From Collaboration to Criminal Responsibility: Rethinking the Legal Status of Slovenian Forces in World War II

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Abstract

This paper examines the distinction between historical claims of "collaboration" with the occupying powers in Slovenia during the Second World War and individual criminal responsibility under modern international law. It argues that collaboration, although historically and politically significant, is not itself an independent international crime and cannot substitute for proof of individual criminal conduct. The law of occupation necessarily contemplated interaction between occupying authorities and the civilian population, including the continuation of administrative, police, and other public functions. Accordingly, the legal characterization of an individual must depend not on organizational affiliation, political allegiance, or the historical label of "collaborator," but on the individual's specific conduct, knowledge, intent, and legally recognized mode of participation in an international crime. Applying this framework to occupied Slovenia, the paper distinguishes between mere association or membership in an organization and participation in murder, persecution, torture, unlawful detention, or other prohibited acts. It further examines the relevance of collaboration as evidence of knowledge, intent, or contribution to criminal conduct while emphasizing that such evidence does not, standing alone, establish criminal liability. This distinction is particularly significant in assessing the Slovene Home Guard and other Slovenian armed organizations and in separating questions of wartime conduct from the separate legal issues arising from the surrender, repatriation, and subsequent killing of Slovenian forces in 1945. The paper concludes that modern international criminal law requires individualized assessment of criminal conduct and

rejects the use of historical or political labels as substitutes for proof of individual responsibility.

The term “collaboration” has substantial historical and political significance in discussions of occupied Slovenia during the Second World War, but it does not, by itself, establish individual criminal responsibility under modern international criminal law. The central distinction is between a historical characterization of a person's relationship with an occupying power and the legal requirements for establishing that the individual committed, ordered, instigated, or otherwise participated in a specific international crime.

1. “Collaboration” is not a standalone international crime

Modern international criminal law does not recognize “collaboration with the occupier” as an independent category of criminal liability. The Rome Statute, for example, establishes individual responsibility for defined crimes—including genocide, crimes against humanity, and war crimes—and specifies particular modes of participation. The basic principle is therefore individual criminal responsibility for conduct constituting a crime, rather than criminal responsibility based upon political affiliation or association with an occupying power.

This distinction is evident in the jurisprudence of the ICTY. In Tadić, for example, the Tribunal adjudicated specific allegations of persecution, murder, beatings, and other offenses and assessed whether the evidence established the accused's individual participation in those crimes. The fact that an individual belonged to a particular political or military community was not itself the offense.

2. The law of occupation itself contemplates interaction between occupier and population

The concept of collaboration must also be understood in light of the law of occupation. Article 43 of the 1907 Hague Regulations required an occupying power to restore and maintain public order and safety while, as far as possible, respecting the laws already in force.

This necessarily creates circumstances in which inhabitants of an occupied territory may interact or cooperate with occupation authorities. Civil servants may continue their functions; local institutions may continue operating; police and municipal authorities may continue performing certain duties; and civilians may provide services necessary for daily life.

Consequently, interaction with an occupying authority cannot logically be equated with criminality. The legal question must be what the individual actually did within that relationship.

3. Historical collaboration can encompass radically different conduct

The historical label "collaborator" may encompass conduct ranging from relatively ordinary administrative cooperation to participation in atrocities.

For example, the term might be applied to someone who:

--continued working in a municipal office;

--served as a policeman;

--worked for a German-controlled railway;

--supplied food or other goods;

--provided intelligence;

--joined an armed auxiliary organization;

--participated in arrests;

--guarded prisoners;

--tortured detainees; or

--participated in executions.

These activities cannot be treated as legally equivalent merely because historians might place them under the same general heading of "collaboration."

The modern legal inquiry therefore has to move from label to conduct.

4. The relevant question is whether the conduct contributed to a specific crime

This is particularly clear in the law of aiding and abetting.

The ICTY has held that aiding and abetting requires a contribution that assists, encourages, or provides moral support to the perpetration of a crime, together with the requisite knowledge concerning that criminal conduct. In Čelebići, the Tribunal emphasized both a physical contribution to the crime and the necessary mental element.

Similarly, in Krstić, the Appeals Chamber distinguished between simply knowing that crimes were occurring and having criminal responsibility for knowingly permitting personnel and resources to facilitate those crimes. Krstić's liability arose from his contribution to specific criminal acts, not merely from his position within the military organization.

Thus, collaboration may be evidence relevant to criminal responsibility, but collaboration itself is not the criminal responsibility.

5. This distinction is particularly important for occupied Slovenia

Applied to Slovenia between 1941 and 1945, the proposition that someone "collaborated with the Germans" should therefore be treated as the beginning of a legal inquiry, not its conclusion.

For each individual, the analysis should ask:

--What was the individual's relationship with the occupying authority?

--What precisely did the individual do?

--Was the conduct lawful military or administrative activity, or did it constitute a prohibited act?

--Did the conduct contribute to a specific war crime or crime against humanity?

--What did the individual know?

--What did the individual intend?

--Was the individual acting voluntarily, under coercion, or pursuant to orders?

--Can one of the recognized modes of individual criminal responsibility be established?

Only after answering those questions can a conclusion concerning individual criminal responsibility properly be reached.

6. Membership in an organization presents the same problem

The same principle applies to membership in an armed organization such as the Slovene Home Guard.

The proposition:

"He was a member of the Home Guard and the Home Guard collaborated with Germany"

does not logically establish:

"He therefore committed an international crime."

There is an evidentiary gap between those propositions.

Modern international criminal law requires that the gap be filled with evidence concerning the individual's conduct and mental state. ICTY jurisprudence repeatedly demonstrates this approach. In Simic, Tadić and Zarić, for example, the Tribunal distinguished between individuals who occupied positions within the relevant structures and those whose particular conduct actually had the necessary substantial effect on criminal acts. Some forms of participation were found insufficient even where the individuals had knowledge of the broader circumstances.

This is particularly important because organizational membership can establish context without establishing criminality.

7. Collaboration can nevertheless be important evidence

It would therefore be too broad to say that collaboration is legally irrelevant.

A more precise proposition is that:

Collaboration is not, standing alone, a sufficient legal basis for individual criminal responsibility, although evidence of collaboration may be relevant to establishing a person's knowledge, intent, contribution, command relationship, or participation in a particular crime.

For example, if evidence established that a particular Slovenian provided information to German authorities specifically knowing that the information would be used to identify civilians for execution, the person's relationship with the German authorities could be highly relevant evidence.

But the prosecution would still have to prove the elements of the underlying crime and the individual's legally recognized participation in it.

The distinction is therefore between evidentiary relevance and legal sufficiency.

8. The distinction can be expressed as a legal framework

The following formulation is especially useful:

Historical question	Modern legal question
Was the person a collaborator?	What precisely did the person do?
Did the person cooperate with Germany?	Did the conduct contribute to a specific crime?
Did the person belong to a German-supported organization?	Did the person incur individual criminal responsibility?
Did the organization fight alongside Germany?	Did the individual commit, order, or assist a crime?

Was the person politically opposed to the Partisans?	What was the individual's criminal intent or knowledge?
Was the person considered a traitor?	Was a defined international crime committed?

This is the essential conceptual difference between historical judgment and legal judgment.

9. The principle cuts in both directions

Importantly, this principle does not provide a presumption of innocence specifically for Home Guard members, nor does it establish that their conduct was lawful.

It operates neutrally.

A Home Guard member who merely served in an armed unit cannot be found criminally responsible solely because of that membership.

But a Home Guard member who participated in murder, torture, persecution, unlawful detention, or another international crime could potentially incur individual criminal responsibility if the applicable elements and mode of participation were established.

The same principle applies to Partisans, Chetniks, German forces, Italian forces, or any other armed organization.

This is one of the fundamental strengths of an individualized approach to international criminal law: the legal standard does not change according to which political side the accused belonged to.

10. Why this matters for postwar Slovenia

This distinction becomes even more consequential when the analysis moves from wartime conduct to the killings of surrendered Slovenian forces in May and June 1945.

Three questions must be kept separate:

1. Were particular Slovenian forces or individuals collaborators?
2. Had particular individuals committed international crimes during the war?
3. What legal consequences followed from their surrender, capture, or repatriation in 1945?

The answer to the first question cannot automatically answer the second. And even proof of the second does not automatically answer the third.

That separation is particularly important when evaluating whether surrendering members of the Slovene Home Guard could lawfully be treated as criminals, prisoners of war, civilians, or other categories, and whether subsequent executions were legally permissible.

11. Conclusion

Historical collaboration with an occupying power is not, by itself, a basis for individual criminal responsibility under modern international law. Collaboration is a historical characterization that may provide relevant evidence concerning an individual's conduct, knowledge, intent, or relationship to an occupying authority. Criminal liability, however, requires proof that the individual committed, ordered, instigated, or otherwise participated in a specific international crime through a legally recognized mode of responsibility and with the requisite mental element. Accordingly, the historical label “collaborator” cannot substitute for proof of individual criminal conduct.

This formulation is particularly useful in the broader legal framework, because it preserves the historical significance of German-Slovenian cooperation while preventing the historical label “collaborator” from becoming a substitute for the legal analysis of individual responsibility.

Relevant Cases

https://www.icty.org/en/press/tadic-case-verdict?utm

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