العدد (6)
أكتوبر 2025
Volume (6)
October 2025
المجلة العربية
للدراسات الانسانية والاجتماعية
Arab Journal of Humanities and Social Studies
ISSN online: 3079-4099
ISSN print: 3079-4080

The Application of Command Responsibility in the Context of Hybrid Warfare and State-Sponsored Non-State Actors (Bridging the Accountability Gap)

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ABSTRACT

The doctrine of command responsibility has long served as a cornerstone of international humanitarian law, establishing accountability for military commanders whose subordinates commit war crimes. However, the emergence of hybrid warfare and the proliferation of state-sponsored non-state actors have fundamentally challenged traditional applications of this doctrine. This research examines the accountability gap created by these contemporary conflict dynamics, where states increasingly employ proxy forces, private military contractors, and irregular armed groups to achieve strategic objectives while obscuring direct legal responsibility. Through doctrinal analysis and examination of recent jurisprudence, this study demonstrates that existing command responsibility frameworks inadequately address situations where control relationships are deliberately fragmented, chains of command are intentionally obscured, and state involvement is carefully calibrated to maintain plausible deniability. The research proposes reconceptualizing command responsibility to encompass functional control rather than solely formal hierarchies, developing evidentiary standards appropriate for covert relationships, and strengthening accountability mechanisms through domestic prosecution and universal jurisdiction. These findings contribute to ongoing debates regarding the adaptation of international criminal law to contemporary security challenges and offer practical recommendations for prosecutors, judges, and policymakers seeking to close the impunity gap in hybrid conflict situations.

Keywords: Command Liability, State-Sponsored Actors, International Humanitarian Law, Proxy Forces, International Criminal Law.

DOI: https://doi.org/10.33193/AJHASS.72

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1. Introduction

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The principle of command responsibility represents one of international humanitarian law's most significant contributions to accountability for atrocity crimes. Rooted in the understanding that military commanders bear responsibility not only for their own actions but also for crimes committed by subordinates under their effective control, this doctrine has evolved through successive conflicts and tribunals (Mettraux, 2009). The International Military Tribunal at Nuremberg established foundational precedents, which were subsequently refined through the jurisprudence of the International Criminal Tribunals for the former Yugoslavia and Rwanda, and ultimately codified in Article 28 of the Rome Statute of the International Criminal Court (Prosecutor v. Bemba Gombo, 2016).

Contemporary armed conflicts, however, increasingly deviate from the conventional inter-state paradigms that informed the development of command responsibility. The rise of hybrid warfare, characterized by the deliberate blurring of boundaries between war and peace, combatants and civilians, and state and non-state violence, has fundamentally altered the operational environment in which accountability mechanisms must function (Hoffman, 2007). States now routinely employ irregular forces, private military companies, paramilitary organizations, and ostensibly independent armed groups to pursue strategic objectives while maintaining arms-length relationships designed to evade legal responsibility (Renz & Smith, 2016).

The conflicts in Ukraine, Syria, and Libya exemplify this phenomenon, where state sponsors provide varying degrees of military, financial, and logistical support to non-state actors while carefully calibrating their involvement to remain below thresholds that would trigger state responsibility or individual criminal liability (Schmitt, 2015). This strategic ambiguity creates what scholars have termed an "accountability gap," where serious violations of international humanitarian law occur yet perpetrators escape prosecution due to evidentiary challenges in establishing the requisite control relationships (Corn & Jenks, 2015).

This research addresses a critical question: how can the doctrine of command responsibility be effectively applied in situations involving state-sponsored non-state actors operating within hybrid warfare contexts? The study proceeds from the hypothesis that existing legal frameworks, developed primarily for conventional military hierarchies, prove inadequate when confronted with deliberately fragmented command structures and covert sponsorship relationships. Through systematic examination of relevant jurisprudence, state practice, and doctrinal developments, this research identifies specific shortcomings in current approaches and proposes adaptations necessary to bridge the accountability gap.

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The analysis unfolds across several dimensions. First, it establishes the doctrinal foundations of command responsibility and examines how this principle has been interpreted and applied by international criminal tribunals. Second, it analyzes the characteristics of hybrid warfare and state sponsorship of non-state actors, identifying specific features that challenge traditional accountability frameworks. Third, it evaluates recent attempts to apply command responsibility in hybrid conflict contexts, assessing both successes and limitations. Finally, it proposes concrete reforms to legal doctrine, evidentiary standards, and institutional mechanisms to enhance accountability for crimes committed within these complex operational environments.

2. The Doctrine of Command Responsibility: Historical Development and Legal Framework

The principle that military commanders bear responsibility for crimes committed by their subordinates emerged gradually through customary international law before achieving codification in treaty provisions. Early expressions appeared in the 1907 Hague Conventions, which imposed duties on commanders regarding the conduct of troops under their authority (Parks, 1973). The post-World War II trials provided crucial jurisprudential foundations, particularly through the prosecution of General Yamashita, whose case established that commanders could be held criminally responsible for failing to prevent or punish subordinate crimes despite lacking direct orders or personal participation (In re Yamashita, 1946).

The modern formulation of command responsibility emerged through the statutes and jurisprudence of the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda. These tribunals clarified essential elements, established evidentiary standards, and distinguished between military commanders and civilian superiors (Prosecutor v. Delali\u0107 et al., 1998). The ICTY's judgment in Čelebići established that command responsibility requires proof of three essential elements: the existence of a superior-subordinate relationship, the superior's knowledge or reason to know of subordinate crimes, and the superior's failure to take necessary and reasonable measures to prevent or punish such crimes (Prosecutor v. Delali\u0107 et al., 1998).

Article 28 of the Rome Statute represents the current authoritative codification of command responsibility, distinguishing between military commanders and other superiors while maintaining the fundamental elements established through prior jurisprudence. For military commanders, responsibility arises when they either knew or, owing to the circumstances at the time, should have known that forces were committing or about to commit crimes, and failed to take all necessary and reasonable measures within their power to prevent or repress their commission or to submit the

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matter to competent authorities (Rome Statute, 1998, Article 28(a)). The standard for civilian superiors differs, requiring actual knowledge or conscious disregard of information clearly indicating subordinate crimes (Rome Statute, 1998, Article 28(b)).

The jurisprudence surrounding command responsibility has particularly focused on defining "effective control" as the determinative criterion for establishing superior-subordinate relationships. The Appeals Chamber in Prosecutor v. Hadžihasanovi\u0107 emphasized that effective control constitutes a material ability to prevent or punish criminal conduct, irrespective of formal position or de jure authority (Prosecutor v. Hadžihasanovi\u0107 & Kubura, 2005). This focus on substantive power rather than formal titles theoretically enables application beyond conventional military hierarchies. However, tribunals have consistently required demonstration of specific indicia of control, including the power to issue binding orders, the capacity to discipline subordinates, and evidence of actual exercise of authority (Prosecutor v. Orić, 2006).

The knowledge requirement has proven equally significant in command responsibility prosecutions. The "should have known" standard for military commanders encompasses situations where information was available that would have enabled a reasonably diligent commander to conclude subordinates were committing or preparing to commit crimes (Prosecutor v. Blaškić, 2004). The Appeals Chamber in Prosecutor v. Bemba Gombo significantly refined this element, emphasizing that commanders must have had information that would have put them on notice of crimes, and that this information must be evaluated based on circumstances prevailing at the relevant time (Prosecutor v. Bemba Gombo, 2018).

The third element, failure to take necessary and reasonable measures, requires assessment of what actions lay within the commander's material possibility given their authority and circumstances. The Bemba trial judgment extensively analyzed this requirement, ultimately concluding that the accused had taken certain measures but that these proved inadequate given the scale and persistence of subordinate crimes (Prosecutor v. Bemba Gombo, 2016). Significantly, the Appeals Chamber's subsequent acquittal focused heavily on questions regarding Bemba's effective control and the reasonableness of measures taken, illustrating continuing uncertainties in applying these standards (Prosecutor v. Bemba Gombo, 2018).

This doctrinal framework, developed primarily through prosecutions of military and political leaders within relatively conventional command structures, faces substantial challenges when applied to contemporary hybrid warfare scenarios. The following section examines how state sponsorship of non-state actors and hybrid operational methods systematically undermine each element of command responsibility.

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3. Hybrid Warfare and State-Sponsored Non-State Actors: Operational Realities and Legal Challenges

Hybrid warfare defies simple definition, but scholarly consensus identifies its core characteristics as the deliberate integration of conventional military force, irregular tactics, terrorist methods, and criminal activities, combined with sophisticated information operations and economic coercion (Hoffman, 2007). Critically, hybrid strategies emphasize ambiguity regarding attribution, deliberately obscuring the distinction between state and non-state violence to complicate adversary responses and evade international legal consequences (Renz & Smith, 2016).

State sponsorship of non-state armed actors represents a central component of hybrid warfare strategies. Such relationships exist along a spectrum, from direct operational control through embedded advisors and integrated command structures, to arm's-length arrangements involving provision of weapons, training, and financial support without direct operational involvement (Cullen, 2016). States structure these relationships to achieve operational effectiveness while maintaining plausible deniability regarding the actions of sponsored groups, deliberately remaining below legal thresholds for state responsibility or individual criminal liability.

The Russian Federation's operations in Ukraine exemplify sophisticated hybrid approaches. Following the 2014 annexation of Crimea, Russian forces supported separatist movements in eastern Ukraine through provision of advanced weapons systems, military advisors, logistical support, and periodic direct intervention by regular forces operating without identifying insignia (Renz & Smith, 2016). This carefully calibrated involvement enabled Russia to achieve strategic objectives while maintaining official denials of direct participation and complicating efforts to establish clear chains of command for accountability purposes.

Similarly, the Syrian conflict has witnessed extensive state sponsorship of non-state actors by multiple parties. Iran's support for Lebanese Hezbollah and various Shia militia groups, Turkey's backing of certain opposition factions, and Qatari sponsorship of different rebel groups all demonstrate varying degrees of control, support, and coordination (Lister, 2016). The resulting complexity of overlapping authorities, divided loyalties, and fragmented command structures creates environments where attribution of specific crimes to particular commanders becomes extraordinarily difficult.

These operational realities challenge each element of command responsibility doctrine. First, effective control becomes difficult to establish when formal command relationships are deliberately obscured, forces operate under multiple competing authorities, and foreign sponsors exercise influence through indirect channels rather than direct command (Corn & Jenks, 2015). Documentation establishing hierarchical

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relationships may be intentionally absent, communications occur through informal networks, and plausible deniability is built into operational structures.

Second, the knowledge requirement faces unique challenges in hybrid contexts. When states sponsor forces operating in foreign territories, information flows regarding subordinate conduct may be irregular, filtered through multiple intermediaries, or deliberately limited to maintain deniability (Schmitt, 2015). Proving that commanders knew or should have known of crimes committed by ostensibly independent forces requires sophisticated intelligence analysis and access to classified communications, creating substantial evidentiary burdens.

Third, determining what constitutes necessary and reasonable measures becomes problematic when authority relationships are ambiguous. If a state sponsor lacks direct command authority and can only influence proxy forces through conditioned support, what measures must they take upon learning of subordinate crimes (Sivakumaran, 2017)? Does withdrawal of support constitute a sufficient response, or must sponsors actively intervene to prevent ongoing violations? Current jurisprudence provides limited guidance for these scenarios.

Furthermore, hybrid warfare deliberately exploits legal ambiguities regarding the classification of conflicts and the applicability of different legal regimes. When state armed forces operate covertly alongside non-state proxies, determining whether international or non-international armed conflict rules apply becomes contested (Schmitt, 2015). This classification uncertainty affects both substantive prohibitions and command responsibility frameworks, as different standards govern superior responsibility in different conflict types.

Private military and security companies represent another dimension of the accountability challenge. States increasingly employ private contractors for functions traditionally performed by regular armed forces, from logistics and training to direct participation in combat operations (Gillard, 2006). These arrangements deliberately exploit gaps between state responsibility frameworks and individual criminal accountability, as contractors operate under commercial contracts rather than military command structures, complicating application of traditional command responsibility doctrine.

The proliferation of informal armed groups, militia organizations, and paramilitary forces further fragments potential lines of accountability. In contexts such as Libya, and South Sudan, armed groups maintain complex relationships with state authorities, international sponsors, tribal structures, and criminal networks simultaneously (Mampilly & Stewart, 2021). Identifying clear command hierarchies within these environments proves exceptionally difficult, as authority may be contested, fluid, or based on personal loyalty rather than institutional position.

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4. Jurisprudential Responses and Practical Applications

International criminal tribunals and courts have confronted hybrid operational environments and state-sponsored actors in several cases, producing jurisprudence that illuminates both possibilities and limitations in applying command responsibility. The International Criminal Court's treatment of the situation in Darfur provides relevant insights, as the conflict involved complex relationships between Sudanese government forces, intelligence agencies, and Janjaweed militia groups (Prosecutor v. Al Bashir, 2009). While the Court issued arrest warrants for senior Sudanese officials, the lack of cooperation from the territorial state and difficulties in establishing precise command relationships have impeded prosecution.

The ICC's investigation into the situation in Georgia following the 2008 conflict examined potential crimes committed during hostilities involving Russian forces, South Ossetian separatists, and Georgian military and police units. The Prosecutor ultimately concluded that while there was a reasonable basis to believe war crimes occurred, the gravity threshold for ICC jurisdiction was not met (Office of the Prosecutor, 2016). This decision has been criticized for potentially creating a precedent whereby hybrid operations involving state forces and proxies could fall outside ICC jurisdiction despite serious violations.

National prosecutions have achieved greater success in certain contexts. German courts have exercised universal jurisdiction to prosecute Syrian officials for crimes against humanity based on command responsibility, demonstrating that domestic legal systems can fill gaps left by international institutions (Kaleck & Kroker, 2018). The conviction of Anwar Raslan by the Koblenz Higher Regional Court in 2022 represents a significant precedent, establishing accountability for senior officials in Syria's security apparatus despite the hybrid nature of the conflict and involvement of multiple state and non-state actors.

The Netherlands has pursued prosecutions related to the downing of Malaysia Airlines Flight 17 over eastern Ukraine, where evidence suggested the missile system came from Russian military forces operating in support of separatist groups (Hague District Court, 2022). This case demonstrates possibilities for establishing criminal accountability even in highly complex hybrid environments, though challenges regarding state cooperation and access to evidence remain substantial.

Efforts to apply command responsibility to private military contractors have met with limited success. The prosecution of Blackwater contractors for the 2007 Nisour Square massacre in Iraq proceeded under United States domestic law rather than command responsibility frameworks, illustrating difficulties in establishing superior-subordinate relationships in private security contexts (United States v. Slough et al., 2014). The subsequent presidential pardons of convicted contractors underscored the

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political dimensions affecting accountability in situations involving state-sponsored private actors.

The Special Tribunal for Lebanon addressed command responsibility in a context involving non-state armed groups with state sponsorship, specifically Hezbollah's relationship with Syrian and Iranian authorities (Prosecutor v. Ayyash et al., 2020). While the tribunal's limited jurisdiction to terrorism-related offenses precluded comprehensive examination of command responsibility for war crimes, the proceedings illuminated challenges in establishing control relationships when non-state actors maintain complex external sponsorship arrangements.

Scholars have proposed various approaches to address the accountability gap. Some advocate expanding the concept of effective control to encompass functional authority exercised through resource provision, training, and strategic direction, even without direct operational command (Corn & Jenks, 2015). This approach would recognize that states sponsoring proxy forces exercise meaningful control over their conduct through mechanisms beyond traditional military hierarchy. However, concerns arise regarding potential over-extension of criminal responsibility to situations where sponsors genuinely lack ability to prevent subordinate crimes.

Others propose developing distinct legal frameworks specifically for state sponsorship scenarios, potentially drawing analogies to aiding and abetting liability rather than command responsibility (Sivakumaran, 2017). This approach would focus on the sponsor's knowing contribution to crimes committed by proxies, avoiding difficulties inherent in establishing effective control while still capturing meaningful accountability. Critics argue this could dilute command responsibility's importance and create new evidentiary challenges regarding proof of knowledge and intent.

A third approach emphasizes strengthening evidentiary frameworks and investigative capabilities to penetrate the secrecy surrounding hybrid operations (Ambos, 2014). This includes developing methodologies for analyzing circumstantial evidence of control relationships, utilizing signals intelligence and financial forensics to trace support networks, and compelling disclosure of classified information through appropriate legal mechanisms. While promising, this approach faces practical limitations regarding access to intelligence sources and political will to fully investigate powerful state actors.

5. Reconceptualizing Command Responsibility for Hybrid Contexts

Bridging the accountability gap requires reconceptualizing command responsibility to address the specific characteristics of hybrid warfare and state-sponsored non-state actors while maintaining fidelity to fundamental legal principles. Any proposed reforms must balance effectiveness in capturing genuine authority relationships against concerns regarding expansion of criminal liability beyond culpable conduct.

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First, the concept of effective control should evolve to encompass functional authority exercised through non-hierarchical mechanisms. The traditional focus on power to issue binding orders and impose discipline remains relevant but proves insufficient in contexts where authority operates through conditioned support, strategic coordination, and resource dependency (Corn & Jenks, 2015). A commander exercising effective control through provision of critical weapons, intelligence, funding, and strategic direction bears meaningful responsibility for subordinate conduct even without formal position in a military hierarchy.

This functional approach to effective control requires developing specific indicia appropriate to sponsorship relationships. Relevant factors might include the exclusivity and materiality of support provided, the sponsor's involvement in strategic planning and target selection, the embedding of advisors within proxy forces, and the sponsor's ability to reward or punish the proxy group through continuation or withdrawal of support (Cullen, 2016). No single factor should prove determinative; rather, cumulative assessment of multiple indicators should guide determinations regarding whether effective control exists.

The knowledge requirement similarly requires adaptation to hybrid contexts. When commanders sponsor forces operating in distant territories, direct knowledge of specific crimes may be difficult to establish. However, a reasonably diligent commander providing substantial military support to forces engaged in ongoing hostilities bears responsibility for acquiring information regarding their conduct (Ambos, 2014). The "should have known" standard must encompass situations where commanders deliberately avoid obtaining information that would reveal subordinate criminality, rejecting willful blindness as a shield against responsibility.

Evidentiary standards should recognize that proof of knowledge and control in covert sponsorship situations necessarily relies heavily on circumstantial evidence. Pattern evidence demonstrating systematic provision of specific weapons systems subsequently used in crimes, intercepted communications revealing coordination between sponsors and proxies, and testimony from participants in support networks can collectively establish the requisite elements even without documentary smoking guns (Kaleck & Kroker, 2018). Tribunals should receive training in intelligence analysis methodologies to effectively evaluate such evidence.

The requirement to take necessary and reasonable measures must account for the distinctive nature of sponsor-proxy relationships. When commanders exercise effective control through resource provision rather than direct command, appropriate measures include conditioning continued support on compliance with international humanitarian law, withdrawing support upon learning of violations, and actively intervening through available mechanisms to halt ongoing crimes (Sivakumaran, 2017). Merely issuing general statements regarding respect for humanitarian law proves insufficient when sponsors possess meaningful leverage over proxy conduct.

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Institutional reforms should complement doctrinal developments. The International Criminal Court requires stronger political support and enhanced cooperation from states to effectively investigate hybrid warfare situations. This includes compelling disclosure of intelligence information relevant to establishing command relationships, despite states' traditional reluctance to reveal sources and methods (Ambos, 2014). Appropriate protective mechanisms can safeguard sensitive information while enabling prosecutorial use.

Domestic courts exercising universal jurisdiction represent crucial accountability mechanisms, particularly given political obstacles facing the ICC. States should strengthen domestic implementing legislation for command responsibility, train prosecutors and judges in relevant international law, and allocate resources for complex transnational investigations (Kaleck & Kroker, 2018). Regional cooperation mechanisms can facilitate evidence sharing and coordinated prosecution strategies for crimes committed in hybrid warfare contexts.

Civil society organizations and international fact-finding mechanisms play essential roles in documenting violations and preserving evidence in situations where formal prosecutions may be delayed. The Independent International Commission of Inquiry on Syria and similar bodies have collected extensive evidence regarding command relationships and criminal conduct that can support future accountability efforts (Human Rights Council, 2021). Ensuring systematic preservation and accessibility of such evidence enhances prospects for eventual prosecution.

6. Case Study Applications

Examining specific conflicts illustrates both challenges and opportunities in applying reconceptualized command responsibility frameworks. The ongoing situation in Ukraine provides particularly relevant examples, given the clear state sponsorship of non-state actors combined with direct participation by regular Russian forces operating without identifying insignia. Evidence suggests Russian military personnel embedded within separatist formations, Russian provision of advanced weapons systems including air defense missiles and artillery, and Russian control over strategic decision-making by separatist leaders (Renz & Smith, 2016).

Applying functional effective control analysis, Russian commanders exercising authority over forces in eastern Ukraine through these mechanisms could face command responsibility for crimes committed by subordinate Russian military personnel and sponsored separatist forces. The provision of exclusive and material military support, embedding of advisors, and exercise of strategic direction collectively indicate effective control despite absence of formal command authority over separatist organizations. Evidence from intercepted communications and testimony from participants could establish both the control relationship and knowledge of ongoing violations.

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The Syrian conflict presents additional complexity given multiple state sponsors supporting various armed groups. Iranian commanders providing support to Hezbollah forces and Shia militia groups operating in Syria could potentially face command responsibility for crimes committed by those forces. The extensive integration of Iranian Revolutionary Guard Corps advisors within supported forces, Iranian provision of weapons and funding, and Iranian involvement in operational planning suggest effective control relationships (Lister, 2016). Documentation of communications between Iranian commanders and militia leaders regarding specific operations could establish requisite knowledge.

Similarly, Turkish military commanders overseeing support for Syrian opposition factions potentially bear responsibility for violations committed by sponsored groups. Evidence of Turkish provision of weapons crossing into Syria, Turkish artillery support for opposition operations, and Turkish bases hosting opposition leadership could establish effective control (Schmitt, 2015). Intelligence regarding specific violations reaching Turkish military authorities would satisfy knowledge requirements.

Private military contractor operations in conflicts including Iraq, Afghanistan, Libya, and other locations present recurring accountability gaps. State military commanders contracting with private security firms for combat support services should bear command responsibility when they exercise effective control through contract terms, operational integration, and oversight mechanisms (Gillard, 2006). Commanders who delegate combat functions to contractors while maintaining authority to direct their activities, access to information regarding their conduct, and power to discipline through contract enforcement possess the attributes of effective control justifying responsibility for contractor crimes.

7. Challenges and Counterarguments

Proposals to expand command responsibility face several substantial objections requiring serious consideration. First, concerns arise regarding potential over-extension of criminal liability to individuals lacking genuine ability to prevent subordinate crimes. If effective control is interpreted broadly to encompass any provision of support to armed groups, sponsors providing humanitarian assistance, training in international humanitarian law, or limited material support could theoretically face prosecution for crimes they genuinely could not prevent (Sivakumaran, 2017). This concern underscores the importance of maintaining substantive thresholds requiring meaningful control over subordinate conduct, not merely incidental connection.

The proposed functional approach to effective control addresses this concern by requiring cumulative assessment of multiple indicia demonstrating substantial authority over proxy forces. Provision of exclusive and material military support

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differs fundamentally from limited humanitarian assistance. Integration of advisors within proxy command structures indicates direct involvement in operational decision-making. The framework should clearly exclude situations where support providers genuinely lack leverage to influence subordinate conduct.

Second, evidentiary challenges in establishing covert command relationships may prove insurmountable in many cases, potentially creating doctrinal standards that appear strong but prove unenforceable in practice. Intelligence agencies guard sources and methods jealously, states resist cooperation with investigations targeting their personnel, and participants in covert operations receive training in operational security (Ambos, 2014). These realities may render functional effective control largely theoretical rather than practically applicable.

This concern, while valid, should not preclude doctrinal development. Some cases will feature sufficient evidence, particularly when defectors provide testimony, signals intelligence captures communications, or financial forensics traces support networks. The successful German prosecutions of Syrian officials demonstrate that evidence can be obtained even regarding secretive operations (Kaleck & Kroker, 2018). Moreover, establishing clear legal standards may itself incentivize better behavior by putting potential defendants on notice regarding their vulnerability to prosecution.

Third, questions arise regarding fairness of holding commanders responsible for crimes committed by forces over whom they exercise only indirect influence. Traditional command responsibility contemplates hierarchical relationships where superiors possess clear authority to prevent subordinate crimes through direct orders. Extending responsibility to sponsors who influence proxy forces through support provision potentially criminalizes conduct that should be addressed through state responsibility frameworks rather than individual criminal liability (Corn & Jenks, 2015).

This objection merits careful consideration but ultimately proves unpersuasive. State responsibility frameworks address different questions and provide different remedies than individual criminal accountability. Commanders who knowingly provide material support to forces committing atrocities, who embed advisors to direct their operations, and who possess leverage to halt violations through withdrawal of support bear genuine culpability justifying criminal responsibility. The fact that they exercise authority through non-traditional mechanisms does not eliminate moral blameworthiness.

Fourth, practical concerns arise regarding selective prosecution and politicization. If command responsibility doctrine expands to encompass state sponsorship of proxy forces, powerful states may prosecute adversary commanders while shielding their own personnel from accountability. Asymmetric application could undermine

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legitimacy of international criminal law and exacerbate rather than resolve accountability gaps (Schmitt, 2015).

This concern highlights the importance of consistent and impartial application of legal standards. International institutions including the ICC must resist political pressure and investigate all situations meeting jurisdictional criteria regardless of the power of implicated states. Domestic courts exercising universal jurisdiction should apply standards evenhandedly. Civil society monitoring and documentation can expose selective prosecution and pressure for consistency. While political obstacles will persist, doctrinal clarity regarding applicable standards represents a necessary foundation for whatever accountability proves achievable.

8. Comparative Perspectives and Alternative Frameworks

Examining alternative legal frameworks provides useful comparative perspective on addressing accountability gaps in hybrid warfare contexts. The law of state responsibility offers one potential avenue, holding states accountable for violations committed by forces under their effective control. The International Court of Justice's judgment in Nicaragua v. United States established that states bear responsibility for acts of non-state armed groups when they exercise effective control over specific operations during which violations occurred (Military and Paramilitary Activities in and Against Nicaragua, 1986).

However, state responsibility frameworks face limitations in hybrid contexts. Attribution of non-state actor conduct to states requires proof of effective control over specific operations, a demanding standard that states deliberately structure relationships to avoid (Schmitt, 2015). Moreover, state responsibility generates obligations regarding reparations and cessation rather than individual criminal accountability, leaving perpetrators unpunished even when state responsibility is established.

Aiding and abetting liability offers another framework potentially applicable to state sponsorship situations. Under this mode of liability, individuals who knowingly provide practical assistance or encouragement to principal perpetrators face criminal responsibility even without exercising effective control. Several scholars advocate developing aiding and abetting liability for state sponsors whose support enables proxy forces to commit crimes (Sivakumaran, 2017).

This approach offers certain advantages, particularly avoiding difficulties in establishing effective control while still capturing culpable state conduct. Proof requirements focus on the sponsor's knowledge and substantial contribution rather than hierarchical authority. However, aiding and abetting liability traditionally requires more direct connection between assistance and specific crimes than typically

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exists in sponsorship relationships, and it carries lesser stigma and sentencing compared to command responsibility.

Joint criminal enterprise liability, as developed by ICTY jurisprudence, provides a framework for holding individuals responsible for crimes committed in furtherance of common purposes even without direct participation or command authority. Applied to hybrid warfare contexts, state sponsors and proxy forces who share a common plan involving violations of international humanitarian law could face responsibility for all crimes committed in furtherance of that plan (Prosecutor v. Tadić, 1999).

This mode of liability proves particularly relevant when evidence demonstrates agreed purposes between sponsors and proxies that include or foreseeably result in criminal conduct. However, joint criminal enterprise faces significant criticism regarding overbroad application and vague boundaries, and proving common plans between state sponsors and ostensibly independent proxy forces presents evidentiary challenges comparable to establishing effective control.

Domestic legal systems offer various approaches to superior responsibility that may prove instructive. Some jurisdictions recognize organizational authority liability, holding individuals responsible for crimes committed within organizations under their authority even without traditional military command relationships (Weigend, 2014). This framework could potentially extend to state sponsors exercising organizational authority over proxy networks through funding, training, and strategic direction.

The doctrine of "control over the organization" developed in Argentinean jurisprudence regarding crimes of the military dictatorship provides relevant precedent. This approach recognizes that individuals occupying positions atop hierarchical organizations bear responsibility for systematic crimes committed throughout the organization based on their authority over institutional apparatus rather than proof of specific orders (Ambos, 2014). Adapting this framework to state sponsorship situations could provide conceptual foundation for responsibility based on functional control over proxy networks.

9. Policy Recommendations and Implementation Mechanisms

Translating doctrinal developments into effective accountability requires concrete policy reforms across multiple dimensions. At the international level, the International Criminal Court should develop comprehensive prosecutorial strategies for hybrid warfare situations, including specialized investigation units trained in analysis of covert command relationships. The Office of the Prosecutor should publish policy papers clarifying interpretive approaches to effective control in sponsorship contexts, providing guidance to states and practitioners (Office of the Prosecutor, 2016).

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States Parties to the Rome Statute should amend domestic implementing legislation to explicitly recognize functional effective control as sufficient for command responsibility, providing clear authorization for domestic prosecutions of commanders exercising authority through non-traditional mechanisms. Model legislation developed by expert groups could facilitate consistent implementation across jurisdictions (Kaleck & Kroker, 2018).

Cooperation frameworks between states require strengthening to enhance evidence sharing in transnational investigations. Mutual legal assistance treaties should be amended to facilitate disclosure of intelligence information for prosecutorial purposes while maintaining appropriate protective measures. Regional cooperation mechanisms, particularly within the European Union, could develop specialized procedures for coordinated investigations of hybrid warfare crimes.

International investigative mechanisms including commissions of inquiry and fact-finding missions should adopt standardized methodologies for documenting command relationships in hybrid contexts. This includes systematic collection of evidence regarding resource flows, communications between sponsors and proxies, and integration of advisors within proxy forces. Evidence should be preserved in formats compatible with prosecutorial use and made accessible to competent courts.

Military training and legal advisor programs should incorporate comprehensive instruction regarding command responsibility in hybrid operational environments. Military lawyers must understand that sponsorship of proxy forces through provision of weapons, advisors, and strategic direction creates potential criminal liability for violations committed by sponsored groups. This awareness may incentivize implementation of safeguards including enhanced monitoring of proxy conduct, conditioning support on compliance with international humanitarian law, and immediate cessation of assistance upon evidence of violations (Corn & Jenks, 2015).

States should establish robust accountability mechanisms for private military and security contractors, including clear contractual provisions establishing oversight authority, mandatory reporting of potential violations, and criminal jurisdiction over contractor personnel. Defense ministries should develop standard contract terms requiring contractor compliance with international humanitarian law and establishing government authority to investigate and discipline violations (Gillard, 2006).

Civil society organizations require sustained support for documentation activities in conflict zones. International donors should fund systematic evidence collection regarding command relationships, atrocities, and hybrid warfare operations. Training programs should enhance civil society capacity for legally admissible documentation methodologies. Secure digital repositories should preserve evidence for future prosecutorial use.

DOI: https://doi.org/10.33193/AJHASS.72

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Arab Journal of Humanities and Social Studies
ISSN online: 3079-4099
ISSN print: 3079-4080

Academic institutions should develop research programs focused on command responsibility in hybrid contexts, producing scholarship that guides jurisprudential development. Specialized training programs should prepare prosecutors, judges, and defense lawyers for complex cases involving state-sponsored non-state actors. Clinical programs could provide technical assistance to domestic courts prosecuting hybrid warfare crimes.

International humanitarian organizations should engage in dialogue with state armed forces and armed groups regarding obligations under command responsibility. Confidential bilateral discussions may prove more effective than public condemnation for influencing conduct, particularly when framed around commanders' interests in avoiding criminal liability. Training programs for armed groups should emphasize command responsibilities alongside substantive prohibitions.

Media organizations and investigative journalists play crucial roles in exposing covert command relationships and support networks. Investigative reporting combining open-source analysis, document leaks, and testimony from participants has revealed details of state sponsorship in multiple conflicts (Bellingcat, 2020). Such journalism both informs public discourse and generates evidence potentially useful for prosecutorial purposes.

10. Conclusion

Command responsibility represents a foundational principle of international humanitarian law, establishing accountability for military commanders whose subordinates commit atrocity crimes. However, the emergence of hybrid warfare and proliferation of state-sponsored non-state actors have revealed significant gaps in traditional applications of this doctrine. States increasingly achieve strategic objectives through proxy forces while structuring relationships to maintain plausible deniability and evade legal responsibility, creating an accountability gap that undermines fundamental purposes of international criminal law.

This research has demonstrated that existing command responsibility frameworks, developed primarily for conventional military hierarchies, prove inadequate when confronted with deliberately fragmented command structures, covert sponsorship relationships, and hybrid operational methods. The requirements to establish effective control, knowledge, and failure to take reasonable measures each face distinctive challenges in contexts where formal command relationships are obscured, information flows are deliberately limited, and authority operates through indirect mechanisms.

Bridging the accountability gap requires reconceptualizing command responsibility to encompass functional authority exercised through non-hierarchical means, developing evidentiary standards appropriate for covert relationships, and strengthening institutional mechanisms for investigation and prosecution. The proposed functional

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approach to effective control recognizes that commanders exercising meaningful authority through resource provision, strategic direction, and embedded advisors bear responsibility for subordinate conduct even without formal position in military hierarchies.

Implementation of these reforms faces substantial challenges, including evidentiary difficulties in establishing covert command relationships, political obstacles to investigating powerful state actors, and legitimate concerns regarding potential over-extension of criminal liability. However, these challenges should not preclude doctrinal development. Establishing clear legal standards serves multiple purposes beyond immediate prosecutions, including deterring future violations, vindicating victims' rights, and maintaining international humanitarian law's credibility in contemporary security environments.

The successful German prosecutions of Syrian officials demonstrate possibilities for accountability even in complex hybrid conflicts. The continued development of specialized domestic capacity, enhanced international cooperation, and strengthened investigative mechanisms can gradually reduce the impunity gap. Doctrinal clarity regarding applicable legal standards provides essential foundation for whatever accountability proves achievable given political realities.

Future research should examine specific evidentiary methodologies for establishing functional effective control, including analysis of signals intelligence, financial forensics, and pattern evidence. Comparative study of domestic prosecutions exercising universal jurisdiction could identify best practices and common challenges. Empirical research examining deterrent effects of enhanced accountability could inform policy debates regarding investment in investigative capacity.

The fundamental question persists: will international criminal law adapt to capture meaningful accountability in hybrid warfare contexts, or will state sponsors continue exploiting doctrinal ambiguities to commit atrocities through proxy forces with impunity? The answer will shape not only prospects for justice in current conflicts but also incentives affecting state behavior in future crises. This research contributes to ongoing efforts to ensure that command responsibility doctrine evolves to meet contemporary challenges while maintaining fidelity to fundamental principles of culpability and fair labeling. The accountability gap can be bridged, but doing so requires sustained commitment to doctrinal development, institutional strengthening, and political will to hold powerful actors responsible for their crimes.

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