

# Corporate Responsibility and Accountability in Armed Conflict

*By Meghan Gauld, Staff Editor Volume 39*



Corporate obligations in international law are few and far between. Enforcement is even rarer. This creates a gap when it comes to upholding international human rights and humanitarian law. One particular area where this problem is crystallizing is the use of AI in war. In April 2024, a [report](#) in +972 Magazine detailed the extensive use Artificial Intelligence (AI) by the State of Israel in its operations in Gaza. The report detailed Israel's use of AI to help identify and track targets, raising questions regarding the extent of human input and compliance with the laws of war. More recently, the Associated Press [reported](#) that American companies—including Microsoft and OpenAI—have made their technology available to Israel for use in these programs. The risk AI poses to international humanitarian law and human rights law have been documented extensively over the years, as the technology has continued to develop. But mechanisms to ensure these risks do not come to fruition have not been forthcoming. One issue is that AI is primarily designed and developed in the private sector, whereas international law has traditionally only governed the relations of states and—more recently—the relations between states and natural persons. The place of corporations within international law and particularly the obligations placed on them by it is significantly less developed. One pathway, however, to create a more robust legal system governing corporate conduct might be through universal jurisdiction and criminal responsibility for complicity. This method is currently being tested out in Sweden, in a trial utilizing universal jurisdiction and complicity to hold corporate executives responsible for war crimes in South Sudan.

International law generally resorts to soft law instruments when it comes to the interaction of business with human rights and humanitarian law. The instruments that attempt to integrate business and human rights are non-binding, such as the U.N. Guiding Principles on Business and Human Rights. The only mechanisms that impose obligations in this area place them on states, requiring that governments exercise due diligence to ensure rights are not being

violated by private actors, including corporations. No obligations are imposed directly on those corporations. Non-binding business and human rights frameworks mention the need for heightened due diligence on the part of business in situations of armed conflict. In such situations, international humanitarian law can give rise to criminal or civil liability on the part of corporations. This responsibility is usually provided for in national law but can also arise directly out of international law. International criminal law, for example, provides for criminal responsibility for complicity.

The extent of linkage necessary is still being developed in courts and tribunals. It first appeared at Nuremberg. Though only jurisdictionally competent to try individuals, it engaged with corporate liability in its decisions. For example, in *Zyklon B* the defendant was the President of a company that supplied poisonous gas to Nazi gas chambers. And in *Krupp* twelve defendants were held individually responsible for war crimes and crimes against humanity related to the utilization of forced labor in Krupp factories.

Through universal jurisdiction, complicity can be applied in national courts to prosecute individuals for crimes committed elsewhere, as demonstrated by the Lundin Oil trial proceeding in Swedish courts. Universal jurisdiction was briefly a powerful force for corporate responsibility for violations of international humanitarian and human rights law in the United States. Its erosion in the face of hostility in the executive and judiciary shows it is unlikely to be reversed in the near future. But outside the United States, there may be more potential for change. In October 2023, a [trial began](#) in Sweden of two corporate executives from Lundin Energy, charged with aiding and abetting war crimes in South Sudan. During Sudan's Civil War, the company contracted with the Sudanese government for exploration and control rights to an area in southern Sudan (Block 5A) that was an active war zone. Wishing to secure their site, they paid the army and paramilitaries to clear the land of civilians. This trial is ongoing and set to conclude in 2025. [So far](#), dozens of plaintiffs have testified. And the testimony of defendant Ian Lundin, former CEO and Chair, has just concluded.

Regardless of the outcome in Sweden, the trial itself demonstrates that corporate accountability in some form can be established for international crimes. Using universal jurisdiction and complicity can allow for a more imposing legal regime governing corporate conduct when it comes to humanitarian and human rights obligations in armed conflict. Moving toward a more compelling legal regime when it comes to corporate responsibility for international crimes may require this piecemeal national approach. Countries with the political will to enact statutes providing for universal jurisdiction and complicity can provide a solution (even if a fragmented one) to the gap in international law regarding corporate responsibility. Filling in this gap will be a step forward in the broader effort to establish controls over AI as it develops and is deployed more extensively in war.