# Collaboration, Treason, and the Law of Occupation: What Was Actually a Crime in Occupied Slovenia, 1941–1945?

## Legal Analysis of the Slovene Home Guard and the Partisan Movement


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## Abstract


**This paper examines the legal status of collaboration, treason, military service under an occupying power, auxiliary police service, and participation in war crimes in occupied Slovenia between 1941 and 1945, with particular attention to the Slovene Home Guard and the Partisan movement. It argues that these categories, although frequently conflated in historical and political discourse, represent distinct legal concepts that must be analyzed according to the law applicable at the time of the conduct. Drawing principally upon the 1907 Hague Regulations, applicable rules governing armed conflict and occupation, and emerging principles of individual criminal responsibility, the paper distinguishes political or administrative cooperation with an occupying power from conduct constituting an international crime. It further examines the significance of coercion, voluntary military service, allegiance, command relationships, military and police functions, and individual participation in prohibited acts. Applying the same legal framework to both the Home**

**Guard and the Partisans, the paper argues that neither organizational membership nor political allegiance, standing alone, establishes individual criminal responsibility. Instead, liability must rest upon proof of specific prohibited conduct, the applicable legal rule, the individual's role and participation, and the requisite knowledge or intent. The paper therefore proposes an individualized, conduct-based methodology for evaluating wartime responsibility in Slovenia, one that distinguishes historical characterization from legal culpability and avoids both collective guilt and the selective application of international humanitarian law.**

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## I. Introduction: The Problem of Legal Categorization

The terms *collaboration*, *treason*, *military service under an occupier*, *auxiliary police service*, and *war crime* are frequently used interchangeably in historical accounts of occupied Slovenia. Legally, however, they describe different concepts arising from different bodies of law. The central question is therefore not simply whether a Slovenian individual or armed organization "collaborated" with Germany or Italy, or whether that person fought against the Partisans. The legally relevant questions are more precise: What law governed the conduct? What was the individual's legal relationship to the occupying power? Was the conduct voluntary or coerced? Was the person performing military, police, administrative, or civilian functions? Was the conduct directed against enemy combatants or civilians? And did the individual personally commit, order, assist, or otherwise participate in conduct prohibited by the law of war?

This distinction is particularly important in Slovenia because the country was divided among several occupying powers following the Axis invasion of Yugoslavia in April 1941. German, Italian, and Hungarian authorities exercised occupation or annexationary authority over different Slovenian territories, producing different administrative and military arrangements. The United States Holocaust Memorial Museum confirms that Germany occupied eastern Slovenia while Italy controlled western Slovenian territories, with the wartime territorial arrangement changing following Italy's capitulation in 1943.

The principal legal framework governing belligerent occupation was the **1907 Hague Regulations**, supplemented by customary international law and, where applicable, the law governing the armed forces and conduct of hostilities. The Hague Regulations did not establish a general international crime called "collaboration." Nor did they make every form of service to an occupying power a war crime. Instead, they regulated the powers of the occupant, protected the population of occupied territory, restricted the methods by which an occupant could employ inhabitants, and prohibited particular acts of violence and coercion.

The same framework must be applied impartially to both sides of the conflict. Thus, the fact that the Slovene Home Guard cooperated militarily with the German occupation authorities does not itself establish that every Home Guard member committed an international crime. Conversely, the fact that the Partisans constituted a resistance movement fighting the Axis occupation does not immunize individual Partisans from responsibility for murder, torture, unlawful killing of prisoners, attacks upon civilians, or other violations of the laws and customs of war.

The proper legal principle is therefore one of **individualized responsibility rather than collective legal characterization**.

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## II. The First Distinction: Collaboration Was Not, by Itself, an International Crime

“Collaboration” is principally a historical and political term rather than a self-contained offense under the international law applicable in Slovenia during 1941–1945.

The law of occupation recognized that an occupying power would necessarily interact with the inhabitants and existing institutions of occupied territory. Article 43 of the Hague Regulations required the occupant to take measures to restore and ensure public order and safety while respecting, unless absolutely prevented, the laws in force in the country. Article 48 contemplated the continuation of tax collection, and Article 52 permitted certain requisitions and services subject to strict limitations.

Consequently, **not every civilian who continued working under an occupation was legally a criminal collaborator**. Teachers, doctors, railway workers, municipal officials, clerks, utility employees, police officers, and other persons could continue performing ordinary functions while the territory was under enemy occupation. The legal question was what they actually did and whether their conduct crossed a prohibition established by applicable law.

This distinction is important because the word “collaboration” can describe conduct ranging from ordinary survival under occupation to active assistance in deportation, persecution, intelligence operations, hostage-taking, torture, or murder. Those activities cannot properly be placed in a single legal category.

The same principle applies to military collaboration. The fact that a national of an occupied country entered an armed organization operating with or under the authority of an occupying power did not, standing alone, establish individual responsibility for a war crime. The legal consequences depended upon the nature of the organization, the circumstances of enlistment, the person's functions, and the conduct in which the individual actually participated.

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## III. The Law of Occupation and the Position of the Inhabitant

The Hague Regulations begin from an important proposition: occupation does not transfer sovereignty over the occupied territory to the occupying state.

Article 42 defines occupation according to effective military authority. Article 43 recognizes the occupant's authority for purposes of administration but requires preservation of existing law insofar as military necessity does not absolutely prevent it. Article 45 expressly provides:

“It is forbidden to compel the inhabitants of occupied territory to swear allegiance to the hostile Power.”

This provision is highly significant when examining military service by inhabitants of occupied Slovenia.

Article 23(h) of the Hague Regulations separately prohibits a belligerent from compelling nationals of the hostile party to participate in military operations against their own country, even if those nationals had been in the belligerent's service before the war.

These provisions demonstrate an important distinction between **coercion and voluntary service**. The Hague Regulations specifically addressed compulsory participation in the enemy war effort. They did not formulate a general rule that every voluntary act of military cooperation by an inhabitant of occupied territory automatically constituted an international crime.

Accordingly, a legal analysis of a Slovene Home Guard member should ask:

1. Was the individual forcibly recruited?
2. Was military service compulsory or voluntary?
3. What oath, if any, was administered?
4. To whom was the oath directed?
5. What military organization did the person join?
6. Was the person incorporated into German armed forces, placed under German operational command, or serving in a separate Slovenian formation?
7. What duties did the individual actually perform?
8. Against whom were those duties directed?
9. Did the individual participate in conduct prohibited by the laws of war?

Those questions are considerably more legally informative than simply asking whether the individual was a “collaborator.”

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# IV. The Slovene Home Guard: Military Service Under an Occupying Power

The Slovene Home Guard presents the most difficult application of these principles.

Historically, the Home Guard was a Slovenian anti-Partisan military organization established after the Italian capitulation in September 1943 and operating under German occupation. Slovenian historical scholarship describes it as the principal military formation of the collaborationist forces in Slovenia, while other historical accounts emphasize its anti-communist purpose and its relationship to the German occupation authorities.

The legal analysis should resist two opposite errors.

The first error is:

**“The Home Guard collaborated with Germany; therefore every Home Guard member was a criminal.”**

That conclusion does not follow from the Hague Regulations.

The second error is:

**“The Home Guard fought communism or the Partisans; therefore its conduct was necessarily lawful.”**

That conclusion also does not follow.

The correct analysis is conduct-specific.

## A. Military service itself

The Hague Regulations recognized organized armed forces, militias, and volunteer corps as participants in warfare when they satisfied specified conditions, including responsible command, a distinctive sign, carrying arms openly, and compliance with the laws and customs of war.

Therefore, the fact that a Home Guard member fought against Partisan military units did not, without more, establish a war crime.

If the Home Guard member was engaged in an armed operation against an opposing military force, the legality of the engagement depended primarily upon the applicable rules governing the conduct of hostilities.

The fact that the Home Guard operated in cooperation with German forces could be highly relevant to questions of political allegiance, military command, and domestic treason, but **cooperation and criminality are not synonymous**.

## B. German command

German operational or organizational control is nevertheless legally important.

Evidence demonstrating that German authorities organized, armed, supplied, trained, commanded, or directed Home Guard units could establish the degree of integration between the Home Guard and the German war effort. Historical scholarship records substantial German involvement in the organization and command of the Home Guard, and contemporary evidence concerning the April 1944 oath demonstrates the close military relationship between the Home Guard and German forces.

But even proof of German command does not eliminate the requirement of individualized criminal responsibility.

A commander who ordered the execution of civilians presents a fundamentally different legal case from a private soldier who served in an armed unit but did not participate in the unlawful act.

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# V. The Home Guard Oath: Allegiance, Treason, and International Law

The Home Guard oath presents an especially important distinction between **political allegiance and international criminal responsibility**.

Historical scholarship records the April 1944 oath as an undertaking by Home Guard members to fight together with German forces against the Communist Partisans and their collaborators.

From an international-law perspective, the question is whether the oath constituted conduct prohibited by the Hague Regulations.

Article 45 prohibited the occupying power from compelling inhabitants of occupied territory to swear allegiance to it.

The provision is therefore directly relevant to the **circumstances in which an oath was imposed**. It does not, however, transform every oath voluntarily taken by an inhabitant into an international crime.

The oath may also have been relevant to **domestic Yugoslav law concerning treason or service in enemy forces**. That is a separate legal question.

This distinction is crucial:

**A person's taking an oath to an enemy power may have consequences under the domestic law of treason without thereby constituting an international war crime.**

Conversely, if an oath was obtained through coercion by an occupying power, that fact would be highly relevant to the legality of the occupation authority's conduct and potentially to the individual's responsibility and defenses.

The legal inquiry must therefore separate:

**(1)** the international prohibition on compelling allegiance;

**(2)** the domestic criminal law governing treason or service to the enemy;

**(3)** the military status of the individual; and

**(4)** the individual's subsequent conduct.

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# VI. Auxiliary Police Service Is Not Identical to Military Service

The same distinction should be applied to Slovenian police and auxiliary police personnel.

An individual working for a police organization under an occupying regime could perform radically different functions. Ordinary policing, maintaining public order, investigating ordinary crimes, guarding buildings, and performing administrative duties are not legally equivalent to participation in persecution, torture, deportation, hostage-taking, or murder.

The historical record demonstrates that the occupation authorities used police and judicial institutions extensively. In the Italian-occupied Ljubljana Province, for example, the existing penal code and judicial institutions initially continued to operate while Italian authorities introduced additional institutions for cases involving Italian interests.

Thus:

**Police service ≠ automatically criminal collaboration.**

The proper legal question is what the police officer actually did.

An officer who participated in the arrest of a civilian pursuant to an ordinary criminal investigation stands in a fundamentally different position from an officer who knowingly participated in the unlawful detention, torture, deportation, or execution of civilians.

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# VII. Treason Is a Different Legal Category

"Treason" must also be separated from "collaboration."

Treason is ordinarily a **municipal or domestic offense** defined by the law of the state against which the alleged betrayal is committed. International law did not create a universal offense called "treason" applicable to every national who cooperated with an occupying power.

This is especially important in the case of Yugoslavia.

The Hague Regulations contemplated the continuation of the pre-existing law of the occupied country, subject to the authority and military necessities of occupation.

Consequently, an inquiry into whether a particular Slovenian had committed treason requires examination of the applicable Yugoslav domestic law, its territorial and temporal application, the individual's citizenship and status, and the particular conduct alleged.

It is therefore legally inadequate to reason:

"He was a collaborator; therefore he was a traitor; therefore he committed a war crime."

Each proposition requires a separate legal analysis.

A person might be:

- a **collaborator but not a war criminal**;
- a **traitor under domestic law but not guilty of a war crime**;
- a **member of an enemy military formation but not personally responsible for criminal conduct**;
- or a **participant in a war crime regardless of whether the person was legally characterized as a collaborator or patriot**.

The categories overlap in some cases, but they are not synonymous.

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# VIII. The Partisans Must Be Subject to the Same Legal Test

The same methodology must be applied to the Slovene Partisans.

The Partisan movement was a resistance movement against Axis occupation and ultimately became a major Yugoslav armed force. Slovenian archival scholarship documents an organized military structure, command hierarchy, and military courts within the Partisan movement.

Under the Hague Regulations, however, the legitimacy of the political objective of resistance did not create an unlimited license to use violence.

Article 1 required organized militia and volunteer forces to have responsible command, a recognizable distinctive sign, carry arms openly, and conduct operations according to the laws and customs of war.

Thus, a Partisan who attacked a German military unit in accordance with the laws of war was engaged in warfare. A Partisan who deliberately murdered a surrendered German soldier, tortured a prisoner, killed civilians without lawful military justification, or participated in an unlawful reprisal could incur individual criminal responsibility.

The legal principle is symmetrical:

**Resistance to occupation does not legalize conduct that international humanitarian law prohibited.**

Nor does membership in an armed resistance movement automatically establish individual guilt for crimes committed by other members.

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# IX. The Particularly Important Question of Partisan Treatment of Slovenian Anti-Communist Forces

This becomes especially important when examining the conflict between the Partisans and Slovene anti-communist forces.

It is tempting to characterize the conflict as simply:

**Partisans = resistance fighters**
**Home Guard = collaborators**

That description may have historical utility, but it is legally incomplete.

The conflict contained an international armed conflict involving Axis forces and Yugoslav forces, while also involving complex internal armed struggles and conflicts among Yugoslav political and military organizations.

The legal status of a particular Home Guard unit therefore cannot be determined solely from its political label, just as the legality of a particular Partisan operation cannot be determined solely from the Partisan movement's anti-occupation objective.

The legally relevant questions include:

- Was the target a German, Italian, or other Axis military force?
- Was the target a Home Guard military unit?
- Was the individual a civilian?
- Had the individual surrendered?
- Was the person hors de combat?
- Was the person a prisoner?
- Was the person suspected of espionage?
- Was there a military necessity for the action?
- Was the person subjected to a properly constituted military process?
- Was the killing part of an authorized reprisal?
- Was the action directed against civilians because of their political affiliation?
- Did the perpetrator personally participate in the act?

These questions are essential when evaluating both Partisan and Home Guard conduct.

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# X. Participation in War Crimes: The Category That Actually Creates International Criminal Responsibility

The most important legal distinction is between **membership and conduct**.

The 1907 Hague Regulations specifically prohibited a series of acts, including treacherous killing, killing or wounding an enemy who had surrendered, declaring that no quarter would be given, improper use of protected flags and insignia, and unjustified destruction or seizure of property.

The Nuremberg Charter subsequently defined war crimes to include violations of the laws or customs of war, including murder or ill-treatment of civilian populations in occupied territory, deportation to slave labor, murder or ill-treatment of prisoners of war, killing of hostages, plunder, and wanton destruction not justified by military necessity.

The legal consequence is profound:

**The crime is the prohibited act, not the political label attached to the organization.**

A Home Guard soldier who participated in the unlawful killing of civilians could be criminally responsible.

A Partisan who participated in the unlawful killing of civilians could likewise be criminally responsible.

A Home Guard soldier who fought a Partisan military formation in an otherwise lawful engagement was not necessarily committing a war crime merely because he fought on the German side.

A Partisan who attacked a German military formation was not committing a war crime merely because he was fighting a resistance war.

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# XI. Individual Responsibility Rather Than Collective Guilt

The emerging postwar international criminal-law framework strongly reinforced the principle of individual responsibility.

The Nuremberg Charter expressly addressed responsibility for leaders, organizers, instigators, and accomplices participating in the formulation or execution of a common plan to commit crimes within the Tribunal's jurisdiction.

This principle is particularly relevant to historical assessments of the Slovene Home Guard and Partisans.

It does not mean that organizations are legally irrelevant. Organizational structure may be evidence of command, knowledge, common purpose, planning, or participation. But organizational membership alone does not necessarily establish that every member committed every crime attributable to the organization.

The proper inquiry is therefore:

**What did this individual know? What did this individual do? What orders did this individual receive or issue? What role did the individual play? Did the individual facilitate the crime? Did the individual possess the requisite knowledge and intent?**

That methodology is fundamentally different from collective attribution.

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# XII. Postwar Yugoslav Practice Provides an Important Historical Comparison

The distinction between membership and criminal conduct is also visible in the postwar treatment of former enemy formations.

In November 1944, the Presidency of AVNOJ adopted an amnesty covering persons who had participated in Chetnik units or Croatian and Slovenian Home Guard units, subject to specified conditions. Later Yugoslav measures likewise distinguished between membership in enemy formations and persons who had personally committed serious crimes.

This does not establish the content of international law. A domestic amnesty cannot determine what international law prohibited. It is nevertheless historically significant because it demonstrates that even the Yugoslav authorities did not necessarily treat every member of an enemy formation as legally equivalent to a person who had personally committed murder, rape, torture, or other serious crimes.

Indeed, scholarship on the immediate postwar judicial process in Slovenia describes proceedings against Home Guard personnel and other alleged collaborators while also noting the broader distinction between collaboration and personal participation in crimes.

That distinction should be incorporated into the legal analysis rather than obscured by the generalized term "collaborator."

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# XIII. The Five Categories Should Therefore Be Kept Separate

The analysis can be summarized in five legally distinct categories.

| Category | Basic legal character | Automatically an international crime? |
|---|---|---|
| **Collaboration** | Descriptive term for cooperation with an occupying power | **No** |
| **Treason** | Primarily a domestic offense against the state | **No** |
| **Military service under an occupier** | Potentially lawful, unlawful, or domestically criminal depending on circumstances | **No, not automatically** |

| | | |
|---|---|---|
| **Auxiliary police service** | Potentially ordinary administration or participation in repression | **No, not automatically** |
| **Participation in war crimes** | Individual participation in prohibited conduct | **Yes, where the elements of the crime are established** |

This table should be understood as a starting point rather than an absolute classification. The categories can overlap. A person may simultaneously have been a collaborator, a traitor under domestic law, a member of an enemy armed force, and a participant in war crimes. But proving one category does not automatically prove the others.

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# XIV. Application to the Home Guard

Applied to the Slovene Home Guard, the legal analysis should proceed in stages.

### 1. Membership

Proof that an individual belonged to the Home Guard establishes membership. It does not by itself establish participation in a particular crime.

### 2. Relationship with Germany

Evidence of German funding, training, weapons, command, deployment, or operational control establishes the relationship between the Home Guard and the German occupation authority. Such evidence is highly relevant to historical characterization and potentially to domestic treason.

### 3. Nature of the assignment

The investigator must determine whether the individual served as:

- a frontline combatant;
- a guard;
- a police auxiliary;
- an intelligence officer;
- an administrator;
- a prisoner guard;
- a participant in anti-Partisan operations;
- or another type of function.

### 4. Conduct

The investigator must identify specific acts:

- killing;
- torture;
- unlawful detention;
- deportation;
- denunciation leading to unlawful persecution;
- hostage-taking;
- participation in reprisals;
- destruction of property;
- mistreatment of prisoners;
- or other prohibited conduct.

### 5. Mental element and participation

Finally, the investigator must establish what the individual knew and intended, and whether he personally committed, ordered, encouraged, facilitated, or otherwise participated in the prohibited act.

Only after completing those steps can individual criminal responsibility properly be determined.

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# XV. Application to the Partisans

Exactly the same methodology should be applied to Partisan personnel.

Membership in the Partisan movement establishes participation in a resistance organization, not individual guilt for every act attributed to that movement.

The analysis should ask:

1. Was the person an organized combatant?
2. Was the person operating under responsible command?
3. Was the person carrying arms openly?
4. Was the operation directed against a military target?
5. Was the target hors de combat?
6. Were civilians deliberately targeted?
7. Were prisoners treated in accordance with the laws of war?
8. Did the person participate in torture, unlawful execution, or other prohibited conduct?
9. Did the person act pursuant to an order?
10. Did the person know that the order or conduct was unlawful?

Partisan military courts and judicial structures existed during the war, and Slovenian historical scholarship has documented their organization and procedures. That fact is relevant because it provides an additional avenue for examining what the Partisan leadership considered lawful or unlawful at the time. It does not, however, by itself establish that every Partisan judicial proceeding complied with international standards.

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# XVI. The Most Important Legal Proposition

The central proposition of this paper can therefore be stated simply:

**International law did not make "collaboration" synonymous with "war crime," just as resistance did not make every act of a Partisan lawful.**

The law of occupation regulated the conduct of the occupying power and established protections for inhabitants of occupied territory. It prohibited certain forms of coercion and military employment and established rules governing the treatment of persons and property. The law of war regulated the conduct of military operations. Domestic law potentially governed treason and other offenses against the state. International criminal law imposed individual responsibility for serious violations of the laws and customs of war.

These legal regimes overlapped, but they were not identical.

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# XVII. Conclusion

The history of occupied Slovenia between 1941 and 1945 should therefore be analyzed through a legal framework that separates **political allegiance, military status, administrative cooperation, domestic treason, and international criminal responsibility**.

The Slovene Home Guard's relationship with the German occupation authorities is historically significant and may constitute collaboration in the ordinary historical sense. In particular cases, service in an enemy military organization may also have consequences under applicable domestic law concerning treason or military allegiance. But neither proposition establishes, without additional evidence, that every Home Guard member committed an international war crime.

The same legal discipline must be applied to the Partisans. The Partisan movement's status as an armed resistance movement and its struggle against Axis occupation do not create immunity from the laws of war. Individual Partisans who committed prohibited acts could incur individual criminal responsibility just as individual Home Guard members could.

The appropriate legal question is consequently not **"Were the Home Guard collaborators?"** nor **"Were the Partisans legitimate resistance fighters?"** Those are historical and political questions whose answers may depend upon context and terminology.

The legally decisive questions are narrower:

**What was the individual's status? What law applied? What conduct occurred? Was the conduct prohibited at the time? Was it voluntary or coerced? Against whom was it directed? Did the victim enjoy protected status? What did the accused know? What did the accused personally do? And can the required elements of an offense be established by reliable evidence?**

That approach replaces collective historical labeling with the principle that ultimately became fundamental to international criminal law: **individual criminal responsibility must rest upon individual criminal conduct.**

For the legal history of Slovenia, this distinction is particularly important. It permits the Home Guard and the Partisan movements to be examined under the **same legal rules**, rather than creating one legal standard for an organization considered politically legitimate and another for an organization considered politically illegitimate. The result is not to exonerate either movement. It is to ask the more demanding—and legally more defensible—question of what each individual actually did.

# Important Addendum

This paper section should not be read as arguing that "nullum crimen sine lege" prevented Nuremberg prosecutions generally. The Nuremberg Tribunal itself rejected that broad argument in important respects.[1] A modern legal definition cannot simply be retroactively substituted for the substantive law applicable in Slovenia in 1941–1945. While some will challenge the retroactive use of modern international law, particular conduct was already criminal under the Hague Regulations or customary law. *See* Legal Concept Paper 7, **The Law in Force, 1941–1945, Versus Postwar Law.**

[1]Nuremberg Trial Proceedings Volume 22, https://avalon.law.yale.edu/imt/09-30-46.asp?utm.