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The Duty to Protect: Corporate Complicity, Political Responsibility, and Human Rights Advocacy

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ABSTRACT. Recent years have heralded increasing attention to the role of multinational corporations in regard to human rights violations. The concept of complicity has been of particular interest in this regard. This article explores the conceptual differences between silent complicity in particular and other, more ''conventional'' forms of complicity. Despite their far-reaching normative implications, these differences are often overlooked. Rather than being connected to specific actions as is the case for other forms of complicity, the concept of silent complicity is tied to the identity, or the moral stature of the accomplice. More specifically, it helps us expose multinational corporations in positions of political authority. Political authority breeds political responsibility. Thus, corporate responsibility in regard to human rights may go beyond ''doing no harm'' and include a positive obligation to protect. Making sense of this duty leads to a discussion of the scope and limits of legitimate human rights advocacy by corporations.

KEY WORDS: Business and Human Rights, complicity, corporate social responsibility, duty to protect, human rights, human rights advocacy, silent complicity

Introduction: changing patterns of influence and the increasing significance of corporate complicity

The 2008 Olympic Games will be remembered not only for its monumental opening ceremony or Michael Phelps's gold medals, but also for the controversies surrounding the country that was hosting it – China. For many an observer, bringing the Games to a country that engages in systematic violations of human rights and whose questionable ties to Sudan helped fuel and sustain what many have called genocide against the Christian population in the Darfur region was a betrayal of the Olympic spirit. It did not take long for the Beijing games to be brand-marked as ''Genocide Olympics.''

The Chinese government and the International Olympic Committee were not the only ones who took some heat from the global public in the run-up to the Games. Interestingly, much of the criticism was directed at the corporate sponsors – some of the world's largest multinational companies, most of them headquartered in Europe and the U.S. The rationale behind this criticism was evident: by financing the Olympic Games and benefiting from their tremendous publicity, these companies indirectly facilitated the human rights violations committed by the Chinese government and implicitly condoned its support of the genocide in Darfur. In other words, those companies were not accused of committing human rights violations themselves, but of being complicit in the violation of human rights committed by someone else, namely, the Chinese government and indirectly the regime in Khartoum. The activist group ''Dream for Darfur,''[1] which spearheaded the campaign and protest against the corporate sponsors commented on the issue as follows:

> Most Olympic sponsors are, in our view, engaged in a form of ''silent complicity'' with the Darfur genocide because they are not raising this issue with the Olympic host. In our view, sponsors are secondarily complicit in the Darfur genocide, insofar as they are supporting China's efforts to position itself in glowing terms on the world stage – yet are silent in the face of China's support of the Sudanese regime, which is pursuing a campaign of mass atrocities in Darfur. (Dream for Darfur, 2007, p. 5)

The breadth of publicity that ''Dream for Darfur'' achieved for this criticism and the significance of public pressure that built up around it were remarkable. I cannot recall an incidence that similarly generated broad media coverage and public attention for the particular issue of corporate complicity.

Awareness of the significance of corporate complicity has increased not only in the broad public in recent years. Also academics and policy-makers have started to look more closely at the concept. For example, to assess and clarify the question of corporate complicity was one of the main tasks specified for the first tenure of the mandate of the UN Special Representative for Business and Human Rights. All this, of course, is not a coincidence, but has to do with the perception that the number and pervasiveness of complicity cases brought to light has increased dramatically in recent years (see, e.g., United Nations, 2008b, p. 8). ''The vast majority of corporate rights violations,'' as Kobrin (2009, p. 351) points out, ''involve complicity, aiding or abetting violations by another actor, most often the host government.''

In this article, I will argue that the concept of *silent* complicity in particular is of seminal significance if we are to understand the new role and responsibility of multinational corporations in the global political economy. The growing pervasiveness of the concept must be interpreted against the background of profoundly changing patterns of influence and authority in the global political economy. These new patterns of influence, power, and authority must be understood to come to an adequate understanding of multinational corporations' role and responsibility in regard to human rights. More specifically, I will argue that an adequate understanding of the concept of corporate complicity will lead to a conception of corporate responsibility that reaches beyond the common limits of ''doing no harm.'' In other words, multinational companies must do more than ''merely'' respect human rights; their scope of responsibility includes a duty to protect, which has commonly been ascribed only to the state. This duty to protect derives from the more general concept of political responsibility and crystallizes around the idea of corporate human rights advocacy. Thus, the concept of silent complicity renders the political roles and positions of political authority of multinational corporations visible. These roles and positions, in turn, are connected to corresponding political responsibilities, which can best be made sense of in terms of human rights advocacy.

I will start my argument with a quick look at the concept of corporate complicity in general. These general features can then be contrasted with the specific characteristics of silent complicity in particular, which will, next, lead to an inquiry into the political role and power of multinational companies in today's global political economy. Drawing the normative conclusions from this new role and position of multinational companies, I will then sketch a general account of political responsibility, which, in the specific context of corporate complicity, suggests a corporate obligation to protect human rights. In a last step, we will try to make sense of this duty which will lead us to an inquiry into the scope and limits of legitimate human rights advocacy by corporations. I will illustrate my elaborations throughout this article with the example of the Olympic sponsors, as introduced above.

Corporate complicity explained

As pointed out above, a large part of human rights violations with business involvement is not committed by the corporation itself, but by a third party which relies on or benefits from the direct or indirect support of the company. In fact, as I will argue, the most significant cases of corporate human rights violations, not only in terms of numbers but also in regard to their severity, are cases in which corporations act as accomplices.

Different forms of complicity can be specified along different kinds of support, participation, or assistance in the human rights violation. This support can be of varying intensity. However, before specifying those different forms of corporate complicity, let us have a brief look at the general defining criteria that are shared by all of them. Thus, the question to be addressed is the following: what conditions need to be fulfilled for us to speak of corporations as being complicit in human rights violations? Or in other words, what is it that turns corporations from mere bystanders into actual accomplices?

The notion of complicity used in the specific context of Business and Human Rights is derived

from criminal law. Symptomatically, the current debate on corporate complicity is heavily dominated by the legalistic point of view on the issue (see, e.g., Clapham, 2004; Clapham and Jerbi, 2001; Ramasastry, 2002). In this article, I am looking at the moral side of the concept. While, of course, not entirely unconnected, an ethical assessment of complicity reaches beyond the legal perspective; its implications are more demanding. A company may not be liable for certain actions from a legal point of view, but nevertheless be regarded an accomplice from an ethical perspective.

An accomplice generally is perceived as someone who knowingly contributes to either a wrongdoing itself or to the ability of a perpetrator to carry out such wrongdoings. Ramasastry (2002, p. 95) defines complicity as "situations in which an MNC 'aids and abets' a host government in carrying out serious human rights abuses." While generally the concept of complicity focuses on assistance given for wrongdoings committed specifically by governments, it is thinkable that also other institutions or even individuals may act as primary perpetrators (see, e.g., Howen, 2005, p. 12). Examples include strategic partners of companies, or their contractors and sub-contractors. However, in this article, I will adopt the general focus on governments as primary perpetrators, since these are the paradigmatic cases that reflect and illustrate the new political role of companies most strikingly.

This definition of the term *accomplice* in the previous paragraph implies that knowledge is a necessary condition for all forms of complicity. Thus, it is necessary that the accomplice knows or should know, that is, could reasonably be expected to know that his or her actions may contribute to the violation of human rights (see Clapham and Jerbi, 2001, p. 342f). Those who have knowledge generally have more options, and choice comes with responsibility – at least for what concerns matters beyond mere taste. It comes with the imperative to justify one's actions in light of all other possible alternatives, an informed agent could have chosen. In other words, only if even a reasonable assessment of the corporation's activities would not reveal their connection to the violation of human rights, could the corporation then justifiably claim not to bear any responsibility in regard to being complicit in the abuse.

What is not a necessary condition for complicity is intent. Or perhaps more precisely, there need not be a *malicious intent* by the accomplice to do harm. What is required, of course, is intent to participate. This absence of malicious intent implies one of the major reasons not only for the pervasiveness of complicity cases, but also for their obscurity. Complicity can and often does derive from a corporation's regular business conduct, rather than from a deliberate assault on the rights of people. Steven R. Ratner even defines complicity as engaging "in otherwise lawful conduct that serves to aid other entities in violating norms" (Ratner, 2001, p. 501). Thus, corporations increasingly find themselves "connected to harms and wrongs, albeit by relations that fall outside the paradigm of individual, intentional wrongdoing" (Kutz, 2000, p. 1). It is this aspect that makes cases of complicity notoriously ambiguous, hard to detect, and often difficult to communicate. It takes quite a bit of critical capacity for a company to see and acknowledge that despite not doing anything wrong directly, its very core business processes might be connected to the violation of people's most basic rights. What is most concerning, however, is that with the rise of corporations to considerable political power, combined with the increasing structural interconnectedness of the global economy, such cases of "unintended" aiding and abetting seem to be getting ever more frequent and pervasive.

A second element besides knowledge that is shared by all forms of complicity is the substantiality of a corporation's assistance. It is commonly agreed that in order for a corporation to turn into an accomplice, its contribution to the human rights violation must be substantial, albeit not indispensable. It is important to point out that substantiality of a corporation's assistance does not only derive from individual actions that are of great magnitude and scope, but can be based on ongoing support that becomes substantial by virtue of its duration (Ramasastry, 2002, p. 150). In other words, facilitating activities with small individual impacts can become substantial over time. A corporation's actions might thus merely facilitate human rights violations rather than directly contribute to them (Clapham, 2004, p. 68). Thus, once we depart from an entirely consequentialist view on the issue, a corporation can be complicit in human rights abuse

even if the respective violation would have taken place also without its assistance. The element of substantiality implies consequence-sensitivity, but not consequentialism. From a deontological point of view, any knowing contribution to human rights violations by corporations would per se have to be considered ethically problematic.

Based on these insights, we may distinguish broadly between four categories of corporate complicity in human rights violations. Let us have a brief look at each of them.

Direct complicity

Cases of direct complicity derive from a corporation's direct and causal contribution to specific human rights violations. Thus, the corporation is not merely facilitating the actions of the primary perpetrator, but directly contributing to the rights violation itself. Examples for direct complicity include corporations that made available their facilities to the authorities for the interrogation and torture of protesters, unionists, or other groups of people. In the year 1997, police forces in India surveyed and violently suppressed demonstrations and protests by activists by using helicopters provided by Enron Corporation (Human Rights Watch, 1999a). Also Yahoo's history of handing over confidential information about user accounts of Chinese dissidents to the Chinese government can be interpreted as one of direct complicity.

Indirect complicity

We may speak of indirect complicity if the corporation's activities do not directly contribute to the violation of human rights, but rather support, in a general way, the ability of the perpetrator to carry out systematic human rights violations. Indirect complicity may occur, for example, when a multinational corporation's activities generally help to maintain an unjust regime's financial and commercial infrastructure (Wells and Elias, 2005, p. 163). Hence, the corporation does not directly participate in, but rather facilitates human rights violations committed by the government. Even the mere payment of taxes to an oppressive government, as Howen (2005, p. 14) points out, can be problematic, especially if these taxes are directed, for example, at financing security forces known as notorious for committing human rights violations. Indirect complicity can be further specified in two sub-categories: beneficial complicity and, for this contribution of central importance, silent complicity.

Beneficial complicity

It is not necessary that a corporation is directly or indirectly *involved* in a particular wrongdoing to be held responsible for complicity; it may be sufficient that the corporation knowingly benefits from human rights abuses committed by a third party (Clapham and Jerbi, 2001, p. 346). It is here that the distinction between a legal and a moral perspective gets evident. While it might be difficult to make a legal case for beneficial complicity if there is not also some actual contribution by the corporation to the violation of human rights, there is certainly a sufficient basis to attach moral blame. Ramasastry (2002, p. 103) concludes that from a legal perspective, the courts must "balance factors to determine whether beneficiary complicity has reached such a threshold that an MNC's continued presence and investments amounts to participation in a criminal enterprise." From a moral point of view, this element of participation is not necessary. The mere fact that a company benefits substantially from human rights violations is ethically questionable. Moral blame in this case is attached to the implicit instrumentalization of human beings for corporate profit.

Silent complicity

There is growing agreement that silence in the face of human rights abuses also can denote a form of complicity. Margaret Jungk from the Danish Center for Human Rights states: "even where a company's operations do not directly impact upon human rights issues, the company may nonetheless be called upon to speak out or act when an oppressive government violates its citizens' rights" (Jungk, 1999, p. 171). In other words, under certain circumstances, otherwise innocent bystanders may turn into accomplices by not speaking out against the wrongdoings done to

human beings; in such cases, their silence is to be interpreted as moral support or encouragement for the perpetrator or at least as a sign of acquiescence. This form of complicity is conceptually different from all other forms of complicity and, while it may appear as the most innocent one of them at a first glance, it turns out as being the one with the most far-reaching implications both in terms of its pervasiveness as well as of the responsibilities it gives rise to. Therefore, let us have a more thorough look at its defining parameters in the next section.

Silent complicity in particular

Cases of silent complicity are not only conceptually different, but also of a different ethical quality than other forms of complicity. As seen above, cases of direct complicity and "conventional" forms of indirect complicity focus on more or less overt collaboration of a corporation with a primary perpetrator, for example, by making their premises and equipment available for the detention and maltreatment of human beings. More generally, they focus on specific *actions* of corporations. Silent complicity, on the other hand, derives from *omission*. According to Andrew Clapham and Scott Jerbi's (2001, p. 347f) definition, "the notion of silent complicity reflects the expectation on companies that they raise systematic or continuous human rights abuses with the appropriate authorities." A similar definition is used also by the UN Global Compact:

> Silent complicity describes the way human rights advocates see the failure by a company to raise the question of systematic or continuous human rights violations in its interactions with the appropriate authorities. For example, inaction or acceptance by companies of systematic discrimination in employment law against particular groups on the grounds of ethnicity or gender could bring accusations of silent complicity.[2]

This seemingly small difference between silent complicity and other kinds of complicity has large normative implications for the kind of response we may expect from companies. In other words, the moral responsibility attached to silent complicity must be framed differently from the one deriving from other forms of complicity.

There is more to this conceptual difference than simply the general distinction between action and omission. The specific, relevant omission that leads to silent complicity, if we follow the above definitions, is a corporation's silence in the face of human rights abuse. As such, as I will show shortly, the concept of silent complicity is closely tied to and indeed derives from a corporation's moral stature. In other words, in conventional cases of complicity, the identity of the accomplice does not matter *in principle*. For the concept of silent complicity, however, it does. For example, it does not matter who provides the equipment for the violation of human rights; it is more or less insignificant whether it is me as an individual who delivers the arms used to threaten, torture and kill people, or whether it is an organization; the outcome will be the same. Thus, in this case of direct complicity, the outcome is tied to the specific act of providing arms, rather than to the identity of those who deliver them. In contrast to such cases of active complicity, it *does* matter who remains silent in the face of human rights abuse. It makes a difference whether those who are silent are vulnerable individuals who choose not to speak out because they fear to be turned into victims themselves, or whether it is a potent corporation operating in proximity to the abuse. The outcome of these two scenarios will likely differ; while it is unlikely that a rogue government would change its stance and policies based on the protest of its powerless victims, a corporation, depending on its status within the respective country and its economic importance for the government, might be more successful in exerting pressure.

Thus, silence in the face of human rights violations does not always denote complicity. It turns into a form of complicity only if it can and must be interpreted as implicit moral approval of the wrongdoing. However, not every form of silence necessarily denotes endorsement. As seen in the above example, it may be a result of fear or of coercion. This is why the moral stature of the accomplice matters; silence only expresses moral approval if it is given by an agent or agency with sufficient influence on or over the perpetrator's behavior, that is, if breaking the silence could reasonably be expected to have an impact on the perpetrator. Following the elaborations of Clapham and Jerbi (2001, p. 344), "an approving spectator who is

held in such respect by the other perpetrators that his presence encourages them in their conduct, may be guilty of complicity […].'' Thus, silent complicity differs from other forms of complicity in one decisive aspect: it presupposes a position of authority of the accomplice.

Authority can be defined as governing power that is perceived as legitimate (see, e.g., Kobrin, 2009, p. 352). This perception of legitimacy must be interpreted widely; it does not only include normative justification (for example, through democratic processes), but also de facto recognition (Raz, 1990, p. 3). Thus, some institutions may acquire a position of authority simply by virtue of not being challenged in their exercise of power, for example, because their powerful positions have become such normal parts of how we see the world that we may not even realize how much influence they exert over the way we live our lives.

I will inquire more into the use of the notion of authority in connection with private corporations in the next section. For now, let us simply note that we perceive corporations as silently complicit if and when they operate in positions of (partial) authority in relation to the government as the primary perpetrator. Or formulated differently: the proximity to human rights violations turns corporations into accomplices if and when the primary perpetrator operates in a position of (partial) dependence relative to the corporation.

> […] presence when combined with authority, can constitute assistance in the form of moral support, that is, the actus reus of the offence. The supporter must be of a certain status for this to be sufficient for [criminal] responsibility. (Clapham and Jerbi, 2001, p. 344)

There is a good case to be made for this condition to be fulfilled for the example of the Olympic sponsors. The Olympic Games in Beijing raised record corporate sponsorship fees amounting to an estimated $1.5 billion, with individual contributions by corporations reaching up to $100 million (Fong, 2007, p. B1). It is safe to say that without corporate sponsors, this commercial super-event would not have been possible. As the activist group ''Dream for Darfur'' (2007, p. 7) comments, ''the backbone of today's Games, and in particular of the 2008 Beijing Olympics, is business.'' Combining this fact with the importance of the Games for China to present itself as an emerging major player on the world stage, these companies, at least as a group acting in concert, disposed over significant leverage and influence both on the IOC (International Olympics Committee) and the Chinese Government.

It is the aspect of authority that renders cases of silent complicity of tremendously greater momentousness than that of any other kind of corporate human rights violations. The wrong that is committed is not the result of an individual act which can be punished, but of the structural and systematic toleration of human rights abuse by the corporation. Silent complicity means authoritative approval of human rights violations; the growing relevance of the concept for corporate conduct is, as such, both a reflection and a result of the fundamental reconfiguration of power relations in the global political economy. In other words, silent complicity is a kind of institutionalization of human rights violations; it is connected to relations, rather than to actions and is, as such, embedded in the basic structure of our global society.

Thus, linking the concept of silent complicity to corporations yields two major implications. First, the increasing significant of silent complicity in practice implies a growing public perception of large multinational corporations as institutions of political authority. In other words, the concept of silent complicity builds the very core around which a new political role of multinational corporations currently seems to be crystallizing. Needless to say, we will not be able to fully understand and comprehend the novel responsibilities of multinational companies in regard to human rights without wrapping our minds around their new political stature. This leads to the second implication: if corporate complicity in human rights abuses ties corporations to new political roles, then any adequate response to it must be of equally political nature. Kobrin makes a similar claim:

> TNCs have become actors with significant power and authority in the international political system: they can set standards, supply public goods and participate in negotiations; political authority should imply public responsibility. (Kobrin, 2009, p. 350)

Thus, the responsibilities of multinational corporations might not be limited to the negative

dimension of "merely" respecting human rights, as, for example, the latest set of reports by the Special Representative for Business and Human Rights, John Ruggie, wrongly concludes (see United Nations, 2008a, b). Instead, they might include political responsibilities, specifically, as I will argue shortly, an obligation to protect human rights, which have been attributed exclusively to governments so far. In the following two sections, we will look at both implications in more detail. Thus, I will inquire into the ever increasing political role of multinational corporations on the one hand, and into the normative implications, that is, the political responsibilities attached to it on the other.

Multinational corporations as political actors: silent complicity and the politicization of the corporation

There is little doubt that the profound social, economic, and political transformations that we commonly call globalization have fundamentally reshaped and reconfigured power relations and authority positions at the global level. We are observing the transition from an international sphere, where national governments were the dominant and indeed the only players on the international political parquet, to a transnational or even global one, characterized by an institutional pluralism based on shared and overlapping power and a "fragmentation of political authority" (Kobrin, 2008, p. 250).

> While states certainly remain important (perhaps the most important) actors, the system is no longer state-centric: non-governmental organizations (NGOs), multinational corporations and international organizations such as the World Trade Organization (WTO) have emerged as significant transnational actors in world politics. (Kobrin, 2008, p. 250)

Large multinational corporations are not only a part of the mix, but have become key players in shaping and directing this process. They are heavily involved in designing and shaping the emerging global governance architecture. Their influence as advisors, experts, and consultants for national governments and supranational bodies is getting increasingly pervasive; they have become indispensable participants in the so-called public policy networks (see, e.g., Benner et al., 2004; Nelson, 2002; Reinicke, 1998), which shape the global public domain and they have been key protagonists in writing and adopting the rulebooks for their own conduct – be it through their involvement in formal regulatory processes and rule-making (Scherer et al., 2006, p. 506) or through self-regulation (Haufler, 2001). In other words, multinational companies are involved in almost all stages of public policy- and economic rule-making today.

Furthermore, while the prosperity of nations is increasingly tied to a vastly under-regulated global marketplace, multinational corporations have become its door keepers, deciding over who does and who does not have access to it. Combined with their unmatched mobility, that is, the capacity to move people, assets, and capabilities almost at will within their transnational structures, and thus the latent threat to national governments that they might move their operations elsewhere at any given time, this has led to a further shift in authority relations. Rather than governments controlling corporate activity, corporations are increasingly dictating the policy options of governments. Walter B. Kielholz, Chairman of the Swiss banking multinational Credit Suisse, must know it; if banks complain, as he comments, governments will not support regulators (Norris, 2009, p. B5). Increasingly, not even the most powerful nations in this world are completely immune to this development. However, it is most evident where governments and economies are weak. It is against this background that multinational corporations have increasingly been described as private political authorities (See, e.g., Cutler et al., 1999; Kobrin, 2008; Wettstein, 2009).

The public pressure put on corporate sponsors of the 2008 Olympic Games was both a sign for increased public awareness of this new politically powerful role of multinationals as well as the very manifestation of their increased politicization. Iris Marion Young (2004, p. 377) defined the political as the "activity in which people organize collectively to regulate or transform some aspects of their shared social conditions," as well as the "communicative activities in which they try to persuade one another to join such collective action or decide what direction they wish to take it." Thus, politicization of the corporation broadly denotes the communicative engagement of the corporation in matters of public

relevance. Faced with the pressure to publicly justify their actions not only in terms of the resulting economic payoff, but also with regard to their political implications, the sponsors of the Beijing Olympic Games saw themselves cast in a political light whether they liked it or not. The official response to the public accusations by sponsors like Atos Origin or Swatch Group,[3] which essentially pointed to the allegedly apolitical nature of the Olympic Games and especially of corporations as economic institutions were not only conceptually flawed, but a stark distortion of the politically charged realities with which they saw themselves confronted at that time. Public criticism was based on the perception that the sponsors were powerful enough that their connection to the Games and thus to the policies of the Chinese government mattered in a way that suggested their complicity in the human rights violations resulting from them. The need to publicly justify and reaffirm their apolitical stance was, in fact, the very sign of their ongoing politicization.

Another, now well-known example is that of Shell's role in the 1995 execution of the Nigerian activist and playwright Ken Saro-Wiwa. In 1995, Ken Saro-Wiwa and eight of his followers were tried and executed by the Nigerian government after protesting against the environmental destruction committed by international oil companies in the Niger Delta. Shell was the main target of Wiwa's ''Movement for the Survival of the Ogoni People'' (MOSOP) and, as such, deeply involved in the incidence. Despite its direct connection to Wiwa's arrest and despite its undisputed position of power in the country, Shell failed to speak out against what was by all standards an unfair trial. Instead, Shell persisted on the allegedly apolitical role it played within the country and indeed on the apolitical nature of the company as such. They argued that it would be ''dangerous and wrong'' for Shell to ''intervene and use its perceived 'influence' to have the judgment overturned.'' Furthermore, they claimed that it cannot be the role of ''A commercial organization like Shell [...] to interfere with the legal processes of any sovereign state'' (Human Rights Watch, 1999b).[4] Much rather, as they claimed, what is needed is ''quiet diplomacy''[5] from all parties. A Shell manager reportedly stated in 1996:

> I am afraid I cannot comment on the issue of the Ogoni 9, the tribunal and the hanging. This country has certain rules and regulations on how trials can take place. Those are the rules of Nigeria. Nigeria makes its rules and it is not for private companies like us to comment on such processes in the country. (Avery, 2000, p. 22)[6]

Shell's perception of itself as an apolitical institution and its decision to remain silent as an expression of neutrality was inherently misguided. Shell's position of power in Nigeria was undisputed, and the very possibility to speak out and exercise influence implied that the company was operating in a public and political role irrespective of whether or not they kept silent. Shell's perception that speaking out is a publicly and politically relevant act while keeping quiet is not was inherently flawed. As a publicly relevant actor, Shell's silence was as much politically relevant as explicit opposition would have been. For institutions in positions of authority, silence is never a neutral stance but an expression of moral support. Thus, Shell had two options, both of which were of inherently political relevance: they could remain silent and become complicit in the human rights violation or they could voice their concern and put pressure on the Nigerian government to have them think their policy over. Unfortunately, they chose to make their political statement by remaining silent. This last insight leads to the second implication outlined above: the claim for corporations to adopt political responsibility.

Political responsibility: the duty to protect and corporate human rights advocacy

The new political role of multinational corporations has profound impacts on the way we must interpret their moral responsibilities. Symptomatic and paradigmatic for this insight are the expectations attached to or even inherent to the concept of silent complicity.

Let us look at the example of the Olympic Games again. When the public pressure on the sponsors of the Games started to increase, the demand at the core of the protest was not that the sponsors simply quit their engagement, but that they speak out

against the genocide in Darfur and address the issue both with the International Olympic Committee and with the government of China. Activist group "Dream for Darfur" stressed that it did not want the companies "to withdraw their sponsorship, boycott the Games or divest of any holdings." In fact the group asserted that it "opposes a boycott of the Olympic Games by any nation or entity" (Dream for Darfur, 2007, p. 11). Instead, they asked the sponsors "to articulate their concerns about Darfur" and to "encourage" and "press" the Chinese government "to take action" and "ensure peace on the ground in Darfur" (Dream for Darfur, 2007, p. 9f). Moreover, sponsors ought "to call for indicted Sudanese war criminals to be banned from the Games" and to "work with the IOC [Intl. Olympic Committee] and each other to craft a meaningful action or urge the UN to deploy the full protection force without further delay."[7]

It is safe to say that these demands go beyond what is commonly expected of corporations. Within the relatively young debate on Business and Human Rights, which evolved in the mid-1990s, triggered by the execution of Ken Saro-Wiwa and the questionable role played by Shell, the dominant perception is that while corporations do have *direct* human rights obligations, they are commonly limited to the negative dimension of "doing no harm." As pointed out above, this position has been reinforced by the latest reports of the Special Representative for Business and Human Rights in Summer 2008. The broad conclusion of the reports was that while all corporations undeniably have an obligation to respect human rights, any duty to protect and realize human rights ought to be ascribed to the state alone.

Professor Ruggie's reports largely missed the profound conceptual implications of silent complicity. The conceptual difference between silent complicity and other forms of complicity, it seems, has gone entirely unnoticed in the reports. Instead, all forms of complicity were treated as one and the same. However, once we dwell deeper into the conceptual foundations of silent complicity, it seems evident that the concept puts the narrow limits of corporate human rights obligations drawn in the reports into question. While there is an evident negative duty to stop harmful support of a primary perpetrator in those cases of complicity that derive from specific corporate activity, a wrongdoing that derives from omission calls for positive action. In other words, the very concept of silent complicity is based on the implicit perception that the wrongdoing derives from corporations *not* taking action in the face of human rights violations, that is, from the fact that the corporation is a silent witness of the abuse, while being in a position that would allow for it to take *protective* measures in favor of those whose rights are violated. Against this background, the general claim stated in Professor Ruggie's reports that the concept of complicity leads to a mere obligation for corporations to "avoid complicity" appears as too trivial. The moral expectations of authorities are not merely passive, but transformational. We are not merely expecting them not to harm anyone, but to use their authority for the benefit of the disadvantaged. Silent complicity implies that multinational corporations operate in political roles; further, as political actors whose influence affects the very constitution of our newly evolving global society, they are increasingly perceived to have equally political responsibilities (see, e.g., Kobrin, 2009; Scherer and Palazzo, 2007).

In his seminal study on "Basic Rights" (1996), Henry Shue provided us with a conceptual foundation and typology of how to think about human rights obligations. Each right, as he claims, gives rise to three types of corresponding obligations: the obligation to avoid depriving, the obligation to protect from deprivation, and the obligation to aid the deprived (Shue, 1996, p. 52) – or in somewhat abbreviated form: the obligation to respect, protect, and realize human rights. As hinted above, this "tripartite typology" of human rights obligations has been adopted also in the reports of the UN Special Representative for Business and Human Rights (see United Nations, 2008a). The first obligation is of negative character and of universal validity, which means that it applies to everyone the same way and to the same extent. The latter two, however, are of positive nature and essentially shared between different agents. In other words, different agents may have differing obligations in the realm of protecting and realizing human rights. What is required here is a "division of moral labor." (Shue, 1988, p. 689f) Thus, such responsibilities require collaboration between different actors and, accordingly, have a strong communicative component to them. In other words, they are of inherently political nature.

Political responsibilities, as defined by Iris Marion Young (2004, p. 374ff), are forward-looking, rather than backward-looking. Their primary aim is not to blame those who brought a bad situation about, but to turn that situation around. As such, it depends on all those actors and institutions that are well positioned to contribute toward the desired improvement. In other words, political responsibility is shared responsibility. It depends on the collaboration between a variety of actors who may not necessarily be directly involved in causing a wrongdoing, but who are structurally linked to it and thus in a position to work toward the betterment of the situation. Consistent with Young's definition of the political quoted above, she defines the nature of such political responsibility as essentially communicative:

> The form of responsibility, then, is political in these senses that acting on my responsibilities involves joining with others in a public discourse where we try to persuade one another about courses of collective action that will contribute to ameliorating the problem. (Young, 2004, p. 380)

Scherer and Palazzo (2007, p. 1109ff) reflect on political responsibility in the specific context of corporate social responsibility. They too define it in deliberative terms, which "changes the modus of responsibility from the reactive model […] to a proactive concept of societal involvement." Corporate social responsibility, as they claim, is "increasingly displayed in corporate involvement in the political process of solving societal problems, often on a global scale." As such, the corporation must be an active part "in an ongoing process of observing and participating in public discourses" (Scherer and Palazzo, 2007, p. 1110).

Combining this political view on the corporation with Shue's tripartite framework of human rights obligations, the duty to protect seems of particular interest and relevance in connection with the concept of silent complicity. The claim is that as political actors of considerable power, corporations do not only have an obligation to respect human rights, as it is commonly assumed, but also similarly one to protect them against systematic violations committed by third parties in their perceived sphere of influence and authority.

As pointed out above, the duty to protect is normally associated exclusively with the state and specifically with its formal power to enact legislation for the protection of its citizens. Evidently, corporations do not have that power. Nevertheless, corporations can give recommendations and assist legislators and governments in crafting legislation and regulations in support of human rights, especially where their economic expertise is a key component of such consultation processes. It is important to reemphasize that this is not a new role for corporations. The above elaborations on the political role of corporations should have made this sufficiently clear. What is new is that we ask them to recommend policies and solutions not only with regard to their own economic benefit but with an emphasis on the protection of people's rights. However, those cases are not really the focus of this article. Rather, this contribution looks at cases where the state is the actual perpetrator and where human rights are violated deliberately and systematically. In those cases such cooperation between state and corporation is often not possible, which may shift the focus of the corporation's duty to protect from cooperation to confrontation. Combining a political and thus communicative duty to protect with a confrontational focus leads us to the idea of corporate human rights advocacy.

Hence, if corporations do not want to get caught in the trap of silent complicity, they must take a stance on human rights. Silent withdrawal is as little of a cure to silent complicity as it is legitimate for a bystander of an accident to silently sneak away. The positional moral responsibility attached to the political authority of the corporation cannot be undone by quietly abandoning the scene. Thus, what we must demand from corporations operating in such powerful positions is to speak out against the abuse of human rights. While this claim might still be considered controversial, the number of scholars arguing in the direction of such corporate advocacy has steadily increased over the past few years. One of the most prominent voices in the Business and Human Rights debate, Sir Geoffrey Chandler, has stated his supportive position on the issue very explicitly:

> These companies are vital to the countries they serve. They help to sustain economically regimes of very varied complexions – from democracies to oppressive dictatorships. We ask them and see it as part of their

> agenda, to speak out in defence of human rights where they are violated in the countries in which they work. This is a wholly legitimate role. It is not interference in domestic politics, an argument that companies have used as an escape route in the past. (Chandler, 1999, p. 43)

Similarly, Hsieh (2009) argues that multinational companies have a duty to support and encourage what he calls just or "well-ordered" institutions in countries where they are lacking. Among his recommended strategies is "activity that directly engages political and legal institutions" or "publicly supporting human rights activists or political opposition leaders" (Hsieh, 2009, p. 263). Even though Hsieh frames his argument explicitly around cases which do not involve corporate complicity and sees his claim deriving from a negative duty not to do harm, rather than from a positive one to protect, his argumentation clearly assigns a larger political role for corporations that involves explicit elements of advocacy. Finally, Peter Frankental and Frances House see it as a part of a consistent human rights strategy for corporations to

> Raise human rights concerns with government authorities either unilaterally or collectively with other companies. Senior managers should be prepared to speak out where abuses persist and quiet diplomacy has failed. (Frankental and House, 2000, p. 11)

What does the claim for human rights advocacy by corporations entail more specifically? I would suggest that to be both effective and legitimate, corporate human rights advocacy must be characterized by three constitutive elements: responsiveness, collaboration, and publicness/transparency. Let us have a brief look at each of these elements.

Responsiveness

Responsiveness as a political concept refers to the readiness and willingness of an institution or representative to listen to others as well as to respond to questions, challenges, impulses, or critique raised by them (Müller, 1999, p. 54). In other words, what we are asking corporations to do is not to take isolated action and play the roles of private and unaccountable governments; as Chandler (2000, p. 5) rightly notes, "companies cannot and should not be the moral arbiters of the world." However, they should be responsive to the concerns of the global public and its institutions. Thus, human rights advocacy by corporations can be seen as legitimate and warranted in light of sufficient public condemnation of the rights violation in question and a forming global consensus that action, rather than inaction is needed. In those cases, the role of those corporations that are perceived as having substantial influence and power over the abusive government will most certainly be discussed in public and a clear position of the corporation will be expected, just as Shell's role in the Saro-Wiwa incidence became a matter of public outrage. A significant level of citizens' activism or formal policies and resolutions of national and supranational organizations against an abusive regime can be taken as signs for corporations to take a stance on the issue. In the case of the Olympic sponsors, such signs did exist, for example, in form of the UN Security Council Resolution 1769 for a UN peace operation to resolve the conflict in Darfur. Furthermore, on the specific question of whether or not Olympic sponsors should speak out publicly against the genocide in Darfur, the UN Global Compact assured explicitly that it would be appropriate to do so (Dream for Darfur, 2008, p. 20). Thus, we are not asking for and do not want private corporations to act as political mavericks in their own right and potentially against the public interest. Corporate human rights activism must be interpreted and understood as a part of those deliberative and communicative processes that are constitutive for democracy, rather than as a step in the direction of corporate tyranny.

Collaboration

The first element of responsiveness implies the second one of collaboration. Corporations ought not to act alone, but in collaboration with those activist groups to whose pressure they are responding, with national and supranational institutions which represent the interest of the global public, as well as with other companies in similar situations. Both the concern for legitimacy of corporate human rights advocacy as well as the prospect of it being effective requires the respective corporations to collaborate

with each other and with other well-positioned groups and organizations. With regard to the example of the Beijing Olympic Games, a first step for the targeted sponsors would have been to contact those non-governmental groups like ''Dream for Darfur'' or ''Reporters without Borders'' which actively put pressure on them to explore and design collaborative strategies to take a public position and to raise the issue with the Chinese government and the IOC. Initially, only three out of 16 sponsors responded to the official invitation by Dream for Darfur to take a stance on the issue. After public pressure increased between November 2007 and April 2008 this number increased to nine (Dream for Darfur, 2008, p. 14). A large part of the sponsors, however, remained inactive. Coca-Cola even chose to fire right back at the group rather than seeking to establish a constructive dialogue (see, e.g., Clifford, 2008; Isdell, 2008). Such a reaction is understandable to a degree – after all, who likes being publicly criticized? – but it is a strategy that diverts, rather than bundles energy and is, as such, of little help to the search for effective solutions to an increasingly urgent problem. Corporations are uniquely positioned for collaborative efforts that address social issues in the ''global age'' – maybe more so than governments, who must learn, sometimes painfully, what it means to collaborate and act in concert. The effective coordination of networks, strategic partnerships, and collaboration across boundaries and cultures is instilled in the DNA of large multinationals. It is now time to use these capacities beyond the narrow parameters that define their economic interest.

Publicness/Transparency

Lastly, human rights advocacy must be public, rather than merely private. ''Quiet diplomacy may not be enough to avoid accusations of silent complicity,'' as Clapham and Jerbi (2001, p. 349) point out; what is needed is a public stance of the corporation on the human rights violations in question. This too is a direct implication of the requirement of responsiveness and that of legitimacy: First, an effective response to public pressure must be similarly public in nature. Second, such corporate political actions must be transparent and accessible to similarly political deliberation in the public; they must not happen behind closed doors. Accountability presupposes transparency. While none of the Olympic sponsors took an explicit public stance on the issue, two of them – Adidas and Eastman Kodak – did write letters to the UN, urging ''the UN to apply all its influence to put an end to the conflict in Sudan, and in particular the genocide in Darfur'' (Eastman Kodak) In addition, Eastman Kodak also approached the IOC (Dream for Darfur, 2008, p. 9). Those letters are publicly available and invite for constructive dialogue.[8]

Let me make one additional point in regard to the legitimacy question. There is a common concern that speaking out against human rights abuses denotes illegitimate interference with a country's sovereignty. However, this objection misses the point on several levels. Most importantly, we should remind ourselves that such politically active roles of companies are nothing new. The involvement of corporations in public affairs has become a regular and in fact one of the most lucrative parts of business. Today, corporations are involved in almost every step of the policy-making process from mere consultation all the way to the crafting and writing of legislation. Thus, it seems peculiar on what basis such ''regular'' political involvement ought to be seen as unproblematic while any form of advocacy in favor of human rights denotes a looming threat of corpocracy. We have come a long way in condemning corporate human rights advocacy as unwarranted and illegitimate interference and attaching the stigma of moral imperialism or colonialism to it while seeing nothing wrong with corporations distorting and undercutting our democratic processes through lobbying for the continuous expansion of the free global marketplace. The irony behind this separation is that those rules and regulations (or the lack thereof) for which corporations tend to lobby on a daily basis yield tremendous impact on the global human rights situation as well. Thus, the implicit distinction made between value-based or moral lobbying for human rights and allegedly value-free lobbying for economic rules is entirely artificial and conceptually flawed. Corporate political involvement as well as their regular business conduct have an impact on human rights no matter what; it seems only reasonable to ask them to take an explicit stance in favor of, rather than an implicit one against, human rights.

In the face of systematic and ongoing violations of human rights, corporations can either speak out or keep silent. It is important to understand that neither of these two choices is morally neutral. Human rights are too important to be left unaddressed. As philosopher Mary Midgley stated:

> It is the sense of our times that, whatever doubts there may be about minor moral questions and whatever respect each culture may owe to its neighbours, there are some things that should not be done to anybody anywhere. Against these things (people feel) every bystander can and ought to protest. (Midgley, 1999, p. 160)

"Every bystander" means *every* bystander; corporations included.

Notes

[1] Dream for Darfur is a non-profit group that was founded in May 2007. It "focuses on encouraging China to intercede with the regime in Khartoum to bring security to Darfur, using the Olympics as leverage" (Dream for Darfur, 2007, p. 2). The most prominent member of the group is the American actress Mia Farrow.

[2] http://www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/principle2.html. It is noteworthy that the formulation chosen by the Global Compact, specifically the reference to "human rights advocates," implies that their stance toward the validity of the concept is rather ambiguous. Nevertheless, the fact that they included silent complicity in their principles underlines the increasing significance of the concept both conceptually and in practice.

[3] The responses of the companies can be found at http://www.business-humanrights.org/Documents/DreamforDarfur.

[4] "Clear Thinking in Troubled Times," SPDC Press Statement, October 31, 1995. Quoted in Human Rights Watch (1999b).

[5] Statement by Mr. Brian Anderson, Managing Director, The Shell Petroleum Development Company of Nigeria Limited. SPDC Press Release, November 8, 1995. Quoted in Human Rights Watch (1999b).

[6] E. Imomoh, General Manager, Eastern Division, Shell Petroleum. On Africa Express, Channel 4 TV, UK (18 April, 1996). Quoted in Avery (2000, p. 22).

[7] http://www.business-humanrights.org/Documents/DreamforDarfur2.

[8] See http://www.dreamfordarfur.org/index.php?option=com_content&task=view&id=181&Itemid=0.

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