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Business in Genocide – Understanding the how and why of corporate complicity in genocides

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Abstract

A holistic analysis of the implication of businesses in genocides that combines historical evidence with tentative theorization is so far unavailable. This paper aims to contribute to start to fill this gap and, ultimately, to start a process of preventive learning concerning private sector involvement in genocides. Based on a literature review, the paper identifies four main roles – victim, preventer, direct accomplice and indirect accomplice – and three main motivations – profit maximization, economic survival and institutional pragmatism – concerning corporate complicity in genocides. Subsequently, the paper explores the concrete roles that companies played in three of the most uncontested cases of corporate complicity in genocide: the Jewish, Kurdish and Darfurian genocides. The paper compares the ways in which scholars have analyzed the roles of companies in these genocidal processes and the motivations that drove companies to play this particular role. Based on these case illustrations, the most pertinent knowledge gap concerning corporate complicity in genocides is located in the absence of empirical data about the interests and motives driving corporate decision-making throughout genocides. The paper concludes that this knowledge gap needs to be addressed if we are to better understand and potentially prevent corporate complicity in genocide.

Companies take advantage of favorable business climates all the time. That's the nature of business. But when a company helps engineer genocide in order to create that favorable business environment, it should be called to account. (Kelly 2011:414)

Introduction

Businesses' support for and violation of human rights is a much debated topic. The call for papers for the *Global Business, Emerging Markets and Human Rights* conference poses: "Will the economic decline of Western democracies see a sell-out of their commitment to human rights? Or will we see a resurgence of business ethics, good global corporate leadership and the adoption of more shared value approaches?" This paper seeks to contribute to this seminal debate by engaging with the role of business in the systematic desecration of the most fundamental human right of all, the right to life. It explores the state of academic understanding of corporate complicity in genocides.

On the one hand, it is often argued that “given the typically disruptive effects of war on private investment and business activity, decision-makers have a vested interest in preventing and managing conflict, or at the very least, in minimizing those aspects of their own conduct which may exacerbate it” (Sherman 2001:7; see also Oetzel et al. 2005:3; Rieth and Zimmer 2004). Brück, Naudé and Verwimp (2013), for instance, reason that, by and large, commercial interactions between people are not zero-sum games, but based on mutual benefits. Violent conflict, especially of the extreme degree embodied in genocides, destroys markets, infrastructure, assets, and resources, and undermines trust, and as such trade and investment. Not in the least in the form of reputational damage of complicity and subsequent economical losses (Amunwa 2012:12; Jerbi and Clapham 2001:340; Kelly 2011:415; Sherman 2001:9; Tripathi 2010:133).

On the other hand, it is usually assumed that “corporate self-interest [is the] main driver” for businesses in all situations, including genocides (Sherman 2001:2); that “war, in general, is a money-making business” (Chella 2012:1); and that “corporations have neither bodies to be punished, nor souls to be condemned [and] therefore do as they like” (Mallinson in Chella 2012:295). Here, one can think of the role of the Dutch and British East India Companies, the world’s first multinationals, in Asia or in the slave trade (Chella 2012:61; Slim 2012:907; Stephens 2002:49); IBM’s complicity in the Holocaust (Black 2001; Stephens 2002); and the controversies surrounding multinational corporations in resource-rich developing countries (Chella 2012; Clapham and Jerbi 2001; Cooper 2002; Kaeb 2008; Rieth and Zimmer 2004).

Apart from these common-sense assumptions about the conduct of companies in genocides, a holistic and critical analysis of the involvement of commercial organizations in genocide that combines case-based evidence with tentative theorization is so far unavailable. This paper aims to start to fill this gap and, ultimately, to start a process of preventive learning for policy-makers as well as managers concerning private sector involvement in genocides. In doing so, the focus will be on the moral or the policy and legalistic aspects of the debate, but rather on the analytical basics: what do we actually know about business complicity in genocides? As such, business is approached agnostically, following Stephens (2002:46) adage that “the pursuit of profit is, by definition, an amoral goal – not necessarily immoral, but rather morally neutral.” The paper departs from the premise that the constructive or destructive involvement of companies in genocides does not follow from the nature of a company as such, but depends on decisions taken by people leading the business. As such, particular attention will be paid to the decision-making of entrepreneurs and managers in an attempt to pierce “the corporate veil” that obscures the agency of businesses (Van der Wilt 2004:994).

The paper consists of four parts. Section 2 offers a literature review on the paper’s core concepts: genocide, business and complicity. It also identifies the main theses in the literature about the potential roles and motivations of businesses confronted with genocide. In section 3, accounts of corporate complicity in three of the most uncontested cases of business complicity in genocide – the Jewish, Kurdish and Darfurian genocides – are discussed.ⁱⁱ Based on a tentative comparison

of the cases presented in section 3, section 4 concludes that *how* companies are involved in genocide is relatively well-known, if not always widely publicized, whereas *why* they ended up as accomplice to genocide is hardly ever explored from the perspective of these firms and their representatives themselves. In section 5, tentative policy implications of this conclusion are presented.

2. Corporate complicity in genocide: an overview of the literature

2.1. Genocide: the politics of naming and framing

A genocide is a mass killing “committed with the intent to destroy, in whole or in part, a national, ethnic, racial or religious group” (Kelly 2012:357). While the term ‘mass killing’ refers to categorization based on scale and quantity, ‘genocide’ refers to a classification grounded in intentionality and quality (Kelly 2012:357). Yet, while genocide is without exception discussed as a unique phenomenon that is different from all other human rights violations, “the crime of crimes” (Kelly 2012:339), the role of companies in genocides is hardly ever discussed separately from other mass killing and human rights violations. Indeed, the wealth of studies on corporate complicity in human rights abuses as a broader category obscures how little we know about the role of businesses in genocides specifically (Kaleck and Saage-Maass 2010:702-703, 707).

The debate on whether genocides should be defined based on intentions or on outcomesⁱⁱⁱ and whether they should be narrowly considered as physical extermination or can include political, socio-economic and cultural forms of destruction,^{iv} creates room for political contention. The consequences of framing an event as genocide, the ultimate atrocity, or as ‘merely’ a human rights violation or mass killing are substantial, also for businesses involved in the process, particularly concerning their vulnerability to reputational damage through ‘naming and shaming’ campaigns (Jacobs 2008:49). Corporate complicity in three of the most uncontested, physical, genocides the world has known will be discussed in section 3. Yet, such unchallenged genocides are actually exceptional; most cases are considered (a particular form of) genocide by some parties, but not by others.^v Unsurprisingly, companies involved in these situations prefer not to have the events they are associated with labeled as genocide.

2.2. Business: exposing some sectors and not others

The literature on corporate complicity in genocide is overwhelmingly concerned with arms trade and private security provision on the one hand and the extractive industries on the other. There is ample analysis on oil companies in Africa as well as Colombia, Ecuador, India and Indonesia (Huisman and Van Sliedrecht 2010; Martin-Ortega 2008:275; Sherman 2001:8; Stephens 2002:51-53; Rieth and Zimmer 2004:2; Watts 2005:390-401); corporations mining for diamonds and gold in Angola, Sierra Leone and the Democratic Republic of Congo (DRC) (Cooper 2002:936; Guidolin and La Ferrara 2007; Huisman and Van Sliedrecht 2010:804; Martin-Ortega 2008:275; Tripathi 2010:135); timber businesses in Liberia (Cooper 2002:949; Sherman 2001:6); and coltan miners in the DRC (Cooper 2002:951). Indeed, due to the specific characteristics of the extractive industries – asset specificity, long production cycles and valuable concession

agreements – they are much less likely to disengage from conflict zones and hence more probable to become involved in genocides, making them the default bogeyman sector for commentators concerned with corporate complicity (Sherman 2001:2).

For similar reasons, the lords of war who trade the weapons with which genocides are executed are also well-covered by the literature, for instance via the emblematic Van Kouwenhove and Van Anraat cases.^{vi} The role of mercenaries and private armies and security companies, often operating in the wake of multinationals active in the extractive industries, are also broadly discussed (Bray and Crockett 2012:1072; Guidolin and La Ferrara 2007:1980; Huisman and Van Sliedrecht 2010:805; Kaeb 2009:327; Percy 2012; Ramasastry and Thompson 2006:17; Sherman 2001:6; Watts 2005:378) – often with specific reference to Iraq and Afghanistan.

Much less attention is being paid to the productive and service sectors. Considering that the main role that companies are seen to play in genocides is that of financing, it is also remarkable that there is not more attention for the role of the banking sector – apart from the work of Bohoslavsky and Opgenhaffen (2010) touching on banks’ involvement in mass killings in Argentina and Colombia and the Holocaust and Weiss and Shamir’s (2012:167) discussion of the complicity of Israeli Banks in Israel’s mass killings in the Gaza Strip.

2.3. *Complicity: roles and motivations*

2.3.1. Roles: direct and indirect complicity

Four core roles of businesses in genocide (that can overlap and co-exist) can be deduced from the literature: preventer; victim; direct accomplice (facilitator and perpetrator); and indirect accomplice (Bernard 2012:882; Chella 2012:52-53; Kaeb 2008:332). Preventers might have striven to contribute to de-escalation, early warning or boycotting (Bray and Crockett 2012:1070; Oetzel et al. 2005; Rieth and Zimmer 2004). Businesses considered victims might have lost personnel or assets or been forced to evacuate. Direct and indirect complicity, however, seems more widespread, or at least more broadly discussed.

Direct complicity of businesses in genocide usually takes the form of facilitation and concerns the provision of finance, material, infrastructure, human resources and capacity and information/intelligence to the perpetrator of the genocide to the extent that the genocide is enabled and/or exacerbated (i.e. could not have been implemented the way it was without the support of the company in question). In short, when companies act as facilitators in genocide, they are “providing means with which wars are fought” (Tripathi 2010:133), they are, first and foremost, suppliers (Slim 2012:913). In Kelly’s (2012:340) words: “think of the foreign companies that supplied Rwanda with machetes to kill Tutsi’s or Saddam’s regime in Iraq with the components for mustard gas to slaughter Kurds.” This role is also often described as ‘aiding and abetting’ and can concern the processes of ordering, instigating, soliciting, inducing, inciting, joining, planning, preparing and conspiring (Chella 2012:23-25, 40). The main issue here is providing a genocidal group or regime with the resources and finances it needs to (buy the weapons and pay the manpower to) execute the genocide through trade, taxes, royalties and providing services or even through non-specified payments (Chella 2012; Cooper 2002; Martin-

Ortega 2008:274; Ramasastry and Thompson 2006:17; Tripathi 2010:133; Wennmann 2009:1129). Businesses might also facilitate genocide by providing the necessary means of transportation or infrastructure, for instance through cooperation with (para-)military or private security groups protecting the company's compounds or assets (such as mines or oil fields) (Chella 2012; Kaeb 2008:336; Khan 2005:2; Manby 2000:6; Moffatt 2009:27; Tripathi 2010:134). In such instances, providing training and/or equipment and sharing of intelligence are also forms of complicity (Bray and Crockett 2012:1077; Kaleck and Saage-Maass 2010:709; Martin-Ortega 2008:275).

There are no documented cases of companies featuring as the main perpetrator in registered genocide (Chella 2012:33; Kelly 2012:340). It should be kept in mind, however, that in genocide, "the 'accomplice' is often the real villain and the 'principal offender' a small cog in the machine" (Jacobson 2005:200). In some cases, the violations are not perpetrated *by* the businesses, but *on behalf* of them, such as can be argued in the case of the forced relocation of indigenous people for the benefit of extractive industries (Clapham and Jerbi 2001:341; Kelly 2012:360; Manby 2000:6), resulting in so-called 'armchair perpetrators' (Kyriakakis 2012:993) or "complicity by instigation" (Jacobson 2005:206).

Indirect complicity can fall in two categories: beneficial complicity – the company benefits from the genocide in some way, whether it was aware of or sympathetic to it or not – and silent complicity – the company does not contribute to or benefit from the genocide, but is aware of it and fails to distance itself from it (Jacobson 2005:202). Legal scholars have been very keen to emphasize that "silence is not neutrality" (Clapham and Jerbi 2001:347) but "an expression of moral support" (Wettstein 2010:40).

2.3.2. Motivations: profit maximization and economical survival

The motivations that businesses might have for choosing to play a specific role in genocide vary depending on the sector they operate in and, of course, the particular role they opted for. Moreover, in many situations businesses maintain they did not have any motivations one way or the other because their role was entirely unintentional. What is more, for obvious reasons – bad PR – very little is known about the decision-making processes of companies confronted with genocide processes and the interests and considerations driving them (Sherman 2001:9). Indeed, Sherman (2001:2) appropriately calls them a 'black box' for outsiders. It is very hard to analyze the concrete roles of business in genocide, not least because "both good and bad deeds often invisible, behind closed doors, discrete, away from the public eye, poorly documented" (Wennmann 2012:934).

The literature overwhelmingly suggests that companies' motivations for becoming directly involved in genocide should be sought in the realm of guaranteeing profit (Jacobson 2005:168; Martin-Ortega 2008:274; Moffatt 2009:43-44; Ramasastry and Thompson 2006:19); preventing losses (Chella 2012:64; Huisman and Van Sliedrecht 2010:818; Van Baar and Huisman 2012:8); maintaining a competitive advantage; and protecting investments and resource security (Jacobs 2008:44; Watts 2008:8).^{vii} Such 'neutral' profit-seeking behaviour is often seen, as exemplified

by Van der Wilt (2006:255), as a mitigating circumstance: “After all, it seems far-fetched – and it may not even be fair – to compare the diabolical minds who frame the extinction of a whole group, with businessmen whose prime interest is to make profits.” Yet, as Tripathi (2010:134) notes, this intuitive logic of seeking profit as the over-riding motivation for each and every act of a company might obfuscate other motivations or concerns leading company decision-making concerning genocide; as it stands, businesses are just “not expected to be driven by other considerations” (see also Forcese 2011:37).

Thus, the generic literature on why companies play the roles in genocides that they do almost exclusively refers to the motivation to make profit. I will now turn to an examination of the main accounts available for three concrete cases of corporate complicity in genocide in order to more empirically explore the claim that business involvement in genocides predominantly hinges on the profit motive.

3. Corporate complicity in genocides: what do they cases say?

3.1. The Kurdish genocide in Iraq

In 1987 and 1988 Saddam Hussein attacked the Kurdish community living in North Iraq with chemical and regular weapons in what is known as the Anfal campaign. This resulted in up to a 100,000 deaths, 182,000 ‘disappeared’ and the displacement of some 1.5 million people in what was an attempt to ‘purify’ the area and bring it under Arab influence (Human Rights Watch (HRW) 1993:5; Kelly 2013:363). The event has been recognized by both Iraqi and foreign courts and institutions as genocide (HRW 1993; Kelly 2013:360).

Various national and international businesses were directly complicit in this genocide. In particular, a wide range of European, predominantly German,^{viii} businesses supplied Hussein with the equipment and resources to implement his genocide (Hippler 1991; HRW 1993:43; Kelly 2013; Shenon 2002).^{ix} Kelly (2013:375) distinguishes between four concrete roles the companies played to enable the genocide:

The thirty-three companies are broken down into four categories: (1) companies that built Iraq’s chemical warfare agent facilities in whole or in part; (2) companies that supplied chemical warfare agent production or related materials; (3) companies that supplied chemical warfare agent precursors; and (4) companies that supplied lab equipment, pumps, or Teflon pipes, etc.

Starcevic (1990) notes that no less than “six Iraqi poison gas plants were built with German help, according to an independent report commissioned by German authorities.” Milhollin and Motz (2003) conclude that “the data reveals that firms in Germany and France outstripped all others in selling the most important thing – specialized chemical-industry equipment that is particularly useful for producing poison gas. Without this equipment, none of the other imports would have been of much use.”

Kelly’s (2013) account convincingly demonstrates that these businesses can be considered direct accomplices in the genocide because, first, they were aware of the genocidal intent of Hussein

vis-à-vis the Kurdish population and aware of the nature of the resources they sold him and, second that they nevertheless continued to sell these products without which the genocide could not have been executed. Kelly (2013:370) argues that “German corporations that supplied Saddam Hussein with components that could be used in a chemical weapons program knew that he was in fact doing exactly that. Iraq’s use of chemical weapons against Iran during the 1980-88 Iran-Iraq war was widely reported in the international press.”

While it is credibly shown that these companies were in fact complicit, that they must have known what was about to happen, the question of why they nevertheless continued to participate is somewhat unsatisfying answered by the standard reference to profit maximization. Kelly (2013:373) does not elaborately discuss the motivations for the companies to participate in genocide, but assumes their main interest is to “seek out profit, maximize its potential and then relentlessly pursue business.” This interpretation is, by default, shared by Marshall (1991) and Hippler (1991). While accounts of corporate complicity in the Kurdish genocide in Iraq provide welcome insights in how businesses can, seemingly quite intentionally, facilitate and enable genocide, they do not tell us much about the concrete decision-making processes driving the companies towards full-fledged involvement.

3.2. *The genocide on the Christian population of Darfur, Sudan*

In the Darfur region of Sudan, government-sponsored and directed *Janjaweed* militias have massacred some 80,000 people in the 2003-2005 period and displaced approximately 2 million from 1999 to 2006 (Clarke 2012).^x These militias explicitly targeted the Christian, ‘African’ (as opposed to the Muslim, ‘Arab’) population of the region subjugating them to forced displacement, scorched earth, massacres and systematic rape (Bannon et al. 2005:3). The ethnic targeting of the campaigns as well as their scope have led to a broad consensus among scholars that the events in Darfur can be considered a genocide (Bannon et al. 2005:6; Jacobs 2008:45; Kelly 2011:417-419; Morse 2005). Forcese (2011:42) describes how “Islamization of Christian and animist regions of Southern Sudan” went hand-in-hand with the ‘development’ of the oil fields and quotes a former employee of an international oil company saying that “when oil profits start flowing into government hands, Christians in the South of Sudan will be largely eliminated within two years.”

Considering business complicity, scholars’ main attention is on the Canadian companies Talisman Energy Inc. and Arakis Energy Corporation (Chella 2012:6; Forcese 2011; Huisman and Van Sliedrecht 2010; Jacobs 2008; Kelly 2011:428; Morse 2005; Rieth and Zimmer 2004:1; Watts 2005:390); the Swedish company Lundin (Clarke 2012; Morse 2005); and the China National Petroleum Corporation (CNPC) that works through its subsidiary PetroChina^{xi} and its Sudanese partner, the Greater Nile Petroleum Operating Company (GNPOC) (Jacobs 2008; Kelly 2011; Morse 2005).^{xii} These businesses are involved in, or have instigated, the ethnic cleansing of their oil extraction areas; the “forced displacement of non-Muslim Sudanese from its oil extraction area in South Sudan, as well as the resultant extrajudicial killings, torture, rape and physical destruction of civilian homes” (Kaeb 2008:342).

Most commentators describe these companies' involvement in terms of direct complicity; "assisting in the commission of genocide" (Kelly 2011:414).^{xiii} Kelly (2011:435) aptly summarizes: the *Janjaweed* committed; Khartoum orchestrated; and CNPC – like other oil companies – was complicit. This complicity most importantly materializes through funding genocide by means of providing revenue to the Sudanese government (Bannon et al. 2005:9; Forcese 2011:41; Kelly 2011:417).^{xiv} Direct complicity was also apparent in "the provision by companies of financial, logistical, material or infrastructural assistance to human-rights abusing troops" (Forcese 2011:37; see also Jacobs 2008:46; Morse 2005). Forcese (2011:41-42) documents how Lundin "serves broken military trucks, provides electricity lines to their barracks and even pipes water to the army camps" and how "airfields and roads built, used and sometimes operated by the oil company have been employed by the Sudanese military in attack against civilian population." CNPC also had "contracts with Khartoum to secure their oil operations and allow Sudanese military forces to use the companies' air strips, landing pads and mechanical support" (Kelly 2011:422). Such direct complicity thus is closely related to companies (self-chosen) dependence on state(-sponsored) troops for their security (Forcese 2011:37; Morse 2005). With regard to Talisman, Jacobs (2008:46) demonstrates that the company

Hired its own military advisors to coordinate military strategy with the Government. Based upon their joint strategy, Government troops and allied militia engaged in an ethnic cleansing operation to execute, torture, rape or displace non-Muslim, African Sudanese civilian population from areas that are near the pipeline or where Talisman wanted to drill.

Morse (2005) adds that the company "is now in court for allegedly aiding Sudan government forces in blowing up a church and killing church leaders, in order to clear the land for pipelines and drilling." Concerning CNPC, Kelly (2011:423) states that "China trains Sudanese military pilots who then strafe villages to clear land [...], it is also the main supplier of weapons used in the genocide."^{xv}

As with the Kurdish genocide, commentators on the Darfur genocide seem relatively uninterested in the motivations for businesses' complicity. Or, rather, they assume that the usual motivation of 'material self-interest,' making profit and protecting investments, explains business behaviour in the face of genocide (Forcese 2011:37). Kelly (2011:419) leaves no doubt about the matter, but does locate a potential shift from maximizing profit to minimizing losses: "The figures [...] starkly demonstrate why the genocide was carried out – money. This initial motive, once a company is invested, can migrate to allow the commission of crimes like genocide and, over time, more emphasis can come to be placed on mitigating losses rather than pushing for more gains." However, the context of the extractive industry in which the Darfur genocide must be placed, encourages analysts to slightly nuance this 'pure profit' perspective. Jacobs (2008:44), for instance, suggests that for CNPC the main driver for involvement in Darfur is not so much profit, but 'resource security:' "the idea is that their home base needs some particular resource or raw material and the point of their overseas operation is to secure that resource."

3.3. *The Holocaust*

The Holocaust does not require any further introduction or elucidation here. The private sector played a significant role in the implementation of Hitler's envisioned extermination of the Jewish people. 'Fortunate' corporations were so-called '*W-Betriebs*,' businesses important for the war effort and hence enjoying privileges such as the use of forced labor and the acquisition of confiscated Jewish businesses (Stallbaumer 1999; Van Baar and Huisman 2012:8; Wiesen 1999).^{xvi}

In particular, four businesses were held accountable for their share in the Jewish genocide in the trials known as the Farben case; the Krupp case; the Flick case and the, most infamous, Zyklon B case (Baars 2006:115-116; Jacobson 2005; Skinner 2008; Vest 2010:854). The Farben, Krupp and Flick cases concerned German industrialists – the former a chemical and pharmaceutical business; the latter steel and coal businesses– that facilitated Hitler's war efforts, which in turn enabled the genocide (Jacobson 2005:178, 186, 189; Slim 2012:912; Stallbaumer 1999; Stephens 2002:34; Wiesen 1999). These businesses were charged with “participating in wars of aggression, in enslavement, in plunder and spoliation of property, and in a common plan or conspiracy to commit crimes against peace” (Jacobson 2005:186). Several authors also highlight the role of businesses in other sectors, such as those trading the gold stolen from the Nazi's victims (Hayes 1998:1; Kyriakakis 2012:993; Wiesen 1999) and the German banking and insurance sector (Hayes 1998:1; Van Baar and Huisman 2012:3). Van Baar and Huisman (2012) present a case-study about the German corporation Topf and Söhne that built cremation ovens and ventilation systems for the gas chambers in Nazi concentration and extermination camps. “By 1943, almost every major private firm in Germany was among the exploiters” (Hayes 1998:2); they all had “profited from the use of forced and slave labor, the ‘Aryanization’ of Jewish property, and the plundering of companies in Nazi-occupied Europe” (Wiesen 1999; see also Hayes 1998; Stallbaumer 1999). The roles these businesses played in the Holocaust fall in the category of direct complicity; the businesses were seen to be used as “instruments of economic mobilization for war” by the main perpetrator (Jacobson 2005:171). Where the Farben, Krupp and Flick industrialists were held responsible for the broader war effort, i.e. war crimes, Tesch's company was considered complicit in genocide, as it had directly delivered the main resource used to execute this genocide.

With regard to the Holocaust, the main interests of businesses to get engaged in genocide is considered to be, again, to do what businesses do best: make profit (Jacobson 2005:168, 183). “Farben acted to enrich itself as part of a general plan to dominate the industries involved” (Jacobson 2005:183). According to Stallbaumer (1999:3), Flick was “moved primarily by business’ as well, his interest being based on “corporate expansion plans” and an urge to protect “his growing market position.” Hayes (1998:18) agrees that business self-interest was the “over-riding motive,” but argues that such business self-interest often concerned survival rather than profit maximization. He states that “the point is not, as is so often assumed, that German corporations grew rich through participation in the Holocaust, since in general, they did not. The point is that they took what they could get and became part of it anyway.” (Hayes 1998:2) As such, ideological motivations for business complicity are mostly refuted in the literature:

Germany's businesses did not "march together like infantry men, into the conference room to do battle with the Jews" (Hilberg 1962 in Stallbaumer 1999:2) and generally were not fanatical Nazis (Van Baar and Huisman 2012:6-7; see also Stallbaumer, 1999).

Apart from the rather one-sided interests generated by either amoral profit seeking or moral zeal, scholars on the Holocaust have also identified more nuanced and multi-faceted drivers of business complicity in genocide. Van Baar and Huisman's (2012) article dedicated to the German business of *Topf and Söhne*, for instance, pays attention to inter-company dynamics that might generate business complicity: competition between sub-units; corporate culture; and normalization and neutralization. They suggest that "while at I.G. Farben, competition *between* corporations was an important explanation for their involvement in the Holocaust, at Topf, it was mostly competition *within* the corporation that explains their involvement" (Van Baar and Huisman 2012:10). Van Baar and Huisman (2012:9) show in great detail how professional enthusiasm, more than moral or profit considerations, determined the company's drive to participate, and participate with dedication, in the genocide on the Jews: "striving for innovation and technical perfection seems to be the most prominent motivation for Topf & Söhne." It was the company, rather than the SS, that took the initiative to 'improve' the ovens and ventilation systems (Van Baar and Huisman 2012:9-10). This reading resonates with the broader literature on business culture where the "bureaucratic nature of organizations and the emphasis on goal attainment, along with the division of labour [can] make it unnecessary for employees to think beyond what they are told to do, causing managers to be solely concerned with reaching targets, and victimization disappears behind cost and benefit analysis" (Van Baar and Huisman 2012:2; see also Brants 2007:315; Kaleck and Saage-Maass 2010).

It is not just the institutional setting within companies, however, that determined their motivations to join the Holocaust, but also to the wider socio-political, institutional context. Scholars bring in the significance of potential economic (and perhaps even non-economic) costs of disregarding chains of command (Kelly 2011:349). Not "following the leaders" or lack of "compliance with the German government's mandate" might have had dire consequences in the totalitarian setting of the Third Reich (Jacobson 2005:181, 189; Van Baar and Huisman 2012:1, 8). The Nuremberg Tribunal found that "a corporation is not liable for merely operating in a criminal system it finds itself in" (Jacobson 2005:211). While government control and regulation of the private sector is usually considered a restraining variable when it comes to corporate complicity, in the case of the Holocaust it instead features as an exacerbating one (Van Baar and Huisman 2012:12).

Academic debates about the extent of state control and corporate freedom under the Nazi regime remain open-ended (Hayes 2008). Just as Van Baar and Huisman (2012:3) remind us that "the regime had almost total control over the supply of raw materials and the purchase of produce in an autarkic, closed economy," other case-studies of companies involved in the genocide of genocides stress that firms were not "forced into complicity" nor "not bribed or bullied" (Stallbaumer 1999:2; Van Baar and Huisman 2012:8-9). Ultimately, however, rather than one-

dimensional greed, it appears to have been pragmatism in light of institutional settings prevailing both internally and externally to the companies in question that determined their decision-making vis-à-vis the Holocaust. Hayes (1998:17) emphasizes that companies' motives and interests developed throughout this period and sketches a continuum from initial rejection to an eventual conviction that there were no alternatives and, subsequently, a rush to get their share (see also Van Baar and Huisman 2012:3). He concludes: "their reservations were phrased in pragmatic rather than principal terms, hence abandoned when the Nazi regime restructured the labor market in a way such that the firm's choice appeared to be between participating or letting the benefits of doing so accrue to others" (Hayes 1998:16).

4. Conclusions

'Business in genocide' is a feature of all genocides. The cases considered in this paper illustrated that in genocides, business complicity manifests itself through providing weapons (in the Kurdish case) and/or providing necessary facilities and finances (the Darfur and Holocaust cases) and underlines that businesses were mostly aware of, or could and hence should reasonably have known about, the ongoing genocide. With regard to the role private actors played in the genocides discussed, the literature's premise that companies tend to facilitate rather than perpetrate genocide was confirmed. This means that the belief that it is not logical for business to become engaged in genocide because it is bad for their business is not only telling just half of the story – in many cases, complicity *can* be good for business – but also misleading. Businesses, apparently, hardly ever *commit* or *perpetrate* genocide; their role consists of *complicity* (either direct or indirect). This also means that their motivation need not be 'positive' or active, i.e. to commit genocide and destroy a group of people, which is indeed a rather peculiar business objective. As an accomplice, businesses merely need to have the 'negative' or passive incentive to not intervene or disengage even while knowing what is going on.^{xvii}

Here, however, it should be noted that the accounts of the three genocides discussed focussed mainly on large firms (in the cases of the Kurds and Darfur multinational enterprises). This mirrors a bias in the broader literature on corporate complicity in human rights violations towards 'big' business' (Chella 2012:22-24; Voillat 2012:1072). Usually, little is said about the role of national businesses or local entrepreneurs in genocidal processes – that might or might not be more likely to be actual perpetration. Indeed, much of the corporate complicity in human rights violations concerns "fluid networks of very small businesses operating at the margins of legality" (Sherman 2001:6) and the nature of ground operations (multinational versus local firms) importantly influence firm decision-making (Sherman 2001:5) – and there is no reason to assume this would be different concerning genocides. Van Baar and Huisman (2012:8), for instance, suggest that there are important differences between family companies and multinationals when it comes to motivations to get involved in genocide. With regard to the Holocaust, Hayes (1998:5) is convinced that

Envy and greed of this sort found their home to a much greater extent among the Gentile participants in those middle ranges of economic life where Jews remained conspicuous as competitors and middlemen, that is to say, among mostly self-employed shopkeepers, artisans, peasant proprietors, and professionals, especially medical doctors [than in big businesses and corporations].

Similarly, and as particularly evident in the Sudanese case, a business' governance and investment structure (partnership or sub-contractor; sole operator or consortium), including its relations with the (home and host) government, crucially affect the ways companies might be involved in genocides (Sherman 2001:5). This last issue is also stressed by Watts (2008:10), who, with reference to firms operating in the extractive industries, notes that "all African governments have organized their oil sectors through state oil companies that have some forms of collaborative venture with the major transnational oil companies (customarily operated through oil leases and joint memoranda of understanding)." Moreover, the organizational structures of businesses operating in areas where genocides are likely are often purposefully vague (Guidolin and La Ferrara 2007:1980; Stephens 2002:54; Watts 2005:387).

While the variations in roles played were thus not particularly remarkable across cases – in all instances, complicity was mainly in the form of facilitation, there were important differences between the cases when regarding the motives for business complicity. Considering the general debates on business complicity in genocide and with regard to the Kurdish and Darfur genocides, while there is ample attention for the 'how,' the 'why' of business complicity is assumed rather than critically explored. The pursuit of profit is considered the default driver of all business behaviour no matter the circumstances. The lack of insights about why businesses are involved in genocide in the first place and why, subsequently, they opt for specific forms and degrees of complicity is partly a result of the fact that the perspective of the business in question is not solicited – and where it is, is hardly received. While it might for various reasons be very difficult to get to internal business motivations and reflections, these nevertheless seem essential to take the next step in understanding how and why businesses enable genocide. While "simply examining the ambitions, intentions, or state of mind of individual civilian superiors still does not put the crimes they incite or facilitate completely in context," as Brants (2007:311) rightfully warns, it would go a long way to both better understanding and potentially limiting business complicity in genocide.

The studies on corporate complicity in the Holocaust, however, provide a useful exception. This remarkable difference in the depth of analyses of the motivations for complicity between the Holocaust case on the one hand and the more Kurdish and Darfurian cases on the other suggests that the longer ago the genocide in question, the more likely the theme of business motivation will be picked up – not in the least because the (legal, socio-economic and hence economic) consequences for businesses will diminish and their willingness to reflect on their previous conduct presumably increases. In addition, what sets the overall analysis of business complicity in the Holocaust apart from other cases of business complicity in genocide is the contributions of historians and criminologists that have added to the overwhelmingly legal approach to the topic and have linked business complicity in genocide to studies on 'normal' corporate crime, allowing

for a more nuanced and institutional analyses of drivers for corporate decision-making in genocidal contexts (Brants 2007:309-310; Van Baar and Huisman 2012:4). This is a welcome shift in perspective considering that “the current debate on corporate complicity is heavily dominated by the legalistic point of view” (Wettstein 2010: 35). In Brants (2007:321) words: the “legal preoccupation with individual culpability [...] should not blind criminologists to the organizational context in which human actors operate.” More attention for the motives driving business complicity and a reconsideration of the dialectic between structure and agency in the question of business complicity in genocide might also allow for a less rigidly legal understanding of the relations between perpetrators – usually state actors – and accomplices – often companies – in genocide.

5. Policy reflections

So what should and can we ask from businesses that are confronted with genocides? There are ample guidelines for business to avoid complicity in human rights violations and genocide. Oetzel et al. (2005:14-15) list firms can leave; withhold payments that might support violence; publicly condemn violence; provide support to peacekeeping missions; lobby the government; and explicitly support the rule of law. Rieth and Zimmer (2004:9) stress that even without such explicit policies, businesses are a major contributor to the prevention of genocides if they strengthen equitable economies and build human capital (see also Bray and Crockett 2012:1070).

A shift from an exclusively legal focus on liability to a more comprehensive perspective revolving around responsibility could further open up the debate on what businesses can and should do in the face of genocidal events, rather than exclusively slamming business for what they should not do. Commentators should take seriously the options of businesses in genocidal settings beyond the usual panacea of disengagement. Businesses have long argued that withdrawal has human security costs as well (Kelly 2011:433; Manby 2000:7; Weiss and Shamir 2012:160). Popper (2007:28) writes that, in the case of an international engineering company, “all stakeholders advised [...] against withdrawing from the country. To do so, they said, would undermine the fragile reconstruction process and deny the country much-needed infrastructure.” Weiss and Shamir (2012) discuss the case of Israeli utility service providers in the Gaza Strip that were pressured by the Israeli government to stop their provision as part of the government’s sanction regime. In this case, scholars argued, disengagement rather than continuation of involvement would constitute a human rights violation.

Ultimately, however, to be able to help businesses steer away from complicity in the future, we need to better understand what drove them towards such complicity in the past. In this chapter, we have demonstrated that further research business complicity in genocide would do well to explore the ‘why’ of such complicity rather than merely the ‘how.’ It is an understanding of the motivations and considerations of companies, more than the technical documentation of their behaviour that will yield the insights needed to work towards prevention.

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Endnotes

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ⁱⁱ These cases feature as illustrates and are not full-fledged case-studies as the literature review underlying them is far from exhaustive.

ⁱⁱⁱ The very salience and uniqueness of genocides suggests a consensus on what does and does not constitute as genocide. Such consensus is, however, a fiction among commentators and policy-makers concerned with political categorization as much as among academics seeking more theoretical conceptualizations. As said, genocide is defined by its quality, its underlying intent. Putting the intentions of the perpetrators centre stage, however, has not restrained an increasing group of scholars and commentators to argue that genocides can also occur unintended, that national, ethical, racial or religious groups might be destroyed in whole or in part as a side-effect of a policy implemented with another purpose. In such a case, the perpetrators did not aim to eradicate a people, but they also did not mind (enough) if this occurred in the process of their pursuit of other aims. Conceptually, such unintended but de facto genocide seems a contradiction in terms. However, the expanding body of legal studies on corporate complicity in genocide shows that the ‘intent clause’ is a convenient legal loophole for alleged perpetrators who might not deny that the destruction of a people took place, or even that they knew it was taking place, but would argue that it had never been their intention (Sherman 2001:2 Tripathi 2010:134; Wettsetin 2010:35). As Kelly (2011:435) remarks concerning the genocide in Darfur: “CNPC [the Chinese oil company operating in the region] would argue that its specific intent was to make money – killing people was merely an antecedent by-product.”

^{iv} Controversies also surround the meaning of the phrase ‘destroy’ in the official definition of genocide. Does such destruction necessarily have to be physical or can it be socio-economical, political or cultural? Could a national, ethical, racial or religious group not be destroyed even if (some or most) of its individual members survive? Scholars have increasingly distinguished between different types of genocide, such as politicide or gendercide (Stokes and Gabriel 2010:463).

^v Examples of such discursive battles over the categorization of companies’ involvement in human rights violations that might be considered genocide are the conduct of oil companies in Nigeria, mining corporations in Guatemala and construction businesses in Palestine.

With regard to the conduct of oil companies such as Shell and Chevron in Nigeria, several authors, such as Manby (2000) frame the developments in Nigeria’s Ogoni region as cultural genocide. He stresses the small size of the Ogoni group and the dependence of their ethnic identity and physical survival on the land that is now taken away from them at the behest of the oil companies (Manby 2000:5). Watts (2008:5, 13-15) notes the violence against the Ogoni people sponsored by oil multinationals has an ethnic component and notes that local indigenous groups feel “cut off from being a nation.” Yusuf (2008:80) emphasizes the “political marginalization” of the Ogoni people and the undermining of their “cultural rights and, by extension, their right to development.” The African Commission also ruled that “pollution and environmental degradation to a level humanly unacceptable’ amounted to a violation to the right to live of the Ogoni society as a whole,” leaning towards associations with the partial destruction of an ethnic group (Yusuf 2008:95).

The involvement of gold mining corporations such as Goldcorp, Nichromet Extractions, Guatemala, Hudbay Minerals and BHP Billiton in Guatemala touches on similar, if less well-known contestations. As with the oil production in Nigeria, the mining in Guatemala threatens the livelihoods and lives of indigenous communities. Van de Sandt’s (2009) analysis implies that the forced displacement of these communities might constitute a cultural genocide. He argues that “the resettlement of indigenous peoples with traditional land-based modes of production is particularly complex and may have significant adverse impacts on their identity and *cultural survival*” (Van de Sandt 2009:25, my italics). Nolin and Stephens (2010:51) corroborate that “mining threatens indigenous ways of life through pollution, the destruction of sacred sites and landscapes, and the imposition of Western values.” Hurtado (2013) goes much further and concludes that “in many ways, land grabbing is a new form of genocide.” She argues that “hundreds of families have been displaced; they do not have land on which to produce or live and they are denied their cultural and community identity. These are conditions that lead to their physical destruction” (Hurtado 2013). The mining companies involved seemingly have a stake in denying the ties of these communities to their land and, by extension, the basis for claims of cultural genocide. They publicly join the debate and state that “landowners

do not have a strong cultural attachment” to their lands and refuting that these are indigenous communities with a “traditional land-based mode of production” (Van de Sandt 2009:103). Canadian representatives have also explicitly denied the existence and rights of the indigenous people in question and referred to them as “occupiers, squatters [and] rebels” illegitimately claiming ownership to “barren lands, depopulated and of no cultural significance” (Nolin and Stephens 2010:49).

In Palestine, several cases have been made against companies facilitating Israeli occupation, most notably those against the producer of the Caterpillar bulldozers that killed protesters seeking to prevent the unlawful destruction of homes in the Gaza Strip and have contributed to building the Separation Wall ruled illegal by the International Court of Justice (Baars 2006; Skinner 2008:321; War on Want 2006); the Green Park International Inc. and Green Mountain International Inc. companies constructing illegal settlements on the West Bank (Moffatt 2009); the transportation companies Assa Abloy and Veolia facilitating transportation to these illegal settlements (Moffatt 2009; War on Want 2006); and British supermarkets (Tesco, Waitrose and Sainsbury’s) that sell produce grown in Israeli settlements under the label of ‘Made in Israel’, “concealing the fact that they are actually made in territories under military occupation” (War on Want 2006:2). These cases are usually portrayed as corporate complicity in war crimes (Baars 2006:97; Moffatt 2009:31) rather than genocide. However, many of the arguments offered seem to add up to an implicit accusation of political genocide, the deliberate undermining of a Palestinian state and nation with land annexation as a core strategy. Moffatt (2009:24) describes that the Separation Wall at the same time marginalizes Palestinian political identity and annexes yet more land to the state of Israel. War on Want (2006:3) concludes: “the companies in question are helping to create ‘facts on the ground’ which will preclude any possibility of a viable Palestinian state.”

^{vi} Guus van Kouwenhoven was accused of trading with a genocidal regime in Liberia and Sierra Leone (Chella 2012:1; Huisman and Van Sliedrecht 2010:805; Kaleck and Saage-Maass 2010:708; Tripathi 2010:139; Wennmann 2012:913) and Frans Van Anraat provided Saddam Hussein with the weapons to execute the genocide on Iraq’s Kurds (Huisman and Van Sliedrecht 2010:805; Tripathi 2010:132; Van der Wilt 2006:2; Vest 2010:855). Other cases, such as the arms trade between UK and Sierra Leone via Air Foyle are also mentioned in the literature (Cooper 2002:907).

^{vii} Guidolin and La Ferrara (2007:1978-1979) describe how the context of violent conflict often preceding and enabling genocide can even have explicit benefits for companies, again predominantly in the extractive industries, as it installs entry barriers and thus limits opposition; ensures that the bargaining power of conflict parties is low due to their need to immediate revenue to sustain the conflict which lowers licensing costs; and transparency is lower and profitable informal deals thus more likely. Bray and Crockett (2012:1072) also note that post-conflict countries constitute “zones of untapped potential and pent-up consumer demand,” suggesting some interest in the end of conflict and genocide, but also, more fundamentally, of their occurrence in the first place.

^{viii} The historical parallels are not lost on Kelly. He notes: these companies are “the same German industry that supplied Himmler’s S.S. with the poison gas to eliminate millions of Jews at Auschwitz” (Kelly 2013:349).

^{ix} Kelly (2013:375-379) provides a full list of companies.

^x Figures are contested. Morse (2005) mentions 2 million dead and 4 million displaced.

^{xi} Because the CNPC is a public company, its involvement goes beyond mere *corporate* complicity. Kelly (2011: 423) describes its involvement in the Sudanese genocide as an ‘iron triangle:’ “the international *political power* of the government in Beijing welded together with the *economic power* of the CNPC and the *military power* of the PLA.” He maintains, however, that, of these three components, the “CNPC is most influential on the ground” (Kelly 2011:424)

^{xii} Bannon et al. (2005:18-19) provide a comprehensive list of oil companies implicated in the Darfur genocide.

^{xiii} This direct complicity is even more direct as all companies work together with the government’s own Sudan National Oil Company, Sudapet, in the Greater Nile Project (Jacobs 2008).

^{xiv} Many observers argue a clear link can be demonstrated between “oil revenue and purchase of weapons by the Sudanese government” (Bannon et al. 2005:13). Bannon et al. (2005:35), for instance, give the example of the Russian company Tanateft that “indicated a willingness to be part of weapons for oil agreements.” Forcece (2011:43) quotes HRW (1998) to show that arms deals in the name of Malaysian and Chinese oil companies have taken place “under the guise of petroleum exploration equipment” and in exchange for concessions for oil explorations.

^{xv} With regard to the involvement of Chinese companies in the genocide in Darfur, Wettstein (2010:33) identifies a form of indirect complicity as well. He argues that the multinational companies that made money from the Beijing Olympics in 2008 implicitly endorsed and even further enabled the genocide in Darfur. Bannon et al. (2005:15-16) make a similar case for the companies present in Sudan and suggests that “the presence of these major energy companies also arguably legitimizes the government of Sudan and, in turn, its acts in Darfur” (see also Popper 2007:27).

^{xvi} The post-World War II Nuremberg Trials are still a benchmark in today’s jurisdiction considering business complicity in human rights violations and war crimes (Huisman and Van Sliedrecht 2010:804; Jacobson 2005:170; Kelly 2012:339, 355; Skinner 2008; Tripathi 2010:138).

^{xvii} In fact, the logic might be reversed in some cases. Van Baar and Huisman (2012:13), for instance, argue that it was exactly because Topf and Söhne did *not* share the genocidal intent of the Nazis that they could continue their everyday business without qualms: “During the war, the corporation provided a product and service that was desired by the government and thereby contributed to a public policy goal: the extermination of the Jews. Because this was not a goal of Topf & Söhne, this kind of involvement bears resemblance to the way professionals such as jurists, doctors, police officers and engineers collaborated to the *Endlösung* without being confronted with moral doubts, or effectively coping with such qualms.” This reading might come closer to companies self-understanding as a ‘neutral’ actor as reflected in statements such as “unfortunately, the world’s oil and gas reserves are not necessarily located in democracies, as a glance at a map shows” (a representative of Total in Kaeb 2008:341-342) and “Caterpillar merely sold bulldozers. The IDF [Israeli Defence Forces] used them” (Baars 2006:128).