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Beyond Hierarchy: Investigating the Role of Complex-Fluid Structures in the Accountability of Criminal Organizations

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Introduction

Traditional frameworks for international criminal responsibility for genocide and other crimes have been developed from the Western (center) countries' experiences and understanding of warfare structures. As such, the modes of perpetration through an organization and superior responsibility have evolved to respond to "well-drilled Western-style bureaucratic and military organizations" where power is systematized, schematized, and hierarchical.¹ Superiors, although usually physically distanced from the commission of crimes, can control and determine subordinates' actions and otherwise sanction their conduct.²

However, the experience of power and conflict in developing countries and peripheral regions has been entirely different. In Latin America and Africa, power is often exercised through personal relations (e.g., charismatic and patrimonial leadership) with complex, fluid, and informal characteristics.³ Thus, classic international criminal law (ICL) frameworks have forced peripheral⁴ regions to employ doctrines with weak sociological bases and poor fits to their realities.

This paper explores the shortcomings of applying said modes of responsibility to conflicts in non-centric areas where "well-drilled" hierarchies are usually rare.⁵ Two case studies are employed: Mexico and Sierra Leone. The first section of this article presents an overview of complex-fluid organizations vis-à-vis classic hierarchical or bureaucratized structures, highlighting the divergences between State (military)-like structures and new organizations present in the 21st century and predominant in non-Western societies. In this sense, it departs from

¹ Tim Kelsall, "International Criminal Justice and Non-Western Cultures" (Oxford Transitional Justice Research Working Paper Series, April 12, 2010), 1, accessed May 20, 2024, https://www.law.ox.ac.uk/sites/default/files/migrated/kelsall_internationalcriminaljustice_final1.pdf.

² Kai Ambos, "The Fujimori Judgment: A President's Responsibility for Crimes Against Humanity as Indirect Perpetrator by Virtue of an Organized Power Apparatus," *Journal of International Criminal Justice* 9, no. 1 (2011), 147–148, accessed May 20, 2024, <https://www.cfr.org/backgrounder/mexicos-long-war-drugs-crime-and-cartels>.

³ See, among others, Joel S. Migdal, *Strong Societies and Weak States: State-Society Relations and State Capabilities in the Third World* (Princeton: Princeton University Press, 1988), 1–43; Victor Azarya and Naomi Chazan, "Disengagement from the State in Africa: Reflections on the Experience of Ghana and Guinea," *Comparative Studies in Society and History* 29, no. 1 (1987), 106–131, accessed May 22, 2024, <https://doi.org/10.1017/S0010417500014377>; Linn A. Hammergren, "Corporatism in Latin American Politics: A Reexamination of the 'Unique' Tradition," *Comparative Politics* 9, no. 4 (1977), 443–461, accessed May 22, 2024, <https://doi.org/10.2307/421234>.

⁴ "Southern" or "peripheral" do not only allude to a geographical dimension, but also serve as metaphors for the power dynamics between the Global North and the Global South in knowledge production. The North/South distinction highlights the divide between regions such as Western Europe and North America, on the one hand, and the countries of Latin America, Africa, Asia, and Oceania, on the other. In this regard, the assumption has been that societies in the South must follow the North's path to "modernize" or be properly equipped with adequate legal frameworks. See Kerry Carrington et al., "Southern Criminology," *British Journal of Criminology* 56, no. 1 (2015), 2–5, accessed August 31, 2024, <https://doi.org/10.1093/bjc/azv083>.

⁵ Kelsall, *International Criminal Justice*, 1.

from a legal pluralism approach while advocating for a context-specific analysis and understanding of the conflict.

Section two provides the elements and minimum requirements of two classic modes of liability under ICL: perpetration through an organization, and superior responsibility. It emphasizes the requirement of a hierarchical structure and the nature of effective authority/control over subordinates. In exemplifying the challenges posed by non-hierarchical or complex-fluid organizations to said modes of liability, the third section presents the case of Sierra Leone and its deeply rooted patrimonial system. It emphasizes the non-hierarchical nature of the Civil Defense Forces (CDF) and the personal dynamics and relationships inside the rebel group.

Section four further employs the case of Mexico to examine quick transformations within illegal organizations and their relevance for international criminal accountability. While groups tend to shatter and create alliances without an apparent clear pattern, different known factors can help to understand the underlying reasons behind these actions. Ultimately, the section questions the diffuse hierarchy between central and satellite operating groups and the need to shift the analysis to a more peripheral and contextual perspective. By examining the complexities of different conflict settings, this paper aims to contribute to a deeper understanding of accountability mechanisms, which is crucial for preventing mass atrocities and genocide in contexts where traditional modes of liability fall short.

Hierarchical Structures or Complex-Fluid Organizations?

The traditional conceptualization of organized armed groups (OAG) and organized criminal structures have been developed from the experiences of Western (center) countries and their understanding of conventional warfare and military structures.⁶ The hierarchical/bureaucratized model describes organized criminal organizations as groups of actors with “government-like or military-like structure[s]”⁷ in which members have a clear rank and position, with superiors directing, approving, and leading subordinates personally carrying out the conduct.⁸ In this sense, “all power flows from top to bottom.” Leaders do not struggle to keep control, and subordinates almost unequivocally follow goals and directives from the top.⁹

A similar approach to the concept of OAGs is found when looking at the organizational requirement for OAGs participating in non-international armed conflict (NIAC).¹⁰ Under Article 8(2)(f) of the Rome Statute of the International Criminal Court (RS), a NIAC exists when there is a protracted conflict between the state and one or several OAGs or between these groups.¹¹

Accordingly, the OAG must have “some” degree of organization to be able to comply with the law of armed conflict in carrying out protracted violence. To determine whether the OAG has the required level of organization, the jurisprudence of the ad hoc tribunals and the International Criminal Court (ICC) have developed a non-exhaustive list of factors, including: internal hierarchy, the group structure of command and its internal disciplinary rules; the availability of firearms and military equipment; its “ability to plan military operations and put

⁶ Ibid.

⁷ UNODC, “Organized Crime Module 7 Key Issues: New Forms of Organized Crime. UNODC’s Education for Justice (E4J) Initiative,” UNODC, May 2018, accessed May 20, 2024, <https://www.unodc.org/e4j/en/organized-crime/module-7/key-issues/networked-structure.html>; Europol, “Serious and Organised Crime Threat Assessment, Crime in the Age of Technology” (The Hague: Netherlands, 2017), 14.

⁸ Jay S. Albanese, “Transnational Organized Crime,” in *International Crime and Justice*, ed. Mangai Natarajan (Cambridge: Cambridge University Press, 2010), 231–238, accessed May 20, 2024, <https://doi.org/10.1017/CBO9780511762116.037>.

⁹ Mark Osiel, “The Banality of Good: Aligning Incentives against Mass Atrocity,” *Columbia Law Review* 105, no. 6 (2005), 1835.

¹⁰ Geert-Jan Alexander Kooops, “The Transposition of Superior Responsibility onto Guerrilla Warfare under the Laws of the International Criminal Tribunals,” *International Criminal Law Review* 7, no. 2–3 (2007), 508–509, accessed May 22, 2024, <https://doi.org/10.1163/156753607X204293>.

¹¹ International Criminal Court, *Rome Statute of the International Criminal Court* (Rome, 1998). Art. 8 (2)(f).

them into effect;" "the extent, seriousness, and intensity of any military involvement;" the group's capacity to enter into agreements; and the military training.¹²

Likewise, the concept of regular forces, as read from the Hague Convention (I) and (IV), has generally been contrasted to that of irregular forces. The former has been defined as "fighting units operat[ing] in an open, structured and coordinated manner" and, thus, having a "well structured" and trained military command.¹³ The latter is often understood as less trained, organized, and coordinated, with operations being carried out by groups or sections and utilizing the element of surprise.¹⁴

Thus, criminal structures and armed groups have been univocally described in hierarchical structures resembling bureaucratized armies and States.¹⁵ Furthermore, it has been a common practice in ICL since early cases¹⁶ to prove superior responsibility, subordination, and the existence of organizations without even considering the diverse cultural settings, social dynamics, or interpersonal relationships in which they operate.

Moreover, when analyzing leadership under ICL, the approach seems to focus on the coercive—material—power to control the will of subordinates rather than on less structured means of influence.¹⁷ Section 3 explores this perspective, dealing with two classic modes of liability under ICL: superior responsibility and perpetration through an organized apparatus of power (hereafter, OAP).

Complex-fluid Organizations Vis-à-vis Traditional Structures

ICL has tried to achieve legitimacy by constructing itself from different legal traditions and comprehending local traditional justice systems.¹⁸ Yet, for International Criminal Law "to be truly cosmopolitan," it cannot merely stretch "Western doctrine onto the transnational plane without considering the implications for societies not sharing similar underlying assumptions."¹⁹

Peripheral regions and conflict situations only partially fit prevailing ICL concepts, forcing doctrines with weak sociological basis into contexts that might only be somewhat applicable.²⁰ New dynamics inside organizations, their consequential fluidity, and even traditional authority models in non-central regions challenge the applicability of current modes of liability without any consideration or reinterpretation.

¹² *Prosecutor v. Germain Katanga*, Judgment pursuant to article 74 of the Statute, No. ICC-01/04-01/07-3436-tENG (ICC, TC II March 7, 2014), paras. 1183–1887; *Prosecutor v. Thomas Lubanga Dyilo*, Judgment pursuant to Article 74 of the Statute, No. ICC-01/04-01/06-2842 (ICC, TC I April 5, 2012) paras. 531–538 (Lubanga Trial Judgment); *Prosecutor v. Dominic Ongwen*, Trial Judgment, No. ICC-02/04-01/15-1762-Red (ICC, TC IX February 4, 2021), para. 2685; *Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaissona*, Prosecution's Request for Reconsideration of, or Alternatively Leave to Appeal," No. ICC-01/14-01/18-437 (ICC, PTC II March 2, 2020), para. 72.

¹³ Knoops, *Transposition*, 509–510.

¹⁴ Yoram Dinstein, ed., "Lawful Combatancy," in *The Conduct of Hostilities Under the Law of International Armed Conflict* (Cambridge: Cambridge University Press, 2004), 41–43, accessed August 20, 2024, <https://doi.org/10.1017/CBO9780511817182.003>.

¹⁵ Leigh Swigart, "Now You See It, Now You Don't: Culture at the International Criminal Court," in *Intersections of Law and Culture at the International Criminal Court*, ed. Julie Fraser and Brianne McGonigle Leyh (London: Edward Elgar Publishing, 2020), 14–36, accessed May 22, 2024, <https://doi.org/10.4337/9781839107306.00008>.

¹⁶ See Jamie Allan Williamson, "Some Considerations on Command Responsibility and Criminal Liability," *International Review of the Red Cross*, 90, no. 870 (2008), 305, accessed May 22, 2024, https://www.icrc.org/en/doc/assets/files/other/irrc-870_williamson.pdf; U.S. War Crimes Commission, "Law Reports of Trials of War Criminals, The Hostage Trial: *United States v. Wilhelm List et al.*," Oxford Public International Law (website), February 19, 1948, accessed November 26, 2024, <https://opil.ouplaw.com/display/10.1093/law:icl/491us48.case.1/law-icl-491us48>.

¹⁷ Saira Mohamed, "Leadership Crimes," *California Law Review* 105, no. 3 (2017), 801–806, accessed June 1, 2024, <https://doi.org/10.15779/Z38D795946>; Carsten Stahn, *A Critical Introduction to International Criminal Law* (Cambridge: Cambridge University Press, 2019), 419–420.

¹⁸ *Prosecutor v. Dominic Ongwen*, Appeals Judgment against the decision of Trial Chamber IX of 6 May 2021, No. ICC-02/04-01/15 A2 (ICC, AC December 15, 2022), paras. 96–110.

¹⁹ Osiel, *Banality*, 1753.

²⁰ Kelsall, *Non-Western Cultures*, 1–2.

Classic legal frameworks governing individual criminal responsibility should account for different contexts, cultural social settings, and contemporary warfare structures.²¹ Globalization, technology, facilities in communication, transportation, and interconnectedness have led criminal organizations²² to move “away from longer-term traditional relationships and structures to more fluid, less formal and temporary associations.”²³ Thus, in the 21st century, criminal organizations are characterized by utilizing “diverse forms and sizes of clusters, network structures and groups.”²⁴

Criminal structures have evolved to possess a high fluidity and structural variability that can differ from those imagined when developing traditional modes of responsibility. Illegal enterprises with disconnected roles and capabilities imitate businesses and show high flexibility in command. Rather than having a centralized “headquarters” and a single figure adopting decisions, organizations now work through vast networks.²⁵ Examples of said organizations can be seen in the Colombian drug cartels, Russian mafia enterprises, or the Japanese Yakuza. It is critical to understand the nature and tendencies of these new structures to effectively combat and dismantle illegal organizations and guarantee accountability for these offenses.

According to the United Nations Office on Drugs and Crime (UNODC), models of organized criminal entities can be classified into three: i) groups with a defined hierarchical structure; ii) local cultural-based connections groups; and, iii) business-based organizations.²⁶ While each category has its own characteristics and others that might overlap, they all share a (primarily economic) purpose, which the lack of institutional control and justice systems can exploit. Fluid structures thrive within organized crime models by constructing less rigid and more compartmentalized chains of command.²⁷ It has been argued that elements that contribute to changing structures might be influenced by different factors, such as volatile political conditions (weak institutions and governability), economic environments, or other social conditions (e.g., local networks or ethnic ties), by creating new market opportunities within illegal products or services where societal links can be more important than laws and official authorities.²⁸ At the same time, many of these components can constitute an ideal territory for criminal organizations to flourish since they can benefit from economic needs, weak governments, and ethnic marginalization.

Efforts from the international community to tackle organized crime have been undermined precisely by the limited or narrow approach to how organized criminal group categories (national or transnational) are defined.²⁹ This has been pointed out as one of the main problems in analyzing this crime typology. The different approximations of qualitative and quantitative data, organizational levels, time frames, and geographical scope have magnified the challenge.³⁰ Similarly, the disparity in the degree to which governments and international organizations have studied organized crime reflects the uneven methodological approach and

²¹ Swigart, *Now You See It*.

²² Jharna Chatterjee, *The Changing Structure of Organized Crime Groups* (Ottawa: Royal Canadian Mounted Police, 2005), 2.

²³ UNODC, *New Forms of Organized Crime*.

²⁴ Chatterjee, *The Changing Structure*, 11.

²⁵ UNODC, *New Forms of Organized Crime*.

²⁶ *Ibid.*

²⁷ Europol, *Serious and Organised Crime*, 14.

²⁸ Phil Williams and Roy Godson, “Anticipating Organized and Transnational Crime,” *Crime, Law and Social Change* 37, no. 4 (2002), 315–318, accessed November 22, 2024, <https://doi.org/10.1023/A:1016095317864>.

²⁹ See, for example, United Nations: General Assembly, *United Nations Convention Against Transnational Organized Crime*, adopted by the General Assembly in Resolution 55/25, (2003). Article 2.

³⁰ Sappho Xenakis, “Incapacity, Pathology, or Expediency? Revisiting Accounts of Data and Analysis Weaknesses Underpinning International Efforts to Combat Organised Crime,” *Trends in Organized Crime* 24, no. 1 (2021), 6, accessed June 1, 2024, <https://doi.org/10.1007/s12117-020-09387-7>.

how illegal structures benefit from the latter.³¹ Conventional organized structures are fought from the hegemonic-centered rhetoric of crime and punishment. However, these fit-all categories fall short when evaluating divergent and changing relationships inside horizontally organized criminal groups. In addition, there needs to be more empirical background on what fluid structures stand for and which measures are more effective in tackling them.

In more flexible structures, criminological research shows that a detailed social network analysis may effectively combat organized crime. Such an approach aims to study organizations beyond an individual level and tackle them by recognizing underlying links between actors. In non-hierarchical groups, central figures are interchangeable, and even when so-called “leaders” are arrested, this does not limit the organization’s capacity. Thus, even the “most relevant” members are not necessarily the more visible ones, nor do the groups depend on them as much as their social links and networks.³² Fluid structures face different challenges, and some of the by-products of fluid structures can be internal conflicts and violence arising from disputing control within criminal organizations.

A similar de-hierarchization process has occurred in the framework of modern warfare, where armed conflict has often taken the form of guerrilla wars fought by irregular forces with low degrees of military training and occurring without or outside the scope of control/command or in an informal manner.³³ Today’s military superiors can hardly take for granted “the strict subordination” characteristic of ideal-type bureaucracies, as described by Max Weber and conceptualized by Claus Roxin.³⁴ Leaders of criminal or lawful organizations seldom assume that their directives will be unquestionably implemented or obeyed. Likewise, it is rather common for subordinates in big organizations to challenge their superior’s orders when they contravert their own goals.³⁵

Recent approaches to the paramilitary phenomenon also highlight the importance of a more nuanced and context-specific analysis since the type of organizations, violence, and relationships with the State and society will depend on the cultural and societal realities.³⁶ When describing common features across paramilitary groups, Uğur Ümit Üngör has noted that generally, militiamen are not formally controlled or commanded by the state or political leaders and rarely receive direct orders from them. They do not have a direct relationship with those in power but merely “informal ties.” Yet, they often adopt similar conducts to those under hierarchical control and operate “based on an implicit expectation that since they are serving a common agenda” with those in political power, they may act with impunity.³⁷

Another interesting point is the relationships between the state (military), paramilitary groups, political parties, and society, which are “not a simplistic top-down process of parties ‘buying muscle’ from paramilitaries, but also the latter co-opting the former for their own

³¹ Adam Crawford, “Networked Governance and the Post-Regulatory State? Steering, Rowing and Anchoring the Provision of Policing and Security,” *Theoretical Criminology* 10, no. 4 (2006), 450–451, accessed May 20, 2024, <https://doi.org/10.1177/1362480606068874>.

³² Nigel Coles, “It’s Not What You Know—It’s Who You Know That Counts. Analysing Serious Crime Groups as Social Networks,” *British Journal of Criminology* 41, no. 4 (2001), 585, accessed August 22, 2024, <https://doi.org/10.1093/bjc/41.4.580>.

³³ Danny Hoffman, “The Meaning of a Militia: Understanding the Civil Defence Forces of Sierra Leone,” *African Affairs* 106, no. 425 (2007), 509, accessed August 20, 2024, <https://doi.org/10.1093/afraf/adm054>.

³⁴ Claus Roxin, “Crimes as Part of Organized Power Structures,” *Journal of International Criminal Justice* 9, no. 1 (2011), 193–205.

³⁵ Osiel, *Banality*, 1835.

³⁶ Ilias Bantekas, “Legal Anthropology and the Construction of Complex Liabilities,” in *The Sierra Leone Special Court and Its Legacy: The Impact for Africa and International Criminal Law*, ed. Charles Chernor Jalloh (Cambridge: Cambridge University Press, 2013), 190, accessed August 23, 2024, <https://doi.org/10.1017/CBO9781139248778.016>; Uğur Ümit Üngör, *Paramilitarism: Mass Violence in the Shadow of the State* (Oxford: Oxford University Press, 2020), 115–116, accessed May 20, 2024, <https://doi.org/10.1093/oso/9780198825241.001.0001>.

³⁷ Uğur Ümit Üngör, “Introduction: Paramilitarism as a Catalyst of Perpetration,” *Journal of Perpetrator Research* 3, no. 2 (2021), 1–2, accessed May 22, 2024, <https://doi.org/10.21039/jpr.3.2.89>.

interests.”³⁸ As such, the phenomenon entails dialectical relationships where paramilitaries influence and are influenced by the State and society.³⁹

Perhaps the most relevant aspect of the phenomenon is the variety of hierarchical and heterarchical shapes the organizations can take, depending on the informal connections common to the communities, tribes, and families in which they operate.⁴⁰ In this sense, membership in what have been described as “non-professionalized” paramilitary groups will tend to be more fluid, less permanent, and operationally more chaotic: they are “local men, with local connections.”⁴¹ On the other hand, in more “professionalized” groups, some permanency, rank, and hierarchy will be expected.⁴²

A similar perspective is implied by the newly coined term “netwar.” Netwar refers to:

[A]n emerging mode of conflict (and crime) at societal levels, short of traditional military warfare, in which the protagonists use network forms of organization and related doctrines, strategies, and technologies attuned to the information age. These protagonists are likely to consist of dispersed organizations, small groups, and individuals who communicate, coordinate, and conduct their campaigns in an internetted manner, often without a central command.⁴³

Thus, focusing on the possibility of conflict and crime being perpetrated by criminal networks rather than organized hierarchical structures resembling the state apparatus and organization.

Besides these global changes in the nature of conflict, customary ways of exercising authority, such as patrimonial-based models, are still present in some non-centric regions such as Africa and Latin America. In contrast to armies, power in peripheral areas has been chiefly personal, horizontal, and dependent on those subordinated.⁴⁴

These often disregarded, complex-fluid organizations, and precisely their absence of a command chain and hierarchy, raise questions about the inflexibility and static nature of traditional modes of liability and their universal automatic applicability. The following section will deal with the two modes of liability to hold superiors accountable under ICL: superior responsibility and perpetration through an OAP.

The Traditional Modes of Responsibility and Complex-Fluid Organizations⁴⁵

Superior Responsibility

Superior responsibility is the doctrine by means of which military and civilian superiors may be held criminally liable for crimes committed by their subordinates.⁴⁶ As such, the notion has

³⁸ Üngör, *Paramilitarism*, 142.

³⁹ *Ibid.*, 178.

⁴⁰ *Ibid.*

⁴¹ Iva Vukušić, “Masters of Life and Death: Paramilitary Violence in Two Bosnian Towns,” *Journal of Perpetrator Research* 3, no. 2 (2021), 75, accessed May 22, 2024, <https://doi.org/10.21039/jpr.3.2.81>.

⁴² *Ibid.*

⁴³ John Arquilla and David F. Ronfeldt, eds., *Networks and Netwars: The Future of Terror, Crime, and Militancy* (Santa Monica: Rand, 2001), 6.

⁴⁴ See note 3.

⁴⁵ Due to the limited scope of this paper, other relevant modes of liability, such as Joint Criminal Enterprise (I, II, III), are not covered. The decision to exclude them from the analysis is justified for two main reasons: first, the mode has been abandoned with the adoption of the *Rome Statute*, and second, the authors believe that, as expressed in the widely known criticisms, especially regarding III, the risks of going back to this approach will outweigh its advantages.

⁴⁶ Gideon Boas et al., eds., “Superior Responsibility,” in *International Criminal Law Practitioner Library: Volume 1: Forms of Responsibility in International Criminal Law* (Cambridge: Cambridge University Press, 2008), 142–260, accessed September 1, 2024, <https://doi.org/10.1017/CBO9780511586569.004>; *Prosecutor v. Zejnil Delalić, Zdravko Mucić (Aka “Pavo”), Hazim Delić and Esad Landžo (Aka “Zenga”) (“Čelebići case”)*, Appeals Judgement (ICTY, Trial Chamber February 20, 2001), para. 228–240.

generally been assimilated to a form of omission that entails criminal responsibility for the superior's failure to prevent, suppress, or punish the crimes committed by those under control.⁴⁷

Under the classic definition of the concept⁴⁸ and its development by the case law of the ad hoc tribunals,⁴⁹ for the superior to be responsible for the crimes committed by their subordinates, three elements must be present.⁵⁰ First, there must be a superior-subordinate relationship.⁵¹ Second, the superior should have known or had reason to know that the crimes were going to be committed or had been perpetrated.⁵² Third, the superior must have failed to take all the reasonable and necessary measures/steps to prevent the perpetration of the conduct or to punish those responsible for the behavior.⁵³

The three elements are reflected in Article 28 RS, according to which a military commander or person effectively acting as such shall be responsible for the crimes committed by the: i.) "forces under his or her effective command and control, or effective authority and control as the case may be, as a result of his or her failure to exercise control properly over such forces" when the superior ii.) "either knew or, owing to the circumstances at the time, should have known that the forces were committing or about to commit such crimes" and, iii.) "failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution."⁵⁴ Attending this article's limited scope, only the first element will be analyzed in depth.⁵⁵

Under Article 28 RS, for a superior-subordinate relationship to exist, first, the superior must be a "military commander or person effectively acting as a military commander."⁵⁶ This

⁴⁷ Antonio Cassese et al., eds., *The Rome Statute of the International Criminal Court: A Commentary* (Oxford: Oxford University Press, 2002), 806; ICTY, TC II, *Prosecutor v. Naser Orić*, Trial Judgment, No. IT-03-68-T (June 30, 2006), para. 300; *Prosecutor v. Enver Hadžihasanović, Mehmed Alagic, and Amir Kubura*, Decision on Interlocutory Appeal Challenging Jurisdiction in Relation to Command Responsibility, No. IT-01-47-A (ICTY, Appeals Chamber July 16, 2003), para. 14.

⁴⁸ Robert Cryer, "The Ad Hoc Tribunals and the Law of Command Responsibility: A Quiet Earthquake," in *Judicial Creativity at the International Criminal Tribunals*, ed. Shane Darcy and Joseph Powderly (Oxford University Press, 2010), 170, accessed August 20, 2024, <https://doi.org/10.1093/acprof:oso/9780199591466.003.0008>.

⁴⁹ *Prosecutor v. Prosecutor v. Bagilishema*, Trial Judgment, No. ICTR-95-1A-T (ICTR, TC I June 7, 2001), para. 38.

⁵⁰ Orić, Trial Judgment, para. 294; *Prosecutor v. Zejnil Delalić, Zdravko Mucić (Aka "Pavo"), Hazim Delić and Esad Landžo (Aka "Zenga")* ("Čelebići case"), Trial Judgment, No. IT-96-21-T (ICTY, Trial Chamber November 26, 1998), para. 346; *Prosecutor v. Jean-Pierre Bemba Gombo*, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo, No. ICC-01/05-01/08-424 (ICC, PTC II June 15, 2009), paras. 401 and following (Bemba Confirmation of Charges); *Prosecutor v. Ndindiliyimana et al.*, Trial Judgment, No. ICTR-00-56-T (ICTR, TC II May 17, 2011), paras. 126, 1916.

⁵¹ Čelebići Case, Trial Judgment, para. 647; *Prosecutor v. Sefer Halilović*, Appeal Judgment, No. IT-01-48-A (ICTY, Appeals Chamber October 16, 2007), paras. 58, 210.

⁵² *Prosecutor v. Milomir Stakić*, Trial Judgment, No. IT-94-1-A (ICTY, TC II July 31, 2003), para. 460; *Prosecutor v. Bagilishema*, Appeal Judgment, No. ICTR-95-1A-A (ICTR, Appeals Chamber July 3, 2002), para. 28; *Prosecutor v. Mladen Naletilić aka "Tuta," Vinko Martinović aka "Stela,"* Trial Judgment, No. IT-98-34-T (ICTY, TC March 31, 2003), para. 73.

⁵³ Čelebići Case, Trial Judgment, para. 346; Bemba, Confirmation of Charges, para. 407; see also *Prosecutor v. Mladen Naletilić aka "Tuta," Vinko Martinović aka "Stela,"* Trial Judgment, No. IT-98-34-T (ICTY, TC March 31, 2003).

⁵⁴ Rome Statute, Art. 28. See also Case Matrix Network, *Command Responsibility: International Criminal Law Guidelines: Case Mapping, Selection and Prioritisation* (Colombia, 2016), 386, accessed November 26, 2024, <https://www.legal-tools.org/doc/7441a2/pdf/>.

⁵⁵ Although the second element can also pose some issues; for instance, in fluid organizations, superiors may be less likely to have full knowledge of subordinates' conduct. This article will focus on the first element since control is a cross-cutting concept employed not only under Art 28 of the RS, but in the theory of perpetration through an organization (replaceability and automatic implementation of orders) and in the control theory (control over the crime).

⁵⁶ Rome Statute, Art. 28

position may arise from a *de facto* or *de iure* relation.⁵⁷ Second, a “functional hierarchical structure”⁵⁸ must allow the superior to exercise “effective command and control or effective authority and control” over his subordinates.⁵⁹

To determine the existence of a said relationship, the ad hoc tribunals advanced the “effective control test.”⁶⁰ The ICTY in the trial judgment of *Aleksovski* held that “the decisive criterion in determining who is a superior according to customary international law is not only the accused’s formal legal status but also his ability, as demonstrated by his duties and competence, to exercise control.”⁶¹ The ICTY Trial Chamber (TC) described control as “formal and actual position of having the authority over the subordinate persons.”⁶² A similar approach was taken by the Trial Chamber (TC) in the Čelebići case, defining the superior’s effective control over a subordinate as the “material ability to prevent or punish criminal conduct.”⁶³ As such, the effective control requirement has often been defined as the commander’s “capacity and power to force a certain act” into the subordinates’ conduct or crime.⁶⁴

When faced with the question of the existence of a superior-subordinate relationship, the Pre-Trial Chamber (PTC) II in Bemba’s confirmation of charges defined effective authority as “the modality, manner or nature, according to which, a military or military-like commander exercise[s] ‘control’ over his forces or subordinates.”⁶⁵ In this line, the PTC stated that the threshold for effective control is higher than that of a “simple ability to exercise influence over forces or subordinates, even if such influence turned out to be substantial”⁶⁶ and refers to “the material ability to prevent and punish” the subordinates’ perpetration of crimes.⁶⁷

⁵⁷ See, among others, *Prosecutor v. Zejnil Delalić, Zdravko Mucić (aka “Pavo”), Hazim Delić and Esad Landžo (Aka “Zenga”) (“Čelebići case”), Appeals Judgement*, para. 192 and following.; *Prosecutor v. Limaj et al.*, Trial Judgement, No. IT-03-66 (ICTY, TC II November 30, 2005), para. 522; *Prosecutor v. Sefer Halilović*, Trial Judgment, No. IT-01-48-T (ICTY, TC I (A) November 16, 2005), para. 791.

⁵⁸ Case Matrix Network, *Command Responsibility*, 9; see also *Prosecutor v. Alex Tamba Brima, Brima Bazza Kamara, Santigie Borbor Kanu*, Trial Judgment, No. SCSL-04-16-T (SCSL, TC II June 20, 2007), at para. 781.

⁵⁹ *Rome Statute*, Art. 28; see also Panagiota Kotzamani, “Towards a Unified Approach to Superior Responsibility in International Criminal Law: Establishing the Links between Participation to the Crime and the Superior Responsibility Doctrine,” *Leiden Journal of International Law* 35, no. 3 (2022), 679–697, accessed May 22, 2024, <https://doi.org/10.1017/S0922156522000115>.

⁶⁰ Volker Nerlich, “Superior Responsibility Under Article 28 ICC Statute: For What Exactly Is the Superior Held Responsible?” *Journal of International Criminal Justice* 5, no. 3 (2007), 669, accessed May 20, 2024, <https://doi.org/10.1093/jicj/mqm033>.

⁶¹ *Prosecutor v. Zlatko Aleksovski*, Trial Judgment, No. IT-95-14/1-T (ICTY, TC June 25, 1999), para. 76.

⁶² *Ibid.*, para. 74.

⁶³ Čelebići Case, Trial Judgment, para. 256. In this sense, see also: *Prosecutor v. Radovan Karadžić*, Trial Judgment, No. IT-95-5/18-T (ICTY, Trial Chamber March 24, 2016), paras. 580–583; *Prosecutor v. Dragoljub Kunarac, Radomir Kovac and Zoran Vuković*, Trial Judgment, No. IT-96-23-T&IT-96-23/1-T (ICTY, Trial Chamber February 22, 2001), para. 628; *Prosecutor v. Tihomir Blaskić*, Trial Judgment, No. IT-95-14-T (ICTY, TC March 3, 2000), para. 301; Harmen van der Wilt and Maria Nybondas, “The Control Requirement of Command Responsibility: New Insights and Lingering Questions Offered by the Bemba Appeals Chamber Case,” in *Military Operations and the Notion of Control Under International Law*, eds. Rogier Bartels et al. (The Hague: T.M.C. Asser Press, 2021), 329–347, accessed August 25, 2024, https://doi.org/10.1007/978-94-6265-395-5_16.

⁶⁴ Guénaél, “A Superior–Subordinate Relationship Between the Accused and Those Who Committed the Underlying Offences,” in *The Law of Command Responsibility*, ed. Guénaél Mettraux (Oxford: Oxford University Press, 2009), 157, in citing Sadaichi case, reported in XV LRWTC 175 (1949), accessed August 25, 2024, <https://doi.org/10.1093/acprof:oso/9780199559329.003.0009>.

⁶⁵ Bemba, *Confirmation of Charges*, para. 413.

⁶⁶ *Ibid.*; Harmen van der Wilt, “Command Responsibility in the Jungle: Some Reflections on the Elements of Effective Command and Control,” in *The Sierra Leone Special Court and Its Legacy: The Impact for Africa and International Criminal Law*, ed. Charles Chernor Jalloh (Cambridge: Cambridge University Press, 2013), 156–158, accessed September 1, 2024, <https://doi.org/10.1017/CBO9781139248778.014>.

⁶⁷ *Ibid.*, para. 415.

The PTC endorsed several of the factors identified by the ad hoc tribunals⁶⁸ as indicative of effective control by the superior:

(i.) the official position of the suspect; (ii.) his power to issue or give orders; (iii.) the capacity to ensure compliance with the orders issued (i.e., ensure that they would be executed); (iv.) his position within the military structure and the actual tasks that he carried out; (v.) the capacity to order forces or units under his command, whether under his immediate command or at a lower level, to engage in hostilities; (vi.) the capacity to re-subordinate units or make changes to command structure; (vii.) the power to promote, replace, remove or discipline any member of the forces; (viii.) the authority to send forces where hostilities take place and withdraw them at any given moment.⁶⁹

Perpetration Through an Organization

According to the Trial Chamber II in Lubanga, Under Article 25(3)(a), an individual can be convicted of committing a crime: (i.) individually, (ii.) jointly with another, or (iii.) through another person.⁷⁰ When interpreting Article 25(3)(a), the PTC I in Katanga and Chui held that the third form of liability under the Article, commonly known as indirect perpetration, included two modes types of liability: “perpetrator behind the perpetrator” and “the perpetration through another by means of ‘control over an organisation (*Organisationsherrschaft*)’.”⁷¹

The concept of indirect perpetration through an organization has its roots in the “control over the crime theory” developed by Claus Roxin.⁷² According to this theory, principals can be distinguished from accessories since the former choose *whether* and *how* crimes are committed, while the latter do not.⁷³

In seeking to apply all the manifestations of the control theory to the jurisprudence of the Court, PTC I in Katanga considered that the framework of the Statute, as well as the wide acceptance of the notion of *Organisationsherrschaft*⁷⁴ in “modern legal doctrine” and national

⁶⁸ Case Matrix Network, *Command Responsibility*, 70.

⁶⁹ Bemba, *Confirmation of Charges*, para. 417.

⁷⁰ Lubanga, Trial Judgement, para. 977; *Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, William Samoei Ruto Defence Brief Following the Confirmation of the Charges Hearing, No. ICC-01/09-01/11-355 (ICC, PTC II October 24, 2011), para. 87; *Prosecutor v. Omar Hassan Ahmad Al Bashir*, Decision on the Prosecution’s Application for a Warrant of Arrest Against Omar Hassan Ahmad Al Bashir, No. ICC-02/05-01/09-3 (ICC, PTC I March 4, 2009), para 210 that speaks about four manifestations of the notion of the control over the crime.

⁷¹ *Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Public Redacted Version Decision on the confirmation of charges, No. ICC-01/04-01/07-717 (ICC, PTC I September 30, 2008), paras. 498, 500–501 (Katanga Confirmation of Charges).

⁷² See Thomas Weigend, “Perpetration through an Organization: The Unexpected Career of a German Legal Concept,” *Journal of International Criminal Justice* 9, no. 1 (2011), 94, <https://doi.org/10.1093/jicj/mqq077>. The control over the crime theory was imported to the Court in the *Prosecutor v. Thomas Lubanga Dyilo*, Decision on the confirmation of charges, No. ICC-01/04-01/06-803-tEN (ICC, PTC I January 29, 2007), para. 347.; see also Kai Ambos, “Command Responsibility and *Organisationsherrschaft*: Ways of Attributing International Crimes to the ‘Most Responsible’,” in *System Criminality in International Law*, ed. André Nollkaemper and Harmen van der Wilt (Cambridge: Cambridge University Press, 2009), 142, accessed May 20, 2024, <https://doi.org/10.1017/CBO9780511596650.007>.

⁷³ Claus Roxin, *Derecho penal. Parte general* (Madrid, España: Editorial Civitas, 1997); Alejandro Kiss, “Indirect Commission,” in *Modes of Liability in International Criminal Law*, ed. Lachezar Yanev et al. (Cambridge: Cambridge University Press, 2019), 31, accessed November 22, 2024, <https://doi.org/10.1017/9781108678957.003>.

⁷⁴ See, for instance, Weigend, *Perpetration Through*.

jurisdictions,⁷⁵ made possible and necessary for Article 25(3)(a) to account for those utilizing an organization to commit crimes.⁷⁶ In this sense, the PTC I considered that for the person to be responsible for the crimes committed by the organized apparatus of power (OAP) under their control, the organization had to be: (i.) based on “hierarchical relations between superiors and subordinates”⁷⁷ and, (ii.) “composed of sufficient subordinates to guarantee that superiors’ orders will be carried out, if not by one subordinate, then by another.”⁷⁸ The PTC I also highlighted that the leader must exercise “authority and control over the apparatus” that allows him to guarantee an “almost automatic compliance with” his orders.⁷⁹

Similarly, the PTC I in the Decision on the “Prosecutor’s Application Pursuant to Article 58 as to Muammar Mohammed Abu Minyar Gaddafi, Saif Al-Islam Gaddafi, and Abdullah Alsenussi,” stated that for a person to be responsible as an indirect perpetrator via the control of OAP: “(a.) the suspect must have control over the organisation; (b.) the organisation must consist of an organised and hierarchical apparatus of power; (c.) the execution of the crimes must be secured by almost automatic compliance with the suspect’s orders.”⁸⁰

In this sense, the theory of perpetration through an organization has been developed to respond to an OAP whose “paradigmatic example” is the state.⁸¹ Roxin’s approach is based on the state and “state within a State” structures characterized by hierarchical relationships and structure.⁸² The theory assumes that individuals committing crimes need to be irrelevant (interchangeable).⁸³ Thus, movements joining “forces to commit joint crimes” even when choosing “one of their number as a leader” do not qualify as a “power structure.”⁸⁴

Another critical element is the control exercised by the “man behind” the structure.⁸⁵ In the words of the TC in Katanga, “the liability of the perpetrator also rests on the exertion of control and genuine authority over the organisation.” Hence, it requires that the man behind the structure employs “at least part of the apparatus of power” to perpetrate the crimes without allowing any of the subordinates the possibility to decide on the execution of the conduct.⁸⁶

The lingering question is whether this model is universally applicable and if all criminal organizations, conflicts, and armed groups can be covered and held accountable by applying these requirements. The following two sections shed some light on the traditional modes’ shortcomings and the importance of analyzing local dynamics and each group’s structures when seeking its members’ responsibility. These sections focus on the perpetration of mass atrocities in Sierra Leone and Mexico, respectively.

⁷⁵ Kai Ambos et al., eds., *Persecución penal nacional de crímenes internacionales en América Latina y España* [National criminal prosecution of international crimes in Latin America and Spain] (Montevideo: Sankt Augustin bei Bonn, República Federal de Alemania, [Freiburg im Breisgau, Germany], Fundación Konrad-Adenauer Uruguay, Konrad-Adenauer-Stiftung, Instituto Max Planck de Derecho Penal Extranjero e Internacional, 2003), 216–240.

⁷⁶ Katanga, *Confirmation of Charges*, paras. 500–504.

⁷⁷ *Ibid.*, para. 512.

⁷⁸ *Ibid.*

⁷⁹ *Ibid.*, paras. 511–518.

⁸⁰ *Prosecutor v. Saif Al-Islam Gaddafi*, Decision on the “Prosecutor’s Application Pursuant to Article 58 as to Muammar Mohammed Abu Minyar Gaddafi, Saif Al-Islam Gaddafi and Abdullah Alsenussi,” No. ICC-01/11-01/11-1 (ICC, PTC I June 27, 2011), para 69. For the jurisprudence of the ICC in developing this mode of responsibility, see also: *Prosecutor v. Bahr Idriss Abu Garda*, Public Redacted Version—Decision on the Confirmation of Charges, No. ICC-02/05-02/09-243-Red (ICC, PTC I February 8, 2010), footnote 246; *Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute, No. ICC-01/09-01/11-373 (ICC, PTC II February 4, 2012), para. 104.

⁸¹ Kiss, *Indirect Commission*, 37.

⁸² Roxin, *Crimes as Part*, 203.

⁸³ For the analysis on interchangeability and automatic implementation of the order see Katanga, *Confirmation of Charges*, paras. 1408–1410.

⁸⁴ Roxin, *Crimes as Part*, 204.

⁸⁵ *Ibid.*, 194.

⁸⁶ Katanga, *Confirmation of Charges*, paras. 1411–1412.

Patron-client Relationships in Sierra Leone

Sierra Leone faced a civil war that lasted for over a decade (1991–2002).⁸⁷ The confrontation was mainly between the Revolutionary United Front (RUF) and the Armed Forces Revolutionary Council (AFRC). However, atrocities were also committed by governmental forces and allied rebel groups, mainly the CDF.⁸⁸ The conflict, although initially low-intensity, was characterized by child abduction (over 10,000 children),⁸⁹ rape and widespread attacks on the population resulting in over “70,000 casualties and 2.6 million displaced people.”⁹⁰

In January 2002, the Special Court for Sierra Leone was established to try those responsible for the crimes occurring during the civil war by an agreement between the United Nations and the government of Sierra Leone.⁹¹ Drawing on the Nuremberg and Tokyo Tribunal’s jurisprudence, CDF members were charged by the Special Court for Sierra Leone with the well-established mode under international law of superior responsibility.⁹² This section highlights the patrimonial and neo-patrimonial dynamics and structures present in Sierra Leone before and during the war, while contesting the application of the concepts of superior responsibility and/or perpetration through an organization to hold CDF’s leaders accountable.

The Patrimonial Relations and the Conflict

Weber conceptualized “patrimonial relations as a tripartite political hierarchy of patrimonial ruler, staff, and subjects.”⁹³ In other words, a complex relationship between the one governing, the ones governed, and those mediating power between the governor and the governed.⁹⁴ In this regard, patronage is considered to encompass the relations between patrons and clients, where the patron delivers services, opportunities, and resources, and the clients, in return paid allegiance, providing gifts, support, and services. As such, the relationship is indirect or mediated by the transaction of favors or values and is highly personal (loyalty-based).⁹⁵

Since pre-colonial times, Sierra Leone has been governed through patrimonial relations and parcels.⁹⁶ The establishment of a British protectorate rather than transforming the existing

⁸⁷ Human Rights Watch, “The Armed Conflict in Sierra Leone,” April 11, 2012, accessed November 10, 2023, <https://www.hrw.org/news/2012/04/11/armed-conflict-sierra-leone>.

⁸⁸ Ibid.

⁸⁹ Marianne Ducasse-Rogier, “Resolving Intractable Conflicts in Africa: A Case Study of Sierra Leone” (Clingendael Netherlands Institute of International Relations, 2004), 31, accessed November 10, 2023, <http://www.jstor.org/stable/resrep05531.8>.

⁹⁰ United Nations Development Programme, Evaluation Office, “Case Study; Sierra Leone, Evaluation of UNDP Assistance to Conflict-Affected Countries,” 2006, 6, accessed November 10, 2023, <http://web.undp.org/evaluation/documents/thematic/conflict/SierraLeone.pdf>.

⁹¹ United Nations and Government of Sierra Leone, “Agreement Between the United Nations and The Government of Sierra Leone On The Establishment Of A Special Court For Sierra Leone,” January 16, 2002, accessed August 24, 2024, <http://www.rscsl.org/Documents/scsl-agreement.pdf>.

⁹² Tim Kelsall, ed., “An Unconventional Army: Chains of Command in a Patrimonial Society,” in *Culture Under Cross-Examination: International Justice and the Special Court for Sierra Leone* (Cambridge: Cambridge University Press, 2009), 71–104, accessed, November 10, 2023, <https://doi.org/10.1017/CBO9780511642173.004>.

⁹³ William P. Murphy, “Military Patrimonialism and Child Soldier Clientalism in the Liberian and Sierra Leonean Civil Wars,” *African Studies Review* 46, no. 2 (2003), 63, accessed November 10, 2024, <https://doi.org/10.2307/1514826>.

⁹⁴ William P. Murphy, “Patrimonial Logic of Centrifugal Forces in the Political History of the Upper Guinea Coast,” *African Social Studies Series* 24, (2010), 32.

⁹⁵ Kelsall, *Unconventional Army*, 76.

⁹⁶ Sara S. Berry, *No Condition Is Permanent: The Social Dynamics of Agrarian Change in Sub-Saharan Africa* (Madison: University of Wisconsin Press, 1993), 24.

system employed it to govern indirectly⁹⁷ via the figure of “chiefdoms.”⁹⁸ Furthermore, in post-colonial times, the system continued untouched. The first president, Milton Margai, acted simply by placing himself over the chiefs of a fragmented society, and subsequent leaders utilized the patrimonial ties to their advantage while deepening the societal division.⁹⁹ Political and military leaders in Sierra Leone have acted like “big men,” providing and solving the everyday needs of the population through redistributing resources based on personal favors and allegiances.¹⁰⁰

A striking factor is the patrimonial structure of the army. For years, the army’s hierarchical system had struggled with corruption and personal ties at the center of its functioning.¹⁰¹ But, patronage was more importantly embedded in the rebel structures: the “political economy of the civil wars provided the new “big men”—that is, commanders at different levels of the military regimes—with the patronage resources they needed for building a following.”¹⁰²

In the words of Daniel Hoffman, there are three clear examples “of the primacy of patronage over purely military style command” inside the CDF.¹⁰³ First, the lack of military training and experience of many of the CDF commanders who were, however, respected and admired by the community before the war. Moinina Fofana, for example, who became the Director of War, had no military experience or previous training but was, nonetheless, considered a successful “businessman and benefactor for internally displaced persons.”¹⁰⁴ Similarly, Brima Jolu Kenneh Sei was elected as commander because he was viewed as an “upstanding citizen” by the chief’s selection committee.¹⁰⁵

Second, there were no standard definitions, “codified duties, obligations, or spheres of command for specific positions” associated with military ranks.¹⁰⁶ Titles had different implications inside different parts of the organization, depending on who held the position and these often implied more than military responsibilities.¹⁰⁷

The title of *Kamajor*, for instance, was employed before the war to incorporate many rights and obligations, primarily in the sense of responsibility to protect a community or village. These obligations and relationships among clients and patrons did not cease to exist during the conflict. Instead, they expanded to cover different areas, with “patrons” now having both social/community-based obligations and military responsibilities. Accordingly, “commanders” or *Kamajors* during the conflict were responsible for their “clients” in a manner that went beyond military need. They were in charge of providing shelter, aid, and food, and acting as

⁹⁷ Kelsall, *Unconventional Army*, 77.

⁹⁸ Pre-colonial rulers entered into agreements with the British to create over 400 chiefdoms. In this sense, traditional rulers had to guarantee law and order inside their territories as well as the application of taxes. At the same time the “Paramount Chiefs” were subordinated to the power of “District Commissioners,” typically British white citizens. See: Truth and Reconciliation Commission for Sierra Leone (TRC), “Witness to Truth: Report of the Sierra Leone Truth and Reconciliation Commission,” Accra: GPL Press and Truth and Reconciliation Commission—Sierra Leone, 2004, vol. 3A, 551, para. 17.

⁹⁹ Kelsall, *Unconventional Army*, 78.

¹⁰⁰ Murphy, *Military Patrimonialism*, 67.

¹⁰¹ Krijn Peters, “Footpaths to Reintegration: Armed Conflict, Youth and the Rural Crisis in Sierra Leone” (PhD diss., Wageningen Universiteit, 2006), footnote 190, accessed November 22, 2024, <https://edepot.wur.nl/44295>.

¹⁰² Murphy, *Military Patrimonialism*, 69.

¹⁰³ The CDF has been chosen in lieu of RUF, a more seemingly disorganized group and AFRC which mimicked a conventional army. Moreover, the CDF as a paramilitary group, allows for the analysis of parallel structures and their relationship with the State (a classic bureaucratic organization) and society. Likewise, its seemingly organized nature allows the authors to portray the point of the fluidity, interconnectedness and personal relationships inside the organization and of the structure with other organizations which might not be completely visible at first hand.

¹⁰⁴ Hoffman, *Meaning of Militia*, 653.

¹⁰⁵ Ibid.

¹⁰⁶ Ibid.

¹⁰⁷ Ibid. For the review of the different meanings of titles and roles, see TRC, *Witness to Truth*.

mediators in disputes and family situations. At the same time, their “subordinates” would give the *Kamajor* part of their earnings and assist him if needed.¹⁰⁸

A third factor, and perhaps one of the most interesting points, is The Report of the Truth and Reconciliation Commission’s finding of the chameleon characteristics or “factional fluidity among the different militias and armed groups.” The Commission found that “fighters switched sides or established new ‘units’ on a scale unprecedented in any other conflict.”¹⁰⁹ As such, captured RUF (Revolutionary United Front) members were often easily incorporated into the CDF and created long-term ties with their new commanders, who would, in turn, stand up for them and provide them with resources when needed. The mobility between groups reflects more than a lack of hierarchy. It shows the personal and evolving dynamics, as well as its flexibility.¹¹⁰

Another factor that raises questions about the application of traditional notions of superior responsibility to the CDF concerns subordination and obedience. According to the Truth and Reconciliation Commission, *Kamajor* fighting units were loosely or arbitrarily organized, with subordinates often acting in contravention or beyond the orders of superiors.¹¹¹ Furthermore, rebel structures had “virtually non-existent hierarchical controls”; leaders inside the groups and territory were unlikely to effectively control their subordinates since it was always possible for them to create new units with autonomy and change groups.¹¹²

Moreover, the patronage characteristics are demonstrated by the amount of “commanders” in the CDF vis-a-vis the non-official ranks. As mentioned before, most individuals would claim titles such as “battalion commander”, “company commander”, or “platoon commander” as rewards but did not necessarily hold a position of superiority or have the ability to control subordinates.¹¹³ In this sense, commanders and “command” as a title referred to individuals acting as “patrons” who had clients and served to denote the position of the person in society, without necessarily implying the correlated control of a hierarchical military position.¹¹⁴

The question then is if the CDF was not structured in military terms and its ranks did not reflect a hierarchical structure but rather a patrimonial-fluid logic, could the modes of superior responsibility or perpetration through an organization be correctly applied to hold their leaders accountable?

Superior Responsibility, Perpetration Through an Organization, and CDF’s Leaders’ Responsibility

For a person to be accountable for the crimes committed through an organization, they must have had a certain degree of control over the organized structure of power so that they could have guaranteed the mechanization of the crimes (automatic commission by the subordinates). Likewise, according to the long-lasting jurisprudence of international criminal courts and tribunals, the concept of superior responsibility requires that the commander or superior has effective control over their subordinates (material ability to suppress, prevent, or sanction). This was the position taken by Trial Chamber I of the Special Court of Sierra Leone in *Moinina Fofana*, which stressed that as developed by the ad hoc tribunals, for a superior to be responsible, they must have had effective control over their subordinates.¹¹⁵

However, when applying these modes of liability to CDF, the structures, patrimonial dynamics, personal relationships, and fluidity of the organization raise several questions. First,

¹⁰⁸ Ibid.; Mariane Ferme and Daniel Hoffman, “Irregular Combatants and International Human Rights Discourse in African Civil Wars: The Case of Sierra Leone’s ‘Hunters’,” *Politique Africaine* no. 88 (2002), 27–48.

¹⁰⁹ TRC, *Witness to Truth*, 540–560, para. 315.

¹¹⁰ Hoffman, *Meaning of Militia*, 654.

¹¹¹ TRC, *Witness to Truth*, 544–545, para. 299.

¹¹² Ibid., 545.

¹¹³ Daniel J. Hoffman, Expert Report on the *Kamajors* of Sierra Leone submitted by the Fofana Defense Team in the *Case of the Prosecutor v. Samuel Hing Norman, Moinina Fofana, and Allieu Kondewa*, No. Case No. SCSL-2004-14-T (Special Court for Sierra Leone August 11, 2006), 19.

¹¹⁴ Ibid., 19–20.

¹¹⁵ *Prosecutor v. Moinina Fofana and Allieu Kondewa*, Trial Judgment, para. 238.

the requirement of automatic implementation of orders by interchangeable subordinates is simply impossible to apply to an organization where relations are essentially personal. The CDF was not a mechanized apparatus of power; it relied on a network of favors and personal connections with those on top owing their “clients” protection and provisions. As such, CDF’s members implemented orders not because the “man behind” had ultimate authority or could replace them, but rather because of the existing two-way beneficial relationship.

Secondly, the application of the mode of superior responsibility is disputable. The existence of a chain of command inside the CDF is not straightforward, specifically considering the possibility of disciplining *Kamajors* and the confusion and overlapping of relationships.¹¹⁶ Furthermore, the number of “commanders,” their literacy, lack of experience/training, and absence of a systematized set of roles for the ranks are indicators of the relationships’ personalized and unstructured nature.¹¹⁷ This was somehow acknowledged by the SCSL TCI in Foana, where the Chamber held that there was no evidence to “conclude beyond reasonable doubt” that Albert Nallo, who was a subordinate of Moinina Foana, exercised “the same degree of control over other Kamajor commanders and fighters who operated in Bo both during the attack and subsequently,” since “by Nallo’s own admission, he could not exercise full or strict control over all of the Kamajors in Southern Region.”¹¹⁸ Similarly, the TC found “that the evidence adduced has not established beyond reasonable doubt that Fofana had a superior-subordinate relationship with all the Kamajors who operated in Bo District and who committed criminal acts.”¹¹⁹ Yet paradoxically, the TC found that there was an effective chain of command regarding some of the *Kamajors* and in relation to some of the acts; this while blatantly ignoring among others the fact that Foana was illiterate and “dependent on Nallo to translate the situation reports for him.”¹²⁰

Thirdly, it is unclear whether commanders and superiors had the material ability to sanction, repress or punish their subordinates, who regularly changed groups, and expected provisions and protection from the commanders. In this sense, the relationships appear more transactional and reciprocal than hierarchical, or control based. Moreover, it is necessary to determine which measures were available and reasonable to the commander who might employ different means of control over their subordinates. When analyzing the reasonable and available measures the SCSL “held that a superior did not take any measures to prevent a crime or to punish the perpetrators, and thus found the Accused responsible on this basis.”¹²¹ However, it often lacked a detailed analysis of what these measures were and the specific contest in which each of the commanders operated.¹²²

Accordingly, the regional analysis and anthropological evaluations of the Sierra Leone conflict show the significant challenges and shortcomings of applying traditional modes of responsibility under ICL automatically to peripheral areas where societies tend to have more personalized and less structured/hierarchical relationships, with little-to-no real analysis of their specific cultural and social aspects. In this sense, it is essential to consider that organizations (criminal or not) do not operate in a vacuum of their context; they relate to and emerge in them replicating social dynamics.

¹¹⁶ Kelsall, *Unconventional Army*, 93.

¹¹⁷ *Ibid.*

¹¹⁸ *Prosecutor v. Moinina Fofana and Allieu Kondewa*, Trial Judgment, para. 819.

¹¹⁹ *Ibid.*, para. 820.

¹²⁰ Kelsall, *Unconventional Army*, 99.

¹²¹ Sandesh Sivakumaran, “Command Responsibility in the Sierra Leonean Conflict: The Duty to Take Measures to Prevent Crimes and Punish the Perpetrators,” in *The Sierra Leone Special Court and Its Legacy: The Impact for Africa and International Criminal Law*, ed. Charles Chernor Jalloh (Cambridge: Cambridge University Press, 2013), 135, accessed August 24, 2024, <https://doi.org/10.1017/CBO9781139248778.013>.

¹²² *Ibid.*; see also *Prosecutor v. Moinina Fofana and Allieu Kondewa*, Trial Judgment, para. 826; *Prosecutor v. Issa Hassan Sesay, Morris Kallon and Augustine Gbao*, Trial Judgment, No. SCSL-04-15-T (SCSL, TC I March 2, 2009), paras. 2132 and 2291; *Prosecutor v. Alex Tamba Brima, Brima Bazzt Kamara, Santigie Borbor Kanu*, Trial Judgment, No. SCSL-04-16-T (SCSL, TC II June 20, 2007), paras. 1949 and 2079.

In the case of Sierra Leone, the contextual dynamics inherited from the pre-colonial period of a patrimonial organization of authority extrapolated into the structure of rebel groups like the CDF, which employed existing networks of client-patrons during the conflict. However, the situation is not isolated nor unique to the country or Africa. Undisputed concepts and modes of responsibility under ICL must be adjusted or at least reinterpreted to fit the context and societies to which they are applied. Local structures and understanding should be part of the legal exercise, especially when dealing with contexts that have not directly participated in the classic formulations of doctrines.

Alliances and Fragmentation Within Mexico's Criminal Organizations

The 1980s and 1990s marked a turning point in Mexico's organized crime history, particularly with the emergence of powerful drug trafficking organizations known as cartels.¹²³ During this time, Mexico underwent significant economic and political changes that contributed to the growth of these groups, with consequences that still shape society.

The North American Free Trade Agreement (NAFTA), signed in 1994, eliminated tariffs and other trade barriers between Mexico, the United States, and Canada. While NAFTA brought economic benefits to Mexico, it also opened new opportunities for criminal organizations to smuggle drugs into the United States, the world's largest market for illegal drugs. During these two decades, Mexico underwent significant political changes including transitioning from one-party rule to multi-party democracy. It saw the rise of corruption and a breakdown in the rule of law, creating a conducive environment for organized crime and violence.

Despite the absence of investigations under ICL on the internal conflict and violence in Mexico, it is instructive to consider the organized criminal structures and the various modes of liability borne by gang leaders involved in illicit activities. A challenge in analyzing the presence and hierarchy of these organizations is the lack of a precise number of known groups. Additionally, it seems that actions to remove kingpins from the scene are not entirely decisive in tackling the problem but can also exacerbate violence. Thus, fragmentation and transformation are common characteristics in big and small consortiums.

Intense turf battles between rival entities marked the early years of the drug cartel's violence in Mexico. The death of drug lord Amado Carrillo Fuentes in 1997 marked a turning point, leading to a consolidation of power among the cartels and the emergence of two dominant organizations: the Sinaloa and the Gulf cartels.¹²⁴ The cartels' violence continued to escalate in the 2000s, with the Mexican government launching a series of offensives. However, these efforts were largely unsuccessful, and violence resulted in thousands of deaths and displaced millions. Today, the cartels continue to be a significant source of violence and instability in Mexico, and the government's efforts remain pending or unsuccessful.

The violence in Mexico resulting from the cartel wars and the government's response has taken various forms and significantly impacted Mexican society.¹²⁵ On the one hand, the government has brutally responded to cartels.¹²⁶ The use of military force and heavy-handed tactics by law enforcement and the military to combat cartels has resulted in numerous human rights violations, including extrajudicial killings, torture, and forced disappearances.

On the other hand, cartels have been known to carry out public executions, dismemberments, and other gruesome acts to intimidate their rivals and assert their dominance

¹²³ Eduardo Hidalgo et al., "NAFTA and Drug-Related Violence in Mexico," *CESifo Working Paper* no. 9981 (2022), 4–7, accessed November 10, 2023, <https://doi.org/10.2139/ssrn.4241621>.

¹²⁴ Julian Cardona, "Juarez Drug Capo's Turf War Feeds Mexico Bloodshed," *Reuters*, February 25, 2010, accessed November 10, 2023, <https://www.reuters.com/article/idINIndia-46479120100225>.

¹²⁵ Mark A. R. Kleiman and Steven Davenport, "Strategies to Control Mexican Drug-Trafficking Violence," *Journal of Drug Policy Analysis* 5, no. 1 (2012), 1–2, accessed November 10, 2023, <https://doi.org/10.1515/1941-2851.1047>.

¹²⁶ "Spiraling Drug Violence in Mexico: Besides Military Action, Police Reforms Are Needed," *Strategic Comments* 14, no. 8 (2008), 1–2, accessed August 24, 2024, <https://doi.org/10.1080/13567880802565187>.

over territories.¹²⁷ Civilians have been caught in the crossfire, resulting in casualties. According to the Institute for Economics and Peace in Mexico, deaths attributed to conflicts between cartels increased from 669 in 2006 to more than 16,000 by 2020, easily exceeding the numerical thresholds commonly proposed for mass killings.¹²⁸ In addition to physical violence, the cartel wars have impacted Mexico economically. They control large portions of the drug trade, a significant income source. This has led to increased corruption, economic instability, and displacement of people forced to flee their homes due to violence and insecurity. Violence has also had psychological repercussions, with many people experiencing high levels of stress, anxiety, and depression due to living in a society marked by insecurity and fear.

These wars and violence have had an impact and have been shaped by a manifold historical context.¹²⁹ One of the critical factors is Mexico's long history of political and economic instability, which has created an environment conducive to organized crime. The country has experienced numerous periods of authoritarian rule, corruption, and financial hardship, eroding the rule of law and creating opportunities for criminal groups to gain power and influence. The demand for illegal drugs in the US has created a highly profitable market, with drug trafficking organizations earning billions of dollars each year. This has led to intense competition between rival groups and has fueled the use of extreme violence as a means of maintaining control over territories and markets. The impact of this complex web of violence in society has been far-reaching and multi-layered, affecting everything from the economy to public health and social cohesion.

The malleable nature of criminal organizations has challenged efforts to combat them.¹³⁰ Organizations can consolidate or shatter, either to fight a common enemy (government forces or rivals) or simply to pursue different interests.¹³¹ These adaptable and malleable characteristics make criminal groups hierarchically complex, and contrary to the example set in Sierra Leone, understanding the connections among individuals (since motivations can be swift, such as money or rivalries) is not an easy task. Local authorities have faced the challenge by trying to break down organizations to a more "manageable" size, creating a power vacuum that has increased violence within and outside illegal groups.¹³²

Mexican criminal groups have mutated into more fluid organizational models throughout recent history. In 2006, the country had four main illegal drug groups, and by 2022, it had nine prominent structures.¹³³ This expansion might have a myriad of explanations, ranging from pressure from the government to volatile leadership within groups. However, the fragmentation has an economic basis. It is business-oriented, transmuting from large-scale

¹²⁷ Jocelyn Chi et al., "Reducing Drug Violence in Mexico: Options for Implementing Targeted Enforcement," *U.S. Department of Justice*, April 2014, 27–28, accessed August 24, 2024, <https://www.ojp.gov/pdffiles1/nij/grants/246358.pdf>.

¹²⁸ Instituto para la Economía y la Paz, "Índice de Paz México 2022: Identificación y Medición de los Factores que Impulsan la Paz [Mexico Peace Index 2022: Identification and Measurement of Peace Drivers]," May 2022, 2–3, accessed August 28, 2024, <https://www.visionofhumanity.org/wp-content/uploads/2022/05/ESP-MPI-2022-web.pdf>.

¹²⁹ Laura Loeza Reyes, "Violencia Criminal, Desempeno Institucional y Respuesta de La Sociedad Organizada En México/Criminal Violence, Institutional Performance, and Responses from Organized Society in Mexico," *Política y Sociedad* 56, no. 1 (2019), 69, 70–73, accessed November 11, 2023, <https://doi.org/10.5209/poso.60793>.

¹³⁰ Laura H. Atuesta and Yocelyn Samantha Pérez-Dávila, "Fragmentation and Cooperation: The Evolution of Organized Crime in Mexico," *Trends in Organized Crime* 21, no. 3 (2018), 235–261, accessed August 23, 2024, <https://doi.org/10.1007/s12117-017-9301-z>.

¹³¹ Peter Rudloff and Michael G. Findley, "The Downstream Effects of Combatant Fragmentation on Civil War Recurrence," *Journal of Peace Research* 53, no. 1 (2016), 22–23, accessed November 10, 2023, <https://doi.org/10.1177/0022343315617067>.

¹³² Viridiana Ríos and David A. Shirk, "Drug Violence in Mexico: Data and Analysis Through 2010," Special Report (San Diego: Trans-Border Institute, February 2011), 18–19, accessed November 11, 2023, <https://justiceinmexico.files.wordpress.com/2011/03/2011-tbi-drugviolence.pdf>.

¹³³ June S. Beittel, "Mexico: Organized Crime and Drug Trafficking Organizations," *Congressional Research Service*, June 7, 2022, accessed November 11, 2023, <https://crsreports.congress.gov/product/pdf/R/R41576>.

groups to satellite and smaller gangs that might be in charge of different economic activities such as mining, agriculture, and security enforcement, among many others.¹³⁴ This shows the fluidity of criminal structures, constantly evolving to compete within changing drug markets.

Similarly, continuity is desired to guarantee the supply and demand of illegal goods.¹³⁵ Thus, these positions are always quickly replaced, even when main actors or leaders are removed from the scene (either by death or imprisonment).¹³⁶ This “war for profit” deserves a deep analysis to understand the root causes of criminality and violence and to comprehend the organizational levels different structures might have.¹³⁷

Smaller domestic groups gravitate around big organizations (with an estimated number of 200 to 400 small-scale groups). This arguably creates a problem when fighting illegal activities because the lines of control and chain of command become more diffuse. In recent years, big criminal organizations have transitioned from structured hierarchical structures (with family ties, community links, or social networks) to a more diluted control, which can exacerbate violence to achieve control of territories and markets.¹³⁸

The former most “prominent” groups have faced fragmentation into relatively smaller organizations. While this case study does not intend to analyze each organization, these groups can share family ties and local connections that are hard to break as a strategy to fight impunity.¹³⁹ Similarly, it has been argued that by forcing the creation of factions, local authorities might be able to fight organized crime more effectively. Alas, this has not always been the case.¹⁴⁰ While ephemeral groups might not have much influence at first glance, they can create a power imbalance among bigger structures.¹⁴¹ In return, authorities are forced to face the problem from different flanks.¹⁴² Unfortunately for the country, most of their responses have been ineffective.

Even though this paper does not take a stance on whether Mexico is facing an internal armed conflict, studying levels of organization, fragmentation, and alliances from this view might be helpful to understanding the fluidity of structures and the levels of violence irradiating from them. While fragmentation matters, different approaches can be seen. On the one hand, it is argued that the atomization of groups fosters a path to negotiation.¹⁴³ Conversely,

¹³⁴ Ibid.

¹³⁵ Guillermo Pereyra, “México: Violencia Criminal y Guerra Contra El Narcotráfico,” *Revista Mexicana de Sociología* 74, no. 3 (2012), 435–436.

¹³⁶ María Del Pilar Fuerte Celis et al., “Organized Crime, Violence, and Territorial Dispute in Mexico (2007–2011),” *Trends in Organized Crime* 22, no. 2 (2019), 188–209, accessed May 20, 2024, <https://doi.org/10.1007/s12117-018-9341-z>.

¹³⁷ Mary Beth Sheridan, “Losing Control: How Criminal Groups Are Transforming Mexico,” *Washington Post*, October 29, 2020, accessed November 11, 2023, <https://www.washingtonpost.com/graphics/2020/world/mexico-losing-control/mexico-violence-drug-cartels-zacatecas/>.

¹³⁸ David Shirk and Joel Wallman, “Understanding Mexico’s Drug Violence,” *Journal of Conflict Resolution* 59, no. 8 (2015), 1348–1376, accessed November 11, 2023, <https://doi.org/10.1177/0022002715587049>.

¹³⁹ A more comprehensive analysis might be found in the reference cited in footnote 132.

¹⁴⁰ CFR.org Editors, “Mexico’s Long War: Drugs, Crime, and the Cartels,” *Council on Foreign Relations*, September 7, 2022, accessed October 29, 2024, <https://www.cfr.org/background/mexicos-long-war-drugs-crime-and-cartels>.

¹⁴¹ Javier Osorio, “The Contagion of Drug Violence: Spatiotemporal Dynamics of the Mexican War on Drugs,” *Journal of Conflict Resolution* 59, no. 8 (2015), 1418–1420, accessed May 20, 2024, <https://doi.org/10.1177/0022002715587048>.

¹⁴² Guadalupe Correa-Cabrera et al., “Losing the Monopoly of Violence: The State, a Drug War and the Paramilitarization of Organized Crime in Mexico (2007–10),” *State Crime Journal* 4, no. 1 (2015), 78–79, accessed May 20, 2024, <https://doi.org/10.13169/statecrime.4.1.0077>.

¹⁴³ Wendy Pearlman and Kathleen Gallagher Cunningham, “Nonstate Actors, Fragmentation, and Conflict Processes,” ed. Wendy Pearlman and Kathleen Gallagher Cunningham, *Journal of Conflict Resolution* 56, no. 1 (2012), 6–10, accessed November 10, 2023, <https://doi.org/10.1177/0022002711429669>.

it escalates violence¹⁴⁴ by prolonging conflicts and dispersing combatants' attention.¹⁴⁵ Nevertheless, this is hardly a dichotomy, and multiple scenarios might be overlooked. It must be noted that there are several vital considerations that emphasize the gravity of the protracted violence observed and the possibility of accountability when arguing that the situation in Mexico may be covered by ICL. These arguments might be centered on the numerous breaches of human rights, the organized crime that resembles an armed conflict, the possibility of holding leaders accountable, the duty of protection and the potential for international investigations. Although it is hard to predict if the ICC will eventually deal with it, it is reasonable to argue that there are grounds to do so.

When external or internal factors shatter, groups, interests, and chains of command might change. While smaller cells can follow orders from big groups, this does not undermine their relative independence to act and interact. Alliances can form, as well as new rivalries with similar-oriented entities. Thus, one of the main questions is the real hierarchy between large and small structures, as well as the chain of command within these two categories. Although cooperation and communication can survive fragmentation, the latter can debilitate hierarchies and control becomes fluid. Replaceable leaders transform illegal groups into non-hierarchical, fluid organizations, with specific dynamics and loyalties in each cell. This creates a shift in the approach to modes of responsibility that deserves more examination.

Laura H. Atuesta and Yocelyn Samantha Pérez-Dávila have developed a typology of fragmentation and alliances for Mexico. While this might not be an exhaustive list, it helps to have an idea from a macro perspective:

Fragmentation by: loss of reputation, when groups are not able to maintain relationships and alliances; heterogeneous factions, when different goals create dispersion within groups; successions within the same organizations, implying that when a leader is removed, disputes over control can create separation; and, by a broken alliance, arising new groups after weak bonds.¹⁴⁶

Alliances to: control territory and to obtain protection, enhancing one of the main objectives of illegal organizations, which usually means a business expansion; weak position after fragmentation, a common feature after broken links, aiming to achieve relevance and cooperation; and to confront a common enemy, to face threats or counter arising conflicts.¹⁴⁷

In rapidly changing systems, there is a need for survival within illegal organizations, leading to fragmentation and alliances to achieve a goal. These phenomena have an implicit price, as they can be potentially linked to a rapid increase in violence and mayhem. Thus, a traditional understanding of modes of superior responsibility seems to fall short when addressing these transformations. However, due to the unpredictable nature of these events and because atomization and collisions are rarely based on particular codes or trust, it is a complex task to look at a multidimensional problem from a single perspective. Conversely, this presents an opportunity to shift from a unitary Western view of crime and responsibility, and to adapt it

¹⁴⁴ Kathleen Gallagher Cunningham et al., "Shirts Today, Skins Tomorrow: Dual Contests and the Effects of Fragmentation in Self-Determination Disputes," ed. Wendy Pearlman and Kathleen Gallagher Cunningham, *Journal of Conflict Resolution* 56, no. 1 (2012), 67–93, accessed November 13, 2023, <https://doi.org/10.1177/0022002711429697>.

¹⁴⁵ Michael Findley and Peter Rudloff, "Combatant Fragmentation and the Dynamics of Civil Wars," *British Journal of Political Science* 42, no. 4 (2012), 886, accessed October 29, 2023, <https://doi.org/10.1017/S0007123412000099>.

¹⁴⁶ Atuesta and Pérez-Dávila, *Fragmentation and Cooperation*, 14–18.

¹⁴⁷ *Ibid.*, 18–22.

to a non-Western (or peripheral) approach. This emphasizes that while analyzing a case within the dynamics formed by mainstream international legal frameworks, a context-specific analysis based on local and traditional settings, as well as social structure, is necessary. It also entails identifying and comprehending unofficial power structures that are exercised through unofficial networks and relationships and that do not always fit with Western-centric theories of warfare.

Conclusions

ICL has made notable accomplishments in developing a legal doctrine that allows for prosecuting individuals responsible for the most heinous crimes. However, this framework was developed primarily from the experiences of Western countries and their understanding of warfare and military structures and might not be a universally valid approach.

The first two sections of this article contrasted traditional organizations and their understandings vis-à-vis different models, such as those based on patronage or economic interest, to classic views on modes and degrees of responsibility. Hence, it stressed that criminal organizations and structures (locally and internationally) have become increasingly complex and fluid, with intricate hierarchies and ties that extend beyond conventional military formations.

Section three delved into the main elements of two traditional modes of responsibility under ICL—superior responsibility and perpetration through an organization—while stressing the limitations of effective control and subordination concepts. Sierra Leone's case in section four revealed the unique features of obedience, command titles, and control inside the CDF, where relationships were linked to interchangeable interests and benefits rather than orders emanating from a position of authority. Similarly, as presented in section five, organized crime and violence in Mexico showed the multifaceted challenge posed by criminal structures evolving to compete within dynamic drug markets.

Both cases demonstrate that traditional modes of responsibility in ICL fall short when seeking accountability for leaders of non-hierarchical and fluid organizations. Likewise, they show that there remains much to learn about the operational strategies of different criminal groups, which could help create effective strategies and combat organized crime and violence.

This paper has stressed the need for legal frameworks governing individual criminal responsibility to account for different contexts, cultural, and social settings, and contemporary warfare structures. Hence, the demand for traditional concepts to be critically re-evaluated and reinterpreted when seeking accountability in non-centric regions—where extrapolating concepts is almost impossible—and when dealing with new types of organizations. Among the many resources offered for the latter purpose, Southern Criminology highlights that access to global knowledge is necessary for a more comprehensive grasp of criminological issues. As such, integrating perspectives and experiences from the Global South continues to be a crucial and continuous undertaking.

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