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## **STATE RESPONSIBILITY AND PROXY WARFARE: RE-EVALUATING THE EFFECTIVE CONTROL TEST IN THE IRAN–ISRAEL CONFLICT**

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### **ABSTRACT**

The paper examines the challenges faces in attributing state responsibility in modern armed conflict, especially ones with proxy warfare by using the Israel- Iran conflict as a case study. Recent developments in the conflict, including direct and indirect use of force such as aerial strikes, missile and drone attacks involving state and more importantly, non-state actors have blurred the traditional concepts of proxy warfare and state conflict. This is exactly what this paper unravels: when can a state be held responsible for actions carried out by groups it supports but doesn't officially control and the effects thereof.

While, as a general rule, international law poses a liability on states only when a high threshold of effective control is proved attributing the conduct i.e. connecting the state directly to the actions of the non-state actor, modern warfare challenges this standard holding it rigid and unyielding. The paper, using pieces of jurisprudence like *Nicaragua v. state of United states* and *Bosnian Genocide case*, that made this very standard, analyses whether these doctrines remain adequate in light of the contemporary conflict in the middle east.

Additionally, this paper analyses these rules alongside the prohibition of use of force and humanitarian law under the UN charter to argue that the current body of legislation cannot address the realities of modern conflict in its entirety. The Iran–Israel situation shows how states can move between indirect and direct use of force without clear accountability.

## INTRODUCTION

A proxy war differs from traditional forms of warfare. A traditional war focuses on offense, annexation, or aggression by a state. A proxy war, to the contrary, provides a reason for exercising self-defence by a state in order to justify foreign intervention. Moreover, 'support' in a traditional war often involves the provision of military personnel. In the case of proxy wars, 'support' is confined to the provision of weaponry, military intelligence, and monetary funds<sup>1</sup>. For example, the United States supporting Afghanistan by deploying its own troops against Al Qaeda and Talibani forces is a traditional alliance warfare<sup>2</sup> i.e. what we call proxy warfare.

The relationship between Iran and Israel is one that has been duly noted as hostile for decades. They have been existing in a space between war and peace, often described as a "cold" or a "shadow" conflict<sup>3</sup>. The hostility between them can be traced back to the Iranian Revolution, which marked a fundamental shift in Iran's foreign policy prior to which, Iran under the Shah maintained relatively cooperative relations with Israel<sup>4</sup>. However, after the revolution, the new Islamic regime adopted a strongly anti-Israel stance, refusing to recognise it and framing opposition to Israel as a central part of its political strategy. Over time, this led Iran to support and develop ties with armed groups such as Hezbollah and later other organisations across the region, using them as a means to counter Israeli influence without engaging in direct military confrontation<sup>5</sup>. This approach laid the foundation for a long-standing pattern of indirect conflict between the two states.

However, recent developments in early 2026 has shown a significant transformation in the nature of this conflict. What was once largely confined to (although gruesome) proxy warfare, has increasingly shifted towards a direct confrontation noted by coordinated air strikes targeting military and strategic infrastructure from Israel and thereof, retaliatory actions from

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<sup>1</sup> Robert Burns, *Amid little scrutiny, US military ramps up in Afghanistan*, Military Times (Apr. 12, 2026, 9: 12 PM), <https://www.militarytimes.com/flashpoints/2018/03/10/amid-little-scrutiny-us-military-ramps-up-in-afghanistan/>.

<sup>2</sup> Id.

<sup>3</sup> Michael Newton, *What is Shadow Warfare? Russia's New Hybrid Warfare*, CEPA (Apr. 12, 2026, 8:45 PM), <https://cepa.org/article/what-is-shadow-warfare-russias-new-hybrid-warfare/>

<sup>4</sup> Jay Mens, *War Without Name: The Iran–Israel Relationship in Historical Perspective* (Belfer Center for Science and International Affairs, Harvard Kennedy School, June 2024), <https://www.belfercenter.org/sites/default/files/2024-08/war-without-name-full-version-june-2024.pdf>.

<sup>5</sup> 2026 Iran Conflict, Encyclopaedia Britannica (Mar. 6, 2026), <https://www.britannica.com/event/2026-Iran-Conflict>.

Iran<sup>6</sup>. The coexistence of direct strikes and proxy-led operations has blurred the distinction between state action and indirect involvement, raising complex questions regarding the application of international law.

At the centre of this legal uncertainty lies the doctrine of state responsibility, particularly the principle of attribution. Under the Articles on Responsibility of state for internationally Wrongful Acts (ARISWA)<sup>7</sup>, acts performed by state organs are usually attributable, but the situation becomes complex when conduct is carried out by non-state actors. In such cases, international law requires a demonstration that the state exercised a sufficient degree of control over the actors in question<sup>8</sup>. Control here, doesn't merely mean training and funding but, an "effective control"<sup>9</sup> and this has become a problem.

The doctrine of attribution determines when the conduct of non-state actors can be treated as that of a state (for the purpose of international responsibility). The key standard is the "effective control" test, developed in *Nicaragua v. United States*<sup>10</sup> and reaffirmed in *Bosnian Genocide Case*<sup>11</sup>, the two major cases in international law

This paper seeks to critically examine the doctrine of attribution within the broader framework of state responsibility, using the Iran–Israel conflict as a case study. It argues that the existing emphasis on strict standards of control, particularly the "effective control" test, is ill-suited to the realities of modern warfare and enables states to evade accountability through indirect means. The paper ultimately calls for a re-evaluation of attribution principles to ensure that international law remains responsive to the evolving nature of armed conflict.

## LEGAL FRAMEWORK OF STATE RESPONSIBILITY

The concept of state responsibility is a fundamental part of public international law, as It

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<sup>6</sup> CENTRE FOR PREVENTATIVE ACTION, [https://www.cfr.org/global-conflict-tracker/conflict/confrontation-between-united-states-and-iran%29?utm\\_source=chatgpt.com](https://www.cfr.org/global-conflict-tracker/conflict/confrontation-between-united-states-and-iran%29?utm_source=chatgpt.com) (last visited Apr. 13, 2026)

<sup>7</sup> Articles on Responsibility of States for Internationally Wrongful Acts, G.A. Res. 56/83, annex, U.N. Doc. A/RES/56/83 (Dec. 12, 2001).

<sup>8</sup> Laetitia Bader, "The Power These Men Have Over Us": *Sexual Exploitation and Abuse by African Union Forces in Somalia*, Human Rights Watch (Sept. 8, 2014), <https://www.hrw.org/report/2014/09/08/power-these-men-have-over-us/sexual-exploitation-and-abuse-african-union-forces>.

<sup>9</sup> Varnik Kundaliya, *Proxy Wars: Chink in the UN Charter in the 21st Century*, 5 NMIMS L Rev (2023) 76, 77-78, 2023

<sup>10</sup> *Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.) (Merits)*, 1986 I.C.J. 14 (June 27).

<sup>11</sup> *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 (Feb. 26).

provides that whenever one state commits an internationally unlawful act against another state, international responsibility is established between the two<sup>12</sup>. In simple terms, it answers the question: *when does a state become legally responsible for something it has done?* The most widely accepted framework governing this area is the Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA)<sup>13</sup>, which, although not a binding treaty, is considered to reflect customary international law and is frequently relied upon by courts and scholars<sup>14</sup>.

## WHEN IS A STATE LIABLE FOR A WRONGFUL ACT

Under this framework, a state is said to incur responsibility when two essential conditions are fulfilled<sup>15</sup>:

1. ***Existence of an internationally wrongful act:*** An internationally wrongful act may be understood as any act or omission by a state that violates a binding rule of international law or general principle<sup>16</sup>. For instance, under the United Nations Charter, states are prohibited to use force against the territorial integrity or political independence of another state<sup>17</sup>. A violation of this rule, unless justified under recognised exceptions such as self-defence<sup>18</sup>, constitutes a breach of an international obligation and therefore satisfies the first requirement of state responsibility.
2. ***Attribution of Conduct to the State:*** The wrongful conduct must be attributable to the state. This means that there must be a legal connection between the act and the state itself. Without attribution, even a clear violation of international law cannot lead to state responsibility<sup>19</sup>. This makes attribution a crucial element, especially in modern conflicts where states often act indirectly.

**Note:** The acts of state organs, such as the military, government officials, or other entities exercising governmental authority are automatically attributable to the state<sup>20</sup>. Even if these

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<sup>12</sup> Malcolm N. Shaw, *State Responsibility*, in *International Law* 694 (6th ed. 2008).

<sup>13</sup> ARSIWA, *supra* note 7.

<sup>14</sup> Ayesha Jawad, *Privatization of Security in Armed Conflicts: Legal Challenges Faced by the Expanded Concept of Militarization*, 6 J. L. & Soc. Stud. 338 (2024).

<sup>15</sup> ARSIWA, *supra* note 7, art. 2.

<sup>16</sup> ARSIWA, *supra* note 7.

<sup>17</sup> U.N. Charter art. 2, ¶ 4.

<sup>18</sup> U.N. Charter art. 51.

<sup>19</sup> ARSIWA, *supra* note 7, arts. 4–7.

<sup>20</sup> *Id.*

organs act beyond their authority or in violation of domestic law, their conduct is still considered an act of the state under international law<sup>21</sup>.

## WHEN IS A STATE LIABLE FOR USING PROXIES

In cases involving non-state actors, such as militant groups or armed organisations, attribution is governed primarily by Article 8 of the Articles on Responsibility of States for Internationally Wrongful Acts<sup>22</sup>. According to this provision, the conduct of a non-state actor can be attributed to a state only if that actor is acting on the instructions of, or under the direction or control of, the state. This requirement is quite specific. It is not enough to show that a state generally supported or influenced the group; rather, it must be established that the state had a role in the “specific conduct” in which the wrongful act occurred.

This position was clearly applied in *Nicaragua v. United States*<sup>23</sup>. In that case, the United States had provided significant financial support, training, and military assistance to the Contra rebels operating in Nicaragua. Despite this extensive involvement, the International Court of Justice held that the actions of the Contras could not be attributed to the United States, as it was not proven that the U.S. exercised control over the specific operations in which the violations occurred. As a result, state responsibility was not established for those acts<sup>24</sup>.

## ATTRIBUTION IN PRACTICE: THE IRAN–ISRAEL CONFLICT

### NATURE OF IRANIAN INVOLVEMENT

Iran’s involvement in the conflict with Israel has largely operated through its relationships with non-state actors across the Middle East. Groups such as Hezbollah in Lebanon, Hamas in Gaza, and the Houthis in Yemen have, over time, been linked to Iranian support in the form of weapons, funding, training, and intelligence sharing<sup>25</sup>. This network of alliances allows Iran to project influence across the region without relying solely on direct military engagement.

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<sup>21</sup> ARSIWA, *supra* note 7, art. 7; Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries, art. 7 cmt. 2, in *Report of the International Law Commission on the Work of Its Fifty-Third Session*, U.N. GAOR, 56th Sess., Supp. No. 10, U.N. Doc. A/56/10 (2001).

<sup>22</sup> ARSIWA, *supra* note 7, art. 8.

<sup>23</sup> *Nicaragua*, 1986 I.C.J. at 3

<sup>24</sup> *Id.*

<sup>25</sup> Ian Bremmer, *These 5 Proxy Battles Are Making Syria’s Civil War Increasingly Complicated*, TIME (Apr. 18, 2026, 12: 05 AM), <https://time.com/5162409/syria-civil-war-proxy-battles/>.

This form of involvement is often strategic rather than operational. While Iran is widely reported to assist these groups in building their military capabilities<sup>26</sup>, the extent to which it directs or controls specific attacks remains less clear. As a result, its role sits somewhere between indirect support and active participation, making legal classification difficult.

Applying the rules of attribution to this situation reveals a key challenge. Even where there is strong evidence of support, establishing that Iran exercised control over a specific operation carried out by these groups is significantly harder. The legal requirement is not simply to show a connection, but to prove a direct link between the state and the particular act even if the non-state actors operate with a degree of autonomy, even while receiving external support. .

In practice, this creates a gap. A state may enable or strengthen a group's ability to carry out attacks, but unless it can be shown that the state had a role in directing that specific conduct, attribution does not arise.

As a side note, in the case of Iran and Israel, recently 2026 has shown an overlap between direct state action and proxy involvement leading to an even more significant legal ambiguity because certain actions can be directly attributed to states and assessed under the law on the use of force<sup>27</sup>, while others remain outside clear legal accountability due to the strict requirements of attribution. As a result, the application of international law becomes inconsistent, particularly in conflicts where both forms of engagement are used simultaneously.

## **CRITICAL ANALYSIS AND THE NEED FOR REFORM**

While the effective control test provides a clear legal standard, its limitations become evident when applied to modern forms of conflict. These limitations are not just theoretical, they directly affect whether states can be held responsible in practice.

### **KEY LIMITATIONS OF THE EFFECTIVE CONTROL TEST**

#### **1. *Overly Narrow Focus on Specific Operations***

The test requires proof that a state controlled the “specific operation” in which the

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<sup>26</sup> *Iran's Support for the Houthis: What to Know*, Council on Foreign Relations, <https://www.cfr.org/articles/irans-support-houthis-what-know>.

<sup>27</sup> *Iran Strikes Israel, Triggering Retaliation and Regional Escalation*, Reuters (Mar. 2026), <https://www.reuters.com/>.

wrongful act occurred. This creates a very high evidentiary burden. In reality, states rarely involve themselves at such a detailed level<sup>28</sup>. Instead, they provide long-term support that shapes the overall conduct of non-state actors.

## **2. *Failure to Account for Indirect but Decisive Influence***

Modern conflicts are not always about direct command, they are about influence. A state may not issue orders for a specific attack, but it may still make that attack possible through funding, weapons, intelligence, and training. The current framework treats this as legally insufficient, even when the state's contribution is essential to the group's functioning.

## **3. *Evidentiary Impracticality***

Proving "effective control" requires access to internal communications, command structures or operational directives and evidence that is rarely available. States can easily deny involvement, and non-state actors often operate with informal or secretive structures<sup>29</sup>. This makes the threshold not just high, but practically difficult to meet.

## **4. *Incentivising Proxy Warfare***

Because responsibility only arises at a high threshold, states have an incentive to operate just below it. By avoiding direct control while continuing to provide support, they can influence conflicts without triggering legal accountability. In this sense, the law unintentionally encourages indirect forms of warfare.

## **POSSIBLE SOLUTIONS FOR PROBLEM OF ATTRIBUTION**

### **1. *Adopting a Modified "Overall Control" Approach***

One possible solution is to move towards a broader standard, such as the one recognised in *Prosecutor v. Tadić*<sup>30</sup>. Instead of requiring control over specific operations, this

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<sup>28</sup> Daniel L. Byman, *Why Engage in Proxy War? A State's Perspective*, BROOKINGS INSTITUTION (Apr. 18, 2018, 12:30 AM), <https://www.brookings.edu/blog/order-from-chaos/2018/05/21/why-engage-in-proxywar-a-states-perspective/>.

<sup>29</sup> A. Cassese, *The Nicaragua and Tadić Tests Revisited in Light of the ICJ Judgment on Genocide in Bosnia*, 18 *Eur. J. Int'l L.* 649, 663–64 (2007), <https://academic.oup.com/ejil/article/18/4/649/401804>.

<sup>30</sup> *Prosecutor v. Tadić*, Case No. IT-94-1-A, Judgment, 38 I.L.M. 1518 (Int'l Crim. Trib. for the Former

approach looks at whether a state exercises general control over the group. However, rather than fully replacing the effective control test, a modified version could be adopted, one that considers sustained and structured support as a relevant factor in establishing attribution.

## ***2. Lowering the Evidentiary Threshold through Inference***

International law could also allow courts to draw reasonable inferences from patterns of conduct. For example, repeated coordination, consistent support, and alignment of objectives could be used to establish a link between the state and the non-state actor, even in the absence of direct evidence of operational control.

## ***3. Differentiated Standards Based on Context***

Instead of a single rigid test, the law could adopt a more flexible approach depending on the situation. In cases involving organised armed groups with sustained state backing, a lower threshold for attribution could apply, while maintaining stricter standards in other contexts. This would allow the law to respond more effectively to different forms of conflict.

## **RELEVANCE TO THE IRAN–ISRAEL CONFLICT**

These limitations and possible reforms become particularly relevant in the context of the Iran–Israel conflict. Iran’s long-standing support to various non-state actors demonstrates how a state can significantly influence hostilities without necessarily meeting the strict requirements of effective control. At the same time, recent direct military actions show that states may shift between indirect and direct engagement depending on strategic needs.

This combination of proxy involvement and direct force highlights the inadequacy of relying solely on a rigid attribution standard. A more flexible approach—one that accounts for sustained support and patterns of involvement—would better capture the realities of such conflicts and ensure that responsibility is not avoided through technicalities.

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Yugoslavia July 15, 1999).

## CONCLUSION

The Iran–Israel conflict demonstrates the growing mismatch between traditional rules of attribution and the realities of modern warfare. While the framework under the Articles on Responsibility of States for Internationally Wrongful Acts provides clarity, the “effective control” test established in *Nicaragua v. United States* sets a threshold that is often too narrow to capture indirect but significant state involvement.

As seen in this paper, states can shape conflicts through sustained support to non-state actors without exercising control over specific operations, thereby avoiding legal responsibility. The Iran–Israel situation highlights how this gap allows states to move between direct and proxy engagement without consistent accountability.

Addressing this requires a more flexible approach to attribution, one that recognises substantial support, allows reasonable inference, and better reflects patterns of involvement. Without such adaptation, international law risks remaining formally coherent but practically ineffective in regulating contemporary conflict.