

Israel – Hamas 2023 Symposium – Iran’s Responsibility for the Attack on Israel

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by [Jennifer Maddocks](#) | Oct 20, 2023



One important question that arises from Hamas’s surprise offensive against Israel relates to Iran’s involvement in the attack. According to the *Wall Street Journal*, Iran’s role was significant. Iranian security officials helped to plan the attack and “gave the green light for the assault” at a meeting in Beirut. Since August, officers of Iran’s Revolutionary Guard Corps (IRGC) reportedly worked with Hamas to devise the air, land, and sea incursions, and IRGC officers and representatives of Hamas and other Iran-backed militant groups refined details of the operation during several meetings in Beirut.

This account of Iran’s involvement, however, does not receive wide support. U.S. Secretary of State Antony Blinken confirmed that although Iran is undoubtedly a long-term sponsor of Hamas, “we don’t have anything that shows us that Iran was directly involved in this attack, in planning it or in carrying it out.” A senior Hamas official stated, “The implementation was all Hamas, but we do not deny Iran’s help and support.” Similarly, according to a spokesperson from the Israel Defense Forces, “Iran is a significant player, but we cannot say that it planned the operation or trained for it.”

This post considers Iran's potential State responsibility for the attack in light of these differing accounts. It examines first whether Iran violated the prohibition on the use of force through its support to Hamas. Second, it assesses whether the violations of international law Hamas committed during the attack are attributable to Iran under the law of State responsibility. Third, the post addresses Iran's potential complicity in these violations. The post commences, however, by exploring Iran's wider relationship with Hamas.

Iran's Relationship with Hamas

Iran is well known for its "networks of influence" throughout the Middle East. It has developed proxy relationships with a wide range of groups across the region, including in Iraq, Syria, Lebanon, and Bahrain. These relationships vary across a wide spectrum. While some militia groups depend on Iranian support to survive, others would continue to pursue their objectives, albeit with diminished resources, if Tehran ceased its assistance.

Hamas falls into the latter category. It is not an Iranian proxy, but rather an ally of convenience, with a shared common enemy in Israel (p. 12, 21-23). As a Sunni Muslim group, Hamas differs from the usual Shi'a militias that Iran supports. Iran and Hamas do not share a political or religious ideology. Yet, the relationship is mutually beneficial. For Iran, a strong Hamas destabilizes Israel and ensures the continuance of its blockade of Gaza, which in turn diminishes Israel's standing on the international stage. For Hamas, Iran has provided a steady flow of weapons, funding, and military training, which undoubtedly facilitated the group's military operations, including its recent attack on Israel. Importantly, Iran helped Hamas to design and produce a rocket system that matches the capabilities and material available in Gaza.

The relationship between Tehran and Hamas is longstanding but has ebbed and flowed over the years. It reached a low point during the Syrian civil war when Hamas sided with the Syrian opposition. Relations subsequently improved when Hamas stepped back from Syria. This evolving alliance demonstrates that Hamas does not depend wholly on Iran for support. It can continue to operate without Tehran's backing and raises funds from numerous sources, including from taxation, private donors, and other States.

Hamas therefore has a degree of independence that allows it to pursue its own objectives. It does not normally operate under Iran's command and control. Where they have a common interest, however, Hamas may act in coordination with Iran. In the case of the recent attack, Iran and Hamas likely shared a motive to disrupt the ongoing talks between Israel and Saudi Arabia, which could ultimately lead to the normalization of the Saudis' relationship with Israel.

For the purposes of the legal analysis that follows, it is necessary to distinguish Iran's longstanding support for Hamas from its role in the recent attack. While the former is clear and undoubted, the latter is far less certain.

The Prohibition on the Use of Force

The prohibition on the use of force is a norm of customary international law, codified in Article 2(4) of the UN Charter. It prohibits not only a State's direct use of force, for example via its armed forces, but also its participation in forcible acts committed by private actors such as armed groups. In such cases, there is no requirement to attribute the armed group's acts of violence to the State. Instead, it is the State's own organs' conduct in assisting the non-State actor that amounts to a use of force attributable to the State.

The International Court of Justice (ICJ) considered such indirect uses of forces in its Paramilitary Activities judgment. When non-State actors in receipt of State assistance commit acts that "involve a threat or use of force," the ICJ confirmed that the assisting State's conduct in providing such support might constitute an unlawful threat or use of force by that State (paras. 205, 228). The question turns upon the types of assistance the State provides and the causal nexus between that support and the non-State actor's use of force. While the mere supply of funds does not amount to a threat or use of force, a State's provision of arms and military training to a non-State actor that the latter uses to commit acts of violence against another State violates the prohibition on the use of force (para. 228).

In view of Iran's significant military assistance to Hamas, and the likelihood that Hamas used Iranian aid in the recent attack on Israel, it seems reasonable to conclude that Iran's support to the group constituted an unlawful use of force, in violation of Article 2(4) of the UN Charter. If that conclusion is correct, Iran's conduct amounts to an internationally wrongful act, giving rise to legal consequences including an obligation on Iran to cease its harmful conduct and to make reparation for the damage and injury caused (International Law Commission, Articles on State Responsibility (ASR), arts. 2, 28-33).

A related question is whether Iran's use of force rose to the level of an armed attack, meaning that Israel is entitled to respond against Iran with necessary and proportionate force in self-defense. While the United States takes the view that all uses of force are armed attacks (*Law of War Manual*, §1.11.5.2), the ICJ and many States distinguish "the most grave forms of the use of force (those constituting an armed attack) from other less grave forms" (*Paramilitary Activities*, para. 191).

According to the ICJ, armed attacks include not only action by a State's regular armed forces,

but also "the sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to" (*inter alia*) an actual armed attack conducted by regular forces, "or its substantial involvement therein" (*Paramilitary Activities*, para. 195, quoting the Definition of Aggression annexed to UN General Assembly resolution 3314 (XXIX)).

Therefore, Iran's use of force amounts to an armed attack if the State either sent Hamas to attack Israel or if Iran had a "substantial involvement" in the attack.

Considering first whether Iran “sent” Hamas to use force against Israel, the *Wall Street Journal* reported that the IRGC “gave the green light for the assault.” This could be interpreted to mean that Iran ordered Hamas to conduct the attack. Alternatively, it could simply indicate that the IRGC acquiesced to Hamas’s plans but without any controlling influence whether the militants went ahead with the attack. Intelligence assessments suggest that the latter interpretation is most likely, in which case it cannot be said that Iran “sent” Hamas to attack Israel.

Assuming this conclusion is correct, Iran’s support to Hamas could nevertheless constitute an armed attack if the State had a “substantial involvement” in the operation. To satisfy this threshold, the State’s degree of involvement must go beyond the mere arming and equipping of the armed group, or the provision of logistical or other support (*Paramilitary Activities*, para. 195). However, considerable ambiguity surrounds the precise meaning of this requirement. It is unclear whether a State’s participation in the planning of an operation amounts to “substantial involvement,” or how this threshold relates to the control tests applicable to the law of State responsibility. Thus, while it seems reasonably clear that Iran’s support to Hamas violated the prohibition on the use of force, it cannot be said with certainty that its conduct also amounted to an armed attack.

Attributing Hamas’s Actions to Iran

Hamas’s surprise attack on Israel involved not only the unlawful use of force against Israel but also clear breaches of the law of armed conflict (LOAC). The group targeted large numbers of civilians while taking others hostage. The question arises, therefore, whether Iran bears international responsibility for such LOAC violations perpetrated by Hamas.

The answer to this question turns upon the issue of attribution, namely whether Hamas’s actions in breach of LOAC can be attributed to Iran. As I have explained in a previous post, there are a number of different grounds on which private conduct can be attributed to a State. The most likely basis of attribution in this case is that in executing the attack, Hamas acted on Iran’s instructions, direction, or control (ASR, art. 8). Rather than looking to the wider relationship between the parties, this rule of attribution focuses on the State’s influence over the specific operation during which the international law violations occur.

To determine Iran’s potential responsibility for the recent attack, therefore, it is necessary to ascertain the facts surrounding the State’s involvement in the operation. If it is correct that Iran was not directly involved in the planning and execution of the attack, the position on attribution is clear: Hamas did not act under Iran’s instructions, direction, or control, and the attack is not attributable to Iran. If, however, the *Wall Street Journal’s* reporting is accurate, the legal assessment is more nuanced.

Instructions

If Iran merely agreed to Hamas's own plans to launch the operation, this is insufficient to lead to attribution. However, if Iran ordered Hamas to execute the attack, the militants' actions when following those instructions are attributable to Iran. In these circumstances, there is no requirement for Iran to also supervise Hamas's conduct during the attack.

Further questions arise regarding the specificity of Iran's instructions and whether the rule of attribution requires that these must relate to the particular acts on the part of Hamas that violated international law. To illustrate, consider Hamas's brutal attack on civilians attending a music festival. For the related LOAC violations to be attributed to Iran, is it necessary that Iran's instructions included orders to attack civilians, or would it suffice if the commands related solely to broader aspects of the operation, or left it open to the militants which targets they should choose to attack?

The answer turns upon "whether the unlawful or unauthorized conduct was really incidental to the mission or clearly went beyond it" (ASR, art. 8, commentary para. 8). Relevant considerations might include the scope of Iran's instructions and the centrality of the civilian deaths to the mission the State ordered Hamas to undertake. Given the meticulous planning and coordination involved in the attack together with the scale of the killings, there appears little doubt that the targeting of civilians formed a central pillar of the operation. As such, if Iran ordered the attack, the State should bear responsibility for the LOAC violations committed during that operation. The position would be different, however, if Hamas breached specific instructions from Iran not to target civilians or to otherwise act in a way that violated international law.

Direction or Control

The direction and control elements of the rule of attribution are commonly considered together. However, international courts and tribunals have reached divergent views regarding their meaning.

On one view, the test for determining attribution is identical to the test for deciding when a conflict is internationalized through a State's support to a non-State actor. This overall control test (paras. 116-145) applies only to hierarchically structured groups and looks to the wider relationship between the State and the non-State actor. According to the International Criminal Tribunal for the former Yugoslavia, "It must be proved 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" (para. 131). This test, therefore, includes no requirement for the State to plan or direct the specific private conduct that violates its international legal obligations.

In the context of conflict classification, Professor Michael Schmitt concludes that "although Iran has been supportive of Hamas, it does not appear to enjoy a level of control over the organization in this situation that would satisfy the overall control test" This assessment

appears accurate. While Iran has equipped and financed Hamas over a long period of time, it is doubtful that the State has also participated in the general planning and supervision of the group's military activities. As noted above, Hamas pursues its own objectives and normally acts independently of Iran. Therefore, if overall control is the appropriate test for the purposes of attribution, Hamas's attack is not attributable to Iran on this basis.

There is, however, a more authoritative control test. In its *Bosnian Genocide* judgment (paras. 396-406), the ICJ rejected the overall control test and reaffirmed the test of effective control it had previously articulated in *Paramilitary Activities* (para. 115). This test requires the State to exercise a detailed or tactical level of control over the specific operation in which the non-State actor perpetrates the relevant international law violations.

From an evidential perspective, it is normally easier to satisfy the overall control test than the ICJ's test of effective control. There is typically more evidence available regarding a State's wider relationship with a non-State actor than there is to prove that the State had a controlling influence over the particular operation at issue. Hamas's recent attack on Israel, however, is a rare example of a case in which the effective control threshold might be satisfied more readily than the test of overall control. If the *Wall Street Journal's* reporting is correct and there is evidence to prove that Iran had a high degree of involvement in the planning and execution of the attack, it is possible that the effective control threshold could be satisfied.

That said, it is important to recall that the ICJ's effective control test is stringent. While the *Wall Street Journal* points towards a high degree of Iranian involvement in the attack, including regular meetings between IRGC leaders and Hamas in the weeks prior to the operation, the ICJ's judgments indicate that Iran's influence would need to extend beyond the planning of the attack to encompass its execution. According to the ICJ, there must be evidence that the State "directed or enforced the perpetration of the acts contrary to human rights and humanitarian law . . ." (*Paramilitary Activities*, para. 115) meaning that the State was "the cause of the commission of acts in breach of its international obligations" (*Bosnian Genocide*, para. 397). Thus, it is only if Iran's influence extended to Hamas's perpetration of the attack, including the acts Hamas committed in violation of LOAC, that Iran bears international responsibility for this conduct based on its exercise of effective control.

In the absence of evidence to prove that Iran was actively involved in Hamas's attack on Israel, for example by issuing regular commands to Hamas fighters, it appears unlikely that Iran exercised effective control over the militants' acts that violated international law. The question nevertheless arises whether Iran bears responsibility for its own contribution towards those violations, through its provision of funding and military support that facilitated Hamas's conduct of the attack.

Complicity

When a State provides assistance to another State in the knowledge that its support will facilitate violations of international law, the donor State bears international responsibility for its own contribution towards the recipient State's internationally wrongful acts (ASR, [art. 16](#)). According to the ASR, however, the same is not true when a State provides similar aid or assistance to a non-State actor. Thus, while Iran's provision of drones to Russia leads to its [complicity](#) in Russia's violations of international law in Ukraine, the same is not true when Iran provides funding and military support to a violent non-State actor such as Hamas.

This anomaly stems from the State-centric focus of the ASR. State responsibility related to aid or assistance is derivative in nature, in that it arises from the principal internationally wrongful act that the State facilitates. When the assisted conduct is private in character, there is no primary wrong for the State to be complicit in, because only States can commit internationally wrongful acts (ASR, [art. 2](#)).

However, customary international law may be developing to also hold States to account when they assist non-State actors to violate international law. In the [Bosnian Genocide](#) case, for example, the ICJ indicated that the rule reflected in Article 16 ASR may apply by analogy when States provide aid or assistance to a non-State actor (paras. 419-420). There are also limited examples of States expressing the view that the rule applies to the assistance they provide to non-State actors. For instance, in the context of arms transfers to Syrian rebels, [Austria](#) asserted, "Should supplied arms be used by armed opposition groups in Syria in the commission of internationally wrongful acts, the States who had supplied these arms and had knowledge of these acts would incur State responsibility for their aid and assistance in the commission of such acts."

Despite these developments, it is probably too early to say that a non-State actor equivalent to Article 16 has crystallized as a norm of customary international law. Yet, the need for international law to regulate States' aid or assistance to non-State actors is evident. Iran's support to Hamas and other militant groups vividly demonstrates how such assistance can facilitate harmful conduct by non-State actors that is in clear violation of international law.

Concluding Thoughts

As Ken Watkin observes in his [recent post](#), it is "hard to see that Iran is not at some level deeply involved in the present hostilities" Yet, the question remains "how that involvement is assessed strategically, including from an international law perspective." International law has developed various approaches to addressing State's relationships with non-State actors, including through tests of effective control, substantial involvement, and overall control. The precise focus and application of each test varies. However, they all seek to address the same issue: the degree of State involvement in a non-State actor's conduct.

In the case of Iran, much of the legal analysis turns upon the level of State involvement in Hamas's recent attack. If the *Wall Street Journal's* reporting is correct, and Iran's role in the attack's planning and execution can be proven or inferred from the available evidence, Iran could bear international responsibility for the armed attack on Israel and also for the many LOAC violations Hamas committed during the attack.

It seems more likely, however, that the most that can be proven with certainty is Iran's ongoing military and financial support to Hamas. If the available evidence supports no greater Iranian involvement in the attack than this, Hamas's conduct in violation of international law is not attributable to Iran. Nevertheless, Iran bears responsibility for its own organs' conduct in support of Hamas, which violated the prohibition on the use of force.

Jenny Maddocks is an Assistant Professor in the Department of Law at the United States Military Academy, West Point and the Managing Editor for Articles of War.

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