

Iran and Its proxies: attribution and state responsibility

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Iran and Its Proxies: Attribution and State Responsibility

Jennifer Maddocks

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*Jennifer Maddocks**

CONTENTS

I.	Introduction.....	713
II.	Iran's Proxy Network.....	715
	A. Hezbollah	715
	B. Shi'a Militia Groups in Iraq	717
	C. Shi'a Militia Groups in Syria.....	718
	D. Hamas	719
	E. The Houthis.....	720
III.	Attribution	721
	A. Organs of State.....	722
	B. Empowerment to Exercise Public Functions.....	727
	C. Instructions, Direction, or Control	731
IV.	State Responsibility Based on Iran's Own Conduct Towards Its Proxies	738
	A. Iran's Complicity in Its Proxies' Violations	739
	B. Iran's Violation of Primary Norms	741
V.	Conclusion.....	747

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I. INTRODUCTION

Iran has invested heavily in proxy militias since the regime's founding in 1979. Aiming initially to export the Islamic revolution, Iran sought to organize Shi'a Muslims across the region, forming influential proxy groups with which it was ideologically aligned.¹ In the decades that followed, Tehran diversified and expanded its proxy network to encompass not only Hezbollah in Lebanon and Shi'a militia groups in Iraq and Syria but also the Houthis in Yemen and Hamas in Gaza. Together, these groups and others have been instrumental in projecting Iran's influence across the region. The proxies helped to sustain President Assad's regime in Syria and significantly extended Iran's reach, surrounding Israel with hostile militia groups.

Today, Iran's proxy network is considerably weakened. Israel's military actions following the attacks of October 7, 2023, enfeebled Hezbollah and Hamas, while the fall of the Assad regime in Syria deprived Iran of significant regional influence.² Nonetheless, the Houthis in Yemen and Iran-linked militias in Iraq remain intact, and reports indicate that Iran is seeking to rearm some proxy groups.³ Iran's proxies retain the potential to cause instability and may, in time, regain at least some of their regional influence. Moreover, as the Houthi attacks on Israel and against Red Sea shipping demonstrate,

1. See generally INT'L INST. FOR STRATEGIC STUD., IRAN'S NETWORKS OF INFLUENCE IN THE MIDDLE EAST (Nov. 2019), <https://www.iiss.org/publications/strategic-dossiers/iran-dossier/>; DIANE M. ZORRI ET AL., JOINT SPECIAL OPERATIONS U. REP. 20-5, IRANIAN PROXY GROUPS IN IRAQ, SYRIA, AND YEMEN: A PRINCIPAL-AGENT COMPARATIVE ANALYSIS (Dec. 2020), <https://apps.dtic.mil/sti/pdfs/AD1146327.pdf>; ARIANE M. TABATABAI ET AL., RAND, THE IRAN THREAT NETWORK: FOUR MODELS OF IRAN'S NONSTATE CLIENT PARTNERSHIPS (2021), https://www.rand.org/pubs/research_reports/RR4231.html.

2. Arman Mahmoudian, *The Fall of Assad's Regime Shakes Iran's Proxy Network Across the Middle East*, IRREGULAR WARFARE INITIATIVE (Feb. 27, 2025), <https://irregularwarfare.org/articles/assad-fall-iran-irregular-warfare/>; Neil MacFarquhar, *Are We Seeing the Outlines of a New Middle East?*, NEW YORK TIMES (July 13, 2025), <https://www.nytimes.com/2025/07/13/us/iran-middle-east.html>.

3. Benoit Faucon & Adam Chamseddine, *Iran is Moving to Rearm Its Militia Allies*, WALL STREET JOURNAL (July 17, 2025), https://www.wsj.com/world/middle-east/iran-militia-allies-houthis-hezbollah-a36d7de7?mod=world_lead_pos2. For an analysis of the continued influence of Iranian-aligned militias in Iraq, see Crispin Smith & Michael Knights, *How Iran Aligned Militias Seized Iraq: Irregular Warfare, Lawfare and Regime Change*, 36 SMALL WARS & INSURGENCIES 659 (2025).

Iran's support to these groups continues to facilitate their conduct in violation of international law.⁴

This article examines Iran's potential responsibility for acts on the part of its proxies that violate its international legal obligations. Examples of harmful conduct abound, ranging from the Houthis' attacks on shipping to Hamas's October 7, 2023, attacks on Israel,⁵ to Shi'a militia groups' assaults on U.S. bases in Iraq.⁶ To set the scene for the legal analysis, the article begins by assessing Iran's proxy network, outlining the varied relationships between the State and the groups it supports. Second, it considers the grounds on which the proxies' acts in violation of international law could be attributed to Iran, meaning that the State bears international responsibility for those acts. The article then moves to address the issue of complicity, considering whether, in the absence of attribution, Iran could nevertheless bear international responsibility for its own contributions towards the harms caused by its proxies. Finally, it assesses Iran's potential breach of primary norms of international law, such as the prohibition on the use of force, through its support to the various proxy groups. In the latter case, Iran's responsibility would arise not from the proxies' acts in violation of international law but rather from its own officials' engagements with those proxies, which violate a primary norm that binds the State.

The analysis highlights the difficulties that arise when seeking to hold Iran to account for its proxies' harmful conduct. While some militias' acts might clearly be attributable to Iran, leading to State responsibility, the relationships between Iran and the various groups it supports are diverse. In many cases, ambiguities surrounding the precise links that exist between Iranian officials and members of a proxy group complicate the attribution analysis and raise doubts regarding the degree of State influence over the acts at issue. While Iran could bear international responsibility for its own organs' conduct in connection with a proxy group's activities, even if attribution is not appropriate, the State's responsibility often remains in doubt. As this article demonstrates, therefore, international law provides little incentive for Iran to cease its longstanding practice of acting via proxy.

4. See, e.g., Final Rep. of the Panel of Experts on Yemen Established Pursuant to Security Council Resolution 2140, U.N. Doc. S/2024/731 (Oct. 11, 2024).

5. See, e.g., John C. Tramazzo et al., *Hostage-Taking and the Law of Armed Conflict*, ARTICLES OF WAR (Oct. 11, 2025), <https://lieber.westpoint.edu/hostage-taking-law-armed-conflict/>.

6. See, e.g., Bill Roggio, *Iran-Backed Shi'ite Militias Attack US Forces Based in Iraq*, LONG WAR JOURNAL (June 15, 2025), <https://www.longwarjournal.org/archives/2025/06/iran-backed-shiite-militias-attack-us-forces-based-in-iraq.php>.

II. IRAN'S PROXY NETWORK

Iran's network of proxies is an essential component of its national defense. Rather than involving itself directly in foreign conflicts, Tehran has made extensive use of non-State actors to project power across the region, deter adversaries, and extend its influence.⁷ A common theme in Iran's relationships with all its proxies is its provision of support, often in the form of funding, advanced military equipment, and training.⁸ Since the early 1990s, the Islamic Revolutionary Guard Corps (IRGC) Quds Force has played a key role in managing this support and in coordinating the proxy network's activities.⁹

While this article uses the word "proxy" to describe the various militia groups that Iran supports, the term can be misleading. It implies that all the groups are dependent on Iran, subordinate to the State, and do its bidding. However, as the following analysis demonstrates, there is a wide diversity in the relationships that Iran has established with these groups, and its alliances have fluctuated over time. While some proxy groups rely heavily on Iran and could not survive without its continued assistance, others are largely autonomous and would continue to operate, albeit with diminished resources, in the event Iran's support ceased. This section does not address Iran's relationship with all the groups that it supports but rather its most prominent proxies, particularly those that have caused the greatest impact and regional instability.¹⁰

A. Hezbollah

The most significant group in receipt of Iranian support is Hezbollah. Based in southern Lebanon, Iran created the group in the early 1980s, primarily as a resistance movement against Israeli occupation. Over the decades that followed, Hezbollah transformed into a political and military force that could project power well beyond Lebanon's borders. Today, the group's future ap-

7. INT'L INST. FOR STRATEGIC STUD., *supra* note 1, at 17; TABATABAI ET AL., *supra* note 1, at 5.

8. TABATABAI ET AL., *supra* note 1, at 1.

9. *Id.* at 7; ZORRI ET AL., *supra* note 1, at 21.

10. For analysis regarding Iran's relationship with other proxy groups located in Bahrain, Saudi Arabia, and Kuwait, see INT'L INST. FOR STRATEGIC STUD., *supra* note 1, at 179–94.

pears uncertain; many of its senior leaders were killed during the 2024 conflict with Israel and there are ongoing calls for the group's disarmament.¹¹ Nevertheless, Hezbollah retains the ability to violate international law, such as by firing rockets indiscriminately into Israel.¹² It has also committed many harmful acts in the past.¹³ An overview of Iran's relationship with the group therefore remains pertinent.

In the decades following its establishment, Iran provided Hezbollah with significant financial support, advanced weapons, and training, acting as both its protector and enabler.¹⁴ Iranian resources were essential to Hezbollah's growth, empowering the group to support the State's interests outside of Lebanon, including by participating in the conflict in Syria and providing training to other proxy groups.¹⁵ Yet the group exhibits a high degree of autonomy, for example, playing an important role in Lebanese politics.¹⁶

This autonomy is evident in Hezbollah's sources of income. Although it has benefited considerably from Iran's assistance, it does not solely depend upon resources from Iran.¹⁷ Moreover, Tehran does not control the group's activities. In view of the alignment between their respective ideologies and strategic objectives, Hezbollah acts instinctively in accordance with Iran's wishes; there is no need for Iran to exert its authority.¹⁸ The independence with which Hezbollah operates is evident from its key role in the conflict in Syria, in which the group controlled the planning and conduct of military operations and its members acted as advisers and trainers for Syrian military

11. Kristian Patrick Alexander, *What to Know About the History (and Future) of the Hezbollah Disarmament Question*, ATLANTIC COUNCIL (Aug. 13, 2025), <https://www.atlanticcouncil.org/blogs/menashow/history-and-future-of-hezbollah-disarmament/>.

12. *Israel: Hezbollah's Use of Inherently Inaccurate Weapons to Launch Unlawful Attacks Violates International Law*, AMNESTY INTERNATIONAL (Dec. 20, 2024), <https://www.amnesty.org/en/latest/news/2024/12/israel-hezbollahs-use-of-inherently-inaccurate-weapons-to-launch-unlawful-attacks-violates-international-law/>.

13. See, e.g., CLAYTON THOMAS & JIM ZANOTTI, LEBANESE HEZBOLLAH, CONG. RSCH. SERV., IF 10703.14 (updated Dec. 4, 2024), <https://www.congress.gov/crs-product/IF-10703>.

14. INT'L INST. FOR STRATEGIC STUD., *supra* note 1, at 43; TABATABAI ET AL., *supra* note 1, at 17.

15. INT'L INST. FOR STRATEGIC STUD., *supra* note 1, at 39; TABATABAI ET AL., *supra* note 1, at 19.

16. COUNTER EXTREMISM PROJECT, HEZBOLLAH'S INFLUENCE IN LEBANON (Apr. 2018), https://www.counterextremism.com/sites/default/files/Hezbollah%20Influence%20in%20Lebanon_043018.pdf.

17. INT'L INST. FOR STRATEGIC STUD., *supra* note 1, at 49.

18. *Id.* at 47, 76.

and paramilitary forces.¹⁹ Over time, therefore, Hezbollah has established a unique status among Iran's proxies. It resembles a strategic ally of the State more than a subordinate proxy group.²⁰

B. Shi'a Militia Groups in Iraq

In the early years following the Islamic Revolution, Iran focused not only on cultivating Hezbollah in Lebanon but also Shi'a militias in Iraq. During the Iran-Iraq war, Iran provided training to opponents of Saddam Hussein's regime and the Badr Organization emerged, operating as a pro-Iranian force in the conflict.²¹ Other Shi'a militia groups then became active following the U.S. invasion of Iraq in 2003. The IRGC and Hezbollah provided training to militants and arranged for Iranian-made roadside bombs to be smuggled into Iraq for use against U.S. forces.²² When the coalition left Iraq in 2011, Iranian officials quickly filled the void, providing more overt military and financial support to the various militia groups.²³

The rise of ISIS provided a further opportunity for Iran to expand its influence within Iraq, with the formation of the Population Mobilization Forces (PMF) in 2014.²⁴ Although a branch of Iraq's security services, the PMF comprises a diverse collection of independent militias brought together to combat ISIS, with varying levels of loyalty to Iran.²⁵ Some, such as Kataib Hezbollah, are ideologically aligned with Iran. They have received training from the IRGC and Hezbollah and rely on Tehran for resources.²⁶ Among the other PMF militias, some generally embrace Iran's ruling ideology, while others are not politically aligned with Tehran at all.²⁷ This complexity impacts the degree to which the militias act in accordance with Iran's wishes. While

19. *Id.* at 76, 87–88; Marisa Sullivan, *Hezbollah in Syria*, INSTITUTE FOR THE STUDY OF WAR (Apr. 7, 2014), <https://understandingwar.org/research/middle-east/hezbollah-in-syria-2/>; Nadav Pollak, *The Transformation of Hezbollah by Its Involvement in Syria*, WASHINGTON INSTITUTE (Aug. 4, 2016), <https://www.washingtoninstitute.org/policy-analysis/transition-hezbollah-its-involvement-syria>.

20. INT'L INST. FOR STRATEGIC STUD., *supra* note 1, at 40, 76.

21. ZORRI ET AL., *supra* note 1, at 40.

22. INT'L INST. FOR STRATEGIC STUD., *supra* note 1, at 134.

23. ZORRI ET AL., *supra* note 1, at 34.

24. Smith & Knights, *supra* note 3, at 666–71.

25. INT'L INST. FOR STRATEGIC STUD., *supra* note 1, at 122–23.

26. *Id.* at 123; ZORRI ET AL., *supra* note 1, at 33–34; TABATABAI ET AL., *supra* note 1, at 10–11.

27. INT'L INST. FOR STRATEGIC STUD., *supra* note 1, at 123–24, 127.

certain militias such as Kataib Hezbollah might act at times under Iranian command and control, they all have a degree of autonomy that derives from their role for the Iraqi State and the fact that their salaries and at least some of their weapons are provided by Baghdad.²⁸

C. Shi'a Militia Groups in Syria

Iraqi Shi'a militia groups played a role in the conflict in Syria, recruiting Shi'a volunteers to fight on behalf of the Assad regime.²⁹ Iran was quick to intervene after conflict broke out in Syria, aiming to secure its crucial conduit of weapons and fighters to Hezbollah in Lebanon. As Syria lacks an indigenous Shi'a population that Iran could mobilize, Tehran instead imported fighters from across the region, including from Iraq, Lebanon, Pakistan, and Afghanistan.³⁰ It additionally dispatched members of the IRGC to guide pro-government military efforts and manage its network of proxies.³¹ Iran supplied the groups with training and equipment, enabling them not only to fight in the conflict but also to secure key supply routes and extend Tehran's regional influence.³²

As with the Shi'a groups in Iraq, Iran's relationships with the various militias operating in Syria were varied and dynamic.³³ Often, Tehran's influence was indirect as it was Hezbollah fighters, rather than the IRGC, that commonly exercised command and control at the tactical level.³⁴ However,

28. *Id.* at 123.

29. *Id.* at 135; Smith & Knights, *supra* note 3, at 664.

30. ZORRI ET AL., *supra* note 1, at 54.

31. Dexter Filkins, *The Shadow Commander*, NEW YORKER (Sept. 23, 2013), <https://www.newyorker.com/magazine/2013/09/30/the-shadow-commander>; PAUL BUCALA & FREDERICK W. KAGAN, CRITICAL THREATS, IRAN'S EVOLVING WAY OF WAR: HOW THE IRGC FIGHTS IN SYRIA 12–13 (Mar. 2016), https://www.criticalthreats.org/wp-content/uploads/2016/07/imce-imagesIrans_Evolving_Way_of_War_IRGC_in_Syria_FINAL-1.pdf.

32. *Id.*; Michael Knights, *Iran's Foreign Legion: The Role of Iraqi Shi'ite Militias in Syria*, WASHINGTON INSTITUTE (June 27, 2013), <https://www.washingtoninstitute.org/policy-analysis/irans-foreign-legion-role-iraqi-shiite-militias-syria>; Farzin Nadimi, *Iran's Afghan and Pakistani Proxies: In Syria and Beyond?*, WASHINGTON INSTITUTE (Aug. 22, 2016), <https://www.washingtoninstitute.org/policy-analysis/irans-afghan-and-pakistani-proxies-syria-and-beyond>.

33. INT'L INST. FOR STRATEGIC STUD., *supra* note 1, at 97.

34. Ben Hubbard, *Iran Out to Remake Mideast with Arab Enforcer: Hezbollah*, NEW YORK TIMES (Aug. 27, 2017), <https://www.nytimes.com/2017/08/27/world/middleeast/hezbollah-iran-syria-israel-lebanon.html>.

Iran developed a closer relationship with some groups, particularly those recruited from Afghanistan who formed the Fatemiyoun Brigade.³⁵ Many of these Afghan fighters were motivated not by religion but rather by promises of money or residency rights in Iran.³⁶ Tehran provided the brigade with training, funding, and equipment, and it operated under the command of IRGC officers.³⁷ The group's relationship with Iran was therefore closer than that of many other Iranian proxies. The status of such groups following the fall of the Assad regime in December 2023, however, remains unclear.³⁸

D. Hamas

Unlike the Iran-linked militia groups operating in Iraq and Syria, Hamas is a Sunni Muslim group. It does not share religious or political ties with Iran but is instead an “ally of convenience,” with a shared common enemy in Israel.³⁹ The relationship is mutually beneficial. For Iran, a strong Hamas destabilizes Israel, while Hamas has benefited from a steady flow of weapons, funding, and military training. This undoubtedly facilitated the group’s military operations, including its attacks on Israel on October 7, 2023.⁴⁰

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, while Iran supported President Assad. Relations later improved when Hamas stepped back from Syria. This evolving alliance demonstrates that Hamas does not depend wholly on Iran for support. It has alternative sources of income and can continue to operate without Tehran’s backing. Thus, Iran has never exercised full command and control over Hamas and the group always sought to guard its operational independence from Tehran.⁴¹ While the group suffered

35. The same is also true of the fighters recruited from Pakistan, who formed the smaller Zainabiyoun Brigade.

36. TABATABAI ET AL., *supra* note 1, at 16.

37. *Id.*; ZORRI ET AL., *supra* note 1, at 64; INT'L INST. FOR STRATEGIC STUD., *supra* note 1, at 103–4.

38. Masood Farivar, *What Happened to Iranian Proxies in Syria?*, VOICE OF AMERICA (Dec. 13, 2024), <https://www.voanews.com/a/what-happened-to-iranian-proxies-in-syria-/7901149.html>.

39. See generally Matthew Levitt, *The Hamas-Iran Relationship*, JERUSALEM STRATEGIC TRIBUNE (Nov. 2023), <https://jstribune.com/levitt-the-hamas-iran-relationship/>.

40. *Id.*

41. *Id.*; INT'L INST. FOR STRATEGIC STUD., *supra* note 1, at 73; TABATABAI ET AL., *supra* note 1, at 13.

vast losses in its conflict with Israel following the October 7 attacks, it could yet reconstitute, particularly with the aid of further Iranian support.⁴²

E. The Houthis

In common with Hamas, the Houthis do not share a religion or ideology with Iran. The Houthis' attacks on shipping and more recently on Israel were driven more by their own domestic imperatives and regional ambitions than by Iran. The group acts with considerable autonomy and does not depend upon Iran for access to arms or other resources.⁴³ Nevertheless, the State's influence over the group and its activities has been considerable. Since 2014, Tehran has provided the Houthis with increasing levels of support, including an arsenal of advanced weaponry and significant training, thereby transforming the Houthis from a localized armed group to a powerful military organization.⁴⁴

The conflict in Gaza prompted the Houthis to cooperate more closely with Iran's other proxies. According to UN experts, joint operational centers in Iraq and Lebanon coordinate the groups' military activities, with Houthi representation.⁴⁵ The Houthis maintain particularly strong military ties with militias in Iraq, while Hezbollah provides the group with a range of assistance including military, technical, and financial support and training.⁴⁶ Some reporting indicates direct Iranian influence over the Houthis' activities.⁴⁷ However, as is the case with many of the harmful acts perpetrated by Iran's proxies, the extent to which any particular Houthi attack was committed under Tehran's influence or control is often hard to ascertain. This ambiguity

42. See, e.g., Adam Rasgon, *Why Hamas Refuses to Give Up*, NEW YORK TIMES (Sept. 5, 2025), <https://www.nytimes.com/2025/09/05/world/middleeast/gaza-hamas-surrender-israel.html>.

43. See generally TABATABAI ET AL., *supra* note 1, at 13–14; INT'L INST. FOR STRATEGIC STUD., *supra* note 1, at 171–73; Allison Minor, *The Danger of Calling the Houthis an Iranian Proxy*, BROOKINGS (Sept. 3, 2024), <https://www.brookings.edu/articles/the-danger-of-calling-the-houthis-an-iranian-proxy/>.

44. Final Rep. of the Panel of Experts on Yemen, *supra* note 4, at 2, 19–20.

45. *Id.* at 2.

46. *Id.* at 8–9.

47. *Id.* at 19; Caitlin McFall, *Trump Vindicated as Explosive Report Confirms Iran Supervises Houthi ‘Political and Military Affairs’*, FOX NEWS (Mar. 20, 2025), <https://www.foxnews.com/world/trump-vindicated-explosive-report-confirms-iran-supervises-houthi-political-military-affairs>.

can cause difficulties when assessing the potential attribution of such acts in violation of international law to Iran.

III. ATTRIBUTION

All Iran's proxies have engaged in conduct that is harmful to other States. Israel is often the victim, particularly of the acts of Hezbollah and Hamas, but other States have also suffered harm as a result of the proxies' actions. To determine the response options of injured States such as Israel, including their rights to respond directly against Iran, it is necessary to look to the law of State responsibility. The most authoritative statement of this body of law can be found in the International Law Commission (ILC) draft Articles on the Responsibility of States for Internationally Wrongful Acts (ARSIWA).⁴⁸

To engage a State's international responsibility, the relevant conduct must amount to an internationally wrongful act. Not only must the conduct violate a norm of international law that is binding on the State, either under treaty law or customary international law, it must also be attributable to the State.⁴⁹ Attribution is thus a crucial element of responsibility. It determines whether conduct performed by individuals or groups is public in character, in which case it is attributable to a State and can lead to that State's international responsibility, or remains private. In the latter case, the private character of the conduct concerned means that it does not constitute an internationally wrongful act and cannot lead to State responsibility.

The law of State responsibility thus creates a strict public/private divide.⁵⁰ This is potentially problematic when considering the harmful actions of Iran's proxies. These acts often feature public elements, due to the State support that facilitates their commission, but also private elements, as the groups concerned often act with considerable autonomy. Further difficulties arise due to the covert nature of the relationships between the proxies and Iranian officials. This makes it difficult for injured States to ascertain the true

48. Int'l Law Comm'n, *Draft Articles on Responsibility of States for Internationally Wrongful Acts with Commentaries*, 56 U.N. GAOR Supp. No. 10, U.N. Doc. A/56/10 (2001), reprinted in [2001] 2 YEARBOOK OF THE INTERNATIONAL LAW COMMISSION 26, U.N. Doc. A/CN.4/SER.A/2001/Add.1 (Part 2) [hereinafter ARSIWA].

49. *Id.* art 2.

50. See generally Robert H. Mnookin, *The Public/ Private Dichotomy: Political Disagreement and Academic Repudiation*, 130 UNIVERSITY OF PENNSYLVANIA LAW REVIEW 1429 (1982); Christine Chinkin, *A Critique of the Public/ Private Dimension*, 10 EUROPEAN JOURNAL OF INTERNATIONAL LAW 387 (1999).

degree of Iranian involvement in a proxy's overall conduct, as well as the specific acts at issue.

Factors such as these complicate any attribution analysis. Yet attribution remains key to determining Iran's potential responsibility for its proxies' actions. Although Iran clearly supports and facilitates its proxies' conduct in potential violation of international law, it only bears international responsibility for those acts if they are attributable to the State. This part considers in turn the three rules of attribution that are most likely to apply to attribute the proxies' conduct to Iran, namely the rules reflected in Articles 4, 5, and 8 of ARSIWA. These rules all reflect customary international law,⁵¹ but significant questions nevertheless arise regarding their interpretation and precise meaning when applied to private conduct performed during armed conflict.

A. Organs of State

The rule reflected in Article 4 of ARSIWA attributes to a State the conduct of its organs.⁵² There are two categories of State organs: *de jure* State organs, which are designated as such by the State's own internal laws; and *de facto* State organs, which gain that status due to the factual relationship between the entity and the State. This rule of attribution has broader effects than the rules reflected in Articles 5 and 8, considered below. If an entity qualifies as a *de jure* or *de facto* organ of State, all its conduct, including any that is *ultra vires* (for example, because it was contrary to the State's instructions), is attributable to the State. Only conduct performed in the organ's private capacity is not so attributable.⁵³

51. Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosn. & Herz. v. Serb. & Montenegro), Judgment, 2007 I.C.J. 43, ¶¶ 385, 398 (Feb. 26) [hereinafter Bosnian Genocide]; 1 CUSTOMARY INTERNATIONAL HUMANITARIAN LAW r. 149 (Jean-Marie Henckaerts & Louise Doswald-Beck eds., 2005).

52. ARSIWA, *supra* note 48, art. 4 ("1. The conduct of any State organ shall be considered an act of that State under international law, whether the organ exercises legislative, executive, judicial or any other functions, whatever position it holds in the organization of the State, and whatever its character as an organ of the central Government or of a territorial unit of the State. 2. An organ includes any person or entity which has that status in accordance with the internal law of the State").

53. *Id.* art. 7 ("The conduct of an organ of State or of a person or entity empowered to exercise elements of the governmental authority shall be considered an act of the State under international law if the organ, person or entity acts in that capacity, even if it exceeds its authority or contravenes instructions").

Entities gain the status of a *de jure* State organ when the State passes a law integrating that entity into the State's structures. Thus, the IRGC, established in the early days of the Iranian Revolution, was officially recognized as an organ of the Iranian State by a decree issued by the Supreme Leader, Ayatollah Khomeini, in May 1979.⁵⁴ The IRGC's conduct from this date is therefore attributable to Iran,⁵⁵ including any acts in breach of Iran's international legal obligations committed during its operations in Syria and elsewhere.⁵⁶ Rather than an Iranian proxy, the IRGC clearly acts as an arm of the State. However, the same is not true of any of the proxy groups outlined above, which do not have the status of State organs under Iranian law. It follows that none of these groups qualify as *de jure* organs of Iran, and their conduct is not attributable to the State on this basis.

Some of the groups Iran supports are, however, *de jure* State organs of other States in the region. Notable in this regard are the PMF in Iraq.⁵⁷ These groups initially emerged in 2014 in response to a call by clerics to support Iraq's collapsing security forces in the fight against ISIS.⁵⁸ The Iraqi government then integrated the PMF into the State's structure as "an independent

54. See *Yeager v. Islamic Republic of Iran*, Award No. 324-10199-1, ¶ 40 (Iran-U.S. Claims Trib., 1987); see also KENNETH KATZMAN, THE WARRIORS OF ISLAM: IRAN'S REVOLUTIONARY GUARD 51 (1993). The IRGC's role in the Iranian State was subsequently enshrined in the Iranian constitution. See Iran (Islamic Republic of)'s Constitution of 1979 with Amendments Through 1989, CONSTITUTEPROJECT.ORG, https://www.constituteproject.org/constitution/Iran_1989.pdf (last visited Oct. 15, 2025).

55. See *William L. Pereira Associates v. Islamic Republic of Iran*, Award No. 116-1-3, ¶ 130 (Iran-U.S. Claims Trib., 1984).

56. For discussion of the IRGC's role in the Syrian conflict, see, e.g., Amir Toumaj, *Array of Pro-Syrian Government Forces Advances in Aleppo*, LONG WAR JOURNAL (Dec. 9, 2016), <https://www.longwarjournal.org/archives/2016/12/array-of-pro-syrian-government-forces-advance-in-aleppo.php>; BUCALA & KAGAN, *supra* note 31. Regarding potential international law violations involving the IRGC in Syria and elsewhere, see, e.g., AMNESTY INTERNATIONAL, REPORT 2017/18: THE STATE OF THE WORLD'S HUMAN RIGHTS 351 (2018), <https://www.amnesty.org.uk/files/2018-02/annualreport2017.pdf>; Andrew Hanna & Garrett Nada, *Timeline: Iran's Assassinations and Plots*, UNITED STATES INSTITUTE FOR PEACE (Sept. 16, 2020), <https://iranprimer.usip.org/blog/2020/sep/16/timeline-iran-assassinations-and-plot>.

57. Kirk H. Sowell, *The Rise of Iraq's Militia State*, CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE (Apr. 23, 2015), <https://carnegieendowment.org/sada/2015/04/the-rise-of-iraqs-militia-state>; Garrett Nada & Mattisan Rowan, *Pro-Iran Militias in Iraq*, UNITED STATES INSTITUTE FOR PEACE (Nov. 10, 2021), <https://iranprimer.usip.org/blog/2021/nov/10/profiles-pro-iran-militias-iraq>.

58. Bill Roggio & Amir Toumaj, *Iraq's Prime Minister Establishes Popular Mobilization Forces as a Permanent "Independent Military Formation"*, LONG WAR JOURNAL (July 28, 2016), <https://longwarjournal.org/2016/07/28/iraqs-prime-minister-establishes-popular-mobilization-forces-as-a-permanent-independent-military-formation/>.

military formation and a part of the Iraqi armed forces.”⁵⁹ Some factions nevertheless remained under considerable Iranian influence, leading the Iraqi government to issue further decrees seeking to exert its authority over the PMF.⁶⁰ Despite this, certain militias seemingly continued to ignore Baghdad’s authority, engaging in human rights abuses against peaceful protestors, for instance, and targeting U.S. and coalition forces in rocket attacks.⁶¹ Assuming such conduct was performed in the militias’ official capacity, it is attributable to Iraq by virtue of the rule reflected in Article 4, even if it was unauthorized.⁶²

Given Tehran’s influence over some PMF factions, questions arise whether any of their acts in violation of international law could be attributed to Iran. As the PMF are Iraqi State organs, this analysis turns upon whether Iran directed and controlled a militia’s commission of an internationally wrongful act, within the meaning of the rule reflected in Article 17 of ARSIWA.⁶³ This is a question of fact that turns upon Iran’s role in the militia’s conduct. Iran is responsible for an act only if it dominated the act’s commission; mere influence or oversight does not suffice.⁶⁴ If this stringent threshold cannot be satisfied, Iran might alternatively bear responsibility for

www.longwarjournal.org/archives/2016/07/iraqs-prime-minister-establishes-popular-mobilization-front-as-a-permanent-independent-military-formation.php; Nada & Rowan, *supra* note 57.

59. Roggio & Toumaj, *supra* note 58; *see also* Nada & Rowan, *supra* note 57; Smith & Knights, *supra* note 3, at 666.

60. Ali Mamouri, *Iraq Orders Militia to Fully Integrate into State Security Forces*, AL-MONITOR (July 2, 2019), <https://www.al-monitor.com/pulse/originals/2019/07/iraq-pmu-iran-abdul-mahdi-shiite-militias.html>.

61. Michael Georgy, *Exclusive: Iran-Backed Militias Deployed Snipers in Iraq Protests—Sources*, REUTERS (Oct. 17, 2019), <https://www.reuters.com/article/us-iraq-protests-iran-snipers-exclusive/exclusive-iran-backed-militias-deployed-snipers-in-iraq-protests-sources-idUSKBN1WW0B1>; *see also* AMNESTY INT’L, IRAQ: TURNING A BLIND EYE: THE ARMING OF THE POPULAR MOBILIZATION UNITS (2017), <https://www.amnesty.org/en/documents/mde14/5386/2017/en/>.

62. Crispin Smith, *It’s Time Iraq Accepts Legal Responsibility for its Iran-Backed Militias*, JUST SECURITY (Mar. 23, 2020), <https://www.justsecurity.org/69273/its-time-iraq-accepts-legal-responsibility-for-its-iran-backed-militias/>.

63. ARSIWA, *supra* note 48, art. 17 (“A State which directs and controls another State in the commission of an internationally wrongful act by the latter is internationally responsible for that act if: (a) that State does so with knowledge of the circumstances of the internationally wrongful act; and (b) the act would be internationally wrongful if committed by that State”).

64. *Id.* art. 17 cmt. ¶ 7.

its own contribution towards the act if it knowingly aided or assisted in its commission.⁶⁵

It is also pertinent to consider whether any of Iran's proxies qualify as State organs due to the strength of their relationship with Iran rather than their status under Iranian law. The International Court of Justice (ICJ) considered de facto State organ status in its *Bosnian Genocide* judgment, concluding that for entities to attain this status, they must be regarded as "mere instruments" through which the State is acting, and "lacking any real autonomy."⁶⁶ If an entity has "some qualified, but real, margin of independence" from the State, it is not completely dependent on the State.⁶⁷ An entity might demonstrate this high degree of dependence by acting consistently in accordance with the State's wishes for fear that if it failed to do so, the State would withdraw the support upon which the group relies for its continued operations.⁶⁸ In the event that the "complete dependence" threshold can be satisfied, the potential for control that exists as a result of that dependence must actually be exercised by the State, to "a particularly great degree," in all the entity's fields of activity.⁶⁹ If the entity has a consistent freedom of action in certain areas of its operations, thereby indicating an absence of "strict control" by the State, the second element of the ICJ's test is not satisfied.⁷⁰

The stringency of the ICJ's test for de facto State organ status raises doubts whether any of Iran's proxies qualify as such. With regard to Hezbollah, for example, the group has an intimate relationship with one particular organ of the Iranian State, the IRGC,⁷¹ and acts consistently in furtherance of Iranian interests. A further indication of Hezbollah's place within the wider architecture of the Iranian State is the group's significance to Tehran's

65. *Id.* art. 16 ("A State which aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if: (a) that State does so with knowledge of the circumstances of the internationally wrongful act; and (b) the act would be internationally wrongful if committed by that State"). For further discussion of Article 16, *see infra* Section IV(A).

66. *Bosnian Genocide*, *supra* note 51, ¶ 394.

67. *Id.* ¶ 394; *see also* Olivier Corten, *L'Arrêt rendu par la CIJ dans l'affaire du Crime de génocide (Bosnie-Herzégovine c. Serbie): vers un assouplissement des conditions permettant d'engager la responsabilité d'un État pour génocide?*, 53 ANNUAIRE FRANÇAIS DE DROIT INTERNATIONAL 249, 266 (2007).

68. Corten, *supra* note 67, at 267.

69. Military and Paramilitary Activities in and against Nicaragua (Nicar. v. U.S.), Judgment, 1986 I.C.J. 14, ¶ 110 (June 27) [hereinafter Nicaragua]; *Bosnian Genocide*, *supra* note 51, ¶ 393.

70. *Bosnian Genocide*, *supra* note 51, ¶ 391.

71. *See, e.g.*, Hubbard, *supra* note 34.

overall concept of defense and deterrence.⁷² These elements, however, must be weighed against factors that point away from Hezbollah's status as a de facto State organ. These include the considerable autonomy the group demonstrates when conducting military operations,⁷³ the support it received from other States such as Syria,⁷⁴ and the important domestic role it plays within Lebanon.⁷⁵

Higher levels of dependence and control can be found in other proxy relationships such as Iran's association with the Afghan Fatemeyoun Brigade, which fought on Iran's behalf in Syria.⁷⁶ Reporting indicates that this group was one of the proxies with the highest degree of dependence on Iran and acted under Iranian command and control on the battlefield.⁷⁷ The same is true of the Pakistani Zainabiyoun Brigade, which also fought in Syria.⁷⁸ It is arguable that these groups acted as combat arms of Iran, integrated into the State's structure in all senses other than their status under Iranian law.

The question whether these groups' conduct is attributable to Iran based on their status as de facto State organs turns upon the facts surrounding their respective relationships with the State. Given the stringency of the ICJ's test, if the groups exhibited any degree of autonomy in their actions, this might

72. Ariane Tabatabai, *The Fruits of Iran's Victory in Syria*, LAWFARE (Apr. 15, 2018), <https://www.lawfareblog.com/fruits-irans-victory-syria>; JACK WATLING, ROYAL UNITED SERVS. INST., IRAN'S OBJECTIVES AND CAPABILITIES: DETERRENCE AND SUBVERSION 16–17 (Feb. 2019), <https://www.rusi.org/explore-our-research/publications/occasional-papers/irans-objectives-and-capabilities-deterrance-and-subversion>.

73. SULLIVAN, *supra* note 19.

74. Mohanad Hage Ali, *Power Points Defining the Syria-Hezbollah Relationship*, CARNEGIE MIDDLE EAST CENTER (Mar. 29, 2019), <https://carnegie-mec.org/2019/03/29/power-points-defining-syria-hezbollah-relationship-pub-78730>.

75. COUNTER EXTREMISM PROJECT, HEZBOLLAH'S INFLUENCE IN LEBANON (Apr. 2018), https://www.counterextremism.com/sites/default/files/Hezbollah%20Influence%20in%20Lebanon_043018.pdf; Matthew Levitt, *Hezbollah Shadow Governance in Lebanon*, WASHINGTON INSTITUTE (Aug. 6, 2024), <https://www.washingtoninstitute.org/policy-analysis/hezbollah-shadow-governance-lebanon>.

76. Ben Farmer & Akhtar Makoui, *Thirsty for Martyrdom and a Living Wage: Why Thousands of Afghans Signed Up to Iran's Shadowy War in Syria*, THE TELEGRAPH (Jan. 26, 2020), <https://www.telegraph.co.uk/news/2020/01/26/thirsty-martyrdom-living-wage-thousands-afghans-signed-irans/>; Phillip Smyth, *Iran's Afghan Shiite Fighters in Syria*, WASHINGTON INSTITUTE (June 3, 2014), <https://www.washingtoninstitute.org/policy-analysis/irans-afghan-shiite-fighters-syria>.

77. ZORRI ET AL., *supra* note 1, at 64; INT'L INST. FOR STRATEGIC STUD., *supra* note 1, at 103–7; TABATABAI ET AL., *supra* note 1, at 16.

78. INT'L INST. FOR STRATEGIC STUD., *supra* note 1, at 103–7; Nadimi, *supra* note 32.

exclude them from qualification as de facto State organs.⁷⁹ It appears unlikely that any of Iran's other proxies could attain this status. Reporting indicates that the majority act with a degree of autonomy that would preclude this status, meaning that it is necessary to look to other rules of attribution to assess Iran's potential responsibility for their conduct.

B. Empowerment to Exercise Public Functions

If an Iranian proxy does not qualify as a de facto State organ, its conduct could nevertheless be attributable to the State on another basis. The rule reflected in Article 5 of ARSIWA applies to outsourcing relationships,⁸⁰ such as those that arise when a State delegates combat-related functions to a private military company (PMC).⁸¹ The rule is narrower in its scope than Article 4, in that it does not attribute all the non-State actor's conduct to the State but only public conduct that is performed on the State's behalf. While a State organ acts exclusively for the State (other than when acting in a private capacity), an entity like a PMC might act for several clients, both public and private. For example, a PMC might guard a military base in a combat zone and also provide security services to a mining company located nearby. If members of the PMC carry out their public functions in a way that violates the State's international legal obligations, such as by killing or injuring a civilian approaching the military base who did not pose a threat, that conduct is attributable to the State even if the relevant acts were contrary to the State's

79. Only one international court to date has concluded that the relationship between a State and a non-State armed group satisfies the ICJ's stringent test. In view of extensive evidence of the links between Russia and separatists in eastern Ukraine, the European Court of Human Rights found that the separatists were de facto State organs. *See Ukraine and the Netherlands v. Russia*, App. No. 8019/16, 43800/14 & 28525/20, Decision, ¶¶ 576–697 (ECtHR Nov. 30, 2022), <https://hudoc.echr.coe.int/eng?i=001-222889>; *Ukraine and the Netherlands v. Russia*, App. Nos. 8019/16, 43800/14, 28525/20 & 11055/22, Judgment, ¶¶ 363–64 (ECtHR July 9, 2025), <https://hudoc.echr.coe.int/eng?i=001-244292>.

80. ARSIWA, *supra* note 48, art. 5 ("The conduct of a person or entity which is not an organ of the State under article 4 but which is empowered by the law of that State to exercise elements of the governmental authority shall be considered an act of the State under international law, provided the person or entity is acting in that capacity in the particular instance").

81. For discussion of the rule in this context, *see, e.g.*, Chia Lehnardt, *Private Military Companies and State Responsibility*, in *FROM MERCENARIES TO MARKET: THE RISE AND REGULATION OF PRIVATE MILITARY COMPANIES* 139 (Simon Chesterton & Chia Lehnardt eds., 2007); HANNAH TONKIN, *STATE CONTROL OVER PRIVATE MILITARY AND SECURITY COMPANIES IN ARMED CONFLICT* 99–112 (2011).

instructions and therefore ultra vires. However, any conduct the PMC performed on its own account or for an entity other than the State remains private in character and cannot lead to State responsibility.⁸²

Three conditions must be satisfied for the rule reflected in Article 5 to apply. First, the non-State actor performs public functions on the State's behalf. Second, the person or entity is empowered by the State's internal law to perform such functions. And third, it acts in that public capacity at the time it violates the State's international legal obligations.⁸³ When considering the rule's potential application to the conduct of Iran's proxies, in many cases, the first condition will be easily satisfied. Although it is not always straightforward to distinguish between public and private functions, combat-related tasks are undoubtedly public in character.⁸⁴ When proxy groups use force against another State or engage in combat, as they did during the Syrian conflict, these actions are clearly public and could violate Iran's international legal obligations.

Difficulties arise, however, when applying the second criterion, namely the requirement for empowerment by law. This condition can be satisfied when a State lawfully delegates functions to another entity, such as when it outsources tasks to a PMC via contract, in accordance with the State's internal legal regime.⁸⁵ When States act more covertly, via proxy, their empowerment of proxy groups to act on their behalf may not be formalized in law. In Syria, for example, Shi'a militia groups augmented the Assad regime's forces on the battlefield without any apparent legal authority to do so.⁸⁶ Although Iran's use of proxies is undoubtedly sanctioned at the highest levels of government, identifying an Iranian law that authorizes the delegation of combat tasks to a proxy presents a significant challenge to injured States.

If the ILC's formulation of Article 5 of ARSIWA reflects customary international law, the requirement for empowerment by law likely precludes the rule's application to the conduct of Iran's proxies. While it is possible

82. ARSIWA, *supra* note 48, art. 7.

83. *Id.* art. 5.

84. For further discussion regarding the identification of public functions in this context, see Jennifer Maddocks, *Outsourcing of Governmental Functions in Contemporary Conflict: Rethinking the Issue of Attribution*, 59 VIRGINIA JOURNAL OF INTERNATIONAL LAW 47, 61–77 (2019).

85. ARSIWA, *supra* note 48, art. 5 cmt. ¶ 2 (“in some countries private security firms may be contracted to act as prison guards and in that capacity may exercise public powers”).

86. See, e.g., Knights, *supra* note 32.

that the militias' acts could be attributed to Iran on another basis, as discussed below,⁸⁷ Article 5 plays a critical role in the wider attribution regime reflected in ARSIWA. As the commentary makes clear, "For the purposes of article 5, an entity is covered even if its exercise of authority involves an independent discretion or power to act; there is no need to show that the conduct was in fact carried out under the control of the State."⁸⁸ This is significant when considering Iran's proxies, which often act with a degree of autonomy that excludes the application of any rule of attribution that requires evidence of State control.

When a State empowers an entity to perform combat functions on its behalf, and the entity acts in that public capacity when committing acts that breach international law, the rule reflected in Article 5 should attribute those violations to the State. This basis of attribution is particularly pertinent when considering the conduct of Iran's proxies in Syria; in this context, they acted to promote Tehran's interests in the conflict and had no independent domestic goals of their own. When Iran incentivized and empowered individuals from Pakistan and Afghanistan to fight on its behalf in Syria,⁸⁹ for example, these fighters were performing public functions for Iran and acted effectively as a branch of its armed forces.⁹⁰ The same could be said of other proxies' conduct during the hostilities, such as the Iraqi militias that fought in Syria under IRGC command and alongside other Iran-backed groups.⁹¹ The same could even perhaps be true of Hezbollah, given that reporting indicates that the group first became involved in the Syrian conflict at Iran's behest, it coordinated its actions closely with the IRGC, and it operated with the benefit of considerable Iranian support.⁹²

87. ARSIWA, *supra* note 48, art. 8 ("The conduct of a person or group of persons shall be considered an act of a State under international law if the person or group of persons is in fact acting on the instructions of, or under the direction or control of, that State in carrying out the conduct").

88. *Id.* art. 5 cmt. ¶ 7.

89. Nadimi, *supra* note 32.

90. The conduct of these groups could, alternatively, be attributable to Iran based on their status as de facto State organs. *See supra* Section III(A).

91. Smith & Knights, *supra* note 3, at 664.

92. Samia Nakhoul, *Special Report: Hezbollah Gambles All in Syria*, REUTERS (Sept. 26, 2013), <https://www.reuters.com/article/us-syria-hezbollah-special-report/special-report-hezbollah-gambles-all-in-syria-idUSBRE98P0AI20130926>; Seth G. Jones, *The Escalating Conflict with Hezbollah in Syria*, CENTER FOR STRATEGIC & INTERNATIONAL STUDIES (June 20, 2018), <https://www.csis.org/analysis/escalating-conflict-hezbollah-syria>.

Iran's proxy relationships demonstrate that a requirement for "empowerment by law" as a prerequisite for attribution on this basis does not accord with the realities of contemporary conflict. While it is common for States to outsource combat functions to armed groups that fall outside the structure of the State, they rarely do so by law.⁹³ Thus, the ILC's formulation of Article 5 provides too easy a means by which States can evade their international responsibility. To avoid the rule's application, States need merely to empower a proxy to act on their behalf in a way that is not formalized in the State's domestic law. The rule would be more effective in attributing to Iran public acts performed on the State's behalf if the "empowerment" criterion were interpreted more broadly.⁹⁴

In the absence of legal authorization, other factors might provide compelling evidence that a State has authorized a proxy to perform public functions on its behalf. These might include evidence that State officials coordinated with the group's leaders regarding the performance of the public tasks, issued guidance regarding the group's operations, and provided the proxy with assistance or training that enabled its performance of the acts at issue.⁹⁵ If such factors could be considered as part of the empowerment assessment, there would still be a requirement for the third criterion relevant to Article 5's application to be satisfied. It is only when the proxies act "for Iran," in support of the State's national security objectives as opposed to in pursuit of any independent goals of their own, that they are acting in a public capacity on Iran's behalf, meaning that the rule of attribution would apply.

If, instead, a proxy group is pursuing its own aims with Iranian support, as appears to be the case with the Houthis' operations against international shipping, for example, the rule reflected in Article 5 is not an appropriate basis of attribution. In these circumstances, it is nevertheless possible that the proxy's conduct could be attributable to Iran because it was acting on

93. Other examples of States outsourcing combat functions to armed groups abound. These include Russia's use of the Wagner Group and Turkey's use of militias to fight on its behalf in Syria, Libya, and Nagorno-Karabakh. *See, e.g.*, Kimberley Marten, *Russia's Use of Semi-State Security Forces: The Case of the Wagner Group*, 35 POST-SOVIET AFFAIRS 181 (2019); Tom Allinson & Abderrahmane Ammar, *Erdogan's Syrian Mercenaries in Libya*, DEUTSCHE WELLE (Feb. 11, 2020), <https://www.dw.com/en/libya-are-turkeys-syrian-mercenaries-a-new-threat/a-52329943>.

94. *See* Maddocks, *supra* note 84, at 77–89; JENNIFER MADDOCKS, ATTRIBUTION OF NON-STATE ACTOR CONDUCT DURING ARMED CONFLICT ch. 5 (forthcoming 2026).

95. For a more detailed discussion of the empowerment requirement and the factors that might be relevant when assessing whether a State empowered a non-State group to act, *see* MADDOCKS, *supra* note 94, ch. 5.

the State's instructions, direction, or control at the time it committed the acts in potential violation of international law.

C. Instructions, Direction, or Control

If the conduct of Iran's proxies is not attributable to the State based on the rules reflected in Articles 4 or 5 of ARSIWA, the only other rule that could feasibly attribute their conduct to Iran is the attribution standard expressed in Article 8.⁹⁶ This reflects a narrower basis of attribution than the rules considered previously, in that it attributes to a State only those acts performed under its instructions, direction, or control. Any conduct that is *ultra vires*, for example because it contravened the State's instructions, remains private in character and is not attributed to the State.⁹⁷ This means that unlike the rules addressed above, where a broader review of the relationship between Iran and the relevant proxy might lead to a conclusion that attribution is appropriate, the assessment under Article 8 must be conducted in relation to each and every act on the part of the proxy that potentially violates Iran's international legal obligations. For instance, in the context of the Houthis' attacks on civilian merchant ships in potential violation of international law,⁹⁸ it is necessary to assess whether each of these attacks was conducted under Iran's instructions, direction, or control.⁹⁹

The most straightforward element of the rule reflected in Article 8 relates to State instructions. If a State instructs a non-State actor to act in a manner that breaches the State's international legal obligations, that conduct in violation of international law is attributable to the State and constitutes an internationally wrongful act. There is no requirement for the State to also supervise the non-State actor's conduct. Therefore, if Iran ordered the Houthis

96. ARSIWA, *supra* note 48, art. 8. It is possible that the proxies' conduct could be attributed to Iran based on the rule reflected in Article 11 ARSIWA, in the event Iran acknowledged and adopted the proxies' prior behavior as its own. This is highly unlikely because Iran has not historically claimed responsibility for its proxies' harmful actions. *See id.* art. 11. For discussion regarding Article 11, *see* MADDOCKS, *supra* note 94, ch. 10.

97. *Id.* art. 8 cmt. ¶ 8; *id.* art. 7.

98. *See, e.g.*, Magne Frostad, *Houthi Attacks on Merchant Vessels in the Red Sea*, ARTICLES OF WAR (June 10, 2024), <https://ieber.westpoint.edu/houthi-attacks-merchant-vessels-red-sea/>.

99. ARSIWA, *supra* note 48, art. 8 cmt. ¶ 7 ("the instructions, direction or control must relate to the conduct which is said to have amounted to an internationally wrongful act"); *see also* Bosnian Genocide, *supra* note 51, ¶ 401.

to execute its attacks on Israel,¹⁰⁰ the Houthis' actions when following those instructions may be attributable to Iran even if Iranian officials did not exercise any form of control over the attacks' execution. There is little evidence in the public domain, however, to indicate that the Houthis conducted such attacks on Iran's instructions. In practice, it is rare for conduct to be attributed to a State on this basis; proof that a State issued instructions to a proxy to act in violation of international law is seldom available.¹⁰¹

Questions arise, moreover, regarding the specificity of the State's instructions and how closely these must relate to the particular acts on the part of the proxy that violated international law. To illustrate, consider Hamas's brutal attack on civilians attending a music festival in Israel on October 7, 2023. For the related international humanitarian law (IHL) violations to be attributed to Iran, is it necessary that Iran's instructions included orders to attack civilians? Or would it suffice if the State's commands related to broader aspects of the operation, or left it open to the militants to choose their own targets to attack?

According to the ARSIWA commentary, the answer turns upon "whether the unlawful or unauthorized conduct was really incidental to the mission or clearly went beyond it."¹⁰² 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 IHL 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.

100. For analysis, *see, e.g.*, Gerald M. Feierstein & Fatima Abo Alasrar, *The Geopolitical Implications of Houthi Attacks and Israeli Retaliation*, MIDDLE EAST INSTITUTE (July 23, 2024), <https://www.mei.edu/publications/geopolitical-implications-houthi-attacks-and-israeli-retaliation>.

101. One rare example is the conduct of the "Unilaterally Controlled Latino Assets" or UCLAs, which was attributable to the United States because the group acted "on the direct instructions" of U.S. officials when laying mines in Nicaraguan ports. *See* Nicaragua, *supra* note 69, ¶ 75; *see also id.* ¶ 80.

102. ARSIWA, *supra* note 48, art. 8 cmt. ¶ 8.

While some reporting after October 7 indicated that Iran was closely involved in Hamas's attacks,¹⁰³ statements made by other States and by Hamas itself suggest that the group was not acting on Iran's orders.¹⁰⁴ If that is correct, it is nevertheless possible that Hamas's conduct is attributable to Iran based on the State's direction or control over the operation. These elements of the rule reflected in Article 8 are commonly considered together, with a principal focus on the State's exercise of control.

When thinking about proxy relationships, control can have various meanings. It could apply at the strategic level, meaning that it is necessary to prove only that the proxies acted in furtherance of Iran's strategic interests. At the opposite end of the spectrum, it could refer to Iran's tactical control over the specific acts of a proxy that violate international law, meaning that evidence is required of Iranian officials acting in some form of command role while the relevant operation is taking place.

These different conceptions of control are evident in the competing control tests devised by the ICJ and the International Criminal Tribunal for the former Yugoslavia (ICTY). In the ICTY's 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 applies only to hierarchically structured groups and looks to the wider relationship between the State and the non-State actor.¹⁰⁵ According to the ICTY, "It must be proved that the State wields overall control over the

103. Summer Said et al., *Iran Helped Plot Attack on Israel Over Several Weeks*, WALL STREET JOURNAL (Oct. 8, 2023), <https://www.wsj.com/world/middle-east/iran-israel-hamas-strike-planning-bbe07b25>.

104. *Meet the Press—October 8, 2023*, NBC NEWS (Oct. 8, 2023), <https://www.nbcnews.com/meet-the-press/meet-press-october-8-2023-n1307318> (U.S. Secretary of State Antony Blinken stated, "we don't have anything that shows us that Iran was directly involved in this attack, in planning it or in carrying it out"); Farnaz Fassihi & Ronen Bergman, *Hamas Attack on Israel Brings New Scrutiny of Group's Ties to Iran*, NEW YORK TIMES (Oct. 13, 2023), <https://www.nytimes.com/2023/10/13/world/middleeast/hamas-iran-israel-attack.html> (according to a senior Hamas official, "The implementation was all Hamas, but we do not deny Iran's help and support"); *After Hamas Attack, Biden Assures Netanyahu That U.S. Stands With Israel*, NPR (Oct. 9, 2023), <https://www.npr.org/2023/10/09/1204612024/after-hamas-attack-biden-assures-netanyahu-that-u-s-stands-with-israel> (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").

105. Prosecutor v. Tadić, Case No. ICTY IT-94-1-A, Appeals Chamber Judgment, ¶¶ 116–45 (Int'l Crim. Trib. for the former Yugoslavia July 15, 1999).

group, not only by equipping and financing the group, but also by coordinating or helping in the general planning of its military activity.”¹⁰⁶ This test, therefore, includes no requirement for the State to plan or direct the specific private conduct that violates its international legal obligations.

This broader test might be satisfied when considering Iran’s relationship with some of its proxies. In the Syrian conflict, for instance, reporting indicates that Iran supplied militia groups with training and equipment, enabling them to fight in the conflict, secure key supply routes, and extend Tehran’s regional influence.¹⁰⁷ Iran also dispatched members of the IRGC to guide pro-government military efforts and manage its network of proxies.¹⁰⁸ As such, both elements of the ICTY’s test might be satisfied. Accordingly, if overall control is the appropriate standard to attribute private conduct to a State for the purposes of Article 8 of ARSIWA, the Shi’a militia groups’ conduct in violation of IHL, such as their indiscriminate attacks during the assault on Aleppo,¹⁰⁹ are attributable to Iran.

There is, however, a more authoritative control test. Overall control has several weaknesses when applied for the purposes of attribution. For instance, its focus on the wider relationship between the entity and the State conflates control under Article 8 with de facto State organ status for the purposes of Article 4.¹¹⁰ In addition, as the ICJ observed in its *Bosnian Genocide* judgment, this test could potentially attribute too much conduct to a State, stretching the links that must exist between the entity and the State too far.¹¹¹ Thus, the ICJ rejected the overall control test and reaffirmed the test of effective control it had previously articulated in *Nicaragua*.¹¹² 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

106. *Id.* ¶ 131.

107. ZORRI ET AL., *supra* note 1, at 53–54, 69; Knights, *supra* note 32; Nadimi, *supra* note 32; Farmer & Makooi, *supra* note 76.

108. Filkins, *supra* note 31; BUCALA & KAGAN, *supra* note 31, at 12–13.

109. See, e.g., Rep. of the Indep. Int’l Comm’n of Inquiry on the Syrian Arab Republic, at 7–11, ¶¶ 25–50, U.N. Doc. A/HRC/34/64 (Feb. 2, 2017).

110. See, e.g., Marko Milanović, *State Responsibility for Genocide*, 17 EUROPEAN JOURNAL OF INTERNATIONAL LAW 581 (2006).

111. *Bosnian Genocide*, *supra* note 51, ¶ 406.

112. *Id.* ¶¶ 396–406; *Nicaragua*, *supra* note 69, ¶ 115.

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 specific operation at issue, during which the relevant international law violations were committed. Hamas's October 7 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 there is evidence to prove that Iran had a high degree of involvement in the planning and execution of the attack, as some reports suggest,¹¹³ it is possible that the effective control threshold could be satisfied even if Iran's relationship with Hamas did not satisfy the overall control test due to a lack of State participation in the planning and supervision of the group's wider military operations.¹¹⁴

That said, the ICJ's effective control test is stringent. Although some sources point 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,¹¹⁵ 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,"¹¹⁶ meaning that the State was "the cause of the commission of acts in breach of its international obligations."¹¹⁷ Thus, it is only if Iran's influence extended to Hamas's perpetration of the attack, including the acts Hamas committed in violation of IHL, 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 same may also be true of other harmful acts committed by Iran's proxies. Consider, for instance, Iran's relationship with Shi'a militia groups operating in Syria. If it is correct that IRGC officers led the militias in combat,¹¹⁸ it may be that Iran exercised effective control over some of the militias' conduct in violation of international law, meaning that these acts are attributable to Iran. But reporting in-

113. Said et al., *supra* note 103.

114. Tadić, *supra* note 105, ¶ 145.

115. Said et al., *supra* note 103.

116. Nicaragua, *supra* note 69, ¶ 115.

117. Bosnian Genocide, *supra* note 51, ¶ 397.

118. BUCALA & KAGAN, *supra* note 31.

dicates that Hezbollah fighters commonly exercised command over Shi'a militia groups at the tactical level, particularly the Arabic-speaking militias.¹¹⁹ If this is accurate, doubts arise whether Iranian officials exerted the requisite quality of control over the militias' activities for their conduct during the hostilities to be attributable to the State. Even if IRGC officers commanded the operation in which the abuses occurred, if they did not exert tactical control over the violations themselves, the effective control threshold might not be satisfied.

This reality raises questions regarding the sufficiency of the effective control test in holding States to account for proxy conduct performed on their behalf.¹²⁰ As the previous example illustrates, the test ignores a State's authority over a proxy's conduct at all levels other than the exercise of tactical control over the specific acts that violate international law.¹²¹ It leaves victims of violations committed by Iran's proxies with limited means of recourse and fails to reflect the reality of Iran's considerable influence over their behavior. If a State is in a position of authority over a non-State actor such that it can control the constituent acts performed during an operation, or order their cessation, this should suffice to attribute the proxy's conduct to the State.¹²² However, the most authoritative interpretation of effective control remains the stringent threshold put forward by the ICJ, which is difficult to satisfy in the case of many harmful acts perpetrated by Iran's proxies.

Before moving on from the discussion of attribution, it is worthwhile to address the concept of "direction" within Article 8 of ARSIWA, and whether this has an independent meaning from effective control. Despite the ILC's

119. Hubbard, *supra* note 34.

120. Many legal scholars have criticized the stringency of the test. See, e.g., Antonio Cassese, *The Nicaragua and Tadić Tests Revisited in Light of the ICJ Judgment on Genocide in Bosnia*, 18 EUROPEAN JOURNAL OF INTERNATIONAL LAW 649 (2007); Marina Spinedi, *On the Non-Attribution of the Bosnian Serbs' Conduct to Serbia*, 5 JOURNAL OF INTERNATIONAL CRIMINAL JUSTICE 829 (2007); Remy Jorritsma, *Where General International Law Meets International Humanitarian Law: Attribution of Conduct and the Classification of Armed Conflicts*, 23 JOURNAL OF CONFLICT & SECURITY LAW 405 (2018).

121. Tom Dannenbaum, *Translating the Standard of Effective Control into a System of Effective Accountability: How Liability Should be Apportioned for Violations of Human Rights by Member State Troop Contingents Serving as United Nations Peacekeepers*, 51 HARVARD INTERNATIONAL LAW JOURNAL 113, 156–57 (2010).

122. This explanation of effective control is put forward in the *Tallinn Manual 2.0*. See TALLINN MANUAL 2.0 ON THE INTERNATIONAL LAW APPLICABLE TO CYBER OPERATIONS ¶ 6 (Michael N. Schmitt gen. ed., 2017); see also MADDOCKS, *supra* note 94, ch. 6.

stated intent that there should be no cumulative requirement for the establishment of both direction and control,¹²³ the commentary to Article 8 does not address direction as a separate rule of attribution. Moreover, minimal guidance is available to determine exactly what direction, as a standalone basis of attribution, entails. The ICJ indicated only that the State must have “provided the direction pursuant to which the perpetrators of the wrongful act acted.”¹²⁴ Meanwhile, former Special Rapporteur James Crawford, in his writings, reinforced the tendency to consider direction and control together.¹²⁵

Nonetheless, in a footnote, Crawford expressed the view that the independent concept of direction “implies a continuing period of instruction, or a relationship between the State and a non-State entity such that suggestion or innuendo may give rise to responsibility.”¹²⁶ This explanation of direction is potentially important when considering Iran’s relationships with its proxies. When there is an enduring relationship between a State and a non-State actor, in which the State provides the proxy with continuing support and the entity regularly performs tasks on the State’s behalf, the proxy might act for the State based on its instinctive knowledge of the State’s wishes, gained through prior training and guidance, rather than pursuant to instructions regarding each specific task. If a State fosters a hierarchical association with a proxy during which it habitually guides that actor’s conduct, the State’s degree of influence over the proxy’s conduct is arguably such that it should bear responsibility for the proxy’s acts that breach its international legal obligations, even in the absence of express instructions to commit those acts or detailed control over their execution.¹²⁷

This understanding of direction is significant when applied to Iran’s dealings with some of its proxies, particularly those with which it has a longstanding relationship and a shared ideology. While ambiguity surrounds Iranian officials’ precise influence over these groups’ behavior, they demonstrate considerable loyalty to Iran and benefit from the provision of arms, finance,

123. ARSIWA, *supra* note 48, art. 8 cmt. ¶ 7.

124. Bosnian Genocide, *supra* note 51, ¶ 406; see also Kubo Mačák, *Decoding Article 8 of the International Law Commission’s Articles on State Responsibility: Attribution of Cyber Operations by Non-State Actors*, 21 JOURNAL OF CONFLICT & SECURITY LAW 405, 417–18 (2016).

125. JAMES CRAWFORD, STATE RESPONSIBILITY: THE GENERAL PART 146–56 (2013).

126. *Id.* at 146 n.28.

127. Mačák, *supra* note 124, at 418.

and training.¹²⁸ It is arguable, therefore, that the militias' conduct in violation of international law should be attributable to Iran based upon the State's direction of the groups' activities, even if Iranian officials did not instruct the militias to act in this manner or exercise effective control over the proxies' conduct at the relevant time.

To date, however, there is no State practice, *opinio juris*, or jurisprudence to support this understanding of direction as a separate basis of attribution. The ILC, in its extensive deliberations on the issue, did not treat direction as a distinct basis of attribution until the drafting committee amended Special Rapporteur Crawford's proposed wording for Article 8 to refer to "direction or control" rather than using the conjunctive "and."¹²⁹ Accordingly, until such time as the law may develop, it seems that the reference to direction in Article 8 refers to the need for a State to direct the manner in which a non-State actor acts, as an inherent part of its exercise of effective control.

IV. STATE RESPONSIBILITY BASED ON IRAN'S OWN CONDUCT TOWARDS ITS PROXIES

The preceding analysis demonstrates some of the difficulties that may arise when seeking to attribute Iranian proxies' conduct in potential violation of international law to the State. Even if significant evidence is available regarding Iranian support to proxy groups, which clearly facilitates those groups' conduct in violation of international law, it is possible that none of the attribution tests outlined above can be satisfied. Many of Iran's proxies act with a degree of independence that precludes the attribution of their conduct to Iran. Therefore, the relevant conduct remains private in character and cannot lead to State responsibility.

This does not necessarily mean, however, that the proxies' harmful conduct does not engage Iran's international responsibility. Even if the acts at issue are not attributable to Iran, the State could bear responsibility for its

128. See, e.g., Liz Sly et al., *Iran Showcases Its Reach with Militia Attacks Across Middle East*, WASHINGTON POST (Jan. 1, 2024), <https://www.washingtonpost.com/world/2024/01/01/iran-militias-gaza-israel/>.

129. Int'l Law Comm'n, Summary Records of the Meetings of the Fiftieth Session (1998), *reprinted in* [1998] 1 YEARBOOK OF THE INTERNATIONAL LAW COMMISSION 289, ¶ 79, U.N. Doc. A/CN.4/SER.A/1998; Int'l Law Comm'n, Rep. of the Comm'n to the General Assembly on the Work of its Fifty-Second Session (2000), *reprinted in* [2000] 2 YEARBOOK OF THE INTERNATIONAL LAW COMMISSION 65, U.N. Doc. A/CN.4/SER.A/2000/Add.1(Part 2)/Rev.1.

own contributions towards the proxies' violations of international law. Alternatively, Iranian officials' conduct in supporting the respective proxies might violate a primary norm of international law that binds the State, such as the prohibition on the use of force. This part addresses each of these possibilities in turn.

A. Iran's Complicity in Its Proxies' Violations

When a State provides assistance to another State in the knowledge that its support will facilitate the latter's violations of international law, the donor State bears international responsibility for its own contribution towards the recipient State's internationally wrongful acts.¹³⁰ Thus, it is likely that Iran bears international responsibility in respect of its provision of drones to Russia, which Tehran knew would be used in a manner that violated IHL.¹³¹

The relevant provision of the law of State responsibility, reflected in Article 16 of ARSIWA, relates only to States' aid or assistance to other States.¹³² This means that when Iran provides advanced weaponry to the Houthis in Yemen, in the knowledge that the Houthis will use this to target civilian merchant shipping, Iran does not bear responsibility for its contribution towards that legal violation. This anomaly stems from the State-centric focus of ARSIWA. 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.¹³³

To illustrate, consider the actions of Shi'a militia groups participating in the Syrian conflict. If their acts in violation of IHL are attributable to Syria due to the Syrian armed forces' exercise of effective control over the relevant conduct, these amount to internationally wrongful acts.¹³⁴ Iran can then bear international responsibility for its contributions towards these abuses, such as its provision of military equipment and training to the militias, pursuant

130. ARSIWA, *supra* note 48, art. 16.

131. Marko Milanovic, *The Complicity of Iran in Russia's Aggression and War Crimes in Ukraine*, ARTICLES OF WAR (Oct. 19, 2022), <https://lieber.westpoint.edu/complicity-iran-russia-aggression-war-crimes-ukraine/>.

132. ARSIWA, *supra* note 48, art. 16.

133. *Id.* art. 2.

134. *Id.* arts. 2, 8.

to the rule reflected in Article 16. But if, as is more likely, these IHL violations are not attributable to Syria or to any other State, there is no internationally wrongful act for Iran to assist.

There are some indications that customary international law may be developing to hold States to account when they assist non-State actors to violate international law. In the *Bosnian Genocide* case, the ICJ indicated that the rule reflected in Article 16 may apply by analogy when States provide aid or assistance to a non-State actor.¹³⁵ 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.”¹³⁶

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. Questions also arise regarding the efficacy of a non-State actor equivalent to Article 16 in regulating Iran’s support to its proxies. In the context of States’ support to other States, there is a lack of clarity regarding the nexus that must exist between the State’s support and the subsequent harmful conduct,¹³⁷ as well as the requisite knowledge or intent on the part of the assisting State.¹³⁸ Uncertainties regarding the mental element, in par-

135. *Bosnian Genocide*, *supra* note 51, ¶¶ 419–20.

136. See Julian Borger, *The Austrian Position on Arms Embargo in Syria—Official Document*, THE GUARDIAN (May 15, 2013), <https://www.theguardian.com/world/julian-borger-global-security-blog/interactive/2013/may/15/austria-eu-syria-arms-embargo-pdf>.

137. The ARSIWA commentary provides first that the assistance must be “clearly linked to the subsequent wrongful conduct” and contribute “significantly” towards it but later states that “the assistance may have been only an incidental factor in the commission of the primary act, and may have contributed only to a minor degree, if at all, to the injury suffered.” See ARSIWA, *supra* note 48, art. 16 cmt. ¶¶ 5, 10.

138. Article 16 stipulates a requirement for “knowledge of the circumstances of the internationally wrongful act,” while the commentary states that “the aid or assistance must be given with a view to facilitating the commission of the act,” thereby indicating a requirement for intent. See ARSIWA, *supra* note 48, art. 16 & cmt. ¶ 3.

ticular, could limit the effectiveness of any non-State actor equivalent to Article 16.¹³⁹ Rather than relying on an underdeveloped complicity rule, therefore, States that suffer injury due to the conduct of Iran's proxies may be better served by looking to Iran's potential violation of primary norms of international law.

B. Iran's Violation of Primary Norms

In contrast with the secondary law of State responsibility, primary norms of international law regulate State behavior and impose obligations upon them. If a proxy group's acts are not attributable to Iran, the State's assistance to that group might nevertheless violate a primary norm that is binding upon the State.

To illustrate, consider Iran's support to Hamas in connection with the group's October 7 attacks on Israel. Even if Iran does not bear international responsibility for the attacks themselves, because attribution of those acts to Iran is not appropriate, the State might nevertheless bear responsibility for its own violation of the prohibition on the use of force through its provision of arms and other assistance to Hamas. Codified in Article 2(4) of the UN Charter, this norm prohibits not only a State's direct use of force, for example via its own armed forces, but also its participation in forcible acts committed by non-State actors.¹⁴⁰ In the latter case, it is Iran's own conduct in assisting Hamas that is attributable to the State based on the rule reflected in Article 4 of ARSIWA.¹⁴¹ Iran's violation of this primary norm therefore gives rise to an autonomous claim of responsibility, which is independent from any claim arising directly from Hamas's attacks.

The ICJ considered such indirect uses of force in the *Nicaragua* case. The Court confirmed that when non-State actors in receipt of State assistance commit acts that "involve a threat or use of force," the assisting State's conduct in providing such support might constitute an unlawful threat or use of

139. For commentary on the mental element of Article 16, *see, e.g.*, Georg Nolte & Helmut Aust, *Equivocal Helpers—Complicit States, Mixed Messages and International Law*, 58 INTERNATIONAL & COMPARATIVE LAW QUARTERLY 1, 13–15 (2009); Harriet Moynihan, *Aiding and Assisting: The Mental Element Under Article 16 of the International Law Commission's Articles on State Responsibility*, 67 INTERNATIONAL & COMPARATIVE LAW QUARTERLY 455 (2018); Marko Milanović, *Intelligence Sharing in Multinational Military Operations and Complicity Under International Law*, 97 INTERNATIONAL LAW STUDIES 1269 (2021).

140. *Nicaragua*, *supra* note 69, ¶ 205, 208.

141. ARSIWA, *supra* note 48, art. 4. For discussion of Article 4, *see supra* Section III(A).

force by that State.¹⁴² The State's responsibility 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 weapons 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.¹⁴³

In view of Iran's significant military assistance to Hamas and the likelihood that Hamas used Iranian aid in its attack on Israel, it is 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 any injury caused.¹⁴⁴

A related question is whether Israel can respond to the attack by using necessary and proportionate force against Iran in self-defense. This depends on whether Iran's indirect use of force against Israel amounts to an armed attack. 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.'"¹⁴⁵ It follows that Iran's indirect use of force against Israel on October 7, 2023, 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, this assessment bears strong similarities to the analysis outlined above as to whether Hamas was acting on Iran's instructions when conducting the attack.¹⁴⁶ If it is correct that the IRGC had no controlling influence over Hamas's decision to conduct the operation on October 7, it may be difficult to conclude that Iran "sent" Hamas to attack Israel.

Iran's support to Hamas could nevertheless amount to an armed attack if the State had a "substantial involvement" in the operation. To satisfy this

142. Nicaragua, *supra* note 69, ¶¶ 205, 208.

143. *Id.* ¶ 228.

144. ARSIWA, *supra* note 48, arts. 2, 28–33.

145. Nicaragua, *supra* note 69, ¶ 195 (citing G.A. Res. 3314(XXIX), Definition of Aggression (Dec. 14, 1974)).

146. See *supra* Section III(C).

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.¹⁴⁷ 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.¹⁴⁸ Thus, while it seems reasonably clear that Iran's support to Hamas violated the prohibition on the use of force, there is some doubt whether its conduct also amounted to an armed attack, entitling Israel to respond with force against Iran in self-defense.

With respect to Iran's proxy network more broadly, it is likely that the State violated the prohibition on the use of force through its support to many of its proxies. For instance, Iran likely violated the norm when it provided training and weaponry to Shi'a militias in Iraq to be used against U.S. forces, or when it supplied the Houthis with military aid that facilitated the groups' attacks on Israel. Iran might also have breached other primary norms of international law. For instance, by assisting the various proxy groups, Iran might have violated the principle of due diligence or the prohibition on interventions into the internal or external affairs of other States.¹⁴⁹ Each primary norm has its own scope of application, meaning that its relevance to any single instance of Iranian support to a proxy depends on the particular facts and circumstances.

Consider, for example, Iran's support to Shi'a militia groups operating in Syria.¹⁵⁰ It is likely that this support facilitated the militias' conduct in potential violation of IHL, such as indiscriminate attacks.¹⁵¹ However, Iran did not violate the prohibition on the use of force or the principle of non-intervention through its provision of aid to these groups because they fought in Syria

147. Nicaragua, *supra* note 69, ¶ 195.

148. For one view of substantial involvement relating to Iran's support to the Houthis, see Nicholas Tsagourias, *Can Israel Target Iran in Response to Houthi Attacks? Exploring the Threshold of "Substantial Involvement"*, ARTICLES OF WAR (May 12, 2025), <https://ieber.westpoint.edu/can-israel-target-iran-response-houthi-attacks-exploring-threshold-substantial-involvement/>.

149. See generally Michael N. Schmitt & Alexander Hernandez, *Analyzing State Support to Non-State Actors—Part I: Primary Obligations and Attribution*, ARTICLES OF WAR (May 7, 2025), <https://ieber.westpoint.edu/analyzing-state-support-non-state-actors-part-i-primary-obligations-attribution/>.

150. See, e.g., Knights, *supra* note 32.

151. See, e.g., Rep. of the Indep. Int'l Comm'n of Inquiry on the Syrian Arab Republic, at 7–11, ¶¶ 25–50, U.N. Doc. A/HRC/34/64 (Feb. 2, 2017).

alongside the Assad regime with governmental consent; this precludes the wrongfulness of Iran's conduct.¹⁵² It may also be difficult to prove that Iran violated any other norms of international law. For instance, neither the due diligence principle nor international human rights law may be engaged due to Iran's lack of territorial control over the areas of Syria in which the militias operated.¹⁵³ This reality leaves States that suffer injury through international law violations involving the Shi'a militia groups with little international legal remedy.

One primary norm that could fill this gap in accountability is the duty to respect and ensure respect for IHL, enshrined in Common Article 1 to the Geneva Conventions.¹⁵⁴ For legal scholars who support the broad interpretation of the norm promoted by the International Committee of the Red Cross (ICRC),¹⁵⁵ Common Article 1 "provides a source of state responsibility for the actions of non-state actors that cures many of the deficiencies of [the] state attribution doctrine viewed on its own."¹⁵⁶ According to this expansive reading of the norm, the provision imposes both negative and positive obligations on States to ensure that other actors engaged in conflict respect IHL, even if the former have no involvement in the hostilities.¹⁵⁷

Many States and legal scholars, however, do not agree with this wide interpretation of the norm.¹⁵⁸ They highlight the norm's drafting history and

152. ARSIWA, *supra* note 48, art. 20.

153. See, e.g., Riccardo Pisillo-Mazzeschi, *The Due Diligence Rule and the Nature of the International Responsibility of States*, 35 GERMAN YEARBOOK OF INTERNATIONAL LAW 9 (1992); MARKO MILANOVIĆ, EXTRATERRITORIAL APPLICATION OF HUMAN RIGHTS TREATIES: LAW, PRINCIPLES, AND POLICY (2011). Both norms may, however, be implicated in respect of Iran's provision of training and other support to Shi'a militia groups from its own territory.

154. Convention (I) for the Amelioration of the Condition of the Wounded and Sick in the Armed Forces in the Field art. 1, Aug. 12, 1949, 6 U.S.T. 3114, 75 U.N.T.S. 31. For discussion regarding the development of Common Article 1 to address this concern, see Kilian Roithmaier, *Holding States Responsible for Violations of International Humanitarian Law in Proxy Warfare: The Concept of State Complicity in Acts of Non-State Armed Groups*, 14 EUROPEAN JOURNAL OF LEGAL STUDIES 140 (2023).

155. See INT'L COMM. OF THE RED CROSS, COMMENTARY ON THE FIRST GENEVA CONVENTION: CONVENTION (I) FOR THE AMELIORATION OF THE CONDITION OF THE WOUNDED AND SICK IN THE ARMED FORCES IN THE FIELD, ¶¶ 118–91 (2016) [hereinafter 2016 COMMENTARY TO GC I].

156. Oona A. Hathaway et al., *Ensuring Responsibility: Common Article 1 and State Responsibility for Non-State Actors*, 95 TEXAS LAW REVIEW 539, 565 (2017).

157. 2016 COMMENTARY TO GC I, *supra* note 155, ¶¶ 164–73.

158. See, e.g., Brian Egan, U.S. State Dep't Legal Adviser, Keynote Address to the American Society of International Law (Apr. 2016) (transcript at: www.lawfareblog.com/state-

subsequent State practice, which does not support the ICRC's assertion that all States are bound by an obligation to bring other States and non-State actors into compliance with IHL. In addition, they maintain that Common Article 1 does not apply to non-international armed conflicts. Yet, when considering proxy relationships, including those that Iran has fostered with groups across the Middle East, there are strong arguments in favor of the norm's application.

Notwithstanding the continued debate regarding Common Article 1, the ICJ ruled in the *Nicaragua* case that the parallel provisions of customary international law impose obligations on States not to encourage armed groups engaged in a non-international armed conflict to commit acts that violate Common Article 3 to the Geneva Conventions.¹⁵⁹ While there is some ambiguity regarding the types of State behavior that amount to "encouragement" for the purposes of the norm, there is a compelling humanitarian logic for extending the ICJ's ruling to encompass States' material aid to non-State actors. It makes little sense to prohibit States' encouragement of violations but not the material forms of aid and assistance that facilitate their commission.¹⁶⁰

As Iran's relationships with its proxies demonstrate, when State officials assist a non-State actor, they gain an enhanced ability to influence its conduct. These relationships of influence are key to enhancing armed groups' compliance with international law.¹⁶¹ If a State develops or sustains a relationship with a militia that is engaged in conflict, thus furthering its own interests in the hostilities, the State's obligation to respect and ensure respect for IHL should extend to any non-State actors it supports and leverages to achieve its own conflict-related objectives. If it is internationally wrongful

department-legal-adviser-brian-egans-speech-asil); John Reid, *Ensuring Respect: The Role of State Practice in Interpreting the Geneva Conventions*, INTERNATIONAL LAW ASSOCIATION REPORTER (Nov. 9, 2016), <https://ilareporter.org.au/2016/11/ensuring-respect-the-role-of-state-practice-in-interpreting-the-geneva-conventions-john-reid/>; Paul Ney, *Remarks by Defense Dept. General Counsel Paul C. Ney Jr. on the Law of War*, JUST SECURITY (May 28, 2019), <https://www.justsecurity.org/64313/remarks-by-defense-dept-general-counsel-paul-c-ney-jr-on-the-law-of-war/>; Michael N. Schmitt & Sean Watts, *Common Article 1 and the Duty to "Ensure Respect"*, 96 INTERNATIONAL LAW STUDIES 674 (2021).

159. *Nicaragua*, *supra* note 69, ¶¶ 220, 255.

160. See Marko Milanović, *Common Article 1 Does Prohibit Complicity in IHL Violations, Through Arms Transfers or Otherwise*, EJIL:TALK! (Apr. 15, 2024), <https://www.ejiltalk.org/common-article-1-does-prohibit-complicity-in-ihl-violations-through-arms-transfers-or-otherwise/>.

161. The ICJ recognized the importance of such relationships in the *Bosnian Genocide* case. See *Bosnian Genocide*, *supra* note 51, ¶ 434.

for States to encourage IHL violations on the part of a non-State actor, it must be similarly unlawful for them to provide material or other assistance to a proxy that facilitates such violations.¹⁶²

While this interpretation of Common Article 1 may not have been contemplated by the parties to the Geneva Conventions at the time these were agreed, negative obligations of this nature follow naturally from the ICJ's judgment in the *Nicaragua* case and are necessary to ensure the norm's effective operation. Moreover, in cases where such a support relationship exists, giving rise to an ability on the part of the State to influence a proxy's behavior, it is arguable that Common Article 1 or its customary equivalent imposes positive as well as negative obligations on the supporting State.

The scope of States' positive duties under Common Article 1 is particularly contentious. The ICRC and some scholars take an expansive view of such obligations¹⁶³ while certain States and other commentators deny that the norm imposes any positive duties on States to ensure external actors' compliance with IHL.¹⁶⁴ Drawing upon the ICJ's judgment in *Bosnian Genocide*, however, there is a sensible middle ground between these opposing positions. While the ICRC's assertion that States are subject to a duty to ensure the IHL compliance of all conflict parties is overly broad and somewhat unrealistic,¹⁶⁵ the same is not true if the duty is restricted to situations where a relationship of influence exists.

To follow the ICJ's judgment in *Bosnian Genocide*, a State's "capacity to influence effectively" is key to the imposition of such positive obligations.¹⁶⁶ The extent of the duty might therefore differ according to the strength of the State's relationship with the non-State actor. When a State has particularly strong links to a non-State group, as Iran has with Hezbollah and some other Shi'a militia groups, the steps it is expected to take might be greater than if its capacity to influence the group's conduct is relatively weak. Other factors of relevance include the severity of the IHL violation and the means

162. For discussion of this proposed interpretation of Common Article 1 in the context of States' support to SDF detentions in Syria, see Jennifer Maddocks, *ISIS Detentions in Syria and the Responsibility of Supporting States*, ARTICLES OF WAR (Aug. 16, 2024), <https://lieber.westpoint.edu/isis-detentions-syria-responsibility-supporting-states/>.

163. See, e.g., 2016 COMMENTARY TO GC I, *supra* note 155, ¶¶ 164–73; Hathaway et al., *supra* note 156.

164. See, e.g., Egan, *supra* note 158; Reid, *supra* note 158; Schmitt & Watts, *supra* note 158.

165. 2016 COMMENTARY TO GC I, *supra* note 155, ¶ 153.

166. *Bosnian Genocide*, *supra* note 51, ¶ 430.

available to the State. These elements, together with the State's ability to influence the proxy's conduct, affect the steps a State can feasibly take to ensure the recipient of its assistance uses the aid provided in a manner that respects IHL.

This proposed interpretation of Common Article 1 would heighten Iran's accountability in respect of its proxies' harmful acts during armed conflict. If adopted by other States, it would also enhance their ability to invoke Iran's international responsibility in connection with its extensive use of proxies, which frequently act with complete disregard for IHL and other norms of international law.

V. CONCLUSION

Iran's varied relationships with groups across the Middle East demonstrate the difficulties injured States often experience when seeking to hold States to account for the conduct of their proxies. In some of these relationships, a shared ideology between Tehran and the proxy leads the latter to act consistently in the State's interests without any requirement for Iranian officials to exercise control over the group's activities. In others, Iran provides significant support that facilitates the proxy's harmful conduct, but the group exhibits a high degree of autonomy in its decision-making. In both cases, there may be significant ambiguity as to Iran's involvement in the conduct at issue and the stringent attribution thresholds are unlikely to be satisfied. This means that the conduct remains private in character and does not engage Iran's international responsibility.

A more relaxed interpretation of the relevant rules of attribution would assist in enhancing Iran's accountability for its proxies' harmful conduct. However, as the ICJ has cautioned, the law of State responsibility should not be stretched too far in this respect.¹⁶⁷ Attribution is appropriate only when the acts in question are performed on the State's behalf. Many of Iran's proxies act with a degree of independence that precludes attribution on any basis. In these cases, Iran's responsibility should more properly relate to its own contribution to the proxies' harmful conduct through the actions of its officials.

Thus, when assessing Iran's potential responsibility for the conduct of its proxies, it is important to consider the State's potential breach of primary norms of international law. The preceding analysis illustrates the importance

167. *Id.* ¶ 406.

of the prohibition on the use of force in this context. However, Iran's support to its proxies will not always violate this norm, as Tehran's involvement in the conflict in Syria demonstrates. In cases such as this, States could instead call out Iran for violating its duty to respect and ensure respect for IHL enshrined in Common Article 1 to the Geneva Conventions. States would first need to accept, however, that this norm applies to the support relationships that States develop with proxy groups engaged in conflict. If they did so, this would represent one small step forward in strengthening the international legal regime that regulates States' support to non-State actors during armed conflict and perhaps provide some incentive to Iran to cease its long-standing practice of acting via proxy.