

# CORPORATE SOCIAL RESPONSIBILITY AND THE RESPONSIBILITY TO PROTECT: CORPORATE LIABILITY FOR INTERNATIONAL CRIMES

## a Responsibility to Protect & Business Policy Brief



### ***Policy Implications:***

#### **Governments**

- In the absence of a clearer, more effective international legal framework for holding corporations accountable for human rights abuses and violations of international humanitarian law, national governments can implement laws to directly shape their behavior.
- National laws can be informed by international norms that identify shared responsibilities or limitations on appropriate action.

#### **Companies**

- Companies can support existing international treaties and customary law and also participate in the development of international law by incorporating international norms into their own codes of conduct and behavior.

#### **Civil Society Organizations**

- CSOs can increase the efficacy of international norms and national laws by publicizing violations and submitting information to authorities for the investigation, prosecution, or other policing of corporate offenders and their officers, directors, or agents.

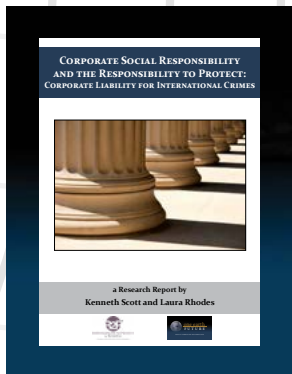
#### **International Governmental Organizations**

- By serving as forums where consensus on human rights issues emerges, IGOs can generate international norms related to correct corporate behavior and possible liability, which can in turn provide the foundation for both judicial and non-judicial regulation of corporate behavior.

**In the relationship between business and conflict, national, corporate, and civil society organizations can take certain actions to address corporate responsibility in regard to mass atrocities.**

## BACKGROUND

A One Earth Future (OEF) research report authored by Ken Scott and Laura Rhodes reviewed international and national legal systems, laws, and practices regarding applicable norms and corporate responsibilities related to human rights abuses, and more specifically, mass atrocities. The following is a summary of their research and OEF's recommendations concerning the responsibilities of corporate actors in terms of human rights abuses, violations of international humanitarian law, and mass atrocity crimes.



[LINK TO REPORT](#)

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## RESEARCH SUMMARY


An array of legal and non-legal mechanisms exists to prevent transnational corporations from contributing to international crime and human rights violations. In the realm of international criminal courts and criminal law, only natural persons, to date, can be prosecuted. Apart from international arbitrations and the internal procedures of various international organizations, there are, to date, no international civil courts where corporations can be sued. On the other hand, many national legal systems can and do criminally prosecute corporations and provide judicial mechanisms for the bringing, adjudication, and enforcement of private civil actions and claims. Most national systems also provide for varying and often robust levels of enforcement of extensive regulatory regimes. These legal mechanisms can and should be used to incentivize good corporate behavior.

National corporate liability laws are often founded upon and/or are intended to enforce international norms, which can lead to the adoption of binding treaty law and/or the emergence of customary international law. Companies can also voluntarily adopt international and other norms into their corporate standards and business behavior. International norms, such as those related to the Responsibility to Protect, can play a key role in reducing corporate violations by leading to the implementation of domestic laws punishing violations and by increasing social pressure incentivizing corporations to adopt behaviors that respect human rights and avoid violations of international humanitarian law. As stated above, when norms are sufficiently integrated into state practice out of a sense of obligation, they can crystallize into customary law binding on both state and non-state actors.


## POLICY RECOMMENDATIONS

### FOR NATIONAL, CORPORATE, AND CIVIL SOCIETY ORGANIZATIONS:


#### Governments

 ***In the absence of a clearer, more effective international legal framework for holding corporations accountable for human rights abuses and violations of international humanitarian law, national governments can implement laws to directly shape their behavior.***


Many countries prohibit the crimes contained in the Rome Statute, although most successful prosecutions to date have been brought against corporate officers or agents as individuals rather than against the corporations themselves, such as when the Supreme Court of the Netherlands upheld a war crimes conviction against a business owner under the Wartime Offences Act. Victims of violations of international and national laws may also pursue private civil suits at the domestic level. For example, the U.S. Alien Tort Claims Act allows foreign claimants to pursue civil remedies against corporations for violations of international law, including international humanitarian law.

 ***National laws can be informed by international norms that identify shared responsibilities or limitations on appropriate action.*** In identifying what kinds of behaviors should be regulated or prevented, national governments can take cues from international norms. Documents setting out R2P norms and required practices can be a valuable source of information on how corporations and businesses may become involved or implicated in mass atrocity crimes and what responsibilities they can expect to have imposed on them.


## Companies

 ***Companies can support existing international treaties and customary law and also participate in the development of international law by incorporating international norms into their own codes of conduct and behavior.*** Companies can give important support to existing international law and also participate in the development of new international norms and binding law by adopting and integrating such laws and norms into their corporate codes and behavior, which also increases pressure on less-positive corporate actors to follow suit. Socially responsible behavior may allow companies to avoid criminal and civil sanctions under current or future laws and may also result in enhanced reputations with investors, shareholders, consumers, and other community members.

## Civil Society Organizations

 ***CSOs can increase the efficacy of international norms and national laws by publicizing violations and submitting information to authorities for the investigation, prosecution, or other policing of corporate offenders and their officers, directors, or agents.*** These efforts can promote awareness of a corporation's human rights abuses and humanitarian law violations, leading to enforcement of international codes by international organizations, national enforcement of domestic laws and regulatory regimes, and the bringing of private actions such as shareholder suits. CSOs can also modify corporate behavior through non-judicial mechanisms, such as filing complaints against corporations through the OECD's National Contact Points, or by acting to monitor corporate compliance with such voluntary standards as the Extractives Industries Transparency Initiative and, perhaps soon, the Global Reporting Initiative. Within the confines of applicable defamation laws, CSOs can also engage in "naming-and-shaming" practices that bring political and community pressure to bear on bad actors and hopefully lead them to reform their behavior.

## International Governmental Organizations

 ***By serving as forums where consensus on human rights issues emerges, IGOs can generate international norms related to correct corporate behavior and possible liability, which can in turn provide the foundation for both judicial and non-judicial regulation of corporate behavior.*** For example, the OECD's Guidelines for Multinational Enterprises and the UN's Guiding Principles on Business & Human Rights operate as "soft law" norms that can significantly influence corporate behavior and possibly lead to new treaty or customary law. IGOs that provide corporate financing and other funding programs, such as the World Bank Group, can develop and employ internal mechanisms for assessing and ensuring compliance with human rights norms integrated into financial instruments, donor grants, and required practices.

One Earth Future's R2P (Responsibility to Protect) Project focuses specifically on the role of the business sector in responding to and preventing atrocity crimes. This focus is the essence of R2P. OEF believes that it is fundamentally in the interest of the business sector to support the development and implementation of R2P.



RESPONSIBILITY TO PROTECT  
& BUSINESS  
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One Earth Future (OEF) is a private foundation founded to help catalyze systems that identify and eliminate the root causes of war. OEF is committed to improving governance structures by acting at the intersection of theory and practice, helping stakeholders solve specific problems in real time, contributing to research literature, and working to detect patterns and lessons about governance as they emerge. Instilled within OEF's work are values of excellence, empiricism, long-term thinking, and active stakeholder engagement.

The OEF policy brief series provides distillations of research lessons into practical recommendations for policy and practice.



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