

Iran as a Party to an International Armed Conflict with Israel

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A recent *Articles of War* [post](#) argues that Iran’s “substantial involvement” in Hezbollah’s activities is sufficient to render it responsible for the latter’s armed attacks, thus triggering Israel’s right to use self-defense directly against Iran. This is a view I also subscribe to for many of the same reasons. While that post focuses on Iran’s responsibility under *jus ad bellum*, Iran’s role in the Middle East conflict is also worth exploring in the context of the *jus in bello*.

Armed Conflict Between Iran and Israel

There have now been several instances of direct hostilities between Iran and Israel: in April 2024 (see [here](#) and [here](#)); July 2024; and October 2024 (see [here](#) and [here](#)). Yet reports on the situation in the Middle East continue to focus largely on Israel’s armed conflict with the region’s non-State actors. Direct hostilities with Iran have been discussed primarily in the context of a possible regional “[escalation](#)” or “[expansion](#),” with many States [noting](#) that more air strikes “*could trigger a full-scale conflict*” between the two countries (emphasis added).

But a full-scale conflict has likely already commenced. The threshold for a situation between two States to constitute an international armed conflict (IAC) is “deliberately low” and may include just one airstrike or incursion into the adversary’s territory. According to the International Committee of the Red Cross’s updated Commentary to common Article 2:

[T]here is no requirement that the use of armed force between the Parties reach a certain level of intensity before it can be said that an armed conflict exists ... even minor skirmishes between the armed forces, be they land, air or naval forces, would spark an international armed conflict and lead to the applicability of humanitarian law. Any unconsented-to military operations by one State in the territory of another State should be interpreted as an armed interference in the latter’s sphere of sovereignty and thus may be an international armed conflict under Article 2(1).

On this basis, it is difficult to see how the direct hostilities between Iran and Israel can be classified as anything other than an IAC. This is significant. If Israel and Iran are involved in an IAC with one another, international humanitarian law (IHL) applies, and the parties bear international responsibility for any violations.

Moreover, the existence of an IAC changes the legal framework. Parties to an armed conflict do not need to rely on self-defense under Article 51 of the UN Charter for each attack. As Professor Geoff Corn has noted, “[O]nce an armed conflict is ongoing, the *legality* of military response is established and international law shifts to regulating the *manner* of operational execution.” As a result, discussions around the legality of the use of force are replaced by considerations of whether the strikes in question were indiscriminate or targeted at military objectives, whether they were calculated to avoid civilian casualties, and so on.

Turning back to Hezbollah, others have argued that Israel’s conflicts with Hezbollah and Hamas are both non-international armed conflicts (NIACs) and that neither of these have become “internationalized.” The basis for such an argument is that “although Iran’s support for Hezbollah is substantial, it does not exercise a level of control sufficient to internationalize Israel’s hostilities with the group.” It should be recalled that a NIAC between a State and a non-State actor has the potential to become “internationalized” if it can be shown that a State exercised “overall control” over that non-State actor so that it can be held responsible for its actions (Tadić, Appeals Judgment, para. 120).

I would not dismiss entirely the argument that Iran exercises a sufficient level of control over Hezbollah to meet the applicable standard. In Tadić (para. 131), the ICTY found that the “overall control” test requires that:

the State wields overall control over the group, not only by equipping and financing the group, but also by coordinating or helping in the general planning of its military activity However, it is not necessary that, in addition, the State should also issue, either to the head

or to members of the group, instructions for the commission of specific acts contrary to international law.

There are various reports indicating that Iran's substantial involvement with Hezbollah extends beyond equipping and financing the group, to coordinating and helping in the general planning of Hezbollah's military activity. Ori Pomson provides some examples of these, including reports that Brigadier Mohammad Reza Zahedi of Iran's military force, the Islamic Revolutionary Guard Corps (IRGC), was also a member of Hezbollah's "central decision-making body," that Hezbollah required Khamenei's "green light" to agree to a ceasefire with Israel, and that Hezbollah used intelligence gathered by Iran on the location and nature of specific military installations in Israel, which it subsequently attacked. Additionally, a U.S. State Department report from 2022 asserts that, in addition to providing financial and other support, equipment, and weapons to Hezbollah, the IRGC also provides the group with "guidance" and "direction."

Pomson uses some of these reports to argue that Iran is "substantially involved" in Hezbollah's activities. However, the assertions in the reports, if proven, are also helpful to establish overall control. Indeed, there is an argument to be made that the concept of "overall control" should be interpreted consistently with the "substantial involvement" test for an armed attack under *jus ad bellum*. The concept of "substantial involvement" suffers from an inherent clarity problem. In seeking to define it, prominent scholars including Professors Tom Ruys and Carsten Stahn have argued that its meaning may be akin to the criteria for "overall control." As a result, there is no clear reason for these tests to be interpreted inconsistently with one another. If we thus conclude that Iran is substantially involved with Hezbollah's activities, we may also conclude that it exercises overall control over the group.

This would be the case despite the fact that Hezbollah may be acting "quite autonomously," as the late Professor Dinstein argued:

The *Tadić* doctrine of subordination to overall control—countenancing the possibility that auxiliaries will act quite autonomously (without being issued specific instructions concerning the details of every individual operation) and still remain *de facto* organs of the foreign State—has been consistently upheld in successive ICTY judgments, both at the Trial and at the Appeals level (p. 239).

It is also logical to assert that if a State can be held responsible for the commission of an armed attack against another State, then that same State should be considered engaged in an IAC with the victim State as a result of the armed attack, particularly if the victim State has responded in self-defense. This is consistent with the "deliberately low" threshold for establishing an IAC. Interpreting the two tests *inconsistently* means that State A could be responsible for an armed attack against State B, but it is only State B's acts of self-defense

against State A which trigger an IAC and thus the applicability of IHL. State A is thus given a free pass for any commission of IHL violations by the non-State actor in the original armed attack.

Concluding Thoughts

Regardless of whether one agrees that the conflict with Hezbollah has become “internationalized,” since at least 13 April 2024 the Iranian Regime and Israel have had direct recourse to armed force against one another. Thus, since at least that date, Iran should be considered a party to an IAC with Israel, with all the obligations this entails.

However, arguably the armed conflict between Israel and Iran has been going on for much longer than that, due to Iran’s substantial involvement with (and overall control over) Hezbollah. If we properly frame the conflict as it is, it may inform how we address each party’s actions in the context of that conflict, including each party’s adherence (or lack of adherence) to the applicable rules.

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