

**An Analysis on Obligations and Responsibilities
Stemming from the Activities of Resistance Groups
Fighting in a Status of Occupation
(Original Research)**

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Extended Abstract

Use of force for the purpose of occupying and taking over the territory of another State or nation is prohibited under International Law. Based on this, resistance to occupation, which is one of the aspects of fulfilling the right to self-determination, is allowed, and according to the standards of International Humanitarian Law, the formation of resistance groups against occupation is recognized and the conflict between resistance movements and the occupier State is subject to international legal rules governing international armed conflicts under paragraph 4, Art. 1, Protocol I additional to Geneva Conventions. So, the members of the resistance group are legitimate combatants and are not responsible for their armed action, but the legitimacy of the resistance does not exempt them from their commitment to International Humanitarian Law.

International documents show that Israel's occupation of Palestinian lands after 1967, including military occupation, the construction of a barrier wall, and the creation of Jewish settlements under the protection of Israel, are considered measures of occupation that are subject to the rules within the system of international law. The International Court of Justice also confirmed this assessment in its recent Advisory Opinion of 2024. Therefore, the activities of Palestinian resistance groups in the occupied territories, in order to put an end to the occupation are legitimate under international law. This article tries to explain the legal framework governing the resistance groups, and specifically answer the questions about the obligations of these groups, their members and the responsibility arising from their actions.

In terms of methodology, this article follows the descriptive and analytical method of research, and the data is collected from original sources of

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international law, such as international treaties and international jurisprudence, and used and analyzed these data by usual logical and judicial methods of international law.

The main ambiguity regarding the Palestinian situation is that whether, considering that Palestine has become a member of the First Protocol since 2014, and the fact that Israel is not yet a member, the conflict between Hamas and Israel can be considered an international conflict; And as a result, can it be subject of the said Protocol? Practice of the States reflected in the resolutions of the General Assembly and the interpretations of the First Protocol follows that the internationalized nature of these conflicts is a customary rule and many other rules of the first protocol are independent of the membership of the states as rules of customary international law, are binding. Therefore, the conflicts between Hamas and other Palestinian resistance groups against Israel can be considered as an International Armed Conflict, with the consequence that the resistance groups party to the said conflict must also comply with the aforementioned standards.

In addition to the international criminal responsibility of the perpetrators in case of committing international crimes, the assumption of the international responsibility of the State can also be proposed. The actions of Non-State Actors do not cause the State to be held responsible unless attribution is present; such attribution being subject to certain conditions such as being controlled or directed by the State. If the situation is such that the (official) armed forces of the country have control over a group of military or volunteer militias and direct their operations, the aforementioned forces are included in the definition of paragraph 1 of Article 4 of the Third Convention, and it can be said that the resistance group acted as an organ of the government. This means that its acts can be attributed to the relevant State. Regarding Palestine, it can be said that the Palestinian government does not have control over these forces, nor does it recognize their specific actions, and the aforementioned groups do not possess a governmental control over the occupied territories, and as a result, their actions cannot be attributed to the Palestinian government.

A third State may also be held responsible within the framework of Article 11 of the 2001 Draft articles on Responsibility of States for Internationally Wrongful Acts, via approval of a wrongful act, and to the extent that it has approved such act. Iran's official authorities have repeatedly emphasized that not only the 7th October 2023 operation, but also other actions of the Palestinian forces are planned and implemented by these forces themselves, and the Iranian government has no control over these groups despite some material and non-material support.

Considering the nature of the resistance/occupier conflict and application of International Humanitarian Law on this type of conflict, the resistance forces will be criminally responsible if they commit a war crime. The

commission of other international crimes such as crimes against humanity or genocide by the resistance also causes criminal responsibility; However, these types of crimes are basically irrelevant in the situation of anti-occupation resistance. This individual responsibility can be imagined in any of the modes of responsibility (committing, assisting, facilitating, etc.). Also, the commanders of the resistance will also be criminally responsible in the framework of International Criminal Law standards (especially the rules contained in Article 28 of the Rome Statute) due to the commission of crimes by their subordinates.

The state of occupation as a violation of the preemptory norm of international law, i.e. the prohibition of use of force, makes some obligations for third countries, which include the obligation not to recognize the said situation, as well as cooperation in the direction of ending the occupation; a notion which is re-affirmed by ICJ in its 2024 Advisory Opinion. Moreover, certain Resolutions of the General Assembly also validate these obligations. From this point of view, the actions of third States to support the resistance group, as long as they do not violate the international law, are legally permissible, and otherwise, it causes the responsibility of that government towards the occupied state, and consequently there is no reason for the occupying state to claim this responsibility (in terms of violating the principle of non-intervention).

Keywords

International Responsibility of the State, International Criminal Responsibility, Attributability, The Right to Resist, The Right to Self-determination, Military Occupation

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