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Attribution without Explanation: Reassessing the Analytical Appropriateness of Individual Responsibility for Understanding War Crimes

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Abstract: The article examines the doctrine of individual criminal responsibility in international criminal law, assessing its analytical appropriateness for explaining the causes of war crimes. The study finds that there are four prevailing modes of individual criminal responsibility, including direct perpetration, co-perpetration, indirect perpetration, and instigation or aiding and abetting. While effectively safeguarding justice in the international community, they tend to overlook the structural, institutional, and ideological factors underlying war crimes. To address this gap, the article introduces three analytical dimensions: structural awareness, causal depth, and narrative completeness. The analysis shows that the current individual-responsibility-centric framework is unable to fully reveal the influence of institutions, systems, or contexts in shaping atrocities, and in determining causation, subjective judgements and judicial constraints often lead to erroneous or overly simplified linkages, thereby weakening the capacity of international criminal law to advance justice, promote education, and foster reflection. It leads to the conclusion that individual-responsibility-centrism cannot construct a coherent and comprehensive understanding of mass violence. Accordingly, the article proposes a reform pathway grounded in individual criminal responsibility, integrated with multidisciplinary perspectives and an emphasis on universal justice, with the aim of promoting justice in the international community.

Keywords: International criminal law; International criminal court; Individual responsibility; War crime; Individual responsibility centrism

I. Introduction

After the Second World War, international criminal law (ICL) has long centred on the doctrine of individual criminal responsibility as the cornerstone for prosecuting war crimes. This paradigm, rooted in the Nuremberg Trials and later codified in the *Rome Statute of the International Criminal Court* (ICC), holds that individuals must be held accountable for mass atrocities. Article 25 of the *Rome Statute* institutionalises this focus by enumerating various modes of individual participation in crimes, thereby making individual liability the primary mechanism for addressing widespread violence.

However, many scholars and judges found that these legal assignments of blame on persons also reveal a critical limitation: they do not inherently explain the larger forces that enable such crimes. In focusing on individual perpetrators, the legal process often overlooks the structural, institutional, and social dynamics that drive organised violence. Critics argue that the doctrine's focus on classifying individual guilt (through modes of liability and mens rea findings) leaves it ill-equipped to address deeper questions of causation and context, such as institutional complicity, collective social conditions, and ideological drivers of violence. Specific

criticisms include focusing only on leaders while neglecting the broader violent groups and the social structure behind them.

Against this backdrop, the central research question of this study is whether individual criminal responsibility is an analytically appropriate framework for understanding war crimes. To support this argument, the analysis evaluates the individual-responsibility paradigm through three interrelated criteria that gauge its explanatory power: (1) structural awareness—the sensitivity of legal doctrine to institutional, systemic, or contextual influences on atrocity; (2) causal depth—the capacity of legal findings to illuminate the full range of factors that cause or enable atrocities beyond the acts of the accused; and (3) narrative integrity—the ability of legal proceedings to construct a coherent and comprehensive account of mass violence that integrates individual actions with collective and organisational dimensions. Through this lens, the paper critically assesses where and how the current practice of individual attribution falls short in explanatory terms, and it explores pathways to bridge these shortcomings.

II. Law and Blame—In the Practice of Individual Responsibility

Individual criminal responsibility is the doctrinal cornerstone of international criminal law, recognised in treaty and custom and operationalized through detailed "modes of liability." Article 25 of the *Rome Statute* enumerates the principal forms of participation (commission, ordering, solicitation/inducement, aiding and abetting, and contribution to a group acting with a common purpose). This post-WWII settlement personalises accountability for mass atrocity by tracing crimes back to legally answerable individuals. These provisions reflect a post-World War II legal consensus that atrocities must ultimately be traced to personal culpability. International courts have refined a "toolkit" that distinguishes principal from accessorial liability and that relies heavily on the ICC's "control over the crime" approach to identify perpetrators within collective settings.

A. Direct and Indirect Perpetration

Under Article 25(3)(a), principal liability can arise by personally committing the crime (direct perpetration) or by committing it through another person or an organised apparatus (indirect perpetration). ICC case law has established co-perpetration on the control-over-the-crime theory, distinguishing principals from accessories and requiring an essential contribution linked to joint control. For example, in the Lubanga case, the Court held that Thomas Lubanga was a co-perpetrator of conscripting child soldiers even though he did not personally abduct or enlist children; his role in coordinating and directing the recruitment through his militia's hierarchy gave him joint control over the crime's commission. Likewise, indirect perpetration was applied in the Katanga case, where Germain Katanga was convicted for crimes committed by militia forces under his command. Katanga's authority over an organised apparatus meant he used others as instruments to carry out the offences, satisfying the control requirement.

B. Command Responsibility

Codified in Article 28 of the *Rome Statute*, command responsibility (also known as superior responsibility) is a form of liability that addresses a superior's failure to prevent or punish crimes by subordinates. To hold a military or civilian superior responsible, three elements must be proven: (1) the superior had effective command or authority over the forces or subordinates who committed the crimes, (2) the superior knew or should have known that the subordinates were committing or about to

commit such crimes, and (3) the superior failed to take reasonable measures to prevent the crimes or punish the perpetrators.

ICC practice has centred on effective control and the reasonableness of preventive/repressive measures, sharpening how individual fault is assessed within hierarchical structures. In the ICC context, Bemba (2016) is illustrative: Jean-Pierre Bemba, a militia commander, was found guilty under Article 28 for murders and rapes committed by his troops in the Central African Republic. The Court held Bemba accountable not for ordering those crimes, but for not stopping or punishing them despite knowing they were occurring.

C. Joint Criminal Enterprise (JCE)

Developed in the ICTY's jurisprudence, JCE is a theory that allows individuals to be held liable for crimes committed by members of a group pursuing a common criminal plan. In its broadest form (sometimes called JCE III), if a person willingly participates in a criminal enterprise, they can be responsible for all acts that were foreseeable consequences of executing the common plan, even if they did not personally carry out those acts. The Tadić case at the ICTY established this concept to tackle collective perpetration in the Bosnian conflict. However, the ICC has charted a narrower course: it declined to adopt the full JCE doctrine, instead using the concept of "common purpose" liability under Article 25(3)(d) of the *Rome Statute*, which demands a more specific intent and contribution from each accused. In other words, the Court looks at what each participant did and intended, rather than treating group membership alone as sufficient for guilt.

D. Aiding and Abetting

As a classic form of accessory liability, aiding and abetting entails providing practical assistance, encouragement, or moral support that has a substantial effect on the commission of a crime. In international law, an aider or abettor must act with knowledge that their aid contributes to the crime (though they need not share the principal's specific intent).

Courts have applied this doctrine to encompass a wide range of conduct: supplying weapons, financing atrocities, logistical support, or even hate speech that inflames violence, if done with awareness of the criminal outcome, can qualify. A key feature of aiding/abetting is the requirement of a causal link or substantial contribution—the assistance must facilitate the crime in some meaningful way.

The doctrines above illustrate how international criminal law assigns guilt using precise legal criteria. It brings specificity and due process to atrocity trials, avoiding nebulous attributions of blame. It personalises justice, affirming that even in collective carnage, individual choices matter and can carry moral culpability. However, this strength is also a limitation: by slicing atrocities into individual pieces, the law often abstracts away from the structural and systemic context in which those pieces fit. In practice, legal judgements risk reducing a complex atrocity to a series of siloed offences, thereby failing to provide a unifying explanation of why these events unfolded as they did.

Scholars and jurists have increasingly critiqued this narrow focus. Some expansive liability theories stretch to cover senior leaders without addressing the political or institutional milieus that make their crimes possible. The net effect is that while attribution of blame is achieved, explanation of the atrocity can be lacking. For instance, individual criminal responsibility for aggression focuses exclusively on the top leaders who planned or executed the war, ignoring the broader government and societal structures that enabled the aggression.

III. The Explanatory Gap in Contemporary Jurisprudence

A. Legal Silence on Structural Causes

International criminal courts, by design, prioritise individual accountability over structural analysis. This often results in a striking silence regarding the structural, institutional, and ideological causes of war crimes. In case after case, complex episodes of collective violence are legally reconstructed as sequences of individual decisions, with minimal acknowledgement of the broader context that enabled those decisions. Two areas where this silence is most evident are (a) the treatment of hierarchical structures (state or military chains of command) and (b) the treatment of non-state or corporate actors in atrocity contexts.

The doctrine of command responsibility is one of the few tools that brings a structural element (the superior-subordinate relationship) into legal consideration. Yet even here, the analysis is narrowly confined to the superior's knowledge and actions, rather than the wider organisational environment. For example, in the Bemba trial and appeal at the ICC, the judges focused on whether Jean-Pierre Bemba had effective control over his troops and whether he took reasonable measures to stop their crimes. And the separate opinions in the Bemba Appeals Judgement argued for an even stricter interpretation of effective control, essentially tightening the focus on direct command authority and further excluding diffuse factors like organisational culture or social pressure on soldiers. These questions, while important, frame the issue in terms of an individual commander's lapse. They do not enquire into why those troops were predisposed to commit such brutal acts in the first place—be it due to indoctrination, command culture, or the breakdown of discipline during conflict. Although some evidence about the operational context was considered (e.g., communication difficulties in the field), institutional constraints or ideological influences were largely sidestepped. The upshot is that even when prosecuting a commander, international courts tend to isolate his failure in a vacuum, rather than depicting the structural forces (strict military hierarchy, wartime propaganda, etc.) that shaped the behaviour of the forces on the ground.

Structural silence is even more pronounced when it comes to collective entities that fall outside traditional military hierarchies. The ICC's framework, influenced by Claus Roxin's control theory, demands a clear hierarchy for indirect perpetration—the perpetrator must have "control over the organisation" in a manner akin to a military chain of command. This is ill-suited to modern non-state armed groups, which often have flat or decentralised structures, as well as to corporate involvement in atrocities, where decision-making is diffuse. Because the law struggles to attribute liability in the absence of a rigid hierarchy, it frequently fails to engage with the responsibility of organisations or companies for war crimes.

Across both state and non-state contexts, these jurisprudential choices result in hierarchy, culture, and ideology being filtered out of the legal record. Trials centre on what a commander did or did not do, what an accused conspirator agreed to, or what a low-level perpetrator carried out—but not on how systemic pressures or collective ideologies primed the environment for atrocity. By isolating violent events from their structural roots, international criminal judgements provide only a partial understanding of war crime causation. They answer the question of "who can we punish for this?" but remain silent on "what conditions made this possible?" This silence has downstream effects: it can lead to an impression that atrocities are aberrational incidents caused by a

few evil individuals, rather than the result of deeper social or institutional pathologies.

B. Guilt Without Causation

An important gap is the tendency of war crimes trials to emphasise moral condemnation of individuals while offering only a rudimentary causal narrative of the events in question. Courts understandably focus on proving the accused's intent (mens rea) and conduct (actus reus) to establish guilt beyond reasonable doubt. In doing so, however, they often bracket off the broader enquiry into causation—the complex interplay of factors that led to the crime. The result can be described as "guilt without causation": a verdict that names the guilty parties without thoroughly explaining the atrocity itself.

One source of this phenomenon is the heavy reliance on mental state assessments in criminal law. Whether an accused acted knowingly, purposefully, or recklessly can make the difference between conviction and acquittal, or between different levels of culpability. Yet research in psychology and legal studies suggests that even judges and juries struggle with these abstract mental state distinctions, potentially misapplying them in practice. For instance, a study by Beattey and Fondacaro found that laypersons often conflate higher and lower levels of intent: over 60% of participants in their experiment incorrectly believed that a defendant had purposeful intent (the highest level of mens rea) when the facts only supported recklessness or negligence. This kind of fundamental attribution error—the human bias to favour internal blame (intent, disposition) over situational explanations—means that legal decision-makers may naturally gravitate towards simply labelling defendants as evil or malicious, rather than parsing the external factors that influenced their actions. In a war crimes trial, the courtroom's attention centres on what the defendant decided to do, not on the myriad situational pressures or background causes at play. Thus, a militia member is convicted because he intended to kill civilians (moral blame established), but the proceedings may say little about how group obedience, fear, propaganda, or trauma contributed to that intent forming.

Another reason for downplaying causation is pragmatic: courts are under pressure to keep trials manageable and focused. Delving into all possible causes of a conflict episode thereby could make trials interminable and legally unwieldy. It may lead to a bad result that the ICC's procedural burdens and evidentiary difficulties prompt judges to narrow fact-finding in order to maintain trial focus and efficiency, but at the cost of avoiding deeper causation.

This analytical shallowness can be seen in the way judgements are written. They meticulously document what happened and who is to blame, but typically devote far less attention to why it happened beyond the immediate intentions of the perpetrators. If one reads the judgement summaries of many ICC cases, the background sections may note there was an armed conflict or widespread violence, but seldom do they probe into the dynamics of that conflict or violence. The emphasis is squarely on the accused's contribution and intent. Such a focus indeed secures individual accountability, yet it yields a form of justice that is somewhat insular—looking inward at the defendant's moral choice, rather than outward at the web of causation. In effect, the law trades explanatory depth for moral clarity. It achieves a verdict ("guilty of war crimes") but stops short of fully illuminating the atrocity's genesis.

C. Consequences of Explanatory Failure

The failure of legal proceedings to adequately explain the occurrence of war crimes is not a trivial oversight: it carries profound consequences for the goals of international justice. Trials of war crimes

and crimes against humanity are expected to do more than determine guilt—they are also tasked with establishing a record of truth, contributing to reconciliation, and even deterring future atrocities. When courts omit structural causes and deeper explanations, these broader aims are undermined in several ways.

First, a thin explanatory record obscures the truth about mass violence. International trials are often touted as instruments of truth-telling, yet if they systematically ignore how and why atrocities unfold, they leave critical truths untouched. Jo & Simmons (2017) note in their corrigendum that the relationship between ICC intervention and reductions in atrocities is complex and context-dependent, such as "Prosecutorial Deterrence" and "Social Deterrence". In other words, the mere existence of judicial mechanisms does not automatically generate deterrence. Unless the trial record probes the conditions under which potential perpetrators change their behaviour, it is difficult to explain why violence persists or subsides. This indicates that the presence of international justice mechanisms alone doesn't straightforwardly stop atrocities—what matters are the specific conditions under which potential perpetrators alter their behaviour. If trials do not investigate and articulate those conditions (e.g., when does fear of prosecution trump the motives for violence, and when does it not?), they cannot clearly explain why atrocities continue or abate.

Second, inadequate explanation hinders societal learning and reconciliation. A trial that simply pronounces certain individuals guilty might satisfy retributive instincts, but it does little to educate the public about the deeper causes of the violence that tore society apart. Post-conflict communities often struggle with questions like "How did neighbour turn against neighbour?" or "Could we have seen this coming and stopped it?" If judicial narratives do not address such questions, they miss an opportunity to foster collective reflection. Consider the aspect of rehabilitation and reintegration of offenders. Early international tribunals paid scant attention to explaining the processes by which an ordinary person became a genocidaire or a war criminal, nor did they clearly articulate what rehabilitation means in such contexts. As a result, when convicts served their sentences and were released, there was public confusion and scepticism about whether justice had truly been served or lessons learned. Recently, courts like the UN International Residual Mechanism for Criminal Tribunals (IRMCT) have begun requiring expressions of genuine remorse and evidence of moral change as part of considering early release—implicitly recognising that understanding why the person committed the crime (and whether they have confronted those causes in themselves) is crucial for society's acceptance.

Third, a lack of explanatory depth can weaken the legitimacy of international justice. Legitimacy partly stems from perception—the sense among affected populations that the court's work resonates with their experiences and addresses their needs for truth and closure. When legal outcomes appear disconnected from the complex reality, survivors and observers may feel that "justice has only scratched the surface." This can breed cynicism, as the accountability delivered seems somewhat arbitrary or incomplete. By contrast, efforts to broaden the explanatory scope can enhance credibility.

IV. Reframing Understanding through Inter-disciplinary Lenses

If traditional legal doctrine falls short in explaining war crimes, one way forward is to supplement legal analysis with insights from other disciplines. Criminology, social psychology, sociology, and political science have long studied

how ordinary individuals become involved in extraordinary evil—offering theories of collective behaviour, organisational dynamics, and social conditions that can fill the gaps left by purely legal approaches. By reframing our understanding of atrocities through these interdisciplinary lenses, we can develop a more nuanced model that retains individual accountability but embeds it within a richer explanatory context.

A. Maintaining Individual Liability as the Core Layer

The first layer is the familiar legal one: individuals are prosecuted and, if convicted, punished for their contributions to war crimes. The *Rome Statute*'s detailed modes of liability (Article 25) and complementary customary norms provide the tools to do this. Any integrated framework must preserve the rigour of legal standards for evidence and mens rea to ensure fairness and prevent diffuse blame. The difference would lie in how the court narrates and situates the individual's actions. Currently, judgements focus on what the accused did in isolation; under an integrated approach, the judgement (or accompanying statements) would explicitly situate the act in its wider context. For example, a judgement might preface its legal findings with a thorough explanation of the conflict's nature, the roles of various actors, and the structural conditions—effectively giving a mini social history of the crime before zeroing in on the accused. This does not change the guilt or innocence determination, but it ensures that the record of the trial captures more than just the defendant's actions.

B. Incorporating Structural Context as a Formal Part of Proceedings

The second layer involves expanding what is admissible and considered relevant in court. Presently, evidence that does not directly link to a specific charge or defendant is often excluded as irrelevant or prejudicial. However, courts could admit expert evidence on context—for instance, historians, sociologists, or regional experts testifying about the structural forces at work (e.g., the history of ethnic propaganda, the command structure of the army). Some trials have begun doing this in limited ways (for example, expert witnesses on background were used in the ICTR trials to explain the Rwandan social context). A more systematic incorporation would treat such context as necessary to fulfil the court's truth-seeking function. In practice, this might mean allowing a phase in the trial or a section of the judgement devoted to explaining context and causation, separate from the legal liability analysis. By doing so, structural causation evidence gains a place in the official record. It need not alter the verdict but can influence sentencing or reparations.

C. Interdisciplinary Collaboration in Legal Analysis

The multi-layered framework would benefit from drawing methodologies from other disciplines into legal practice. This could entail training prosecutors and judges in basic social science methods of causal inference or narrative construction so they feel more competent engaging with such evidence. It could also involve hiring interdisciplinary experts as part of the investigative teams. For example, including a criminologist or social psychologist when mapping out how to present a case about a death squad could improve how the case is argued—ensuring that prosecutors highlight not just "what the accused did" but also "how the situation enabled it". Interdisciplinary competence also mitigates known cognitive pitfalls in criminal adjudication—especially systematic difficulties in applying mens rea distinctions in practice. By institutionalising such collaboration, courts send a

message that explaining the crime is part of their mandate, not a mere byproduct.

D. Narrative Pluralism and Inclusive Judgements

A multi-layered approach would also acknowledge that there is more than one narrative to be told about atrocities—the criminal trial tells the perpetrator-focused narrative, but victims, communities, and historians have broader stories. Such narrative pluralism can strengthen perceived legitimacy by connecting outcomes to lived experience and by clarifying how individual guilt fits within broader structures. For example, requiring prosecutors and other ICC officials to adapt as much as possible to the expectations of local victims, and to strengthen the critical rehabilitation of perpetrators and broader societal reflection.

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Such a framework would not abandon the assignment of individual guilt—which remains essential for justice—but would embed each finding of guilt within a larger explanatory narrative about the crime's causes and context. The goal is a paradigm of "integrated accountability," where legal judgements acknowledge and incorporate structural and collective dimensions alongside personal responsibility.

V. Conclusion

This article analyses, from three distinct dimensions, the incompatibility between the modern international criminal law framework—grounded in the principle of individual responsibility—and the nature of war crimes as international atrocities. It then proposes a framework to bridge legal and extra-legal understandings. It requires Courts to cooperate with other mechanisms or adopt creative judicial strategies to ensure that atrocities are narrated in a more comprehensive way, thereby prompting broader societal reflection while upholding fairness and justice.

On the contrary, this approach does not dilute individual accountability. It can enhance the legitimacy of individual convictions by demonstrating that the convicted person's actions were not random or purely personal but significantly harmful precisely because they exploited or fit into larger violent structures. Recognising context can even bolster the gravity of a crime. The outcome would be a stronger foundation for accountability, one that is intellectually honest about the multifaceted nature of mass atrocity and thus better positioned to prevent and redress it.

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