnational Corporations and Other Human Business Enterprises*, 2023 UN Doc A/HRC/49/65/Add.1

[107] *Commission nationale consultative des droits de l'homme (CNCDH)*, '*Opinion on the Updated Draft Business and Human Rights Treaty*' (Paris, 19 October 2023) https://www.cncdh.fr/sites/default/files/2024-10/23.10.19.%20CNCDH%20Opinion%20on%20the%20updated%20draft%20Business%20and%20Human%20Rights%20Treaty.pdf accessed 24 July 2025.

1. The term human rights abuses in ***Article 1.2*** lacks vigilance in interpretative clarity. There are no fundamental problems; however, the terminology may lead to misinterpretation.
2. ***Article 4***[108]

Article 4 of the draft describes who the victims are. But the continued usage of the term 'victims' throughout Article 4 risks framing affected individuals in a passive, disempowered light. The word focuses narrowly on harm already suffered, rather than on the broader, proactive entitlement to rights and justice. It could undermine the treaty's alignment with a rights-based approach grounded in human dignity and agency.

Rather, the term ***"right-holders***" can replace the victims. This broadens the scope to include all affected individuals, not only those already harmed.

Article 4 further outlines forms of remedy such as restitution and compensation. However, this list is not exhaustive and omits several critical measures. Instead, some additional steps can be taken.

Explicitly include remedies such as

i. Relocation assistance for displaced communities
ii. Replacement of community facilities
iii. Long-term health monitoring and care for populations exposed to toxic waste or other harmful conditions
iv. Emergency aid for communities facing immediate consequences of corporate actions.

3. Article 5

This article inadequately refers to state responsibility. In international law, state responsibility refers to a state's legal accountability in its actions or omissions that violate international obligations and cause harm to other states or international interests. In simple terms, this article aims to protect individuals or groups seeking

[108] Mares, Radu, '*The United Nations Draft Treaty on Business and Human Rights' (November 16, 2021). Available* at SSRN: http://dx.doi.org/10.2139/ssrn.3964852

justice from corporate human rights abuses from any form of retaliation. However, there are notable shortcomings.[109]

i. Lack of Specific Protective Measures

It does not mandate concrete obligations or mechanisms for States or companies to ensure this protection. There is no requirement for preventive measures or safe reporting mechanisms.

ii. Absence of Corporate Accountability

The draft places the burden solely on States to protect victims but fails to address the responsibility of companies to avoid actions that may lead to reprisals or harassment.

4. Article 6

Notably, compared to the earlier two drafts, this draft has some positive changes. It has removed the usage of the term "severe limitation". This term previously limited the scope of due diligence. Further, it has made strong references to public reporting and impact assessments. Yet it needs additional clarification.[110]

i. State as an economic actor

Responsibilities of States engaging in economic activity are inadequately defined

ii. Due Diligence

Drafters have failed to align the terms of the provision with 'due diligence', according to UNGPs. Further, to better enunciate the provision, human rights should encompass all sectors of society. For instance, LGBTIQ+, peasants, rural, and ethnic minorities.

5. Article 7: Access to Remedy[111]

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[109] Marco Fasciglione, *'The Objectives of a Convention on Business and Human Rights: Some Remarks on Prevention and Access to Remedy'* [2022] Droits Fondamentaux <https://www.crdh.fr/revue/n-20-2022/the-objectives-of-a-convention-on-business-and-human-rights-some-remarks-on-prevention-and-access-to-remedy/> accessed 24 July 2025.

[110] International Commission of Jurists, *Universal Comments Draft Treaty on Business and Human Rights* (Advocacy Note, August 2019) https://www.icj.org/wp-content/uploads/2019/08/Universal-Comments-Draft-Treaty-BHR-Advocacy-2019-ENG.pdf accessed 24 July 2025.

[111] Zgjim Mikullovci,*'Overview of the Proposed Binding Treaty on Business and Human Rights'* <https://www.law.georgetown.edu/ctbl/blog/an-overview-of-the-proposed-legally-binding-instrument-to-regulate-in-international-human-rights-law-the-activities-of-transnational-corporations-and-other-business-enterprises/> accessed 24 July 2025.

Article 7 focuses on making sure people harmed by businesses can get justice through courts, compensation, and fair legal help.

Key flaws

i. Access to Information is Weak

Victims often cannot access the documents or evidence they need from powerful companies

ii. Burden of Proof is Unfair

Victims still carry the responsibility to prove that the company caused harm. Judges and the court should allow the reverse burden of proof in this scenario. However, the current draft does not specify that.

6. Article 8: Legal Remedy[112]

Article 8 talks about how companies can be held legally responsible in the scenarios. However, despite some improvements, problems persist.

i. Lack of Clarity on Types of Liability

The article should specify

When a company directly causes harm, vs When a company controls or works with another company that causes harm, vs When a company fails to prevent harm by others. In this case, there is no distinction

ii. Removal of Key Terminologies

- The earlier drafts included 'other legal rule violations' to ensure the company cannot escape its liability. But they have removed this
- Criminal liability of companies in serious international crimes (like war crimes) has been removed.

[112] Carlos Lopez,'The Third Revised Draft of a Treaty on Business and Human Rights: Modest Steps Forward, But Much of the Same' (*Opinio Juris*, 3 September 2021) <https://opiniojuris.org/2021/09/03/the-third-revised-draft-of-a-treaty-on-business-and-human-rights-modest-steps-forward-but-much-of-the-same/> accessed 24 July 2025.

7. Article 9: Adjudicative Jurisdiction[113]

Article 9 details which court can hear the cases of corporate complicity. Compared to the earlier drafts, this could be seen as positive. It now includes the place of occurrence as a valid reason for a court to take a case. It also clearly defines what 'domicile' means. Some improvement could level up the article.

i. The cause is missing

One part only mentions companies 'contributing to harm. It should also include companies directly causing harm to stay consistent. Any meaningful activity by the company should be enough to hold them liable

ii. Jurisdiction in Hard Cases (Forum Necessitatis)

Sometimes, victims cannot get justice anywhere else. To provide adequate justice, courts should be able to take these cases if:

- The victim is in their country
- The company has assets there
- The company works for profit.

However, the article now lists only specific reasons a court can take such a case. This may leave some people out. Instead, it is better to keep a general rule (if there is a real link to the country) and then list those three specific scenarios.

8. Article 10 – Statute of Limitations

It deals with the period limitation for victims to take legal action. A positive change has been noted; it now covers all types of legal actions, including civil cases. But due attention should be paid to these aspects.

i. In some countries, criminal cases for serious crimes like torture or genocide have no time limit, but civil cases do. This can block victims from getting compensation.

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[113] International Commission of Jurists, *Universal Comments Draft Treaty on Business and Human Rights* (Advocacy Note, August 2019) https://www.icj.org/wp-content/uploads/2019/08/Universal-Comments-Draft-Treaty-BHR-Advocacy-2019-ENG.pdf accessed 24 July 2025.

Articles 9 to 10 set out duties on prevention and effective remedies in case no adequate due diligence is followed. However, it gives vague criteria on what constitutes adequate due diligence.[114] And unanswered questions, such as the benchmarks or indicators that could be applied. Further, whether liability attaches itself, even if all reasonable steps have been taken. Alongside these articles, other articles need substantial changes in the framework.

On a general analysis, the draft treaty is filled with rampant problems. Article 15(4) mentions "special attention" in conflict-affected areas. However, special attention remains insufficient to understand the increasing role of corporations. The treaty fails to adopt the requisite language and specific legal framework pertinent to conflict-affected areas. The treaty stays clear of controversy by imposing obligations only on nations rather than creating international obligations on corporations.

Further, the draft offers no protection for the victims the human rights defenders, or whistleblowers who showcase the threats. Out of this, most crucially, the zero draft risks making due diligence rigged with uncertainty. Zero Draft risks shifting due diligence from a standard of conduct to a standard of result, making them liable if harm occurs, regardless of the result. This critique is crucial concerning HRDD; HRDD is not meant to be absolute liability. Instead, it is a process of identifying, preventing, and mitigating risks, not a promise that no harm will ever occur.

XII. VICTIM COMPENSATION SCHEME OF THE ROME STATUTE

Article 73 [115]of the Rome Statute empowers the Court to provide victim compensation, including restitution, compensation, and rehabilitation. The Statute also establishes a Victims Trust Fund, under Article 79, to which money and other property can be collected via fines or forfeitures. However, in myriad instances, the convicted persons are indigent. For instance, in the ICC decision of Lubanga,[116] no assets could be

[114] 'Another Step on the Road? What Does the "Zero Draft" Treaty Mean for the Business and Human Rights Movement?' (*Business & Human Rights Resource Centre*) <https://www.business-humanrights.org/en/blog/another-step-on-the-road-what-does-the-zero-draft-treaty-mean-for-the-business-and-human-rights-movement/> accessed 24 July 2025.

[115] Rome Statute of the International Criminal Court, 17 July 1998, 2187 UNTS 90, Art 73

[116] Prosecutor v Thomas Lubanga Dyilo (Trial Chamber I), Judgment, March 14, 2021, ICC-01/04-01/06,¶ 1013.

identified for reparation. In such cases, a victim trust fund is ordered under Article 79[117]. However, this trust fund is reliant on State Party Contributions and donations to meet the demands. Consequently, the victims are often left uncompensated and suffer the cruel human rights abuses committed by the wealthier entities.

XIII. CONCLUSION

To conclude, it is highlighted that the intersection of corporate activity and international liability remains under-regulated, especially in conflict regions. The analysis of Google and Wiz reveals how seemingly neutral business decisions can indirectly support or enable abuses. The current international framework does not impose any liability per se. However, this study takes the viewpoint that corporate complicity can and should be recognized through indirect modes of liability under International Criminal Law. Further, a stricter norm should be established for corporate liability in national action plans

To close the accountability gap, legal reform must move toward a more inclusive and anticipatory regime. First, the scope of international criminal law should be expanded to recognize corporations as subjects of responsibility. Second, the mens rea standard for aiding and abetting should include knowledge that one's operations contribute to violations. Third, states should mandate conflict-sensitive due diligence for cross-border transactions involving entities operating in or linked to conflict zones. Fourth, national jurisdictions should strengthen extraterritorial civil remedies, codify the UNGP into the binding laws.

Looking ahead, future corporate accountability frameworks must evolve alongside technological and geopolitical realities. The ongoing treaty negotiations and domestic initiatives like the EU Corporate Sustainability Due Diligence Directive and UN Zero Draft Treaty signal a growing willingness to embed human rights into global supply chains. However, these frameworks must provide enforceable standards, clear definitions, and effective remedies.

[117] Rome Statute of the International Criminal Court, 17 July 1998, 2187 UNTS 90, Art 79

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