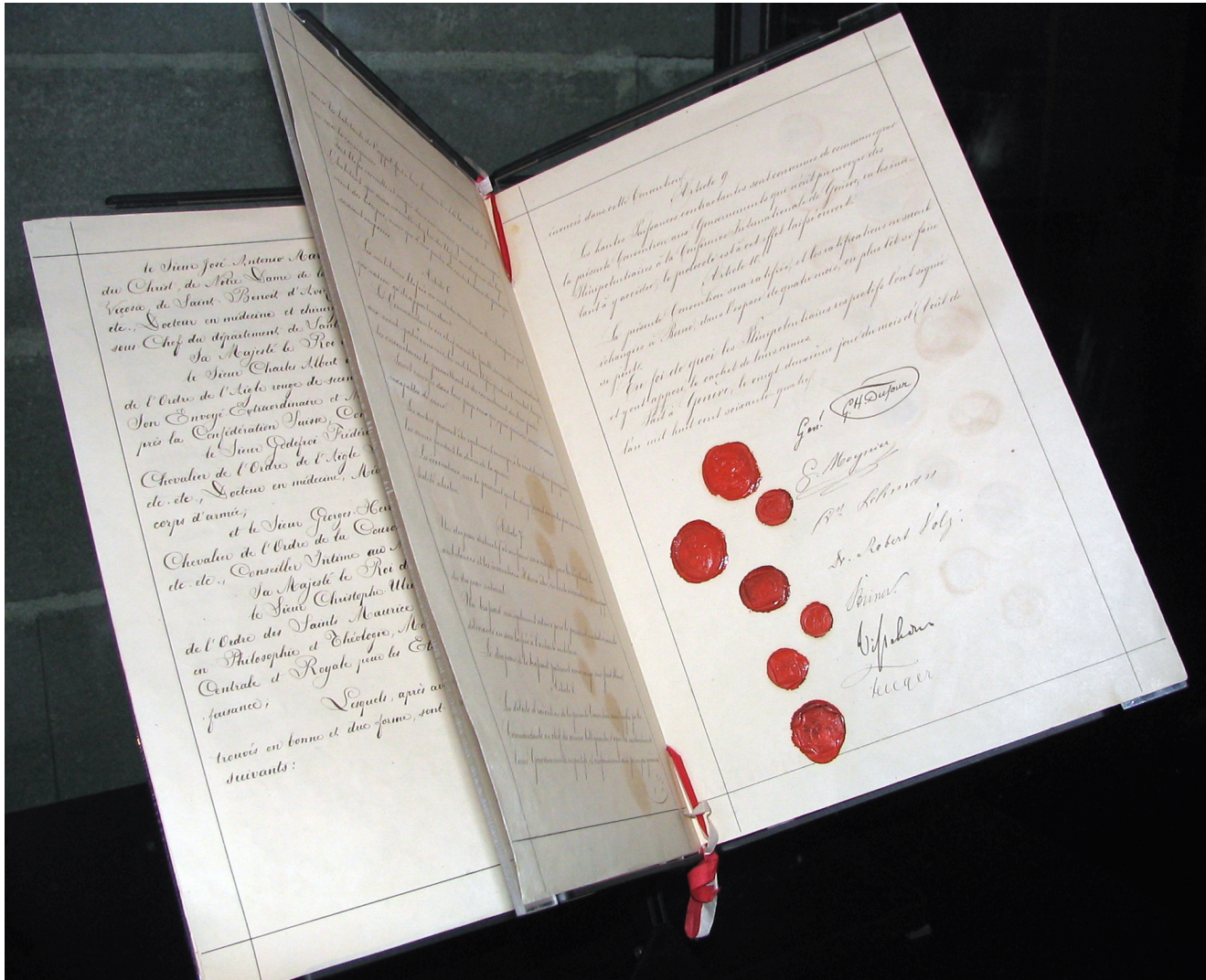


Indirect Occupation and Direct Harm: Operationalizing IHL Obligations in Proxy Wars

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Introduction

Indirect forms of warfare, where States project military power through armed non-State actors (ANSAs), are no longer peripheral to contemporary armed conflict. From [eastern Ukraine](#) to [eastern Democratic Republic of Congo \(DRC\)](#), proxy engagement has become a recurrent strategy through which States influence territorial control beyond their borders while seeking to limit political, legal, or military exposure. These situations compel [renewed scrutiny](#) of how international humanitarian law (IHL) operates when territorial control is exercised not directly by a State's armed forces, but through an intermediary armed group operating on the ground.

Particularly complex are situations in which an ANSA exercises effective control over territory in a foreign State while acting with varying degrees of support, direction, or coordination from an external State. These situations, often described as *occupation by proxy* ([Ferraro](#) (p. 158), or *indirect (effective) control* ([ICRC Expert Report](#), p. 23), raise difficult legal and operational questions. While the law of occupation is well developed in [treaty law](#), [customary IHL](#), and [authoritative commentary](#), [its application becomes far less straightforward](#) where occupation is mediated through non-State surrogates rather than uniformed State forces.

This commentary focuses on one central question: *what is the nature of the obligations borne by an occupying power in situations of proxy occupation, and how should those obligations be operationalized in practice?* While attribution of legal duties is relatively clear in abstract terms, translating those obligations into effective protection and application on the ground presents distinct challenges. Understanding how obligations are distributed, and how they should be invoked, requires a careful examination of the legal architecture of proxy occupation itself.

Proxy Occupation as a Legal Problem?

At first glance, the obligations of an occupying power appear settled. The [Fourth Geneva Convention of 1949 \(GC IV\)](#), the [1907 Hague Regulations](#), and [customary IHL](#), impose extensive duties on an occupier toward the civilian population of occupied territory. These include maintaining public order and safety, ensuring access to essential goods and services, protecting civilians from violence, and facilitating impartial humanitarian assistance.

However, when territorial control is exercised through an ANSA rather than directly by State forces, the application of these obligations becomes operationally and politically fraught. Humanitarian actors, diplomats, and legal advisers are often confronted with practical questions that do not admit easy answers. Who bears responsibility for reopening critical civilian infrastructure, such as airports or supply routes? Who should be engaged on issues of civilian protection, detention, or conflict-related sexual violence? Should obligations be invoked against the external State, the armed group administering territory on the ground, or both?

These questions underscore a crucial distinction: *while the possession of obligations under international law may be clear, their implementation and enforcement in proxy occupation settings is not*. One could say this is not a *legal* but *enforcement* question; but, it is exactly this enforcement question that prompts a legal re-evaluation. Consequently, addressing this gap requires returning to the foundational question of what, precisely, constitutes a proxy occupation under international law.

Defining Proxy Occupation: Three Doctrinal Approaches

Although the law of occupation traditionally presupposes direct State control over foreign territory ([ICRC Expert Report](#), p. 17), contemporary practice demonstrates that occupation may also be exercised indirectly, through *de facto* agents or surrogate forces. Three principal doctrinal approaches are proposed here (as [I have suggested elsewhere](#)), to help illuminate when such indirect control amounts to occupation by proxy.

The Agency Approach

The first approach derives from a purposive interpretation of [Article 29 of the Fourth Geneva Convention](#), which provides that a Party to a conflict is responsible for the treatment of protected persons by its “agents”. Although the provision does not expressly contemplate ANSAs, it may be interpreted to encompass a broader scope of agents ([1958 ICRC GC. IV Commentary](#), p. 211), including where a State exercises control over territory through an armed group acting on its behalf.

Under this approach, occupation may arise where an ANSA operates “in the service of” ([1958 ICRC GC. IV Commentary](#), p. 211) a foreign State, even absent formal subordination or incorporation into State structures ([Prosecutor v Tadić](#), p. 298). The notion of agency here is functional rather than formal, focusing on whether the armed group acts as a *de facto* instrument of the State. This conception aligns closely—I suggest—with international responsibility jurisprudence of the International Court of Justice (ICJ) recognizing that entities under a State’s *complete dependence* may be assimilated to State organs for legal purposes ([Bosnia and Herzegovina v Serbia and Montenegro ICJ Genocide Case](#), paras. 392-393).

Critically, this approach sets a high threshold. Establishing proxy occupation under an agency model requires evidence of proximate subordination or a relationship of service that goes beyond political alignment or material support. Mere assistance, financing, or parallel interests are insufficient. The ANSA must effectively function as an extension of the State’s authority in the occupied territory.

The Effective Control Approach

The second approach borrows from the “effective control” test developed in ICJ jurisprudence for the attribution of conduct by non-State actors to States. Under this framework, an ANSA is considered to act on behalf of a State where the State exercises

effective control over the group's operations, including directing or enforcing specific conduct ([Nicaragua v United States of America](#), para. 115).

Applied to occupation, this approach requires that the foreign State not only support the ANSA but exercise control over its military or administrative actions in the territory concerned. The standard remains stringent: extensive support alone does not suffice unless it translates into operational direction over the relevant conduct.

While this model captures some proxy relationships, it often fails to reflect the realities of contemporary conflicts, where armed groups retain significant autonomy even while benefiting from substantial State support.

The Overall Control Approach

The third and increasingly influential less stringent approach stems from the jurisprudence of the International Criminal Tribunal for the former Yugoslavia, which articulated an “overall control” test. Under this model, a conflict may be internationalized, and occupation by proxy established, where a State exercises overall control over an ANSA, *even if* it does not direct each specific operation ([Prosecutor v Tadić](#), paras. 120, 122).

Crucially, this approach separates two inquiries: whether the foreign State exercises overall control over the armed group, and whether the armed group itself exercises effective control over the territory ([2025 ICRC GC. IV Commentary](#), para. 400). Where both conditions are met, the law of occupation applies, even if the State does not administer the territory directly or supervise every action undertaken on its behalf.

This framework has gained traction precisely because it prevents States from circumventing occupation law by outsourcing territorial control to surrogate forces. As emphasized in the most recent ICRC Commentary to the Fourth Geneva Convention, the concept of indirect control is essential to avoiding legal vacuums where States seek to evade their obligations through proxies. ([2025 ICRC GC. IV Commentary](#), para. 403)

Proxy Occupation and Distribution of Obligations

Therefore, the nature and distribution of obligations in proxy occupation depend significantly on which doctrinal approach is adopted.

Where occupation is established under the *agency* or *effective control* models, the foreign State's responsibility as occupier is relatively straightforward. Engagement with the State is sufficient to invoke the full range of occupation obligations, while parallel engagement with the ANSA may address day-to-day operational issues.

However, under the *overall control* approach, which reflects the dominant trend in [contemporary legal commentary](#), the picture is more complex. Here, the ANSA retains a measure of autonomy and operates as a distinct entity, even as it serves as a surrogate through which the State projects power. This has important implications for how obligations are conceptualized and implemented.

Conceptual Allocation of Obligations

At a minimum, an ANSA exercising territorial control is bound by [Common Article 3 of the Geneva Conventions](#), [Additional Protocol II](#) (where applicable), and customary IHL. These norms require humane treatment of all persons not participating in hostilities and prohibit violence to life and person, including murder, torture, cruel treatment, and mutilation; outrages upon personal dignity, including humiliating and degrading treatment; hostage-taking; and the passing of sentences without essential judicial guarantees. Customary IHL further requires the ANSA, as a party to the conflict and *de facto* authority, to [protect civilians from the effects of hostilities](#) and to [allow and facilitate impartial humanitarian relief](#) for populations in need.

At the same time, the foreign State exercising overall control bears the obligations of an occupying power under [GC IV](#) and the [Hague Regulations](#). These include ensuring the basic needs of the civilian population are met, including access to food, medical care, shelter, and essential services; maintaining public order and safety in the occupied territory; protecting civilians from violence, ill-treatment, and forcible transfer, including conflict-related sexual violence; facilitating rapid and unimpeded humanitarian relief; and prohibiting collective punishments and reprisals. Where the ANSA administers territory as a proxy, the occupying [State remains responsible for ensuring these obligations are fulfilled](#) in practice, including where violations are committed through its surrogate.

A Functional and Pragmatic Approach

While conceptual clarity is necessary, it is insufficient on its own. Effective implementation of occupation law in proxy contexts requires a functional assessment of *who controls what* within the occupying power's composite structure, and how authority, capacity, and proximity to harm are distributed across the constituent actors exercising control. This distribution is rarely uniform: general authority and strategic military policy may be retained by the foreign State, operational capacity may be delegated or shared, and proximity to civilian harm is often greatest at the level of the armed group administering territory on the ground.

In practice, this requires disaggregating the occupier's obligations according to the realities of decision-making and enforcement. Some decisions, such as border closures, airspace restrictions, control over key supply routes, or the reopening of airports and ports, are typically taken at a strategic or political level and may lie primarily within the purview of the foreign State exercising overall control. Others, such as policing, detention practices,

regulation of civilian life, protection of vulnerable populations, or the prevention and response to conflict-related sexual violence, are more likely to fall within the immediate operational control of the ANSA administering territory on a day-to-day basis.

From a humanitarian, diplomatic, and advocacy perspective—and certainly as a legal matter (I should add), [invoking unrealistic obligations](#) against an actor that lacks the operational authority or practical capacity to implement them is unlikely to yield compliance and may, in some cases, entrench obstruction or denial. A *functional approach* therefore directs engagement toward the entity best placed to give effect to the obligation in question, while preserving the overarching and undiminished responsibility of the foreign State as occupying power. This approach is not without imperfection: in practice, the precise allocation of authority and capacity between a State and its proxy is often opaque to external observers, including humanitarian actors, and uncertainty as to who controls a given function may risk hesitation, under-denunciation, or delayed engagement. Recognising this limitation is critical, not to justify inaction, but to underscore that functional engagement must operate alongside—rather than in lieu of—the continued legal attribution of responsibility to the occupying State, precisely to avoid accountability vacuums. In this way, functional engagement enhances compliance without fragmenting responsibility and aligns normative obligation with operational reality.

Why This Matters

The stakes are high. Proxy occupation is not a theoretical anomaly; it is an operational reality affecting millions of civilians. Effective humanitarian access, civilian protection, and accountability depend on identifying the correct interlocutors and framing obligations in ways that reflect actual power dynamics.

Moreover, at both a policy and legal level, proxy occupation raises a further concern: *the invisibility of surrogate actors*. Once a foreign State is identified as the occupying power, the ANSA often disappears behind the legal identity of the State. While this is normatively important to prevent State evasion of responsibility, it risks obscuring the agency of the very actors with whom civilians and humanitarians interact daily.

A functional approach helps mitigate this risk. It preserves the unified legal identity of the occupier, while maintaining analytical and operational attention to its constituent parts. In doing so, it promotes both accountability and effectiveness, ensuring that obligations are recognised and implemented where they matter most, on the ground, for the benefit of affected populations.

Conclusion

Proxy occupation exposes the limits of a strictly formalist application of occupation law. While international law provides robust tools to prevent States from outsourcing responsibility, those tools must be applied with sensitivity to the fragmented realities of control on the

ground. Recognising proxy occupation as a unified but multifaceted legal construct, and engaging it through a *functional, capacity-based lens*, offers a way forward. It preserves the normative integrity of IHL while enhancing its practical relevance in conflicts where control is indirect, layered, and contested.

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