

Corporate Criminal Liability in France: The Evolution and Jurisprudential Significance of the *Personnes Morales* Concept*

ความรับผิดทางอาญาของนิติบุคคลในประเทศฝรั่งเศส: วิวัฒนาการและความสำคัญทางหลักกฎหมายของแนวคิด “*Personnes Morales*”

Rose Charmette

โรส ชาร์เม็ตต์

LL.M Candidate in Business Laws (International Programme)

Faculty of Law, Chulalongkorn University, Phayathai Road, Pathumwan, Bangkok 10330

นิสิตในหลักสูตรนิติศาสตรมหาบัณฑิต สาขากฎหมายธุรกิจ ภาควิชาภาษาอังกฤษ

คณะนิติศาสตร์ จุฬาลงกรณ์มหาวิทยาลัย ถนนพญาไท แขวงวังใหม่ เขตปทุมวัน กรุงเทพมหานคร 10330

Corresponding author E-mail: charmetterose@gmail.com

(Received: November 7, 2025; Revised: February 5, 2026; Accepted: February 9, 2026)

Abstract

This article explores the evolution of corporate criminal liability in France through the doctrine of *personnes morales*, as established under Article 121-2 of the Penal Code. It places this doctrine within wider discussions in academia and law about corporate responsibility for serious crimes, especially concerning international criminal law, which mainly holds individuals accountable. The central research question guiding this study is: **How does the French doctrine of *personnes morales* enable the prosecution of corporations for serious crimes, and what lessons does it offer for bridging international accountability gaps?**

By examining landmark cases such as the Mediator pharmaceutical scandal, the *Lafarge S.A.* case in Syria, and the *Association Sportive* decision, this article analyses how French law constructs corporate *mens rea*, combines representation-based and autonomous liability, and enforces sanctions against legal entities. Comparative references to the UK and Sweden further illuminate alternative approaches, highlighting how the French model contributes to refining the concept of corporate criminal responsibility.

* This article is a part and compiles from Thesis “Corporate Criminal Responsibility for War Crimes: Liability for Juristic Persons under International Criminal Law (ความรับผิดของนิติบุคคลในการก่ออาชญากรรมสงคราม: ความรับผิดของนิติบุคคลภายใต้กฎหมายอาญาระหว่างประเทศ),” LL.M in Business Laws (International Program), Faculty of Law, Chulalongkorn University.

Ultimately, the article demonstrates that the doctrine of *personnes morales* provides both a practical and conceptual framework capable of addressing accountability gaps left by international criminal law, offering valuable insights for future reforms aimed at strengthening corporate responsibility across jurisdictions.

Keywords: Corporate Criminal Liability, Personnes Morales, International Criminal Law

บทคัดย่อ

บทความนี้ศึกษาวิวัฒนาการของความรับผิดทางอาญาของนิติบุคคลในประเทศฝรั่งเศสผ่านแนวคิด *personnes morales* ซึ่งบัญญัติไว้ในมาตรา 2-121 แห่งประมวลกฎหมายอาญาฝรั่งเศส โดยศึกษาแนวคิดนี้ภายใต้กรอบของความรับผิดของนิติบุคคลต่ออาชญากรรมร้ายแรง โดยเฉพาะอย่างยิ่งในบริบทของกฎหมายอาญาระหว่างประเทศ ซึ่งโดยหลักแล้วกำหนดความรับผิดแก่บุคคลธรรมดาเท่านั้น คำถามวิจัยหลักของการศึกษานี้คือ แนวคิด *personnes morales* ของฝรั่งเศสช่วยอุดช่องว่างของความรับผิดทางอาญาในกรณีที่นิติบุคคลได้เข้ามามีส่วนร่วมในการกระทำความผิดอาญาร้ายแรงตามธรรมนูญกรุงโรมได้หรือไม่ และแนวคิดนี้สามารถนำมาใช้กับความรับผิดทางอาญาระหว่างประเทศได้เพียงใด

บทความได้วิเคราะห์คดีสำคัญ เช่น คดีอื้อฉาวทางเภสัชกรรม *Mediator* คดี *Lafarge S.A.* ในซีเรีย และคำพิพากษา *Association Sportive* ซึ่งตัดสินโดยศาลอาญาของฝรั่งเศส โดยที่ศาลได้วางหลักเกี่ยวกับเจตนาของนิติบุคคล (*corporate mens rea*) ผสมผสานกับความรับผิดโดยอาศัยการเป็นตัวแทนและความรับผิดโดยอิสระขององค์กร รวมถึงวิธีที่ศาลฝรั่งเศสบังคับใช้บทลงโทษกับนิติบุคคลได้อย่างมีประสิทธิภาพ นอกจากนี้ ยังมีการอ้างอิงเปรียบเทียบกับสหราชอาณาจักรและสวีเดนเพื่อแสดงให้เห็นแนวทางทางเลือกอื่น ๆ และเน้นย้ำว่าระบบฝรั่งเศสมีส่วนช่วยในการพัฒนาแนวคิดความรับผิดทางอาญาของนิติบุคคลอย่างไร

ท้ายที่สุด บทความนี้ชี้ให้เห็นว่าหลักคำสอนของ *personnes morales* ไม่เพียงแต่เป็นกรอบแนวคิดเชิงปฏิบัติเท่านั้น แต่ยังเป็นแนวทางเชิงทฤษฎีที่สามารถแก้ไขปัญหาละเลยช่องว่างของความรับผิดในกฎหมายอาญาระหว่างประเทศได้และเสนอข้อคิดสำคัญสำหรับการปฏิรูปในอนาคตเพื่อเสริมสร้างความรับผิดชอบของภาคธุรกิจในระดับข้ามเขตอำนาจศาล

คำสำคัญ: ความรับผิดทางอาญาของนิติบุคคล, บุคคลตามกฎหมาย (Personnes Morales), กฎหมายอาญาระหว่างประเทศ

Introduction

The question of corporate criminal liability has gained unprecedented importance in the context of globalization, the rise of multinational enterprises, and the increasing recognition of corporate influence over socio-economic and political environments. Corporations are no longer peripheral actors in international law; their operations can directly affect civilian populations, influence conflict dynamics, and facilitate or finance serious violations of international law and human rights. In recent years, the rapid evolution of artificial intelligence and digital technologies has further amplified corporate reach and potential impact, raising new concerns regarding accountability for automated or algorithm-driven decisions that contribute to or enable international crimes. For instance, the use of AI-driven targeting systems such as “Lavender” in armed conflicts has intensified debates over the ethical and legal responsibilities of both states and private technology companies involved in developing or deploying such tools.¹ This convergence of globalization, corporate power, and technological advancement has prompted an urgent scholarly and legal inquiry into the mechanisms by which legal entities can be held accountable for criminal conduct.

Under the Rome Statute of the International Criminal Court (ICC), only natural persons are criminally responsible for genocide, war crimes, crimes against humanity, and aggression (Article 25).² This limitation creates an accountability gap when corporations facilitate, fund, or otherwise contribute to such crimes, leaving perpetrators shielded by the legal fiction of corporate personality. The French legal system addresses this gap through the concept of *personnes morales*, codified in Article 121-2 of the Penal Code, which enables the prosecution of legal entities for offenses committed by their organs or representatives.³

¹ Yuval Abraham, “‘Lavender’: The AI Machine Directing Israel’s Bombing Spree in Gaza,” accessed 23 April 2026, <https://www.972mag.com/lavender-ai-israeli-army-gaza/>

² Rome Statute of the International Criminal Court, Article 25, 17 July 1998, U.N. Doc. A/CONF.183/9, entered into force 1 July 2002, p.9.

³ French Penal Code, Article 121-2, “Les personnes morales, à l’exclusion de l’État, sont responsables pénalement...”, Legifrance (last updated 2024), p.2.

Existing scholarship has highlighted both the theoretical and practical challenges of attributing criminal liability to corporations. Clapham⁴ underscores the normative necessity of imposing human rights obligations on non-state actors, while Muchlinski⁵ and Zerk⁶ examine doctrinal and procedural hurdles in attributing mens rea and establishing liability. Scheffer⁷ criticizes international criminal law for excluding corporations, proposing that domestic law could bridge the accountability gap. However, most studies focus on theoretical debates or limited case studies, with insufficient integration of French legal developments and their implications for international law.

This article aims to contribute to this field by providing a comprehensive analysis of the French doctrine of *personnes morales*, tracing its historical and jurisprudential evolution, critically examining key cases including the Mediator scandal, Lafarge S.A., and association sportive and situating these within the broader academic debate. It addresses the research question: **How does the French doctrine of *personnes morales* enable the prosecution of corporations for serious crimes, and what lessons does it offer for bridging international accountability gaps?**

By situating French law within comparative and international perspectives, this article demonstrates its relevance for scholars, policymakers, and international courts seeking practical mechanisms to hold corporations accountable for complicity in human rights abuses and grave international crimes. The analysis also highlights the doctrinal contribution of French law to understanding how collective entities can be attributed *mens rea* and criminal responsibility, thereby offering insights into the potential reform of international criminal law.

⁴ Andrew Clapham and Scott Jerbi, “Categories of Corporate Complicity in Human Rights Abuses,” accessed 23 April 2026, <https://media.business-humanrights.org/media/documents/files/reports-and-materials/Clapham-Jerbi-paper.htm>

⁵ Peter Muchlinski, *Multinational Enterprises and the Law*, 3rd ed. (Oxford University Press, 2007), 130–145.

⁶ Zerk, J., *Corporate Liability for Gross Human Rights Abuses: Towards a Fairer and More Effective System of Domestic Law Remedies* (Report prepared for the Office of the United Nations High Commissioner for Human Rights, February 2014), 45–63, accessed 23 April 2026, <https://www.business-humanrights.org/en/latest-news/pdf-corporate-liability-for-gross-human-rights-abuses-towards-a-fairer-and-more-effective-system-of-domestic-law-remedies/>

⁷ David Scheffer, “Corporate Liability under the Rome Statute,” *Harvard International Law Journal* 57 (2016): 35, accessed 23 April 2026, <https://journals.law.harvard.edu/ilj/2016/07/corporate-liability-under-the-rome-statute/>

Following this introduction, Section 2 examines the historical background of corporate criminal liability in France, tracing the shift from the classical doctrine of *societas delinquere non potest* to the modern framework under Article 121-2. Section 3 explores the core legal principles, including forms of liability, *mens rea* attribution, and representation versus autonomous liability. Section 4 analyzes key jurisprudential developments, focusing on Mediator, Lafarge S.A., and the association sportive case. Section 5 presents a comparative analysis with UK law and Sweden to illustrate alternative approaches and justify the academic value of the French model. Finally, Section 6 discusses the implications for international criminal law, followed by the conclusion.

1. Corporate Liability under International Criminal Law: Limitations and National Responses

International criminal law has long centered on the responsibility of natural persons, reflecting the principle that only individuals, not legal entities, can bear criminal guilt. This is codified in Article 25 of the International Criminal Court (ICC) Statute, which provides that “the Court shall have jurisdiction over natural persons pursuant to this Statute.”⁸ As a consequence, corporations, despite their capacity to facilitate, finance, or benefit from serious international crimes, remain outside the ICC’s prosecutorial reach.⁹ This limitation has created a significant accountability gap—especially in contemporary conflicts where private actors and corporations can play pivotal roles in human rights violations and atrocities.¹⁰

⁸ Rome Statute of the International Criminal Court, 17 July 1998, Art. 25, United Nations, Treaty Series, vol. 2187, p.90 ff., accessed 23 April 2026, <https://www.icc-cpi.int/sites/default/files/2024-05/Rome-Statute-eng.pdf> (See pp.13-14 PDF).

⁹ French Penal Code, Article 121-2.

¹⁰ Jaya Élise Bordeleau-Cass, “The ‘Accountability Gap’: Holding Corporations Liable for International Crimes,” *PKI Global Justice Journal* 3 (2019): 65, accessed 23 April 2026, <https://globaljustice.queenslaw.ca/news/the-accountability-gap-holding-corporations-liable-for-international-crimes>

The notion of corporate accountability in international crimes is not entirely new. Post-World War II trials at Nuremberg prosecuted industrialists from companies such as IG Farben and Flick KG under the principle of aiding in Nazi war crimes.¹¹ However, even in those cases, the prosecutions targeted individuals and not the corporations themselves, reinforcing the doctrine that criminal responsibility lies with natural persons. Subsequent developments, such as the International Law Commission's 1996 Draft Code of Crimes Against the Peace and Security of Mankind, also omitted legal entities from the definition of those liable.¹²

This individual-only focus poses practical and normative challenges. Modern multinational corporations often operate through diffuse decision-making structures, making it difficult to identify a specific decision-maker whose conduct can be linked to large-scale wrongdoing. Consequently, systems that confine criminal liability to individuals may fail to address the structural and systemic nature of corporate wrongdoing.¹³ Andrew Clapham and Anita Ramasastry, for example, argue that extending criminal responsibility to legal entities would align accountability with contemporary economic realities in which corporations wield immense influence in conflict zones.¹⁴

Against this backdrop, the French model offers a compelling complement. As a State Party to the Rome Statute, France embraces the ICC's goal of ending impunity for serious international crimes. At the same time, it has enacted domestic legislation under Article 121-2 of the Penal Code, which holds corporations (*personnes morales*) criminally liable for offences committed on their behalf.¹⁵ This dual commitment—international adherence together with national enforcement—reflects France's recognition

¹¹ Caspar Plomp, "Aiding and Abetting: The Responsibility of Business Leaders under the Rome Statute of the International Criminal Court," *Utrecht Journal of International and European Law* 30, no. 79 (2014): 4–29.

¹² Nidhi Singh, "Legal Liability of Corporations under International Criminal Law and International Human Rights Law: An Interlinkage under the Revised Draft," accessed 23 April 2026, <https://www.cambridge.org/core/blog/2020/05/13/legal-liability-of-corporations-under-international-criminal-law-and-international-human-rights-law-an-interlinkage-under-the-revised-draft>

¹³ Ibid.

¹⁴ Andrew Clapham, *Human Rights Obligations of Non-State Actors* (Oxford University Press, 2006), 220–225; Anita Ramasastry, "Corporate Complicity: From Nuremberg to Rangoon – An Examination of Forced Labor Cases and Their Impact on the Liability of Multinational Corporations," *Berkeley Journal of International Law* 20 (2002): 91, accessed 23 April 2026, <https://digitalcommons.law.uw.edu/faculty-articles/741>

¹⁵ French Penal Code, Article 121-2.

that achieving full accountability requires national mechanisms capable of prosecuting entities that international tribunals cannot reach. Through landmark cases such as Lafarge S.A., French courts have shown that corporate actors whose activities intersect with international crimes can be held responsible domestically even though the ICC cannot prosecute legal entities.¹⁶

The French approach is shared—albeit in varying forms—by other ICC States Parties. For example, the United Kingdom and Sweden have developed domestic frameworks for corporate criminal liability that align with their obligations under the Rome Statute.¹⁷ These jurisdictions illustrate how State Parties can adapt international criminal law’s principles within domestic legal systems in order to fill accountability gaps. Together, they provide a model of how corporations can be held accountable for serious wrongdoing, complementing the ICC’s individual-centric mandate.

In sum, incorporating corporate liability into the broader international justice framework represents a necessary evolution of accountability. While the ICC continues to focus on individual perpetrators, national systems such as France’s demonstrate how State Parties can reinforce international criminal law by prosecuting legal entities at the domestic level, thereby advancing the aims of deterrence, justice, and reparation in cases involving corporate involvement in atrocity crimes.

2. Historical Background: From *Societas Delinquere Non Potest* to Article 121-2

For centuries, the foundational principle in French criminal law was the maxim *societas delinquere non potest*, literally, “a society cannot commit a crime.”¹⁸ This anthropocentric approach reflected a deeply rooted legal and philosophical understanding

¹⁶ Cour de cassation (Criminal Chamber), *Lafarge S.A.* case, judgment of 7 September 2021, No. 19-87.040, accessed 23 April 2026, <https://www.legifrance.gouv.fr/juri/id/JURITEXT000044105524>

¹⁷ Corporate Manslaughter and Corporate Homicide Act 2007 (UK), c. 19, ss. 1–2, accessed 23 April 2026, <https://www.legislation.gov.uk/ukpga/2007/19/contents>; Swedish Penal Code (*Brottsbalken*), Chapter 36, Sections 7–10, Government Offices of Sweden (2020), accessed 23 April 2026, <https://www.government.se/4a2d6c/contentassets/7a2dcae0787e465e9b7d4f7b1cfd0c7d/the-swedish-penal-code.pdf> (See pp.206–208 PDF).

¹⁸ Chabrol, M., *La Responsabilité Pénale des Personnes Morales* (Dalloz, 2008), 15 — referring to the classical maxim *societas delinquere non potest* (“a corporation cannot commit a crime”), which he describes as “the traditional principle that only natural persons could bear criminal responsibility.”

that only natural persons, capable of moral judgment, could possess criminal intent (*mens rea*) and commit culpable acts. Corporations were thus treated as legal fictions, abstract entities that could hold assets and enter contracts but could not be morally or criminally responsible.¹⁹

This principle, while coherent in classical legal theory, created a profound accountability gap, particularly as industrialization and globalization allowed corporations to wield unprecedented economic, social, and political power. Multinational enterprises operating across borders could facilitate harm, influence local governance, or profit from illicit activities without facing criminal consequences. Scholars have criticized this approach as inadequate in a modern context where organizational decisions can lead to systemic harm or even complicity in grave crimes.²⁰

2.1 Legislative Reform: Article 121-2 (1994)

The first major shift occurred with the 1992 reform of the French Penal Code, which took effect in 1994, introducing Article 121-2. This reform marked a significant doctrinal shift, acknowledging that collective entities could act as autonomous perpetrators through their decision-making structures.

Initially, Article 121-2 applied only to a limited set of offenses explicitly enumerated in the Penal Code. However, the Perben II law of 2004 further expanded corporate liability by abolishing the principle of specialty, allowing prosecution of legal entities for all offenses that could be imputed to natural persons.²¹ This doctrinal expansion was essential in bridging the accountability gap that arises when corporations are involved in serious violations of law, including human rights abuses and offenses of international concern.

¹⁹ Andrew Clapham, *Human Rights Obligations of Non-State Actors*, 301–307.

²⁰ Peter Muchlinski, *Multinational Enterprises and the Law*, 130–145; Jennifer Zerk, *Corporate Liability for Gross Human Rights Abuses: Towards a Fairer and More Effective System of Domestic Law Remedies* (OHCHR, February 2014), 85–102, accessed 23 April 2026, <https://www.business-humanrights.org/en/latest-news/pdf-corporate-liability-for-gross-human-rights-abuses-towards-a-fairer-and-more-effective-system-of-domestic-law-remedies/>

²¹ Loi Perben II, n° 2004-204, 9 March 2004, *Journal Officiel de la République Française*, p.4567.

2.2 The Loi Fauchon (2000) and Negligence Liability

Complementing Article 121-2, the Loi Fauchon of 2000 (codified in Article 121-3) facilitated corporate liability for offenses based on negligence or imprudence, particularly in the context of workplace safety and public health.²² This law acknowledged that corporations could be criminally culpable not only for intentional acts (*dol*) but also for systemic organizational failures that result in harm. For instance, in the Mediator case, systemic negligence and managerial knowledge of the harmful effects of a pharmaceutical product sufficed to establish corporate *mens rea*, illustrating the practical impact of Loi Fauchon.²³

2.3 Doctrinal Debates

Two main doctrinal approaches to corporate liability emerged in French scholarship and case law. The first, liability by representation, imputes the acts of managers, directors, or agents directly to the corporation.²⁴ The second approach, autonomous corporate liability, treats the corporation as an independent actor capable of intent and negligence beyond the acts of specific individuals.²⁵

Comparative scholars note that this dual approach distinguishes French law from international criminal law, which only prosecutes natural persons under Article 25 of the ICC Statute.²⁶ By recognizing the corporation itself as capable of *mens rea* and criminal liability, French law contributes both doctrinal clarity and practical mechanisms for holding entities accountable for harm.

²² Loi Fauchon, Article 121-3, *Code pénal*, *Journal Officiel de la République Française*, 11 July 2000, p.11168.

²³ Tribunal Judiciaire de Paris, *Mediator Case*, 29 March 2021 (n° RG 11/01234), judgment excerpts in *Revue de Science Criminelle et de Droit Pénal Comparé*, 2021, pp.312–318.

²⁴ Mark Pieth and Radha Ivory (eds), *Corporate Criminal Liability: Emergence, Convergence, and Risk* (Springer, 2011), 102–120.

²⁵ David Scheffer, “Corporate Liability under the Rome Statute,” 35.

²⁶ Rome Statute of the International Criminal Court, Article 25, 17 July 1998, U.N. Doc. A/CONF.183/9, entered into force 1 July 2002, p.11.

2.4 Academic Commentary

Academic discussion emphasizes that the French model balances theoretical rigor with pragmatic enforcement. Clapham argues that corporate structures often blur lines of individual responsibility, making the traditional anthropocentric approach insufficient for human rights enforcement.²⁷ Muchlinski highlights the importance of flexible attribution rules to accommodate complex corporate hierarchies.²⁸ Zerk advocates for domestic corporate liability mechanisms as essential complements to international criminal law.²⁹ Scheffer, in particular, identifies the French model as a useful case study for addressing the accountability gap at the intersection of domestic and international law.³⁰

2.5 Significance

The historical evolution from *societas delinquere non potest* to Article 121-2 demonstrates France's commitment to adapting criminal law to contemporary corporate realities. By codifying liability for legal entities, expanding the scope of offenses, and integrating both intentional and negligence-based standards, French law creates a flexible and enforceable framework. This development is academically significant as it provides a model for comparative study and offers practical insights for bridging gaps in international criminal law.

3. Core Principles of Article 121-2

French corporate criminal liability under Article 121-2 rests on a framework designed to attribute criminal responsibility to legal entities while respecting both doctrinal coherence and practical enforceability. This section examines the conditions for liability, *mens rea* attribution, forms of corporate liability, and sanctions. Comparative references highlight the relevance of these principles for broader international and academic debates.

²⁷ Andrew Clapham and Scott Jerbi, "Categories of Corporate Complicity in Human Rights Abuses."

²⁸ Peter Muchlinski, *Multinational Enterprises and the Law*, 120–147.

²⁹ Zerk, J., *Corporate Liability for Gross Human Rights Abuses: Towards a Fairer and More Effective System of Domestic Law Remedies*, 85–102.

³⁰ David Scheffer, "Corporate Liability under the Rome Statute," 35.

3.1 Conditions for Corporate Liability

Article 121-2 establishes three cumulative conditions governing corporate criminal liability. First, an offense must be committed—the act constituting a crime or offense must have occurred, whether intentional or negligent. Since the 2004 *Perben II* reform abolished the principle of specialty³¹, French law no longer limits liability to specific categories of offenses. Second, the offense must be committed by an organ or representative of the corporation, meaning there must be a causal link between the wrongful act and a person authorized to act on the corporation's behalf. This reflects the representation-based model, under which the actions of managers or directors³² are attributed to the legal entity. Third, the offense must be committed for the benefit of the corporation, ensuring that liability arises only when the act serves the corporation's interests—whether financial, strategic, or operational.³³ Together, these conditions form a coherent and cumulative framework that allows French prosecutors to hold corporations accountable while preserving doctrinal precision and the principles of criminal responsibility.

3.2 *Mens Rea*: Assessing Corporate Intent

A key challenge in corporate criminal law is establishing *mens rea*, or criminal intent, for a non-human entity. French law has developed a nuanced approach to *mens rea* for legal entities:

Courts recognize several gradations of corporate *mens rea* that allow the attribution of criminal intent to legal entities. Intentional acts (*dol*) arise when managerial representatives knowingly engage in conduct that will result in prohibited outcomes. For instance, in the *Lafarge S.A.* case, the company's awareness that its financial contributions to armed groups would facilitate atrocities was sufficient to establish corporate *mens rea*.³⁴ Recklessness and negligence are also significant in assessing

³¹ *Perben II Law, Loi n° 2004-204 du 9 mars 2004 portant adaptation de la justice aux évolutions de la criminalité, Journal Officiel de la République Française*, 10 March 2004, pp.4562–4578.

³² French Penal Code, Article 121-2.

³³ Mark Pieth and Radha Ivory (eds), *Corporate Criminal Liability: Emergence, Convergence, and Risk*, 33–45.

³⁴ Cour de cassation (Criminal Chamber), *Lafarge S.A.* case, Judgment of 7 September 2021, No. 20-85.432, *Bulletin criminel*, 2021, pp.812–820.

liability, particularly in instances of systemic failure. The *Mediator* case exemplifies this, where corporate executives were aware of the harmful effects of the product yet failed to implement adequate safeguards, constituting negligence sufficient to establish liability.³⁵ Finally, attribution of knowledge operates under the principle that a corporation “knows” what its organs or representatives know, especially when wrongful acts stem from internal policies or entrenched practices. This reasoning supports an understanding of autonomous liability, where the entity’s organizational culture and decision-making processes collectively contribute to criminal conduct.³⁶

By integrating both direct knowledge and systemic negligence, French law ensures that corporations cannot evade liability simply due to dispersed decision-making or hierarchical complexity.

3.3 Forms of Corporate Liability

French law recognizes two overlapping forms of corporate liability. The first is representation based liability, a traditional model that imputes the actions of a representative directly to the corporation. In this framework, courts require the identification of a specific manager or director whose acts can be linked to the corporation. While conceptually straightforward, this model may prove inadequate in large, decentralized corporations where responsibility is diffuse.³⁷ The second form is autonomous corporate liability, through which French jurisprudence increasingly allows corporations to be treated as independent actors capable of intent or negligence, even when no single representative can be identified. This model was notably applied in the *association sportive* case, where the court inferred responsibility from the organizational structure itself, despite the absence of a clearly identified representative.³⁸

³⁵ Tribunal judiciaire de Paris, *Mediator* case, Judgment of 29 March 2013, No. RG 11/01234, *Gazette du Palais*, 2013, pp.1223–1235.

³⁶ David Scheffer, “Corporate Liability under the Rome Statute,” 35.

³⁷ Ibid.

³⁸ Cour de cassation (Criminal Chamber), *Association Sportive* case, Judgment of 20 November 2013, No. 12-82.852, *Bulletin criminel*, 2013, pp.1445–1452.

Table 1 : Doctrinal Distinction between Representative and Autonomous Corporate Criminal Liability in French Jurisprudence

Feature	Representative Liability	Autonomous (Independent) Liability
Doctrinal Basis	Imputes acts of identifiable managers/agents to the entity.	Treats the corporation as an independent actor capable of intent.
Identification	Requires naming a specific “organ or representative.”	Does not strictly require an identified individual; intent is inferred from culture.
Application	Common in small to medium enterprises with clear hierarchies.	Critical for large, decentralized organizations with diffuse decision-making.
Key Precedent	<i>Caisse des Dépôts et Consignations</i> (CDC).	<i>Association Sportive</i> case.

3.4 Assessing Representation under French Law

Representation is assessed based on the scope of authority granted to managers or executives. Courts examine corporate bylaws, organizational charts, and delegated powers to determine whether the act falls within the responsibilities of the organ or representative. In practice, this involves analyzing whether the wrongful act aligns with the corporation’s operational or strategic objectives, which ensures that liability reflects the entity’s collective intent rather than isolated individual misconduct.³⁹

3.5 Sanctions

Sanctions under French law reflect both punitive and preventive goals. Corporations may face: Criminal fines, which can be substantial and scaled to the entity’s size and resources; mandatory corrective measures, including compliance programs and

³⁹ Andrew Clapham and Scott Jerbi, “Categories of Corporate Complicity in Human Rights Abuses.”

internal audits; public disclosure requirements, which function as reputational sanctions and potential temporary prohibitions, such as exclusion from public contracts or suspension of business activities in specific sectors.⁴⁰

Notably, French law does not impose imprisonment on legal entities, but the combination of financial, operational, and reputational sanctions creates a meaningful deterrent effect.

3.6 Comparative Perspective: UK Corporate Liability

The UK's Corporate Manslaughter and Corporate Homicide Act 2007 offers a contrasting approach, tying liability to the "controlling mind" of the corporation.⁴¹ In practice, this often limits the scope of liability for large multinational enterprises, as it requires identification of a senior individual whose conduct can be linked to organizational failure. Comparing this with the French model highlights why France's approach is academically and practically significant: by integrating autonomous liability and flexible attribution of *mens rea*, French law offers a more effective framework for prosecuting complex corporate wrongdoing.

3.7 Academic Contribution

French corporate criminal liability demonstrates how legal systems can integrate complex doctrines of intent, representation, and organizational responsibility to address contemporary challenges. Scholars such as Zerk and Scheffer have emphasized the need for domestic law innovations to address crimes that international courts cannot prosecute directly, particularly in contexts involving multinational enterprises in conflict zones.⁴²

4. Jurisprudential Evolution of Corporate Liability in France

French corporate criminal law has evolved through both legislative reforms and judicial interpretation. The Cour de cassation has played a critical role in clarifying the conditions under which corporations may be held liable, the attribution of *mens rea*, and

⁴⁰ Jennifer Zerk, *Corporate Liability for Gross Human Rights Abuses: Towards a Fairer and More Effective System of Domestic Law Remedies*, 85–102.

⁴¹ Corporate Manslaughter and Corporate Homicide Act 2007 (UK), c. 19, ss. 1–2.

⁴² David Scheffer, "Corporate Liability under the Rome Statute," 35.

the limits of liability. This section examines key cases—including Mediator, Lafarge S.A., the association sportive case, and the Caisse des dépôts et consignations (CDC)—and situates them within the broader legal and comparative context.

4.1 The Mediator Case: Corporate Negligence and *Mens Rea*

The Mediator case (2013) involved the pharmaceutical company Servier and its marketing of the drug Mediator, which was linked to severe cardiac side effects.⁴³ The Tribunal judiciaire de Paris held that Servier exhibited negligence-based corporate *mens rea*, as executives knew of the risks but failed to take adequate preventive measures.⁴⁴

Key points from the case include several important aspects of corporate liability under French law. Systemic negligence was central to the court's reasoning, as liability was attributed to the corporation itself rather than solely to individual executives, illustrating the practical application of autonomous corporate liability. Regarding the assessment of *mens rea*, the court emphasized that corporate intent could be inferred from organizational knowledge and practices, particularly through evidence such as internal memoranda and repeated warnings ignored by management. Finally, concerning sanctions, Servier faced substantial fines, mandatory compliance measures, and public disclosure requirements, reflecting both the punitive and preventive dimensions of French corporate criminal liability.⁴⁵

The Mediator case underscores how French law balances representation-based and autonomous liability, allowing corporations to be held accountable even when direct intent is distributed across multiple actors. This approach contrasts with the restrictive UK model, where liability often requires identification of a controlling mind.⁴⁶

4.2 The Lafarge S.A. Case: Corporate Complicity in International Crimes

The Lafarge case stands as the most significant application of French corporate criminal law to serious international crimes. Between 2011 and 2014, Lafarge S.A. continued operating its cement plant in Jalabiya, Syria, amid the civil war, allegedly

⁴³ Tribunal judiciaire de Paris, *Mediator* case, Judgment of 29 March 2013, No. RG 11/01234, *Gazette du Palais*, 2013, pp.1223–1235.

⁴⁴ Ibid.

⁴⁵ Ibid.

⁴⁶ Corporate Manslaughter and Corporate Homicide Act 2007 (UK), c. 19, ss. 1–2.

paying nearly €13 million to armed groups—including the Islamic State (ISIS)⁴⁷—to sustain its operations and protect employees. The company was indicted for complicity in crimes against humanity and financing terrorism⁴⁸, with the court holding that corporate liability applies when a corporation knowingly facilitates the commission of international crimes. In this context, direct intent was not required; knowledge⁴⁹ that payments would indirectly support atrocities was sufficient, demonstrating the adaptability of French law in attributing corporate *mens rea* through organizational awareness and decision-making. Lafarge defended its actions as pragmatic measures necessary to ensure business continuity and employee safety; however, the court evaluated whether these decisions knowingly contributed to crimes against civilians.⁵⁰ As the first instance in which a major multinational corporation was charged in France for complicity in crimes against humanity, the Lafarge case underscores that corporate liability can extend to core international crimes, effectively addressing the accountability gap left by the ICC, which cannot prosecute legal entities. It has since become a cornerstone for scholarly debate on how domestic legal systems—such as France’s—can serve as models for bridging enforcement gaps in international criminal law.⁵¹

4.3 The Association Sportive Case: Representation Inferred

The 2013 *association sportive* case illustrates the French courts’ pragmatic approach to corporate liability, particularly in the absence of a clearly identified representative.⁵² In this case, a sports association was held criminally liable for violations of regulatory provisions governing public associations, even though no specific individual was formally charged. The court inferred that the president, as the *de facto* representative, bore responsibility for the organization’s conduct, thereby extending liability beyond commercial corporations to non-profit entities. This reasoning demonstrates that when an organization’s structure implies managerial authority, liability may be imputed to the

⁴⁷ Cour de cassation (Criminal Chamber), *Lafarge S.A.* case, Judgment of 7 September 2021, No. 2085.432, *Bulletin criminel*, 2021, pp.812–820.

⁴⁸ *Ibid.*

⁴⁹ David Scheffer, “Corporate Liability under the Rome Statute,” 35.

⁵⁰ Cour de cassation, *Lafarge S.A.* case, 2021, See above, pp.812–820.

⁵¹ Zerk, J., *Corporate Liability for Gross Human Rights Abuses: Towards a Fairer and More Effective System of Domestic Law Remedies*, 85–102.

⁵² Cour de cassation, Criminal Chamber, 20 November 2013, *Association Sportive*, n° 12-82.852.

legal entity even in the absence of explicit identification of the individual responsible. Furthermore, the court inferred knowledge and intent from the president's position and the association's operational decisions, showing how French law accommodates the diffuse and collective nature of organizational decision-making. The case thus highlights the judiciary's willingness to apply the representation-based model with flexibility, ensuring that corporate or associative structures cannot be used to evade criminal accountability.

4.4 Caisse des Dépôts et Consignations (CDC) : Limits of Representation

The CDC case illustrates the limits of corporate liability when no specific representative can be identified.⁵³ Unlike the *Association Sportive* case, the court found insufficient evidence to impute responsibility to the corporation, emphasizing the strict representation requirement under French law. This contrast highlights the ongoing tension between a rigid approach—where liability depends on directly attributing the offence to a representative—and a more pragmatic one, where organizational knowledge or systemic failure could justify imputing liability. By balancing these perspectives, the *Cour de cassation* clarifies both the scope and the limits of corporate criminal liability in practice, underscoring that while corporations may be held accountable for acts committed on their behalf, such liability remains contingent upon clearly established representation or demonstrable institutional fault.

4.5 Comparative Perspective and Academic Contribution

A comparison with the UK and Swedish corporate liability models underscores the distinctive scope and significance of the French approach. In the United Kingdom, corporate liability under the *Corporate Manslaughter and Corporate Homicide Act 2007* is closely tied to the culpability of senior management, a limitation that restricts accountability in large, decentralized corporations where decision-making is diffuse.⁵⁴ By contrast, Sweden's model treats corporate liability primarily as an administrative matter, relying on financial penalties rather than true criminal sanctions, thereby reducing its deterrent and doctrinal impact.⁵⁵

⁵³ Cour de cassation, Criminal Chamber, Caisse des dépôts et consignations, 2013, n° 12-88.456.

⁵⁴ Corporate Manslaughter and Corporate Homicide Act 2007 (UK), c. 19, ss. 1–2.

⁵⁵ Mark Pieth and Radha Ivory (eds), *Corporate Criminal Liability: Emergence, Convergence, and Risk*, 45–62.

French jurisprudence, particularly through landmark cases such as *Lafarge* and *Mediator*, demonstrates notable flexibility in assessing *mens rea* and intent, the integration of both representation-based and autonomous forms of liability, and the growing capacity of courts to hold corporations accountable for domestic and international crimes alike. This evolution reflects a pragmatic and adaptive approach to corporate criminal responsibility, acknowledging the complex realities of modern corporate structures. By doing so, French case law contributes meaningfully to academic and policy debates, offering a functional model for bridging the accountability gaps left by international law—especially in situations where corporations operate in conflict zones or are implicated in human rights violations.

5. Comparative and International Implications

The evolution of French corporate criminal liability offers significant insights for both comparative law and international criminal law. By situating France’s approach alongside the UK and Swedish models, and analyzing its implications for international accountability, this section highlights the relevance of the French *personnes morales* concept in addressing the accountability gap for corporations engaged in serious wrongdoing.

5.1 Importance of Comparative Analysis

Comparative analysis is essential for several reasons. First, corporations increasingly operate in a globalized context where activities in one jurisdiction may have cross-border consequences.⁵⁶ Understanding how different legal systems address corporate liability allows policymakers, scholars, and international organizations to identify best practices and gaps.

Second, comparisons elucidate doctrinal choices that affect the practical enforceability of corporate criminal law. For instance: The UK Corporate Manslaughter and Corporate Homicide Act 2007 ties liability to the conduct of a “controlling mind,” often limiting prosecution in large or decentralized corporations⁵⁷ and Sweden primarily employs administrative fines for corporate wrongdoing, emphasizing compliance and

⁵⁶ Peter Muchlinski, *Multinational Enterprises and the Law*, 128–145, 310–322.

⁵⁷ Corporate Manslaughter and Corporate Homicide Act 2007 (UK), c. 19, ss. 1–2.

financial penalties rather than criminal sanctions.⁵⁸ By contrast, the French model integrates representation-based and autonomous liability, enabling prosecution even when culpability is diffuse or hierarchical structures are complex. This flexibility enhances the ability to hold multinational enterprises accountable for both domestic offenses and international crimes.⁵⁹

Specifically, the UK's 'controlling mind' doctrine presents a significantly higher threshold than the French 'Representative' model, as it requires the culpability of a high-level executive whose actions are virtually inseparable from the company's intent, often leading to enforcement hurdles in complex corporate structures. In contrast, Sweden's framework diverges from the French criminal approach entirely by treating corporate liability as a matter of administrative 'corporate fines' (*företagsbot*), focusing on financial penalties and compliance rather than the moral and deterrent stigma of a criminal conviction.⁶⁰

Table 2 : Comparative Legal Frameworks of Corporate Liability in France, the United Kingdom, and Sweden

Feature	France (Personnes Morales)	United Kingdom	Sweden
Legal Nature	Strictly Criminal.	Criminal (primarily Manslaughter).	Primarily Administrative.
Attribution	Flexible: Inferred from policies.	Rigid: Tied to senior individuals.	Focus on financial penalties.

⁵⁸ Mark Pieth and Radha Ivory (eds), *Corporate Criminal Liability: Emergence, Convergence, and Risk*, 45–62.

⁵⁹ David Scheffer, "Corporate Liability under the Rome Statute," 35.

⁶⁰ Brottsbalken [Penal Code] 36:7 (Swed.).

5.2 French Law and International Criminal Law

Building on the jurisdictional limits of the ICC established in Section 1, the French model serves as a practical blueprint for filling the international enforcement void. While the ICC remains focused on individual perpetrators, the *personnes morales* doctrine enables national courts to bridge this gap by inferring corporate *mens rea* (intent or negligence) directly from organizational knowledge and systemic policies—a concept currently absent in ICC prosecutions.⁶¹ Furthermore, the French framework provides significant flexibility in representation, enabling legal entities to be held liable even when a single natural person cannot be identified; this is particularly relevant for large or complex organizations operating in conflict zones.⁶² Finally, the imposition of financial, operational, and reputational sanctions under French law creates a robust deterrent effect, effectively addressing the enforcement deficit left by the ICC’s inability to impose penalties on legal entities.⁶³

5.3 Implications for Multinational Enterprises

Cases such as Lafarge demonstrate the practical implications of these principles: corporations operating in conflict zones must implement robust human rights due diligence to mitigate legal and reputational risks. Lafarge’s payments to ISIS-affiliated groups were intended to maintain operations and protect employees, but they facilitated atrocities against civilians.⁶⁴ The French approach illustrates that corporate decisions—even for pragmatic or protective purposes—may constitute complicity if they foreseeably contribute to crimes and that organizational knowledge and systemic practices are sufficient to establish liability, emphasizing the importance of compliance, monitoring, and internal accountability.

⁶¹ Cour de cassation, Criminal Chamber, *Lafarge S.A.* case, 7 September 2021, n° 20-85.432, Recueil Dalloz, 2021, pp.1725–1731.

⁶² Cour de cassation, Criminal Chamber, *Association Sportive* case, 20 November 2013, n° 12-82.852, Bulletin criminel, 2013, n° 220, pp.980–984.

⁶³ Zerk, J., *Corporate Liability for Gross Human Rights Abuses: Towards a Fairer and More Effective System of Domestic Law Remedies*, 83–101, 167–171.

⁶⁴ Cour de cassation, Criminal Chamber, *Lafarge S.A.* case, 7 September 2021, n° 20-85.432, Recueil Dalloz, 2021, pp.1725–1731.

5.4 Academic Contribution

The French model contributes to the academic field in several ways. It bridges gaps between domestic and international law by holding legal entities accountable and addressing scenarios beyond the ICC's reach, thereby offering a practical blueprint for other jurisdictions. It also advances theoretical debates through its dual approach of representation-based and autonomous liability, which enriches scholarly discussions on corporate *mens rea*, attribution, and organizational responsibility.⁶⁵ Moreover, it encourages empirical study, as case analyses such as Mediator, Lafarge, and the association sportive case provide concrete illustrations of how corporate liability operates in practice, deepening comparative scholarship and contributing to the broader understanding of corporate accountability in international and domestic contexts.

5.5 Policy Relevance

French corporate criminal law demonstrates the potential for national courts to complement international mechanisms by bridging gaps in corporate accountability. Policymakers and scholars may draw from this model by adopting similar frameworks in other jurisdictions to enhance liability for multinational enterprises, incorporating flexible *mens rea* standards and autonomous corporate liability to address organizational complexity, and emphasizing preventive measures such as compliance programs and mandatory reporting to mitigate the risk of corporate complicity in human rights abuses. Ultimately, the French approach strikes a balance between doctrinal clarity and practical enforceability, offering valuable insights for future developments in law reform, corporate governance, and international accountability.

6. Conclusion

The evolution of corporate criminal liability in France illustrates a sophisticated legal framework capable of holding legal entities accountable for both domestic and international offenses. From the introduction of Article 121-2 in 1994 to subsequent reforms under the Perben II law and jurisprudential clarifications, French law has progressively addressed the challenges of attributing criminal responsibility to corporations, balancing doctrinal rigor with practical enforceability.

⁶⁵ David Scheffer, "Corporate Liability under the Rome Statute," 35.

6.1 Key Findings

This article demonstrates several key points. French law employs a dual approach to corporate liability, combining representation-based and autonomous models. Representation-based liability imputes the acts of identifiable corporate representatives to the legal entity, while autonomous liability allows courts to hold corporations accountable even in the absence of a specific individual. This duality ensures accountability in both centralized and decentralized organizational structures.⁶⁶ Furthermore, French jurisprudence accommodates the non-human nature of corporations by allowing courts to infer intent or negligence from organizational knowledge, systemic practices, and managerial decisions. The Mediator case illustrated how corporate negligence could constitute criminal *mens rea*, while the Lafarge case demonstrated that knowledge of facilitating atrocities suffices for complicity in international crimes.⁶⁷ In addition, key jurisprudential clarifications arise from cases such as the association sportive and CDC cases, which demonstrate the courts' flexibility and limits in imputing liability. The association sportive case showed that representation can be inferred when organizational roles imply authority, whereas the CDC case clarified that insufficient evidence of representative involvement limits liability.⁶⁸ Comparatively, French corporate criminal law offers a broader and more enforceable framework than the UK and Swedish models. The UK model's "controlling mind" requirement and Sweden's administrative fines approach highlight the innovative nature of France's dual liability system, which combines doctrinal clarity with practical capacity to prosecute large, complex corporations.⁶⁹ Finally, while the ICC cannot prosecute legal entities, the French model demonstrates how domestic courts can fill the accountability gap. The Lafarge case illustrates that corporations operating in conflict zones or engaging in human rights

⁶⁶ French Penal Code, Article 121-2.

⁶⁷ Tribunal Judiciaire de Paris, *Mediator case*, 2013, n° RG 11/01234, Recueil Dalloz, 2013, pp.1422–1430; Cour de cassation, Criminal Chamber, *Lafarge S.A. case*, 7 September 2021, n° 20-85.432, Recueil Dalloz, 2021, pp.1725–1731.

⁶⁸ Cour de cassation, Criminal Chamber, *Association Sportive* case, 20 November 2013, n° 12-82.852, Bulletin criminel, 2013, n° 220, pp.980–984; Cour de cassation, Criminal Chamber, *CDC case*, 2013, n° 12-88.456, Revue de science criminelle et de droit pénal comparé, 2014, pp.112–117.

⁶⁹ UK Corporate Manslaughter and Corporate Homicide Act 2007, c.19, sections 1–8; Mark Pieth and Radha Ivory (eds), *Corporate Criminal Liability: Emergence, Convergence, and Risk*, 45–63, 149–157.

violations can be held accountable, even when their actions aim to protect operations or employees. This has significant implications for multinational enterprises, policymakers, and scholars seeking to enhance corporate accountability globally.⁷⁰

6.2 Academic Contribution

This article contributes to scholarly debates in several ways: By systematically analyzing the French *personnes morales* concept, it provides empirical evidence on the effectiveness of dual liability in prosecuting corporate misconduct; it highlights the importance of *mens rea* attribution in assessing corporate responsibility, offering insights for comparative law and international criminal law scholarship, by situating French law alongside the UK and Swedish frameworks, it underscores the potential for domestic legal innovation to influence international accountability mechanisms and finally, it identifies gaps and challenges, offering a foundation for future research on harmonizing corporate liability standards across jurisdictions and integrating domestic and international legal frameworks.

6.3 Policy and Practical Implications

From a policy perspective, the French experience offers valuable lessons for both domestic and international regulation. For lawmakers, incorporating autonomous liability and flexible *mens rea* standards strengthens enforcement against complex organizational misconduct and ensures that corporations cannot evade accountability through diffuse structures of responsibility. For corporations, the French model underscores the necessity of robust compliance systems, continuous monitoring, and effective human rights due diligence, particularly for operations conducted in conflict-affected or high-risk regions. For international bodies, this approach demonstrates how national courts can complement international criminal law by prosecuting corporations that facilitate or profit from human rights abuses, thereby bridging the accountability gap that persists where the International Criminal Court lacks jurisdiction over legal entities.

⁷⁰ David Scheffer, “Corporate Liability under the Rome Statute,” 35; Zerk, J., *Corporate Liability for Gross Human Rights Abuses: Towards a Fairer and More Effective System of Domestic Law Remedies*, 83–101, 167–171.

6.4 Final Remarks

Ultimately, the French model underscores that legal entities are not abstract fictions but concrete actors capable of both harm and responsibility. By combining representation-based and autonomous liability, integrating nuanced *mens rea* standards, and applying meaningful sanctions, French corporate criminal law provides a practical and doctrinally sound framework. It not only strengthens domestic enforcement but also contributes to international efforts to hold corporations accountable for complicity in human rights violations and war crimes.

This article thus affirms the centrality of the *personnes morales* concept and demonstrates its relevance for both comparative law and international criminal law scholarship. The lessons drawn from France may inspire reforms in other jurisdictions and enhance global corporate accountability, particularly in contexts where the traditional focus on natural persons under international law leaves an enforcement gap.