

The Legal Characterization of Armed Organizations in Occupied Slovenia, 1941–1945: A Framework Under International Law

Proposed Concept and Structure

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Abstract

The armed organizations that operated in Slovenia during the Second World War occupied different positions within the legal order governing armed conflict and belligerent occupation. Yet historical descriptions frequently use terms such as *army*, *resistance movement*, *militia*, *collaborator*, *traitor*, *auxiliary*, and *partisan* without first determining the legal significance of those classifications. This paper establishes a framework for determining the legal status of armed organizations that operated in occupied Slovenia between 1941 and 1945. It does not undertake the characterization of any particular organization. Instead, it identifies the applicable legal sources and develops a common set

of criteria by which each organization may subsequently be analyzed. The framework begins with the law applicable to belligerent occupation and the law governing the status of members of armed forces and organized resistance. It then distinguishes between the legal status of the organization itself and the status and rights of its individual members. Particular attention is given to organization, command structure, authority, relationship to a government or occupying power, territorial control, uniforms or distinctive signs, carrying arms openly, compliance with the laws and customs of war, and the circumstances under which an organized armed group may acquire or claim belligerent or combatant status. The framework also distinguishes legal characterization from questions of political allegiance, legitimacy, collaboration, treason, and subsequent criminal responsibility. Its purpose is to provide a consistent legal methodology for evaluating the several armed organizations that operated in Slovenia during the war without imposing retrospective legal categories that did not exist at the relevant time.

I. Introduction: The Problem of Legal Characterization

The history of occupied Slovenia between 1941 and 1945 involves numerous armed organizations operating under radically different political, military, and territorial circumstances. Historical accounts frequently characterize these organizations according to their political allegiance or subsequent historical reputation. Terms such as "partisan," "collaborator," "traitor," "resistance fighter," "home guard," "auxiliary," and "army," however, do not necessarily correspond to precise legal classifications.

The central question of this paper is therefore not whether a particular organization was politically legitimate or illegitimate, patriotic or treasonous, or ultimately responsible for crimes. The question is more fundamental:

What legal categories existed under the law applicable during the Second World War, and what factual criteria should be used to determine the legal status of an armed organization operating in occupied Slovenia?

The paper establishes the methodology for answering that question.

The approach is deliberately organization-neutral. Individual organizations are reserved for subsequent studies in which the framework developed here can be applied to the historical evidence concerning each organization.

II. The Applicable Legal Framework

The analysis should begin with the law actually applicable during the period 1941–1945, rather than with postwar political classifications.

The principal sources include:

1. the Hague Regulations of 1907, particularly the provisions concerning belligerent occupation and the status of armed forces;
2. the Hague Convention IV of 1907;
3. the 1929 Geneva Convention relative to the Treatment of Prisoners of War;
4. customary international law as reflected in contemporary state practice;
5. military manuals and governmental practice relevant to the treatment of armed groups and irregular forces;
6. relevant instruments and state practice concerning resistance movements and occupied territories; and
7. where useful, later international jurisprudence as evidence of the development or interpretation of principles, while avoiding the retroactive application of later treaty rules.

The methodological principle should be:

First determine the law applicable at the time; only afterward use later jurisprudence to illuminate, rather than replace, that legal framework.

III. The Legal Environment of Occupied Slovenia

Before determining the status of any armed organization, it is necessary to establish the legal environment in which it operated.

The framework should therefore ask:

- Was the territory under belligerent occupation?
- Which state or states exercised effective authority?
- What was the relationship between the occupying power and the pre-existing sovereign government?
- Did the occupation alter the legal status of the territory or its inhabitants?
- What obligations did the occupying power have toward the civilian population?
- What authority, if any, remained with the displaced or sovereign government?
- What legal significance attached to armed opposition to the occupation?

These questions establish the background against which the status of an armed organization can be determined.

IV. The Fundamental Distinction: Organization Versus Individual

A central methodological distinction is between the **legal characterization of an armed organization** and the **legal status or conduct of an individual member**.

Membership in an armed organization does not, by itself, establish that an individual committed a crime. Conversely, the characterization of an organization does not automatically determine the legality of every act committed by its members.

The analysis should therefore proceed on two separate levels:

Level One — Organizational status:

What was the legal character of the armed organization?

Level Two — Individual status:

What was the legal status of a particular person who belonged to, supported, or opposed that organization?

This distinction prevents political labels applied to organizations from being transformed into conclusions concerning individual criminal responsibility.

V. Categories of Armed Organizations

Rather than beginning with the historical names of particular Slovenian organizations, the framework should establish functional legal categories.

These may include:

A. Regular Armed Forces

Forces forming part of the armed forces of a state or government and operating under responsible command.

B. Militia and Volunteer Corps

Organized armed formations that may or may not form part of the regular armed forces but may qualify for recognition under the applicable law if the relevant conditions are satisfied.

C. Organized Resistance Movements

Armed organizations resisting an occupying power, including groups that may operate without being incorporated into the regular armed forces of a government.

D. Auxiliary and Associated Forces

Organizations that cooperate with or operate alongside another military power while retaining some degree of separate organizational identity.

E. Police and Security Organizations

Armed formations whose primary function is policing, internal security, intelligence, or maintenance of public order rather than participation in military operations.

F. Irregular or Unorganized Armed Groups

Persons or groups engaging in armed operations without satisfying the organizational or behavioral requirements traditionally associated with recognized belligerent forces.

G. Occupying Forces

Military forces belonging to the state exercising belligerent occupation, whose legal position derives from the law of occupation rather than from the law governing resistance organizations.

These categories should be treated as **analytical categories**, not as conclusions concerning any particular organization in Slovenia.

VI. Criteria for Legal Characterization

Every organization should subsequently be evaluated according to the same factual and legal criteria.

1. Origin

- How and when was the organization established?
- By whom?
- Did it originate from a pre-existing state institution, government, political movement, local population, military organization, or occupying authority?

2. Authority

- Who authorized its creation?
- Did it claim authority from a recognized government?
- Did it operate under the authority of an occupying power?
- Did it claim to constitute an independent military or governmental authority?

3. Command and Organization

- Did the organization possess a responsible command?
- Was there a hierarchical structure?
- Were orders issued through an identifiable chain of command?
- Could commanders exercise effective control over members?

4. Relationship to a State or Government

- Was the organization part of the armed forces of a state?
- Did a government recognize or support it?
- Was it subordinate to another state's military command?
- Did it operate independently of any state authority?

5. Relationship to the Occupying Power

This should be treated as a factual criterion, not as a conclusion.

The inquiry should determine:

- whether the organization opposed the occupying power;
- cooperated with it;
- operated under its command;
- received weapons, training, intelligence, or logistical support from it;
- performed security or military functions for it; or
- maintained an independent command while pursuing objectives compatible with or opposed to those of the occupier.

Cooperation alone should not be treated as a legal characterization. Its legal significance depends upon the nature, degree, and purpose of the relationship.

6. Distinctive Identification

The framework should examine whether members:

- wore uniforms;
- carried distinctive insignia;
- could be distinguished from the civilian population; and
- otherwise presented themselves as members of an organized armed force.

7. Carrying Arms Openly

Whether and under what circumstances members carried their weapons openly should be examined in relation to the applicable law and the nature of the military operation.

8. Compliance With the Laws and Customs of War

The organization's conduct should be evaluated separately from its political purpose.

Relevant questions include whether it maintained rules governing:

- treatment of prisoners;
- treatment of civilians;
- protection of the wounded;
- conduct of combat operations;
- treatment of property; and
- other obligations imposed by the laws and customs of war.

9. Territorial Control

The framework should consider whether the organization exercised effective control over territory and, if so, what governmental or military functions it performed.

Territorial control may be relevant to characterization, but it should not be treated as an indispensable prerequisite unless the applicable legal rule requires it.

10. Recognition

Recognition by a government or belligerent power may provide important evidence of legal status, but recognition should not automatically determine legal status where the applicable law establishes objective criteria.

VII. Combatant, Belligerent, and Prisoner-of-War Status

The framework should carefully distinguish several concepts that are frequently conflated.

Combatant status, belligerent status, membership in an armed organization, and entitlement to prisoner-of-war protections are related but not necessarily identical questions.

The analysis should therefore ask separately:

1. Was the organization legally part of the armed forces of a state?
2. Could its members qualify as lawful combatants under the applicable law?
3. Could the organization qualify as a militia or volunteer corps?
4. Could members of an organized resistance movement receive the protections applicable to recognized belligerents?
5. What conditions governed entitlement to prisoner-of-war treatment?
6. What legal consequences followed if the conditions for privileged combatant status were not satisfied?

This prevents the common error of treating "not entitled to prisoner-of-war status" as synonymous with "criminal" or "illegal."

VIII. What Legal Characterization Does Not Mean

Several concepts have frequently been merged with legal characterization in historical writing.

A. Political Legitimacy

Whether an organization pursued a legitimate political objective is not necessarily determinative of its status under the law of armed conflict.

B. Patriotism or National Loyalty

The question whether members acted patriotically, loyally, or treasonously belongs to a different legal and political inquiry.

C. Collaboration

"Collaboration" is principally a historical and political description unless a particular form of cooperation corresponds to a defined legal prohibition.

D. Treason

Treason depends upon the applicable domestic law and the person's legal relationship to the state. It should not be treated as an automatic consequence of military cooperation with an occupying power.

E. Criminal Responsibility

The criminality of an individual act must be determined separately from the status of the organization with which the person was associated.

F. Political Outcome

The fact that an organization ultimately prevailed, lost, was recognized, or was later condemned does not retroactively determine its legal status during the conflict.

IX. The Temporal Problem

A particularly important methodological issue is the danger of applying legal rules retrospectively.

The framework should distinguish:

1. law applicable in 1941;
2. legal developments during the war;
3. legal developments immediately following the war;
4. postwar prosecutions and jurisprudence; and
5. modern international humanitarian and criminal law.

Later law may provide useful evidence concerning the development or interpretation of earlier customary rules. It should not, however, automatically be treated as though it governed the conduct of organizations in Slovenia in 1941–1945.

This temporal distinction is particularly important when modern concepts such as "non-state armed group," "non-international armed conflict," "crimes against humanity," or contemporary combatant classifications are applied to historical events.

X. A Uniform Analytical Test

The framework can ultimately be reduced to a common sequence of questions for each organization:

1. What was the organization?

Its origin, structure, membership, command, and purpose.

2. Who exercised authority over it?

A recognized government, occupying power, political movement, local authority, or no identifiable sovereign authority.

3. What was its relationship to the conflict?

Was it part of regular armed forces, an organized resistance movement, a militia, an auxiliary, a police/security organization, or another armed formation?

4. What was its relationship to the occupying power?

Opposition, cooperation, subordination, independence, or a changing combination of these.

5. Did it satisfy the legal criteria applicable to its claimed category?**6. What was the legal status of its members?****7. What protections and obligations followed from that status?****8. Were particular acts lawful or unlawful under the law applicable at the time?**

Only after these questions have been answered should the analysis proceed to individual responsibility.

XI. A Neutral Terminology for Historical Analysis

Historical and legal analysis should avoid using contested labels as conclusions.

Instead of beginning with:

"the collaborationist army"

the analysis should begin with:

"the armed organization in question"

and then determine whether the historical evidence establishes that it was, for example, an auxiliary force, militia, police formation, organized resistance movement, or component of a state's armed forces.

Likewise, terms such as "traitor," "quisling," "terrorist," "bandit," "liberator," and "patriot" should not substitute for legal analysis.

The objective is not to eliminate historical terminology but to distinguish **descriptive terminology from legal characterization**.

XII. Application to Occupied Slovenia

The framework is designed to permit subsequent studies of individual organizations without changing the analytical methodology.

Each armed organization can therefore be examined separately using the same sequence:

Historical facts → applicable law → organizational characteristics → relationship to state/government → relationship to occupying power → combatant/belligerent criteria → protections and obligations → individual status.

This approach makes meaningful comparison possible while avoiding the assumption that organizations with different origins, purposes, or relationships to the occupying powers necessarily occupied the same legal position.

XIII. Conclusion

The legal characterization of armed organizations operating in Slovenia during the Second World War requires a methodology that separates historical description from legal classification and organizational status from individual responsibility. The appropriate inquiry begins with the law applicable during the period, establishes the legal environment of belligerent occupation, identifies the relevant categories of armed organizations, and then applies objective criteria concerning organization, command, authority, state affiliation, relationship to the occupying power, identification, conduct, and recognition. Political allegiance, collaboration, treason, legitimacy, and subsequent criminal responsibility must be examined separately rather than treated as substitutes for legal characterization. Establishing this framework before examining individual organizations provides a consistent basis for determining the legal status of the various armed forces and armed groups that operated in occupied Slovenia between 1941 and 1945.