

Review Article

## CONFRONTING TRANSNATIONAL CORPORATE CRIMES: URGENT GLOBAL MEASURES

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### ABSTRACT

**Background:** In today's interconnected world, the global economy holds significant importance due to its far-reaching impact on various aspects of the world. It provides emerging economies, especially developing countries, access to larger markets and enhances substantial business transactions requiring commercial legal entities to wield significant influence and power across borders, leading to a surge in complex transnational crimes.

**Methods:** This qualitative systematic review paper overviews, analyses, and synchronises the secondary sources relating to the prosecution of the criminal liability of commercial legal entities. The outcomes cement the legal basis for the urgent need for globally harmonised sanctions to prosecute commercial legal entities involved in transnational crimes effectively.

**Results and conclusions:** By exploring the nature and scope of these offences, the challenges in enforcement, and the benefits of a unified approach, this research aims to provide a comprehensive framework for international cooperation to uphold justice and integrity in prosecuting the criminal liability of commercial legal entities. Through case studies, analysis of existing legal structures, and recommendations for future actions, this study highlights the necessity of global collaboration to establish harmonised sanctions and legal frameworks relating to the prosecution of criminal liability among countries. In addition, it constitutes some implications for changing the current situation of prosecuting criminal liability worldwide, especially in countries that have yet to enter into signatories with other countries to address transborder prosecution of criminal liability.

## 1 INTRODUCTION

The globalisation of trade and commerce has brought unprecedented opportunities and challenges. While multinational corporations contribute significantly to economic growth, their transnational operations often lead to complex criminal activities that transcend national borders.<sup>1</sup> Crimes such as money laundering, human trafficking, environmental violations, and tax evasion involve sophisticated networks and intricate corporate structures, making prosecution difficult. The current situation indicates that in an increasingly interconnected world, commercial legal entities operate across borders, making them susceptible to engaging in or falling victim to complex transnational crimes. This growing threat necessitates a coordinated global response to ensure that justice is served and to deter future criminal activities.<sup>2</sup> In essence, the concept of criminal liability for commercial legal entities, often referred to as corporate criminal liability, has been a subject of considerable debate and evolution in legal systems worldwide. Historically, criminal liability was predominantly associated with natural persons, based on the premise that only individuals could possess the moral and intentional capacity necessary for criminal responsibility.<sup>3</sup> However, the complexity and scale of modern business operations have necessitated a re-evaluation of this stance. Today, many jurisdictions recognise that commercial entities, such as corporations and partnerships, can and should be criminally liable for certain offences.

The primary justifications for imposing criminal liability on commercial legal entities revolve around deterrence, retribution, and moral culpability.<sup>4</sup> Deterrence theory suggests

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- 1 Nadia Bernaz, 'Corporate Criminal Liability under International Law: The *New TV SAL* and *Akhbar Beirut SAL*: Cases at the Special Tribunal for Lebanon' (2015) 13(2) *Journal of International Criminal Justice* 313, doi:10.1093/jicj/mqv014; Jonathan Clough, 'Improving the Effectiveness of Corporate Criminal Liability: Old Challenges in a Transnational World' in Ron Levy and others (eds), *New Directions for Law in Australia: Essays in Contemporary Law Reform* (ANU Press 2017) 163; Michael J Kelly and Luis Moreno-Ocampo, 'Modes of Criminal Liability under International Law' in Michael J Kelly and Luis Moreno-Ocampo, *Prosecuting Corporations for Genocide* (OUP 2016) 73, doi:10.1093/acprof:oso/9780190238896.003.0004.
  - 2 Mark Pieth and Radha Ivory, 'Emergence and Convergence: Corporate Criminal Liability Principles in Overview' in Mark Pieth and Radha Ivory (eds), *Corporate Criminal Liability: Emergence, Convergence, and Risk* (Ius Gentium: Comparative Perspectives on Law and Justice (IUSGENT, vol 9), Springer Dordrecht 2011) 3, doi:10.1007/978-94-007-0674-3\_1; Azat M Toleubai and Antonina S Kizdarbekova, 'The Concept of Commercial Legal Entities in Kazakhstan and Foreign Legislation' (2018) 9(7) *Journal of Advanced Research in Law and Economics* 2437, doi:10.14505/jarle.v9.7(37).31.
  - 3 Bokhodir Isroilov, Gaybulla Alimov and Bobokul Toshev, 'Prosecution of Legal Entities: History, Theory, Practice and Proposals' (2021) 527 *Advances in Social Science, Education and Humanities Research* 294, doi:10.2991/assehr.k.210322.127; Eli Lederman, 'Corporate Criminal Liability: The Second Generation' (2016) 46(1) *Stetson Law Review* 71; Ellen S Podgor, 'Introduction: Corporate Criminal Liability 2.0' (2016) 46(1) *Stetson Law Review* 1.
  - 4 Lawrence A Cunningham, 'Deferred Prosecutions and Corporate Governance: An Integrated Approach to Investigation and Reform' (2014) 66(1) *Florida Law Review* 1.

that the threat of criminal sanctions can dissuade companies from engaging in illegal activities. By holding corporations accountable, the law can influence organisational behaviour, encouraging the implementation of robust compliance programs and ethical standards. Retribution, on the other hand, focuses on the moral blameworthiness of corporate conduct. When a corporation engages in conduct that harms society, it is argued that the entity itself should bear responsibility, not just the individuals involved. This perspective acknowledges that corporations can create cultures and systems that promote or tolerate illegal behaviour, thus warranting punitive measures.<sup>5</sup> Despite these justifications, corporate criminal liability faces significant criticism and practical challenges. One major critique is the "collective knowledge" problem, which questions whether it is fair to attribute criminal intent to a corporation when it comprises many individuals, none of whom may possess the requisite *mens rea*<sup>6</sup> (guilty mind) individually. This issue complicates the prosecution process, as it requires piecing together fragmented knowledge and intentions within the organisation.<sup>7</sup> Moreover, there is the risk of disproportionate punishment. Fines and sanctions imposed on corporations can have far-reaching consequences, potentially harming innocent stakeholders such as employees, shareholders, and customers. This raises ethical concerns about the fairness and efficacy of corporate punishment, suggesting a need for carefully calibrated penalties that target culpable individuals within the corporation alongside the entity itself.<sup>8</sup>

One of the most significant hurdles in prosecuting commercial legal entities is the complexity of gathering evidence and establishing guilt.<sup>9</sup> Corporations often have vast resources and sophisticated legal teams that can complicate investigations. Accessing internal documents, emails, and communications requires extensive effort, and companies may engage in obfuscation or destruction of evidence. Whistleblowers and internal investigations play a crucial role in uncovering corporate misconduct.<sup>10</sup> However, whistleblower protection laws vary significantly across jurisdictions, and potential

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5 Toleubai and Kizdarbekova (n 2).

6 The *mens rea* requirement is premised upon the idea that one must possess a guilty state of mind and be aware of his or her misconduct; however, a defendant need not know that their conduct is illegal to be guilty of a crime.

7 Carlos Gómez-Jara Díez, 'Corporate Criminal Liability in the Twenty-First Century: Are all Corporations Equally Capable of Wrongdoing?' (2011) 41(1) *Stetson Law Review* 41.

8 Peter Alldridge, 'The Changing Face of Corporate Criminal Liability in England and Wales' (2017) 39 *Archives de Politique Criminelle* 163, doi:10.3917/apc.039.0163; Peter J Henning, 'Corporate Criminal Liability and the Potential for Rehabilitation' (2009) 46 *American Criminal Law Review* 1417.

9 Lisa M Fairfax, 'On the Sufficiency of Corporate Regulation as an Alternative to Corporate Criminal Liability' (2011) 41(1) *Stetson Law Review* 117.

10 Mihailis E Diamantis and William S Laufer, 'Prosecution and Punishment of Corporate Criminality' (2019) 15 *Annual Review of Law and Social Science* 453, doi:10.1146/annurev-lawsocsci-101317-031212.

whistleblowers may fear retaliation. Strengthening legal protections and incentivising whistleblowing can be pivotal in securing critical evidence against corporate wrongdoers.<sup>11</sup>

The global nature of modern business poses additional jurisdictional challenges. Corporations often operate across multiple countries, complicating the enforcement of national laws. Differences in legal standards, evidentiary requirements, and procedural rules can hinder cooperation between jurisdictions. International cooperation mechanisms, such as mutual legal assistance treaties (MLATs) and joint investigation teams, are essential in addressing these challenges.<sup>12</sup> Enhancing the efficiency and scope of these mechanisms can facilitate the prosecution of transnational corporate crimes, ensuring that legal entities cannot exploit jurisdictional gaps to evade accountability. Imposing criminal liability on commercial legal entities must strike a balance between punishment and the broader economic impact. Excessive fines or sanctions can lead to bankruptcies, job losses, and negative economic repercussions. Policymakers and prosecutors must consider these potential outcomes when determining appropriate penalties. Deferred prosecution agreements (DPAs) and non-prosecution agreements (NPAs) have emerged as tools to balance these concerns.<sup>13</sup> These agreements allow corporations to avoid criminal convictions by fulfilling certain conditions, such as paying fines, implementing compliance measures, and cooperating with investigations. While these agreements can mitigate economic fallout, they also raise concerns about accountability and the potential for corporations to view fines as mere costs of doing business.

International law addressing the prosecution of the transnational criminal liability of commercial legal entities involves various treaties, conventions, and legal frameworks. These regulations aim to hold businesses accountable for criminal activities that transcend national borders.<sup>14</sup> Recent developments, including enhanced corporate due diligence,

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11 Díez (n 7); Rafael Aguilera Gordillo, 'Weaknesses in Spanish Jurisprudence on the Criminal Liability of Legal Entities: Non-Imputability of Certain Legal Entities and Lack of Methodology When Applying the Transfer of Criminal Liability between Corporations' (2023) 3 *Eucrim* 293.

12 Nguyen Thi Phuong Hoa, 'A Scientific Understanding of Conditions for a Commercial Legal Entity to be Criminally Charged under the Current Criminal Code' (2022) 38(2) *VNU Journal of Science: Legal Studies* 60, doi:10.25073/2588-1167/vnuls.4454; Isroilov, Alimov and Toshev (n 3); Robert E Wagner, 'Corporate Criminal Prosecutions and the Exclusionary Rule' (2016) 68(4) *Florida Law Review* 1119.

13 Jennifer Arlen, 'Prosecuting Beyond the Rule of Law: Corporate Mandates Imposed through Deferred Prosecution Agreements' (2016) 8(1) *Journal of Legal Analysis* 191, doi:10.1093/jla/law007; Cunningham (n 4); David M Uhlmann, 'Deferred Prosecution and Non-Prosecution Agreements and the Erosion of Corporate Criminal Liability' (2013) 72(4) *Maryland Law Review* 1295.

14 Dinh Thi Mai, 'Provisions on Execution of Criminal Judgments against Commercial Legal Entities Committing a Crime' (2020) 11 *Journal of Legal Studies - Hanoi Law University* 59; Joanna Kyriakakis, 'Prosecuting Corporations for International Crimes: The Role for Domestic Criminal Law' in Larry May and Zachary Hoskins (eds), *International Criminal Law and Philosophy* (CUP 2009) 108; Alejandro Sánchez González, 'The Criminal Liability of Corporations: A Step Forward in the Implementation of the United Nations Guiding Principles on Business and Human Rights' (2019) 12(1) *Mexican Law Review* 91, doi:10.22201/ijj.24485306e.2019.2.13640.

transparency initiatives, and international accountability mechanisms, offer promising avenues for strengthening the prosecution of transnational corporate crime.<sup>15</sup>

Corporate crime refers to illegal acts committed by a company or its representatives, typically involving financial or regulatory misconduct, such as fraud, insider trading, embezzlement, and environmental violations. The primary motivation is usually financial gain or competitive advantage within legal business operations. Organised crime involves structured groups engaging in illegal activities on a continuous basis. These groups often participate in drug trafficking, human trafficking, extortion, money laundering, and other forms of serious crime. Their primary aim is profit through illegal means.

While corporate crime and organised crime are distinct, they can overlap. For instance, organised crime groups may infiltrate legitimate businesses to launder money or use corporate entities as fronts for illegal activities. Conversely, corporate entities may engage in activities that facilitate organised crime, such as providing logistical support, falsifying records, or engaging in corrupt practices to avoid scrutiny.

The role of the UNODC<sup>16</sup> is crucial in providing comprehensive frameworks for member states to criminalise and prosecute organised and corporate crimes. It also encourages and supports cross-border cooperation among law enforcement agencies, fostering information sharing, joint investigations, and mutual legal assistance in combatting these crimes.

Continued innovation, commitment to global cooperation, and robust legal frameworks are essential to ensure that commercial legal entities are held accountable for their actions across borders. As globalisation increasingly intertwines economies and societies, pursuing justice for transnational corporate crime remains a critical endeavour for the international community. Despite this, until now, there have been limited reports on transnational corporate prosecutions, convictions, and punishment, reflecting that current sanctions might be ineffective or conceptually and practically incoherent. This situation possibly stems from the loophole in the tight cooperation among countries to prosecute the criminal liability of commercial legal entities.<sup>17</sup>

Photeine Lambridis notes that multinational corporations' complicity in international crimes has risen because they are directly involved in the commission of crimes, making it challenging to address this ongoing situation on a global scale.<sup>18</sup> Recognising the complexity and danger of transnational corporate criminality, most nations must establish their own

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15 Charles R P Pouncy, 'Reevaluating Corporate Criminal Responsibility: It's All About Power' (2011) 41(1) *Stetson Law Review* 97.

16 UNODC, *United Nations Convention against Transnational Organized Crime and the Protocols Thereto* (UN 2004) <<https://www.unodc.org/unodc/en/organized-crime/intro/UNTOC.html>> accessed 20 May 2024.

17 Diamantis and Laufer (n 10).

18 Photeine Lambridis, 'Corporate Accountability: Prosecuting Corporations for the Commission of International Crimes of Atrocity' (2021) 53(1) *NYU International Law and Politics* 144.

legal framework to combat these crimes due to the lack of comprehensive international regulations and sanctions.

Given the situation in Vietnam, some studies have explored preventive methods and current sanctions for prosecuting corporate criminality. However, the challenges of transnational corporate prosecutions operating inside and outside Vietnam have been considered.<sup>19</sup>

As such, this research paper argues the necessity of globally harmonised sanctions to address the criminal liability of commercial legal entities engaged in such transnational crimes. By aligning legal standards and fostering international cooperation, the global community can enhance the effectiveness of law enforcement and ensure that corporate entities are held accountable for their actions. To highlight the corpus of the paper, the following questions are set forth to direct the study correctly as follows:

1. Why is it necessary to call for single international harmonised sanctions to prosecute the criminal liability of transborder commercial legal entities?
2. How do countries deal with the prosecution of criminal liability of transnational commercial legal entities currently?

Accordingly, this research explores the prosecution of the criminal liability of commercial legal entities, examining the legal frameworks, theoretical foundations, practical challenges, and implications for justice and corporate governance.

## 2 MATERIALS AND METHODS

This study employed a qualitative systematic review based on the content analysis methods to generate, systemise, analyse, and scrutinise the secondary resources by adopting the research model proposed by Long-Sutehall et al.<sup>20</sup> By examining the United Nations Convention against Transnational Organized Crime and the Protocols Thereto,<sup>21</sup> and the highly influential EU Directive 2024/1226 on the definition of criminal offences and penalties for the violation of Union restrictive measures,<sup>22</sup> together with current legal

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19 Dinh (n 14); Do Thi Phuong, 'Criminal Prosecution Against the Crime of Legal Entities in Vietnam' (2023) 39(1) VNU Journal of Science: Legal Studies 45, doi:10.25073/2588-1167/vnuls.4365; Mai Dac Bien, 'Supervising the Investigation of Criminal Cases Committed by Commercial Legal Entities under the Regulation of Vietnam Criminal Procedure Code' (2021) 12(3) Turkish Online Journal of Qualitative Inquiry (TOJQI) 3095.

20 Tracy Long-Sutehall, Magi Sque and Julia Addington-Hall, 'Secondary Analysis of Qualitative Data: A Valuable Method for Exploring Sensitive Issues with an Elusive Population?' (2010) 16(4) Journal of Research in Nursing 335, doi:10.1177/1744987110381553.

21 UNODC (n 16).

22 Directive (EU) 2024/1226 of the European Parliament and of the Council of 24 April 2024 on the Definition of Criminal Offences and Penalties for the Violation of Union Restrictive Measures and amending Directive (EU) 2018/1673 <<http://data.europa.eu/eli/dir/2024/1226/oj>> accessed 20 May 2024.

normative documents in Vietnam, this study has developed appropriate recommendations for formulating the legal framework. These recommendations aim to establish global sanctions to effectively prosecute commercial legal entities involved in transnational crimes.

### 3 DISCUSSIONS

#### 3.1. Legal basis for the classification of criminal liability of transnational commercial legal entities

The classification of criminal liability for transnational commercial legal entities - necessary for maintaining ethical standards in international trade - remains fraught with challenges. It plays a crucial role in facilitating the flow of goods, services, and capital across borders. Key among these are the inconsistencies across legal systems and the difficulties in enforcing laws across borders. Moving forward, enhanced international cooperation and the harmonisation of laws are crucial. Additionally, there is a growing need to focus on preventive measures, including effective corporate compliance programs and a strong ethical corporate culture.<sup>23</sup> However, their global reach and multifaceted operations also introduce significant legal challenges, especially in the realm of criminal liability. Initially, it is important to understand the nature of transnational crimes.

Transnational crimes are criminal activities that cross national borders and involve multiple jurisdictions. These crimes are often complex, involving various actors, intricate planning, and sophisticated methods to evade detection and prosecution. The principal characteristics of transnational crimes include four features, particularly cross-border nature, involvement of organised crime groups or networks, significant impact on multiple countries, and challenges in jurisdiction and enforcement.<sup>24</sup> As cited by Brandon L. Garrett,<sup>25</sup> cross-border corporate crime, also known as transnational corporate crime, involves illegal activities carried out by corporations that span national borders. They pose significant challenges due to modern business's complexity and global nature. These crimes can have severe socio-economic and environmental impacts on the countries involved.

Another definition describes transnational commercial crimes as a range of illegal activities coordinated across national borders, primarily profit-driven. These crimes can significantly impact economies, societies, and governance structures worldwide.<sup>26</sup> Photeine Lambridis

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23 Clough (n 1).

24 Robert C Thompson, Anita Ramasastry and Mark B Taylor, 'Transnational Corporate Responsibility for the 21st Century: Translating Unocal: The Expanding Web of Liability for Business Entities Implicated in International Crimes' (2009) 40(4) *George Washington International Law Review* 894.

25 Brandon L Garrett, 'International Corporate Prosecutions' in Darryl Brown, Jenia Turner and Bettina Weisse (eds), *Comparative Criminal Procedure* (OUP 2018) <<https://ssrn.com/abstract=3138239>> accessed 20 May 2024.

26 UNODC (n 16).

highlights that while corporate complicity in international crimes is not considered a new phenomenon, multinational corporations are increasingly involved in directly committing such atrocities.<sup>27</sup> By providing perpetrators with the means necessary to commit these crimes, they exacerbate conflicts between state governments and paramilitary groups while actively profiting from them. However, due to the lack of international enforcement mechanisms, including substantive criminal laws, companies are easily able to escape criminal liability despite their direct involvement in criminal activities.

Dr. Jennifer Zerk firmly asserts that currently, there is a lack of decisive action from criminal prosecution and law enforcement agencies, significant legal uncertainty surrounding the scope of principal liability concepts, unevenness in distribution and use of domestic remedial mechanisms to deal with these consequences, some political concerns over extraterritorial regulations, and gaps in international mechanisms for fair distribution and cooperation in prosecuting transnational commercial entities.<sup>28</sup>

Mai Dac Bien claims that, at present, there is no specific legislative definition regulating the norms of cross-border criminal liability in Vietnam's current criminal law; this notion is, however, conceptualised by criminologists in criminal law science.<sup>29</sup> Regarding its nature, the State holds the right to prosecute criminal acts prescribed clearly from Article 74 to Article 89 in Chapter XI of the Criminal Code 2015.<sup>30</sup> Nguyen Hung et al. analyse the criminal liability of commercial legal entities under Vietnam's Criminal Code but fail to define and mention the transnational crimes thereof.<sup>31</sup> Thus, prosecuting transnational commercial entities for criminal activities presents numerous challenges, including legal interpretations of complicity, limitations of international criminal law, and reliance on national legal systems.

The criminal prosecution of commercial entities represents an essential aspect of corporate governance and regulatory compliance, aiming to hold businesses accountable for offences committed in the name of or for the organisation's benefit. The extent and nature of corporate criminal liability varies significantly between different legal systems. In some jurisdictions, like the United States, corporate responsibility is well-established and widely

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27 Lambridis (n 18) 144.

28 Jennifer Zerk, *Corporate Liability for Gross Human Rights Abuses: Towards a Fairer and More Effective System of Domestic Law Remedies: A Report Prepared for the Office of the UN High Commissioner for Human Rights* (OHCHR 2012) 9 <<https://www.ohchr.org/sites/default/files/Documents/Issues/Business/DomesticLawRemedies/StudyDomesticLawRemedies.pdf>> accessed 20 May 2024.

29 Mai (n 19).

30 Criminal Code of the Socialist Republic of Vietnam no 100/2015/QH13 of 27 November 2015 <<https://luatvietnam.vn/hinh-su/bo-luat-hinh-su-2015-101324-d1.html>> accessed 20 May 2024.

31 Nguyen Hung, Mai Van Thang and Tran Thu Hanh, 'The Criminal Liability of Commercial Legal Entities in the Current Criminal Code of Vietnam' (2022) 2(40) *Law & Social Bonds* 185, doi:10.36128/priw.vi40.398.



enforced, especially under federal law.<sup>32</sup> In contrast, other jurisdictions may be more limited in scope or may rely more on civil penalties and administrative sanctions rather than criminal prosecution.

Transnational corporations can face criminal liability for committing a range of activities, including—but not limited to—financial fraud, bribery and corruption, environmental crimes, and other regulatory offences. The severity and nature of these crimes often influence the decision to prosecute and the type of punishment imposed therein.

In other ways, transnational corporate crime refers to corporate crimes that extend beyond national borders. These crimes can involve multiple jurisdictions and are often complex regarding enforcement and the legislation governing them therewith.<sup>33</sup> The typical categories of crimes (as cited by Brandon L. Garrett)<sup>34</sup> might be classified into politics, human beings, economics, and environment as follows:

- a) *Corruptive regimes*: Transnational corporations operating in multiple countries with central management in their home country play crucial roles in the global economy. However, their extensive reach and the complexity of their operations also make them susceptible to unethical practices and, remarkably, corruption. Their commission of corruption typically involves activities such as bribery of foreign public officials, kickbacks, and other illicit payments to facilitate business operations across different countries. These illicit actions can occur at different levels of the organisation, from top executives to local subsidiaries. The principal corruption causes might stem from the following:
- (1) diverse regulatory environments across countries with either stringent anti-corruption laws and robust enforcement mechanisms or weak regulations and inadequate enforcement;
  - (2) cultural differences in which different countries might address corruption in a dissimilar way;
  - (3) competitive pressures to enjoy favourable stances and;
  - (4) inadequate internal controls and poor corporate governance.

As such, the corruption of transnational corporations can be prevented by implementing comprehensive anti-corruption measures and fostering a culture of integrity.

- b) *Human rights issues*: Transnational corporations involving human rights violations can involve many activities, for example, labour exploitation, environmental degradation, displacement of communities, and complicity in government abuses. These violations can take place directly through the corporations' actions or indirectly through their

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32 Stephen F Smith, 'Corporate Criminal Liability: End it, Don't Mend it' (2022) 47(4) *Journal of Corporation Law*, 1089.

33 Pouncy (n 15); Nguyen, Mai and Tran (n 31).

34 Garrett (n 25).

supply chains and business partners to conduct business. These human rights violations' causes might originate from the following:

- (1) weak regulatory or poorly enforced frameworks resulting in a lack of stringent labour laws, environmental regulations, and oversight mechanisms;
  - (2) aggressive cost-cutting measures leading to poor working conditions, low wages, and inadequate health and safety standards;
  - (3) complex and extensive supply chains, making it challenging to monitor and ensure compliance with human rights standards, and;
  - (4) corrupt practices to bypass legal and regulatory requirements, allowing transnational corporations to operate with impunity, ignoring labour laws, environmental protections, and other regulations designed to protect human rights.
- c) *Money laundering*: It refers to the process of disguising the origins of illegally obtained money and has become a critical concern in the global financial system. Transnational corporations, while instrumental in driving global economic growth, can also be conduits for money laundering activities, which typically involve three stages: placement, layering, and integration. With their complex structures and extensive global networks, transnational corporations might encompass these stages.

Placement denotes converting illicit funds to the financial system using legitimate business operations to commingle illegal proceeds with legitimate earnings. Layering involves concealing the illicit origin of the money through a series of transactions by exploiting international presence to move funds through subsidiaries in different jurisdictions, especially those with weak regulatory frameworks or strong banking secrecy laws. Integration is the final stage, where the 'cleaned' money is integrated into the legitimate economy. Such activities might be practised by investing in real estate, luxury goods, or other high-value assets to provide a cover of legitimacy for the illicit funds.

As regulatory frameworks evolve and enforcement capabilities strengthen, transnational corporations must prioritise compliance and ethical practices to mitigate the risks associated with money laundering and uphold the integrity of the global financial system.

- d) *Tax evasion*: Transnational corporations are scrutinised for their involvement in tax evasion, which undermines the tax base of countries, distorts competition and raises ethical concerns. In other words, tax evasion involves illegal practices to avoid paying taxes using various sophisticated strategies to evade taxes, taking advantage of their complex structures and the disparities in tax regimes across different countries.

Some common mechanisms include transfer pricing manipulation, profit shifting, use of tax havens, or even selling companies. Transfer pricing manipulation often manipulates transfer prices, that is, the prices at which goods and services are sold between subsidiaries of the same company to shift profits to low-tax jurisdictions. They reduce their overall tax burden by inflating prices in high-tax countries and underpricing in low-tax countries. Meanwhile, profit shifting involves moving profits from high-tax to low-tax jurisdictions. Techniques

include strategic location of intangible assets (like patents and trademarks) in tax havens or using intra-company loans to shift profits through interest payments. Another ongoing practice is the deceptive use of tax havens in which transnational corporations set up subsidiaries in countries with low or no corporate tax rates and high levels of secrecy, commonly called 'tax havens'. These subsidiaries are often used to hold intellectual property or to route financial transactions, effectively lowering the corporation's global tax rate. Lastly, the formation of selling companies, which do not have significant operations or employees, facilitates financial manoeuvres such as profit shifting. They provide a layer of opacity that makes it difficult for tax authorities to trace the money flow. Thus, transnational corporations employ various sophisticated mechanisms to minimise their tax liabilities, often at the expense of public revenue and fair competition.

e) *Environmental Crimes*: The extensive operations of transnational corporations can lead to severe environmental impacts, such as pollution, deforestation, and biodiversity loss. Consequently, prosecuting transnational corporations for environmental crimes is essential to hold them accountable and mitigate environmental damage. Transnational corporations' mechanisms of environmental crimes manifest in various forms, primarily stemming from their resource extraction, manufacturing, and industrial operations. Common mechanisms comprise pollution, deforestation and land degradation, illegal resource extraction, and non-compliance with environmental regulations.

As far as pollution issues are concerned, transnational corporations may release harmful pollutants into the air, water, and soil through direct discharge or accidental spills. These pollutants can include heavy metals, toxic chemicals, and greenhouse gases. As for the problems of deforestation and land degradation, transnational corporations' large-scale agricultural and logging activities commonly lead to deforestation, habitat destruction, and soil erosion, contributing to biodiversity loss and climate change. Regarding illegal resource extraction, some transborder corporations engage in illegal mining, logging, and fishing activities, exploiting natural resources without proper permits or exceeding legal limits. The last issue refers to the non-compliance with environmental regulations. Multinational companies may evade environmental regulations by falsifying reports, bribing officials, or exploiting regulatory loopholes in countries with weak enforcement.

Efforts to enhance accountability and enforcement are crucial in holding transnational corporations responsible for environmental crimes and promoting sustainable business practices. As regulatory frameworks evolve and enforcement mechanisms strengthen, transnational corporations must prioritise environmental stewardship to minimise their impact and contribute positively to global sustainability. In short, transnational corporations significantly impact the environment, and prosecuting them for environmental crimes is essential to ensure accountability and mitigate harm.

In the same vein, the classification of criminal liability for transnational commercial legal entities under the 2015 Criminal Code of Vietnam involves understanding the legal framework that holds corporations accountable for criminal acts committed in the course of their business activities, especially those with cross-border implications.<sup>35</sup> In essence, the 2015 Criminal Code of Vietnam marks a significant shift by recognising the criminal liability of legal entities, which was not provided for in previous legislation,<sup>36</sup> which allows for the prosecution of companies, not just individuals, for criminal offences. It, however, does not provide any specified legal provision regulating the prosecution of the criminal liability of commercial legal entities like individuals therewith, leaving some gaps in enforcement.

As a result, corporate criminal liability encompasses various offences, including environmental crimes, corruption, and other economic-related crimes, as outlined in Articles 8 and 75.<sup>37</sup> This broad scope is particularly broad for transnational companies operating in Vietnam, encompassing crimes committed both within the country and those with effects outside the national borders, as prescribed from Article 10 to Article 18). Enforcement of these regulations involves cooperation between Vietnamese authorities and other countries (see Articles 74 to 89),<sup>38</sup> including extradition agreements, mutual legal assistance treaties, and coordination with international law enforcement agencies.

Despite these advancements, challenges remain. Do Thi Phuong argues that the regulations for prosecuting criminal liability for commercial legal entities have loopholes, which may conflict with other legal documents.<sup>39</sup>

In general, Vietnam's legal normative documents for prosecuting commercial entities need to be revised and specified in detail to regulate unpredicted commercial crimes. This revision is crucial to address the ongoing complexity of the criminal liability of transnational corporations.

### 3.2. Principles regarding the applicable prosecution of the criminal liability of commercial legal entities

Prosecuting commercial legal entities for criminal activities represents a significant aspect of corporate governance and legal accountability. It is, therefore, necessary to harmonise common principles underlying the prosecution of commercial legal entities for criminal offences to focus on legal frameworks, challenges, and implications. These principles should ensure these entities can be held liable for criminal acts and promote ethical behaviour and

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35 Criminal Code of the Socialist Republic of Vietnam (n 30).

36 Do (n 19); Nguyen (n 12); Nguyen, Mai and Tran (n 31).

37 Nguyen (n 12).

38 Mai (n 19).

39 Do (n 19) 49.

compliance within corporate structures.<sup>40</sup> Clearly, the principle that a corporate entity can be held criminally liable originates from the notion that corporations, like individuals, can commit crimes and should be subject to sanctions accordingly.<sup>41</sup> This concept is rooted in the broader objectives of deterrence, punishment, and encouraging ethical corporate behaviour. By holding corporations liable, the law aims to foster a culture of compliance and responsibility at all organisational levels.

In the field of corporate law, due diligence and compliance programs are important tools to manage and minimise criminal liability risks in commercial legal entities. These programs serve not only as a defence mechanism but also as a proactive strategy to ensure businesses operate ethically and within the boundaries of the law.<sup>42</sup> In particular, due diligence in a legal context involves a thorough investigation into the business activities and associations of a company. Accordingly, it is a preventive measure that helps identify legal, financial, and compliance risks associated with business operations, especially in mergers, acquisitions, and partnerships.

The nature of due diligence encompasses some key aspects, such as due diligence, financial due diligence, and operational due diligence. In particular, legal due diligence overviews the legal aspects of a company, including contracts, ownership of assets, liabilities, pending litigation, compliance with local laws, and intellectual property rights.<sup>43</sup> Financial due diligence assesses the financial health of a company through audits, evaluations of asset valuations, and reviews of cash flow and debt. Lastly, operational due diligence analyses the operational aspects of a company, including the efficiency of processes, reliability of supply chains, and the integrity of information systems.

Compliance programs are structured plans designed to ensure adherence to legal standards and regulations. Courts and regulatory bodies often view robust compliance programs as a mitigating factor when assessing penalties for criminal activities, and it might contain the following compliance programs hereinafter.<sup>44</sup>

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40 Fairfax (n 9); Pieth and Ivory (n 2); Alessandra De Tommaso, *Corporate Liability and International Criminal Law* (Routledge 2023) doi:10.4324/9781003390534.

41 Cunningham (n 4); Kingsley Omote Mrabure and Alfred Abhulimhen-Iyoha, 'A Comparative Analysis of Corporate Criminal Liability in Nigeria and Other Jurisdictions' (2020) 11(2) *Beijing Law Review* 429, doi:10.4236/blr.2020.112027; Mohammed Saif-Alden Wattad, 'Natural Persons, Legal Entities, and Corporate Criminal Liability under the Rome Statute' (2016) 20(2) *UCLA Journal of International Law and Foreign Affairs* 391.

42 Arlen (n 13); Vitalii Datsiuk and Iryna Nesterova, 'Sustainability Issues of Business Security in Ukraine: Risk Factors of the Corporate Criminal Liability' (2020) 116 *Teisè* 120, doi:10.15388/Teise.2019.116.8; Fabian Teichmann, Chiara Wittmann and Sonia Boticiu, 'Compliance as a form of Defense against Corporate Criminal Liability' (2023) 1 *Journal of Economic Criminology* 100004, doi:10.1016/j.jeconc.2023.100004.

43 Garrett (n 25); Isroilov, Alimov and Toshev (n 3).

44 Gustavo A Jimenez, 'Corporate Criminal Liability: Toward a Compliance-Orientated Approach' (2019) 26(1) *Indiana Journal of Global Legal Studies* 353.

Notably, Michael J. Kelly and Luis Moreno-Ocampo outline several modes of criminal liability<sup>45</sup> for compliance programs. These programs typically include documented guidelines that outline ethical behaviours and legal compliance, ensuring accessibility for all employees. Training and education are integral, involving the process of regular training sessions for employees to reinforce the company's commitment to legal and ethical standards. Monitoring and auditing programs play a crucial role in conducting regular audits to ensure policy adherence and detect violations early. Furthermore, it is necessary to mention the vitality of reporting mechanisms, which allow employees to report unethical behaviour or compliance violations anonymously. The last program focuses on the tasks of enforcement and discipline, which entails clear consequences for violating policies applied consistently across all levels of the organisation. In short, transnational corporations must demonstrate that they have adequate measures in place to prevent criminal behaviour by implementing compliance programs and internal controls.

In the context of transnational commercial corporations, attributing criminal liability extends beyond individual actors to encompass the corporate entity itself. This approach recognises that the decisions and actions resulting in criminal behaviour involve complex organisational processes and cannot solely be attributed to individuals. The prosecution of these entities, therefore, focuses on corporate culture, policies, and the role of top management in fostering an environment where illegal activities can occur.

To address this, specific principles such as the control test and the identification doctrine are applied.<sup>46</sup> In more detail, the control test examines whether the senior personnel who committed the offence had substantial control over the corporation's decision-making process. In contrast, the identification doctrine features conventional practices in common law jurisdictions and associates the corporation with its decision-makers—typically senior executives—whose actions and intentions are deemed to be those of the corporation itself. By that means, the responsibility of transnational commercial corporations in criminal activities extends beyond individual perpetrators to include the entity itself, particularly when facilitated by corporate practices or culture.

Another principle relates to the proportionality and penalties in prosecuting the criminal liability of transnational commercial corporations. This aspect involves complex legal considerations due to the nature of transnational business operations and the difficulty in enforcing laws across different jurisdictions.<sup>47</sup> Specifically, the principle of proportionality in legal penalties is crucial in ensuring that punishments are appropriate to the severity of the offence. In the context of transnational corporations, penalties must not only be severe enough to deter future violations but also fair and consistent across

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45 Kelly and Moreno-Ocampo (n 1).

46 Diez (n 7); Nick Werle, 'Prosecuting Corporate Crime when Firms are Too Big to Jail: Investigation, Deterrence, and Judicial Review' (2019) 128(5) *The Yale Law Journal* 1366.

47 Garrett (n 25).

different legal systems.<sup>48</sup> While penalties must be proportionate to the harm caused and should serve both punitive and deterrent functions. These can include fines, remediation orders, or even corporate dissolution. In practice, penalties for criminal activities of corporations can include fines, sanctions, or more severe measures such as barring the company from doing business. In some cases, individual corporate officers might face personal penalties, including prison sentences.

The last principle refers to restorative justice in prosecuting the criminal liability of transnational commercial corporations, constituting a significant regulation in addressing the aforementioned issues. Notably, restorative justice presents an alternative approach to the traditional punitive measures in dealing with the criminal liability of transnational commercial corporations. Its primary focus is to repair the harm caused by criminal actions, involve all stakeholders, and promote a dialogue that leads to mutual understanding and resolution.<sup>49</sup> Restorative justice characterises some significant features. Remarkably, the involvement of stakeholders relates to victims, offenders, community members, and transnational corporations therein, including affected local communities, employees, shareholders, and regulatory bodies. Another feature is to concentrate on repairing harm. Restorative justice addresses the harm caused by the corporation's actions, which may involve compensation to affected communities, remediation of environmental damage, or public commitments to change harmful business practices. Typically, an essential principle of restorative justice is voluntary participation by the corporation and all other stakeholders, which is critical to achieving a genuine dialogue and meaningful outcomes.<sup>50</sup>

It can be challenging in cases involving transnational entities due to the complexity of legal and ethical standards across different jurisdictions. Restorative justice often employs mediation sessions where all parties come together to discuss the impact of the corporation's actions and agree on steps to make amends. This dialogue is facilitated by a neutral mediator who ensures all voices are heard, and the process remains constructive. Restorative justice might encounter outcome agreements; thereby, its process typically involves some form of agreement on actions that the corporation shall take to address the harm caused.<sup>51</sup> These agreements can be more flexible than traditional court orders, allowing for creative solutions that better fit the specific circumstances and needs of the affected parties.

Regarding preventive measures, beyond addressing specific incidents, restorative justice can encourage corporations to implement ongoing changes in their business practices to prevent future harm. It might refer to altering corporate governance structures, increasing

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48 Lederman (n 3); Harmen van der Wilt, 'Corporate Criminal Responsibility for International Crimes: Exploring the Possibilities' (2013) 12(1) *Chinese Journal of International Law* 43, doi:10.1093/chinesejil/jmt010.

49 Pouncy (n 15); Smith (n 32).

50 Wilt (n 48).

51 Henning (n 8).

transparency, and enhancing ethical standards within the company.<sup>52</sup> In addition, it also encounters challenges and criticism. It denotes that implementing restorative justice for transnational corporations faces several challenges, including ensuring meaningful participation by large corporations, balancing power asymmetries between corporations and victims, and integrating these processes into diverse legal systems with varying degrees of support for restorative practices.<sup>53</sup> Overall, restorative justice offers a promising complement to traditional legal approaches, particularly in its capacity to transform corporate behaviour and remedy the broader impacts of corporate misconduct on communities and the environment.

Under Vietnam's jurisdiction, the principle applicable to this type of crime is prescribed in Article 74 of the 2015 Criminal Code, which stipulates general principles subject to commercial legal entities. The provisions in Article 74 are appropriate, affirming more clearly that the individuals and the legal entity shall be liable for their commission of crime. Consequently, issues such as fault, stage of crime, crime classification, and complicity (*inter alia*) are regulated to the corresponding provisions of the 2015 Criminal Code to be under the criminal liability of legal entities.<sup>54</sup>

### 3.3. The demand for establishing globally harmonised sanctions regarding transnational prosecution concerning the criminal liability of commercial legal entities

The demand for globally harmonised sanctions concerning the criminal liability of commercial legal entities is a response to the increasing recognition of corporations' role in transnational crimes, including corruption, human rights violations, and other international crimes. Based on the previous legal grounds, the following section synthesises critical points from various sources to provide an overview of the current landscape and the push towards a more unified approach to prosecuting corporate criminality. To constitute a globally harmonised mechanism, legislators shall confront many difficulties in overcoming challenges in the global trend towards increased prosecution of corporations for criminal violations, with multinational corporations facing enforcement in multiple countries.<sup>55</sup>

The first challenge in prosecuting transnational crimes is jurisdiction. Countries have varying legal frameworks, making coordinating and enforcing laws across borders difficult. Some jurisdictional issues are determining the appropriate jurisdiction for prosecution, the conflicts between national laws and international standards, and the limited extraterritorial

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52 Datsiuk and Nesterova (n 42); Pouncy (n 15).

53 Alldridge (n 8).

54 Criminal Code of the Socialist Republic of Vietnam (n 30).

55 Wagner (n 12).



reach of national laws.<sup>56</sup> Overall, different countries have varying laws and regulations, leading to conflicts and loopholes which transnational criminals fraudulently exploit.

The second challenge is the complexity of corporate structures. Many multinational corporations use intricate structures designed to obscure ownership and operations, complicating investigations. These structures involve deceptively selling companies and offshore entities, retaining multiple layers of ownership, or making complex financial arrangements.

Next, more international cooperation is needed to deal with this aspect. Inadequate cooperation between countries often hampers the ability to gather evidence and prosecute offenders effectively.<sup>57</sup> This loophole includes differences in the legal system and procedure, limited mutual legal assistance treaties, and political and diplomatic barriers. As such, the lack of globally cooperative sanctions can result in uneven justice and create safe havens for criminal entities.

Finally, legal loopholes and inadequate laws in some countries contribute to the problem. Many jurisdictions lack robust laws to address corporate criminal liability, resulting in safe havens for criminals.<sup>58</sup> Issues include inadequate definitions of corporate criminal liability, limited penalties for corporate crimes, and weak enforcement mechanisms. Generally, the absence of standardised legal definitions and frameworks allows entities to manoeuvre through legal gaps. As a result, globally harmonised sanctions are needed to address these challenges.

Countries like Vietnam should consider adopting and ratifying international conventions that set standards for corporate criminal accountability.<sup>59</sup> The legal basis should be formulated based on a number of widely recognised normative documents, typically the United Nations Convention against Transnational Organized Crime (UNTOC),<sup>60</sup> also known as the Palermo Convention. The Convention is a comprehensive international legal instrument designed to combat transnational organised crime. Its mission is to provide cooperation to prevent and fight transnational organised crime more effectively. The practicality of the Convention is to provide a global framework for dealing with proceedings brought by transnational organisations and to enhance international cooperation, making it easier for signatory States to combat organized crimes. By addressing different aspects of organised crime, from prevention and criminalisation to protection and cooperation, a comprehensive approach is necessary to tackle this problem. Overall, the UNTOC is a

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56 Garrett (n 25).

57 Clough (n 1).

58 Werle (n 47).

59 Jimenez (n 44); Kelly and Moreno-Ocampo (n 1); Bui Sy Nam, 'Criminal Liability of Commercial Legal Entity in Vietnamese Law' (2020) 498 *Advances in Social Science, Education and Humanities Research* 54, doi:10.2991/assehr.k.201205.010.

60 UNODC (n 16).

pivotal instrument in the global fight against transnational organised crime, providing international cooperation and strengthening legal frameworks worldwide.

The second legislative document is the OECD Anti-Bribery Convention,<sup>61</sup> formally known as the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. This landmark international treaty is designed to curb corruption and promote fair business practices. Its primary purpose is to combat the bribery of foreign public officials in international business transactions. In fact, the OECD Anti-Bribery Convention has had a significant impact on global efforts to combat corruption, influencing national laws and corporate practices. It actively strengthens international cooperation in the fight against corruption, fostering mutual legal assistance and information sharing. By criminalising bribery of foreign public officials across signatory countries, the Convention helps level the playing field for businesses operating internationally. In short, the OECD Anti-Bribery Convention is a critical instrument in the global fight against corruption, setting high standards for anti-bribery laws and enforcement practices and promoting integrity and transparency in international business transactions.

The final document is the Financial Action Task Force (FATF) Recommendations, a comprehensive framework aimed at combating money laundering, terrorist financing, and other related threats to the integrity of the international financial system.<sup>62</sup> It sets international standards and promotes effective implementation of legal, regulatory, and operational measures to combat money laundering, terrorist financing, and other related threats. These normative documents are recognised globally as the international standard for combating money laundering and terrorist financing, which foster international cooperation and coordination among countries to combat financial crimes. In reality, the FATF continuously updates and refines its Recommendations to address emerging threats and challenges in the financial sector. Generally, the FATF Recommendations play a crucial role in maintaining the integrity of the global financial system by setting comprehensive and adaptable standards for combating money laundering, terrorist financing, and other related threats.

The pillar of the Framework for Harmonized Sanctions is the establishment of a centralised international body tasked with overseeing and regulating the implementation and enforcement of harmonised sanctions. It is practical to propose that this body could be modelled after the FATF,<sup>63</sup> incorporating the regulations from OECD<sup>64</sup>, UNTOC<sup>65</sup>,

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61 OECD, *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions: And related documents* (OECD 2024) <<https://www.oecd.org/corruption/oecdantibriberyconvention.htm>> accessed 20 May 2024.

62 FATF, *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation: The FATF Recommendations* (FATF OECD 2023) <[www.fatf-gafi.org/en/publications/Fatfrecommendations/Fatf-recommendations.html](http://www.fatf-gafi.org/en/publications/Fatfrecommendations/Fatf-recommendations.html)> accessed 20 May 2024.

63 *ibid.*

64 OECD (n 61).

65 UNODC (n 16).

UNODC<sup>66</sup>, U.S. Department of Justice 9-28.000,<sup>67</sup> and International Criminal Court (ICC)<sup>68</sup> to constitute three functions; that is, this unique body should be legitimate with three distinctive features. First, the body is in compliance with a standard setting to develop and promote international standards for corporate criminal liability. Second, it has a feature of monitoring compliance to assess and monitor compliance with international standards. Finally, it is committed to facilitating cooperation and promoting cooperation and coordination among countries and organisations. A treaty on MLATs in prosecuting the criminal liability of commercial legal entities subject to complicated, transnational crimes shall be strengthened to facilitate the exchange of information and evidence between countries.<sup>69</sup>

Besides, it is necessary to clarify some key elements to ascertain MLATs. The primary principle is to establish transparent and efficient procedures for requesting and providing assistance. Next, it is crucial to ensure timely and effective responses to requests for assistance, and finally, it is mandatory to cover a wide range of transnational crimes, including provisions for corporate liability.

In addition, national governments should bolster regulatory bodies to enforce compliance with international standards by providing adequate resources and training for regulatory bodies. They shall update national laws to align with international standards and develop robust mechanisms for monitoring and enforcing compliance.<sup>70</sup>

Another effective method is encouraging collaboration between governments and the private sector to share intelligence and best practices in combating transnational crimes. Critical aspects of public-private partnerships are facilitating the exchange of information between businesses and law enforcement, promoting the development and implementation of corporate compliance programs, and raising awareness about the risks and consequences of transnational crimes. Moreover, international organisations play a critical role in facilitating harmonised sanctions to assist the enforcement of the body.<sup>71</sup> Key organisations should be actively joint-hand to make sure about the functions of the body. For the role of the United Nations, the organisation should provide a platform for developing international legal standards and promoting cooperation. In addition, the International Criminal Police

66 United Nations Office on Drugs and Crime (UNODC) <<https://www.unodc.org/unodc/en/index.html>> accessed 20 May 2024.

67 US Department of Justice, '9-28.000 - Principles of Federal Prosecution of Business Organizations' in *Justice Manual* (DOJ 2023) title 9 <<https://www.justice.gov/jm/jm-9-28000-principles-federal-prosecution-business-organizations>> accessed 20 May 2024.

68 ICC, *Rome Statute of the International Criminal Court* (ICC 2021) <<https://www.icc-cpi.int/sites/default/files/Publications/Rome-Statute.pdf>> accessed 20 May 2024.

69 Isroilov, Alimov and Toshev (n 3).

70 Garrett (n 25).

71 Tommaso (n 40).

Organization (INTERPOL) assists in coordinating law enforcement efforts across borders,<sup>72</sup> and the OECD develops guidelines and conventions to combat transnational crimes. The above bodies can foster judicial cooperation through regular meetings, joint training programs, and information-sharing platforms to establish networks of judges and prosecutors to facilitate communication and cooperation. They could offer joint training programs to enhance the skills and knowledge of judicial personnel and develop platforms for exchanging information and best practices among judicial bodies.

In short, to address the challenges of prosecuting transnational crimes, there is an urgent need for globally harmonised sanctions. Harmonisation involves aligning national laws and regulations to create a cohesive framework for prosecuting transnational crimes.

## 4 CONCLUSIONS

Confronting corporate criminal activities in developing countries like Vietnam requires a multi-faceted approach that addresses legal, regulatory, institutional, and cultural challenges. To start, there must be a reform of outdated laws to clearly define and penalise corporate crimes, including fraud, bribery, embezzlement, and environmental violations. Establishing or reinforcing independent regulatory agencies with clear mandates, adequate funding, and protection from political interference is crucial.

Harmonising local laws with international standards and best practices, such as those set by the OECD and UNODC, is also necessary. Promoting good corporate governance involves developing and enforcing codes of good corporate governance that outline ethical standards and practices, coupled with more training programs for corporate boards to ensure they understand their roles and responsibilities in preventing and addressing corporate crime.

Furthermore, companies should implement robust internal controls and compliance programs. Developing countries should participate in international cooperation to address transnational corporate crimes, leveraging treaties and agreements, and seek technical and financial assistance from international organisations and developed countries to build local capacity and strengthen regulatory frameworks. Besides, advocacy for necessary policy changes at national and international levels will further enhance the legal and regulatory environment against corporate crime.

At present, there is a loophole in addressing the criminal liability of transborder commercial legal entities, highlighting the urgent need for globally harmonised sanctions. Harmonisation involves aligning national laws and regulations to create a cohesive framework for prosecuting transnational crimes. Uniform laws across countries ensure that all commercial entities are held to the same standards, eliminating safe havens. A unified

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72 'Cooperation Agreements' (INTERPOL, 2024) <<https://www.interpol.int/en/Who-we-are/Legal-framework/Cooperation-agreements>> accessed 20 May 2024.

approach increases the risk for entities involved in transnational crimes, deterring future violations. Thus, harmonised sanctions facilitate better cooperation between countries, enabling efficient evidence collection and prosecution by pooling resources and expertise, which reduces the enforcement burden on individual countries.

The absence of a global regulatory body means that different countries may address these issues in inconsistent ways, creating loopholes for corporate criminals to exploit. A global legal framework would enable the classification and prosecution of criminal activities across transnational commercial entities, bridging gaps between different legal systems and improving the ability to address crimes that transcend national boundaries. Given the rise in transnational crimes involving commercial legal entities, a harmonised approach to sanctions and prosecution is essential. Aligning legal standards, boosting international cooperation, and strengthening enforcement mechanisms will help the international community combat these crimes and hold commercial entities accountable. The urgency of this call cannot be overstated, as the integrity of the global economic system and the rule of law depend on robust and unified actions against transnational criminal activities. Implementing harmonised sanctions will deter future violations and promote a fair and just international business environment.

## REFERENCES

1. Alldridge P, 'The Changing Face of Corporate Criminal Liability in England and Wales' (2017) 39 *Archives de Politique Criminelle* 163, doi:10.3917/apc.039.0163.
2. Arlen J, 'Prosecuting Beyond the Rule of Law: Corporate Mandates Imposed through Deferred Prosecution Agreements' (2016) 8(1) *Journal of Legal Analysis* 191, doi:10.1093/jla/law007.
3. Bernaz N, 'Corporate Criminal Liability under International Law: The *New TV SAL* and *Akhbar Beirut SAL*: Cases at the Special Tribunal for Lebanon' (2015) 13(2) *Journal of International Criminal Justice* 313, doi:10.1093/jicj/mqv014.
4. Bui S N, 'Criminal Liability of Commercial Legal Entity in Vietnamese Law' (2020) 498 *Advances in Social Science, Education and Humanities Research* 54, doi:10.2991/assehr.k.201205.010.
5. Clough J, 'Improving the Effectiveness of Corporate Criminal Liability: Old Challenges in a Transnational World' in Levy R and others (eds), *New Directions for Law in Australia: Essays in Contemporary Law Reform* (ANU Press 2017) 163.
6. Cunningham LA, 'Deferred Prosecutions and Corporate Governance: An Integrated Approach to Investigation and Reform' (2014) 66(1) *Florida Law Review* 1.
7. Datsiuk V and Nesterova I, 'Sustainability Issues of Business Security in Ukraine: Risk Factors of the Corporate Criminal Liability' (2020) 116 *Teisė* 120, doi:10.15388/Teise.2019.116.8.

8. Diamantis ME and Laufer WS, 'Prosecution and Punishment of Corporate Criminality' (2019) 15 Annual Review of Law and Social Science 453, doi:10.1146/annurev-lawsocsci-101317-031212.
9. Díez CGJ, 'Corporate Criminal Liability in the Twenty-First Century: Are all Corporations Equally Capable of Wrongdoing?' (2011) 41(1) Stetson Law Review 41.
10. Dinh TM, 'Provisions on Execution of Criminal Judgments against Commercial Legal Entities Committing a Crime' (2020) 11 Journal of Legal Studies - Hanoi Law University 59.
11. Do TP, 'Criminal Prosecution Against the Crime of Legal Entities in Vietnam' (2023) 39(1) VNU Journal of Science: Legal Studies 45, doi:10.25073/2588-1167/vnuls.4365.
12. Fairfax LM, 'On the Sufficiency of Corporate Regulation as an Alternative to Corporate Criminal Liability' (2011) 41(1) Stetson Law Review 117.
13. Garrett BL, 'International Corporate Prosecutions' in Brown D, Turner J and Weisse B (eds), *Comparative Criminal Procedure* (OUP 2018).
14. Gordillo RA, 'Weaknesses in Spanish Jurisprudence on the Criminal Liability of Legal Entities: Non-Imputability of Certain Legal Entities and Lack of Methodology When Applying the Transfer of Criminal Liability between Corporations' (2023) 3 *Eucrim* 293.
15. Henning PJ, 'Corporate Criminal Liability and the Potential for Rehabilitation' (2009) 46 *American Criminal Law Review* 1417.
16. Isroilov B, Alimov G and Toshev B, 'Prosecution of Legal Entities: History, Theory, Practice and Proposals' (2021) 527 *Advances in Social Science, Education and Humanities Research* 294, doi:10.2991/assehr.k.210322.127.
17. Jimenez GA, 'Corporate Criminal Liability: Toward a Compliance-Orientated Approach' (2019) 26(1) *Indiana Journal of Global Legal Studies* 353.
18. Kelly MJ and Moreno-Ocampo L, 'Modes of Criminal Liability under International Law' in Kelly MJ and Moreno-Ocampo L, *Prosecuting Corporations for Genocide* (OUP 2016) 73, doi:10.1093/acprof:oso/9780190238896.003.0004.
19. Kyriakakis J, 'Prosecuting Corporations for International Crimes: The Role for Domestic Criminal Law' in May L and Hoskins Z (eds), *International Criminal Law and Philosophy* (CUP 2009) 108.
20. Lambridis P, 'Corporate Accountability: Prosecuting Corporations for the Commission of International Crimes of Atrocity' (2021) 53(1) *NYU International Law and Politics* 144.
21. Lederman E, 'Corporate Criminal Liability: The Second Generation' (2016) 46(1) *Stetson Law Review* 71.
22. Long-Sutehall T, Sque M and Addington-Hall J, 'Secondary Analysis of Qualitative Data: A Valuable Method for Exploring Sensitive Issues with an Elusive Population?' (2010) 16(4) *Journal of Research in Nursing* 335, doi:10.1177/1744987110381553.

23. Mai DB, 'Supervising the Investigation of Criminal Cases Committed by Commercial Legal Entities under the Regulation of Vietnam Criminal Procedure Code' (2021) 12(3) Turkish Online Journal of Qualitative Inquiry (TOJQI) 3095.
24. Mrabure KO and Abhulimhen-Iyoha A, 'A Comparative Analysis of Corporate Criminal Liability in Nigeria and Other Jurisdictions' (2020) 11(2) Beijing Law Review 429, doi:10.4236/blr.2020.112027.
25. Nguyen H, Mai VT and Tran TH, 'The Criminal Liability of Commercial Legal Entities in the Current Criminal Code of Vietnam' (2022) 2(40) Law & Social Bonds 185, doi:10.36128/priw.vi40.398.
26. Nguyen TPH, 'A Scientific Understanding of Conditions for a Commercial Legal Entity to be Criminally Charged under the Current Criminal Code' (2022) 38(2) VNU Journal of Science: Legal Studies 60, doi:10.25073/2588-1167/vnuls.4454.
27. Pieth M and Ivory R, 'Emergence and Convergence: Corporate Criminal Liability Principles in Overview' in Pieth M and Ivory R (eds), *Corporate Criminal Liability: Emergence, Convergence, and Risk* (Ius Gentium: Comparative Perspectives on Law and Justice (IUSGENT, vol 9), Springer Dordrecht 2011) 3, doi:10.1007/978-94-007-0674-3\_1.
28. Podgor ES, 'Introduction: Corporate Criminal Liability 2.0' (2016) 46(1) Stetson Law Review 1.
29. Pouncy CRP, 'Reevaluating Corporate Criminal Responsibility: It's All About Power' (2011) 41(1) Stetson Law Review 97.
30. Sánchez González A, 'The Criminal Liability of Corporations: A Step Forward in the Implementation of the United Nations Guiding Principles on Business and Human Rights' (2019) 12(1) Mexican Law Review 91, doi:10.22201/ij.24485306e.2019.2.13640.
31. Smith SF, 'Corporate Criminal Liability: End it, Don't Mend it' (2022) 47(4) Journal of Corporation Law, 1089.
32. Teichmann F, Wittmann C and Boticiu S, 'Compliance as a form of Defense against Corporate Criminal Liability' (2023) 1 Journal of Economic Criminology 100004, doi:10.1016/j.jeconc.2023.100004.
33. Thompson RC, Ramasastry A and Taylor MB, 'Transnational Corporate Responsibility for the 21st Century: Translating Unocal: The Expanding Web of Liability for Business Entities Implicated in International Crimes' (2009) 40(4) George Washington International Law Review 841.
34. Toleubai AM and Kizdarbekova AS, 'The Concept of Commercial Legal Entities in Kazakhstan and Foreign Legislation' (2018) 9(7) Journal of Advanced Research in Law and Economics 2437, doi:10.14505//jarle.v9.7(37).31.
35. Tommaso AD, *Corporate Liability and International Criminal Law* (Routledge 2023) doi:10.4324/9781003390534.

36. Uhlmann DM, 'Deferred Prosecution and Non-Prosecution Agreements and the Erosion of Corporate Criminal Liability' (2013) 72(4) Maryland Law Review 1295.
37. Wagner RE, 'Corporate Criminal Prosecutions and the Exclusionary Rule' (2016) 68(4) Florida Law Review 1119.
38. Wattad MSA, 'Natural Persons, Legal Entities, and Corporate Criminal Liability under the Rome Statute' (2016) 20(2) UCLA Journal of International Law and Foreign Affairs 391.
39. Werle N, 'Prosecuting Corporate Crime when Firms are Too Big to Jail: Investigation, Deterrence, and Judicial Review' (2019) 128(5) The Yale Law Journal 1366.
40. Wilt H, 'Corporate Criminal Responsibility for International Crimes: Exploring the Possibilities' (2013) 12(1) Chinese Journal of International Law 43, doi:10.1093/chinesejil/jmt010.
41. Zerk J, *Corporate Liability for Gross Human Rights Abuses: Towards a Fairer and More Effective System of Domestic Law Remedies: A Report Prepared for the Office of the UN High Commissioner for Human Rights* (OHCHR 2012).

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## АНОТАЦІЯ УКРАЇНСЬКОЮ МОВОЮ

Оглядова стаття

### ПРОТИДІЯ ТРАНСНАЦІОНАЛЬНИМ КОРПОРАТИВНИМ ЗЛОЧИНАМ: ТЕРМІНОВІ ГЛОБАЛЬНІ ЗАХОДИ

**Хоат Ван Нгуєн**

#### АНОТАЦІЯ

**Вступ.** У сучасному взаємопов'язаному світі глобальна економіка має важливе значення через свій широкомасштабний вплив на різні аспекти життя. Вона надає країнам, що розвиваються, доступ до більших ринків і сприяє значним бізнес-операціям, що вимагають від комерційних юридичних осіб мати значний вплив і силу за межами національних кордонів, що призводить до зростання складних транснаціональних злочинів.

**Методи.** У цій якійсній систематичній оглядовій роботі здійснюється огляд, аналіз і синхронізація вторинних джерел, що стосуються притягання до кримінальної відповідальності комерційних юридичних осіб. Результатами дослідження було підтверджено правову основу для нагальної необхідності глобально гармонізованих санкцій, що дадуть змогу ефективно переслідувати комерційні юридичні особи, причетні до транснаціональних злочинів.

**Результати та висновки.** У роботі досліджується природа та обсяг цих правопорушень, виклики у їхньому застосуванні, а також переваги єдиного підходу. Оглядова стаття має на меті надати всебічну основу для міжнародної співпраці, щоб дотримуватись справедливості та доброчесності під час притягнення до кримінальної відповідальності комерційних юридичних осіб. Завдяки тематичним дослідженням, аналізу наявних правових структур і рекомендацій для майбутніх дій, у цьому дослідженні підкреслюється необхідність глобальної співпраці для встановлення гармонізованих санкцій та правових меж, що стосуються притягнення до кримінальної відповідальності між країнами. Крім того, дослідження містить деякі пропозиції щодо зміни стосовно зазначеного питання у світі, особливо в країнах, які ще не підписали міжнародні угоди з іншими країнами для вирішення проблеми з транскордонним притягненням до кримінальної відповідальності.

**Ключові слова:** гармонізовані санкції, кримінальна відповідальність, комерційні юридичні особи, транснаціональні злочини, правові межі.