Setting It in Stone

How the Lafarge Ruling in France Could Cement a New Standard for Corporate Complicity

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On 13 April 2026, France's Court of Cassation will rule on whether cement giant Lafarge financed terrorism and violated international sanctions by paying over USD 5 million to armed groups in Syria, including ISIS, to keep its factories running. Beyond the question of terrorist financing looms an even more consequential issue: whether the corporation is complicit in crimes against humanity.

Under French law, corporate complicity turns on knowledge and facilitation, not on a shared criminal purpose. This marks a clear departure from the ICC's "purpose" test, which requires proof that the accomplice intended to further the crime.

The stakes extend far beyond Lafarge. If that standard prevails, corporations cannot distance themselves from atrocities by invoking commercial motives. The case may crystallise a fault line between domestic and international standards of complicity – and reshape the legal parameters of operating in conflict zones.

Corporate criminal liability in French law

Article 121-2 of the French Criminal Code provides that "[l]egal persons… are criminally liable for offences committed on their behalf by their organs or representatives, as set out in Articles 121-4 and 121-7." Article 121-4 defines direct perpetration, while Article 121-7 governs complicity.

In its 7 September 2021 judgement (the "*Lafarge* Judgement"), the Court of Cassation first applied corporate complicity standards to grave international crimes. It answered unequivocally: "Article 121-7 of the Criminal Code makes no distinction according to the nature of the principal offence or the status of the accomplice. This analysis is intended to apply to both legal persons and natural persons." In one decisive sentence, the Court confirmed that corporations can be accomplices to crimes against humanity – a global landmark.

Article 121-7 defines an accomplice as anyone who "*knowingly,* by aiding or abetting, facilitates [the] preparation or commission [of a felony or misdemeanour]." Three elements must therefore be met under French law: first, the existence of a principal offence; second, the facilitation of its preparation or commission by aiding or abetting; and third, the knowledge that one's act facilitates that offence.

The second and third elements hinge on the *mens rea* – the mental element or "*élément moral*", particularly challenging for corporate actors where individual intent must be attributed collectively: does knowledge that one's actions facilitate a crime suffice, or must intent to advance it be shown?

French vs. international standard

In contrast to the French provision, the statutes of international criminal tribunals vary significantly in structure and wording. These nuances are not merely semantic. They have shaped diverging interpretations that now place the French "knowledge test" at odds with the International Criminal Court's (ICC) stricter "intent" requirement.

The ICC's high threshold

The International Criminal Court (ICC) has taken a clear, restrictive position: aiding and abetting requires specific intent. Under Article 25(3)(c) of the Rome Statute, an accomplice must act "for the purpose of facilitating" the crime. As the Trial Chamber clarified in *Bemba et al.*, mere awareness is insufficient; the accessory must actually desire the criminal outcome (*Bemba et al.*, para. 97). From a corporate accountabil-

ity perspective, this high evidentiary bar arguably operates as a "safe harbour" for corporations, allowing them to claim that their involvement in conflict zones was driven by commercial necessity rather than a shared criminal purpose.

The legacy of ad hoc tribunals

However, the landscape of international criminal law is more complex than the Rome Statute suggests. The ad hoc tribunals for the former Yugoslavia (ICTY) and Rwanda (ICTR) offer a more fragmented precedent. Their statutes distinguish between "complicity" and "aiding and abetting," leading to a long-standing debate over the requisite *mens rea*.

Scholars such as Boas, Bischoff, and Reid have highlighted how different chambers – in landmark cases like *Stakić, Semanza, Akayesu,* and *Krstić* – vacillated between requiring "intent" and accepting "knowledge." While "intent" raises the evidentiary bar, "knowledge" lowers the threshold for liability. Despite these diverging approaches, prominent experts like van Sliedregt argue that the "customary *mens rea*" for aiding and abetting remains knowledge, not purpose (see An Introduction to International Criminal Law and Procedure, 5th edn, p. 340; Boas, Bischoff and Reid, p. 296) – a view that supports a knowledge-based understanding of aiding and abetting in customary international law.

The Rwandan parallel to France

Building on this, several ICTR judgements (*Akayesu, Musema, Bagilishema,* and *Semanza*) drew on the Rwandan Criminal Code. This structural parallel reinforces the French Court's approach: by fusing "complicity" and "aiding and abetting" into the single concept of "knowingly aiding or abetting," both systems prioritise the act of objective facilitation over the specific intent of the accomplice.

It suggests that the French Court of Cassation's interpretation – which explicitly rejected the need for an accomplice to "approve" or "intend" the underlying crime – is not a legal outlier. By holding in the Lafarge Judgement that knowledge of the principal crime is sufficient, the French court situates its standard within that broader tradition of "knowing facilitation".

Applying the standard: Implications for Lafarge

If this "knowledge-only" standard governs the forthcoming decision on crimes against humanity, the prosecution's burden of proof is significantly lower than under the *ICC's Bemba et al.* standard. The focus shifts from the corporation's internal "commercial purpose" to its "operational awareness."

In its 2021 ruling, the Court already confirmed that Article 121-7 does not require the accomplice to intend or "approve" the underlying crime. It explicitly rejected the idea that the accomplice needs an "intention to commit" the crimes themselves (*Lafarge* Judgement, para. 66), stating that "it is sufficient that they have knowledge that the principal perpetrators are committing or about to commit such a crime" (*Lafarge* Judgement, para. 67).

The difference is decisive for the scope of corporate complicity: alignment with the criminal purpose is no longer a shield against liability.

Corporate liability in international criminal law and beyond

Efforts to codify corporate criminal liability at the international level reveal how consequential the choice of mental element can be. When drafters define complicity or aiding and abetting, the wording they select determines the reach of liability. Domestic approaches, including the French knowledge model, therefore offer important guidance for future international instruments.

The Malabo Protocol illustrates both the progress and the remaining uncertainty in this area. It expressly recognises corporate criminal liability and defines two mental elements: "corporate intention to commit an offence" and "corporate knowledge of the commission of an offence" (see Article 46C). Yet it does not clarify which standard applies to which mode of liability. Article 28N provides for both complicity (in sub-section 1) and for aiding and abetting (in sub-section 2), but it does not specify whether the courts must determine that the company meant for the crime to occur, or whether awareness that its conduct would facilitate the crime is sufficient. The allocation of the mental

element is thus deferred to judicial interpretation once the Protocol enters into force.

Despite this ambiguity, the Protocol marks a significant development. It places corporate criminal liability within an international framework and makes the knowledge–intent distinction explicit. That distinction will shape how broadly corporate actors may be held responsible.

Developments in domestic and transnational criminal law will continue to influence this design. The implications are practical as much as doctrinal. Parent companies can no longer rely on complex corporate structures as a barrier to liability for conduct abroad. The *Lafarge* proceedings show that payments within supply chains may trigger responsibility where decision-makers knew that their support facilitated international crimes. In high-risk environments, meaningful due diligence becomes a legal imperative rather than merely a matter of corporate reputation for companies seeking to insulate themselves from complicity charges.

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