

LEGAL OPINION

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INTRODUCTION


Professor Heybatollah Najandimanesh, from the Allameh Tabatab’i University (Tehran, Islamic Republic of Iran), consulted us about our legal opinion to identify the legal status related to facts below:

I - Legal status concerned to actions of the Mojahedin-e (MeK) or People’s Mujahedin Organization of Iran (PMOI) since its foundation in 1965 – before 2003 – specially in the 1980’s, when it was engaged in terrorist attacks against Iranian civilians;

II – About the legal qualification of the named *Operation Eternal Light*, launched as a relevant military mission by *National Liberation Army* (NLA), from Iraq territory into Iran territory, on July 20th, 1988.

III – If there was an international conflict between Iraq and Iran from July 25th, 1988 to July 28th, 1988 (*May it be classified as non-international or international armed conflict?*)

IV - If the operation is qualified as an armed conflict - whether international or non-international - is there any nexus between the executions – started in 1981- and the Operation Eternal Light?




PEOPLE'S MUJAHEDIN ORGANIZATION OF IRAN (PMOI)/MEK LEGAL STATUS

First of all, it must be considered that this legal opinion is exclusively based on the report received, without any other sources and information. Due to this aspect, it must be taken into consideration the theoretical character of the present analysis.

The provided data concerning the Mujahedin Organization of Iran (PMOI) actions since 1965, also named MeK (*Mujahedin-e Khalq*, henceforth *MeK*), when the mentioned organization was founded at the Tehran University by a group of supposedly radical students, as informed by the legal advice addressed to us, allows the perception of some relevant elements. In this sense, it is important to notice the goals and the nature of the actions of the appointed group (MeK) in an attempt to achieve its political intentions: since its foundation, the main purpose of the organization was to defeat and overthrow the government of the moment – firstly, the regime of the Shah of Iran, a pro-Western autocratic monarchy led by Shah Mohammad Reza Pahlavi considered a Western's "puppet"; secondly, against the Iran's legal government after 1979 when the Iranian Revolution changed the regime.

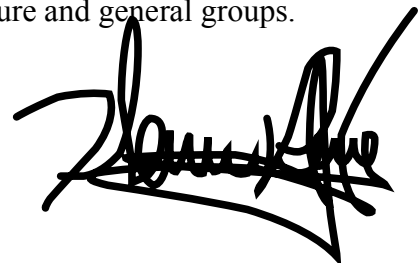
Under both scenarios, the actions of the MeK group to accomplish its political goals were violent and exemplified with following descriptions:

- a) *"...radical ideas centered on armed revolt against Shah of Iran,..."*
- b) *"...In 1971, the MeK's first planned terrorist attack, which targeted electric power grids in Tehran, was thwarted by the Shah's secret police..."*
- c) *"...Throughout the 1970s, the MeK carried out a series of attacks against the Iranian government and Western targets, including the assassination of three U.S. Army officers and three U.S. civilian contractors in Tehran..."*



- d) *“...Because of the divergent opinion between Rajavi and the Iranian government, ted to violent actions...”*
- e) *“...On 20 June 1981 at 16:00 h based in Tehran local time, the Mujahedin issued a military-political declaration and called on its members and sympathizers to come to the streets. It entered a new military and violent phase against the legal government...”*
- f) *“...On 20 June, the Mujahedin organized violent demonstrations in Tehran and some other big cities including Isfahan, Mashhad, Tabriz, Arak, and Bandar Abbas. It was illegal because the authorization has not been requested. According to some sources, more than 16 persons were killed and more than 200 persons were injured...”*
- g) *“...In his memories book, Hashemi Rafsanjani, the then Speaker of the Majilis, regarding the events of 20 June 1981, writes: “the Mujahedin-e Khalq and Peykar and Rnajarbaran and Fadaeeyan (the minority) organized a large plan for creating chaos and preventing the Majlis to do its functions and in other words, they declared an armed campaign. They came to the streets from 4:00 pm and started killing and plundering in Tehran and many other cities...”*
- h) *“...The recorded conversations of the center of commanders of Mujahedin indicated that they had large plans to create chaos and destruction on a wide scale...In one obvious case, the MeK launched violent attacks against Islamic Republic Party targets, the largest of which—the bombing of the IRP’s Tehran headquarters - killed more than 70 members of the leadership...”*

As can be perceived by the informations for the present legal consultation, the MeK organization conceived and developed violent actions not only against specific targets, but also against public ones, like what infra-structure and general groups.




The *mens rea*, as a mental element of the actions, are expressed, for example, by the memories of Hashemi Rafsanjani, when remembering the events of 20th June 1981 which recorded that the Mujahedin-e Khalq had as a plan the spread of chaos, preventing the public agents to develop their job, as well as to cause destruction on a wide scale.

The mental elements of the described actions (the intention to spread chaos and destruction against public places and targets, as well as against widespread victims, to make prevail certain radical ideology), in addition to the objective legal element consisting of material actions of attacks that spread panic and serious material damages, can typify characteristic actions of the crime of terrorism, as it will be analysed further on.

The legal opinion, in the present context, must be well grounded, since some confusion between the so-called *freedom fighters* and *terrorist groups* is not unusual.

CRIME OF TERRORISM IN THE INTERNATIONAL LAW – SOME CONSIDERATIONS

The expression *terrorism* was first used during the so called *terror regime* under Robespierre leadership along the French Revolution during the 18th century. During the 19th century, the expression terrorism reappeared, due to the attacks by anarchist groups against government authorities, as for example, the Russian nihilists, who murdered Tsar Alexander I, in 1881. The Terrorism started to be treated as a debate by international criminalists from the 1930s onwards, especially after the *6th Conference for the Unification of Criminal Law* (Copenhagen, 1935), when some articles with a preamble were written, recognizing the need for national legislations to recognize the crime of terrorism. On December 16th, 1937, the League of Nations approved two conventions for the prevention and suppression of terrorism, which did not reach effectiveness under international law, as only India ratified it. However, the definition enshrined in the aforementioned 1937 convention defined the crime of terrorism as acts ...*directed against*



a State and whose purpose or nature is to provoke terror in certain persons, groups of persons or in the general public...(JAPIASSÚ, Carlos Eduardo Adriano)¹.

During the 60s and 70s, along the cold war and the resurgence of terrorist acts on the international level, international conventions on this crime multiplied, such as:

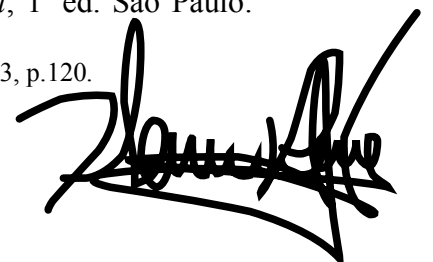
- I - Convention on Offences and Certain Other Acts Committed on Board Aircraft (1963);
- II - Convention for the Suppression of the Illicit Capture of Aircraft (1970);
- III - Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1971);
- IV - International Convention Against the Taking of Hostages (1979);
- V - Convention on the Physical Protection of Nuclear Material (1980);
- VI - International Convention for the Suppression of the Financing of Terrorism (Terrorist Financing Convention, 1999);
- VII - United Nations Security Council Resolution n. 1.373, of September 28th, 2001.

The development of international law regarding the repression of the crime of terrorism has provided, over time, the consolidation of the legal definition of terrorism which, for a certain current of jurists, is not yet totally consolidated in the global sphere.

However, internationally renowned jurists such as Antonio Cassese reject this opinion and assert that there is a well-established conceptual core for such a legal definition. Thus, as an example, some behaviors can be considered as acts of terrorism, for example, actions of devastation, looting, promoting fires, depredations, causing explosions, carrying out acts of terrorism for political reasons; maintenance of illegal paramilitary organizations to carry out mass destruction actions against generalized targets, civilian or otherwise. The renowned jurist states that²:

¹ JAPIASSÚ, Carlos Eduardo Adriano. *Direito Penal Internacional*, 1ª ed. São Paulo: Tirant Lo Blanch, 2020, p.175.

² CASSESE, Antonio. *International Criminal Law*. Oxford University Press, 2003, p.120.

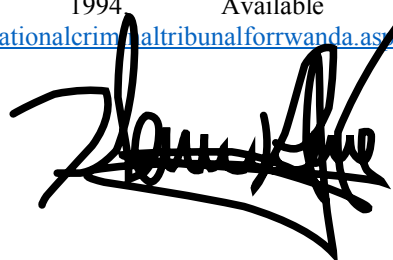


Third World countries staunchly cling to their view that this notion could not cover acts of violence perpetrated by so-called 'freedom fighters', i.e. individuals and groups struggling for their right to self-determination. Furthermore, developing countries vociferously insisted on the notion that no treaty could be adopted to ban terrorism unless at the same time the historical, economic, social, and political causes underlying resort to terrorism were studied in depth and thrashed out. As a result, both scholars and diplomats currently hold the view that States have never agreed upon a definition of terrorism. Hence, it would be impossible to criminalize this phenomenon as such. At present it would be possible to consider as criminal only single and specific instances of terrorism specifically prohibited by some treaties...To my mind, this view is not correct. A definition of terrorism does exist, and the phenomenon also amounts to a customary international law crime.

The internationally consolidation of the recognition of acts of terrorism is also a result of the international criminal Courts development, as we can verify by the article 4 of the Statute of the International Criminal Tribunal for Rwanda, which granted to the Court *the power to prosecute persons committing or ordering to be committed serious violations of Article 3 common to the Geneva Conventions of 12 August 1949 for the Protection of War Victims, and of Additional Protocol II thereto of 8 June 1977 including, between others, the acts of terrorism*³, as well as those acts of terrorism committed during the course of internal armed conflicts.

Another important consideration must be registered concerning the International Convention for the Suppression of the Financing of Terrorism (1999) and which provides by its article 2(1)(b) a relevant legal definition for terrorism as:

³ United Nation Human Rights Office of the High Commissioner. *Statute of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States*, between 1 January 1994 and 31 December 1994. Available in <https://www.ohchr.org/en/professionalinterest/pages/statuteinternationalcriminaltribunalforrwanda.aspx>. Accessed in Dec., 15th, 2021.



[...] Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act [...]

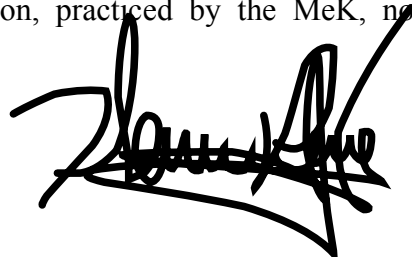
In this respect, some material elements must be considered to allow the identification of the crime of terrorism under the international law, such as established by the UK Terrorism Act (2000), as for example, the threat or the effective commitment of acts like serious violence against people or a person; to cause damages to public or private properties; to put other people's lives at risk; to create serious risks to the health or to safety of a public or a section of the public; to impose damage or interference to electronic systems.

Important to mention the 1998 Arab Convention for the Suppression of Terrorism definition of *acts of terrorism*, in its Article 1(2):

Any act or threat of violence, whatever its motives or purposes, that occurs in the advancement of an individual or collective criminal agenda and seeking to sow panic among people, causing fear by harming them, or placing their lives, liberty and security in danger, or seeking to cause damage to the environment or to public or private installations or property or occupying or seizing them, or seeking to jeopardize a national resource.

One of the most important goals of the acts mentioned above is exactly the attempt to influence the government or to cause intimidation to the government, to the public; still, to impose political, religious or ideological changes.

To this extent, it is necessary to evaluate whether the historical facts and actions mentioned in the statement of this legal consultation, practiced by the MeK, now



submitted to this expert, are accurately subsumed under the descriptions of the aforementioned legal formulas.

At this point, it can be said that the goals sought by MeK, if considered the references presented by this consultation, in their entirety, correspond to acts of terrorism, at least in theory, as pointed out the highlights on pages 2 and 3 above, for which attention is drawn to the mentions of the aforementioned objectives, such as causing panic; commission of murders; cause large-scale destruction, etc.

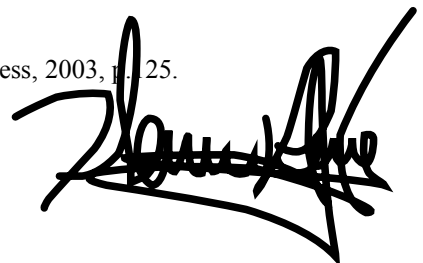
The named *mens rea* or mental requirement of terrorism acts are also mentioned by the query presented, such as the violent opposition against different governments and regimes of Islamic Republic of Iran (IRI), through violent attacks that caused many deaths in Tehran – including the murder of three United States Army officers and three U.S. civilian contractors - and widespread destruction on several occasions, aiming to achieve political and military objectives.

Non-target distinction is a typical element of the crime of terrorism. As Cassesse mentions⁴:

[...] *In the case of terrorism...the perpetrator does not attack a specific victim, on account of a personal relationship or animosity, or of the victim possessing certain assets, or of his or her gender or age, or of his or her nationality, social position, etc. Here the perpetrator is 'blind', as it were, to the victim; it does not matter to him whether the victim is young or old, male or female, a fellow-countryman or a foreigner, wealthy or poor, etc. He attacks persons at random. What matters is that the victim be murdered, wounded, threatened, or otherwise coerced so that the political, religious, or ideological purpose of the perpetrator may be attained. In the eyes of the perpetrator, the victim is simply an anonymous and expendable tool for achieving his aim [...]*

Indeed, acts of threats of violence which have as their primary purpose *to spread indiscriminated terror among the civilian population* constitute acts of terror and are

⁴ CASSESSE, Antonio. *International Criminal Law*. Oxford University Press, 2003, p. 25.




prohibited by the International Humanitarian Law, specially by the articles 51 of the Protocol I - Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, as well as to the Article 13 of the Additional Protocol II.

It is important to distinguish the situation characterized by possible attacks directed against military targets, in an eventual armed conflict, also capable of generating fear or panic among the civilian population and that do not constitute acts of terrorism, from actions that directly and indiscriminately attack the civilian population and public and/or private property, in order to generate the aforementioned panic, with the scope of overthrowing regimes, governments, imposing radical views (political, religious, separatism, ethnic cleansing, etc.).

Another situation must be considered not as a terrorism attack: the status of the freedom fighters and organized social movements, usually considered or labeled as "terrorists" when, in fact, they seek - or have sought, especially throughout the 20th century - to conquer freedom curtailed by European colonizing countries or redemocratization in the face of totalitarian or dictatorial regimes, as can be exemplified by the colonial liberation wars on the African continent or even the military dictatorships in Latin America during the cold war.

At this request, the International Humanitarian Law does not provide a definition of "terrorism", but it prohibits attacks in an armed conflict that would normally be considered "terrorists". The central principle involves the idea that combatants conflicts must at all times distinguish between *civilians* and *combatants* and between *civilian assets* from *military objectives*, during the armed conflict.

Article 33 of the 4th Geneva Convention provides that *collective penalties, like all measures of intimidation or terrorism, are prohibited*. Article 4 of Additional Protocol II prohibits *acts of terrorism* against *people who do not participate or have stopped participating in hostilities* and that seems to be the case described in the consultation presented here. For example, it is possible to read that:

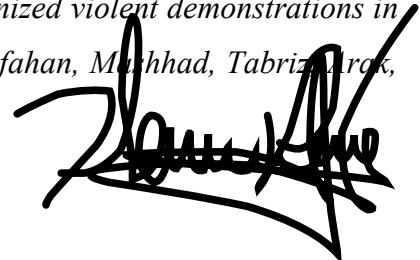


[...] *It is also necessary that at that time the country was in a war situation. Iraq imposed the war against Iran for the last two years. On 20 June, the Mujahedin organized violent demonstrations in Tehran and some other big cities including Isfahan, Mashhad, Tabriz, Arak, and Bandar Abbas. It was illegal because the authorization has not been requested. According to some sources, more than 16 persons were killed and more than 200 persons were injured. [...]*

According to the report presented, the active group (MeK) developed over the years attacks against the civilian population and also against public and private areas both during the course of the war with the Iraqi State, as well as in times of peace, in order to overthrow different administrations that ruled the Islamic Republic of Iran (IRI) during different times. In this sense, even if *International Humanitarian Law* is only applicable during the course of armed conflicts, national or international, still, *International Human Rights Law* seeks to prevent and repress widespread attacks against non-military (civilian) targets, as already stated earlier in this Opinion.

The elements for understanding that acts of terrorism were committed both during the period of international armed conflict with the Iraqi State, and after Ayatollah Khomeini's cease-fire announcement in July 25th, 1988, upon the agreement by the belligerent countries with Resolution n. 598, of July 20, 1988, of the United Nations Security Council and which ended the Iran-Iraq war, can be identified with the presence of the following aspects:

- a) **The presence of the intention (*dolus*) of the underlying crime** – as, for example: “...*On 20 June 1981 at 16:00 h based in Tehran local time, the Mujahedin issued a military-political declaration and called on its members and sympathizers to come to the streets. It entered a new military and violent phase against the legal government...*”;
- b) **The special intent (*dolus specialis*) to spread fear or coerce authority** – for example: “...*On 20 June, the Mujahedin organized violent demonstrations in Tehran and some other big cities including Isfahan, Mashhad, Tabriz, Arak,*



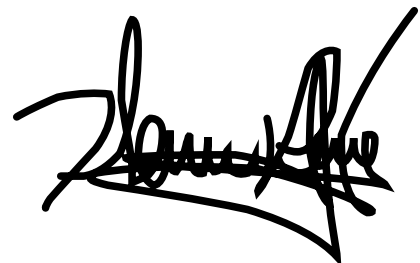
and Bandar Abbas. It was illegal because the authorization has not been requested. According to some sources, more than 16 persons were killed and more than 200 persons were injured...In his memories book, Hashemi Rafsanjani, the then Speaker of the Majilis, regarding the events of 20 June 1981, writes: “the Mujahedin-e Khalq and Peykar and Rnajbaran and Fadaeeyan (the minority) organized a large plan for creating chaos and preventing the Majlis to do its functions and in other words, they declared an armed campaign. They came to the streets from 4:00 pm and started killing and plundering in Tehran and many other cities...”

- c) **The comission of a criminal action – for instance:** “...*In one obvious case, the MeK launched violent attacks against Islamic Republic Party targets, the largest of which—the bombing of the IRP’s Tehran headquarters— killed more than 70 members of the leadership...*”
- d) **The comission of national acts of terrorism**, as exemplified above.

THE OPERATION ETERNAL LIGHT – LEGAL QUALIFICATION

According to the information provided, *Operation Eternal Light* consisted of a military action against the Islamic Republic of Iran (IRI), from Iraqi territory, carried out by the so-called National Liberation Army (NLA), created in 1986, composed of exiled members of the MeK and commanded by Masoud Rajavi.

It is important to notice that the Operation Eternal Light is considered the last important battle of the Iran-Iraq war, even taken into consideration the announcement of Ayatollah Khomeini’s accepting the cease-fire, on July 25th, 1988. The State of Iraq offered hard aerial support to MeK and to NFL during the operation and only in August, 1988, officially recognized the UN Res. 598 and the consequently armistice. Indeed, Iraq’s leader Saddam Hussein explained his intention after the launching of the Operation Eternal consisted in capture Iranian Prisoners of War (POWs), but it is believed that the



involvement of Iraq State in the mentioned operation had as a goal to end the war with a victory of Saddam Hussein and his armed forces.⁵

Thus, *Operation Eternal Light* began on July 25th, 1988, with the advance of MeK and NFL forces over Iranian territory for about 150 km, with the consequent conquest of some cities. However, not receiving support from the population and the IRI military, this operation did not achieve its objectives and the Iranian Army, as well as the Iran's Revolutionary Guard imposed important defeats on the MeK and the NFL, only after which Iraq officially accepted UN Res.598, followed by the end of the war.

Defining the legal qualification of Operation Eternal Light requires an understanding of two specific situations provided for by *International Humanitarian Law* (IHL):

a) **the international armed conflict**, in which the armed forces of two or more belligerent States fight; and, b) **non-international armed conflict**, a situation characterized by confrontation between government forces and insurgents or, between them, in the territory of a State party to the Geneva Conventions.


The distinction must be considered necessary for the understanding of the legal consequences, based on the discipline of the subject by the International Committee of the Red Cross (ICRC) and by International Humanitarian Law (IHL) – “Geneva Law”, especially in relation to the incidence, or not, of humanitarian law and war crimes rules on specific cases.

INTERNATIONAL ARMED CONFLICT (IAC)

In relation to the *International Armed Conflict* (IAC), the Common Article 2 to the Geneva Conventions of 1949 states that:

In addition to the provisions which shall be implemented in peacetime, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them. The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.

⁵ HIRO, Dilip. *The Longest War*. Routledge, 1999, pp. 246–47.



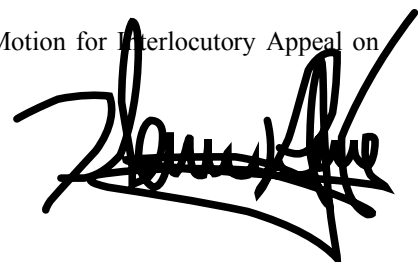
The interpretation of the norm imposes the understanding that an *international armed conflict* (IAC) can only be glimpsed in the event of mobilization of the armed forces of a State against another State (*high contracting parties*), regardless of the intensity of the confrontation or formal recognition of the "state of war" by one of the belligerent states or the motivations leading to the conflict. Another possibility provided for by the Geneva Convention concerns to the cases of partial or total occupation of the territory of a high contracting party, even if the said occupation meets with no armed resistance. The *International Criminal Court For the Former Yugoslavia* (ICTY) consolidated important precedent on the characterization of an international armed conflict (IAC) during the trial of the Tadic case, in the following terms: *an armed conflict exists whenever there is a resort to armed force between States*.⁶

H.-P. Gasser explains:

[...] any **use of armed force by one State against the territory of another**, triggers the applicability of the Geneva Conventions **between the two States**. [...] It is also of no concern whether or not the party attacked resists. [...] As soon as the armed forces of one State find themselves with wounded or surrendering members of the armed forces or civilians of another State on their hands, as soon as they detain prisoners or have actual control over a part of the territory of the enemy State, then they must comply with the relevant convention [...]

The information presented by this consultation, regarding the nature of Operation Eternal Light, which began on July 25, 1988, demonstrate that the advance into the territory of the Islamic Republic of Iran (IRI) had MeK and Liberation Army forces as protagonists (NLA) which, as narrated, constituted organized and armed groups, with chains of command, however, composed of Iranians, as well as with the original objective of overthrowing the government of the Iranian State. However, this operation was only possible, in its military and territorial scope, with the effective participation of Iraqi forces. In this sense, the elements mentioned above that characterize an international armed conflict (IAC) are present in the situation described, moving away from the strict requirements that characterize a non-international armed conflict (NIAC).

⁶ ICTY, *The Prosecutor v. Dusko Tadic*, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, IT-94-1-A, 2 October 1995, para. 70.



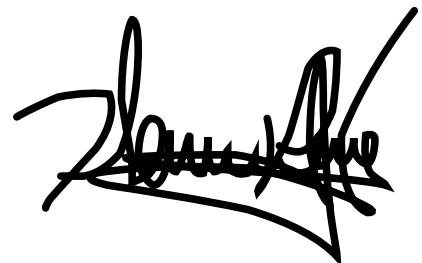
NON-INTERNATIONAL ARMED CONFLICT (NIAC)

Non-International Armed Conflicts (NIAC) represent a category specifically provided for by the common **Article 3 of the Geneva Conventions of 1949**; and, for by **Article 1 of Additional Protocol II**, which determines:

Article 1 - This Protocol, which develops and supplements Article 3 common to the Geneva Conventions of 12 August 1949 without modifying its existing conditions of application, shall apply to all armed conflicts which are not covered by Article 1 of the Additional Protocol to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) and which take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol.

Unlike *international armed conflict* (IAC), *non-international armed conflicts* (NIAC) involve **confrontations between the armed forces of a State and dissident or rebel forces, within a territory, with no conflicts with other sovereign States**, even if these States suffer the effects of the internal conflict in the neighboring state.

The concrete analysis, case by case, allows the identification of the presence of elements that characterize the non-international armed conflict (NIAC), as already stated above, such as, for example, **the continuity of combats that last in time; the intensity of the aforementioned combats; the presence of one or more non-governmental armed groups, organized and operating under hierarchically established chains of command; the confrontation between official forces and non-governmental armed groups, or even between them**; to which must be added the **occurrence of the aforementioned armed conflicts in the territory** of one of the States-party to the Geneva Conventions.



Under this understanding, the *International Committee of the Red Cross (ICRC)* has already expressed its opinion in its *2008 Opinion Paper* on the subject:

In order to distinguish an armed conflict, in the meaning of common Article 3, from less serious forms of violence, such as internal disturbances and tensions, riots or acts of banditry, the situation must reach a certain threshold of confrontation. Generally accepted that the lower threshold found in Article 1(2) of APII, which excludes internal disturbances and tensions from the definition of NIAC, also applies to common Article 3. Two criteria are usually used in this regard:

- ✓ ***First, the hostilities must reach a minimum level of intensity.*** This may be the case, for example, when the hostilities are of a collective character or when the government is mandatory to use military force against the insurgents, instead of mere police forces.
- ✓ ***Second, non-governmental groups involved in the conflict must be considered as "parties to the conflict", meaning that they possess organized armed forces.*** This means for example that these forces have to be under a certain command structure and have the capacity to sustain military operations. (See D. Schindler, *The Different Types of Armed Conflicts According to the Geneva Conventions and Protocols*, RCADI, Vol. 163, 1979-II, p. 147. For a detailed analysis of this criteria, see ICTY, *The Prosecutor v. Fatmir Limaj*, Judgment, IT-03-66-T, 30 November 2005, para. 94-134)
- ✓ ***A more restrictive definition of NIAC was adopted for the specific purpose of Additional Protocol II. This instrument applies to armed conflicts "which take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol". This definition is narrower than the notion of NIAC under common Article 3 in two aspects:***
 - ✓ ***Firstly, it introduces a requirement of territorial control, by providing that non-governmental parties must exercise such territorial control "as to enable them to carry out sustained and concerted military operations and to implement this Protocol".***



✓ *Secondly, Additional Protocol II expressly applies only to armed conflicts between State armed forces and dissident armed forces or other organised armed groups. Contrary to common Article 3, the Protocol does not apply to armed conflicts occurring only between non-State armed groups.*

The most restrictive characteristics applicable to the definition of Non-International Armed Conflict (NIAC) are not clearly subsumable to the dynamics present in Operation Eternal Light.

The situation concerning to Operation Eternal Light seem to fit under the above legal outlines applicable to the legal definition of **International Armed Conflict (IAC)**, since it is possible to verify the presence of some IAC elements, like territories under the control of MeK/NFL; concerted combats that have spread over time, until the military victory of the iranian troops; the support of the Iraqi Air Force to MeK combatants that penetrated 150 km into the territory of the Iranian State etc.

The aforementioned Operation Eternal Light, considering the information presented in this legal consultation, as well as the historical context currently available for investigation and research, authorize the understanding that the said incursion into Iranian territory was planned, authorized and executed by MeK and NFL fighters still under the conditions - and as yet another sequel - of the Iran-Iraq War, even though the Iranian State has officially expressed its agreement with United Nations Security Council Resolution n. 598, as already pointed out, above.

From this perspective, it is known that the characterization of an armed conflict, whether international (IAC) or non-international (NIAC), depends directly on the circumstances present in each specific case.

Thus, some aspects should be highlighted regarding Operation Eternal Light, among which⁷:

⁷ Human Rights Watch. Available in <https://www.hrw.org/legacy/backgrounder/mena/iran0505/3.htm>

 in

a) About seven thousand MeK members received military equipment and training in Iraqi territory, even during the course of the Iran-Iraq war, under the name of the *National Liberation Army* (NFL);

b) Operation Eternal Light was not the first and only one military action carried out by the Mek/NFL during the Iran-Iraq war, as its members carried out attacks against Iranian troops, as well as incursions into Iranian territory during the conflict between both States, demonstrating the presence of important elements for the legal configuration of an armed conflict, whether international or not, namely: *intensity* and *duration of the conflicts*;

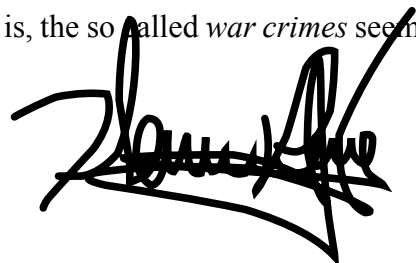
c) Although the Iranian State has expressly accepted the terms of UN Security Council Resolution 598, which ended the conflict, Iraq has not only been silent on the matter, but also provided military air support for Operation Eternal Light, thus confirming the maintenance of the international character of the mentioned operation and its insertion in the set of military operations unleashed throughout the Iran-Iraq war. Even though the MeK and NFL organizations kept their specific objectives consistent with overthrowing the government of the Islamic State of Iran;

d) The MeK/NFL forces advanced about 150 km into Iranian territory, including conquering cities, some attacked with chemical weapons by the Iraqi State, as was the case of the cities of Qasr-e Shirin and Sarpol-e Zahab.

e) Even though UN Res.598 had already been accepted by Iran, the Iraqi State and its leadership agreed, supported and participated militarily in Operation Eternal Light, before the aforementioned resolution became effective. Only on August 20th, 1988, UN Res.598 began to generate effectiveness, ending the conflict with the Iranian victory in the battle fought over Operation Eternal Light. Therefore, we understand that Operation Eternal Light is yet another chapter in a long international armed conflict that lasted for eight years in the Persian Gulf region.

WAR CRIMES

The comprehension of some aspects of the International Humanitarian Law (IHL) and one of the consequences of its violation, that is, the so called *war crimes* seems



important for the present analysis, specially because once defined that Operation Eternal Light entailed an International Armed Conflict (IAC), some connections between such a consequence (*war crimes and the incidence of the International Humanitarian Law - IHL*) and the executions of prisoners in Iran, must be faced and considered.

Historically, the *Charter of London* (August, 8th, 1945) of the International Nuremberg Military Tribunal (INMT) defined the *war crimes* in its article 6 as:

[...] *violations of the laws or customs of war. Such violations shall include, but not be limited to, murder, ill-treatment or deportation to slave labor or for any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity [...]*

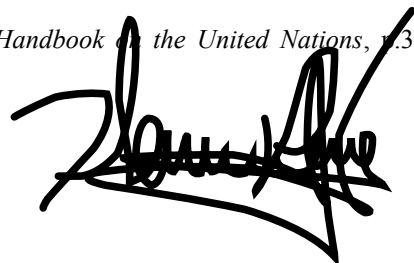
War crimes, as a *core and an international crime*, have gradually evolved in terms of definition over the decades, since the Nuremberg trials.

In this sense, the war crimes are the violations of the rules and customs of war committed by combatants throughout armed conflicts. For Ramesh Takur⁸, “...*the Geneva Convention of 1949 established a new category of war crimes called ‘grave breaches’ which could be prosecuted in the courts of all countries that have ratified the convention...*”. The concept of war crimes had its limits gradually expanded, including the interpretations developed by the International Criminal Courts for the Former Yugoslavia (ICTY) and for Rwanda (ICTR).

In the decision of Tadić case the ICTY the Court defined that:

“...*war crimes must consist of ‘a **serious infringement**’ of an **international rule**, that is to say ‘must constitute a breach of a rule protecting important values, and the breach must involve **grave consequences for the victim**’; (ii) the rule violated must either **belong to the corpus of customary law or be part of an applicable treaty**; (iii) ‘the violation must entail,*

⁸ TAKUR, Ramesh. *Humanitarian Intervention. The Oxford Handbook of the United Nations*, p.399. Oxford University Press, New York, 2008.



under customary or conventional law, the individual criminal responsibility of the person breaching the rule’; in other words, the conduct constituting a serious breach of international law must be criminalized...” (ICTY, Tadić case, Interlocutory Appeal - cited in Vol. II, Ch. 44, § 106).

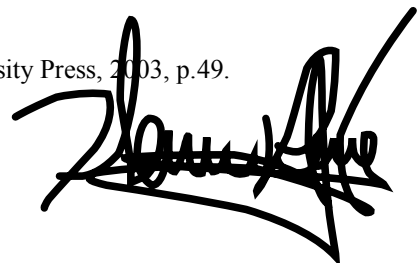
Once the war crime has been legally defined, the central question that arises to clarify the questions presented in this consultation concerns who is entitled to protection under humanitarian norms (*jus in bello*), which aim to minimize the intense suffering imposed by wars. Therefore, the legal definition of the recipients of the aforementioned tutelage is of great importance for the effectiveness of the right of war and for elucidating the presence of a causal relationship - or not - between the Operation Eternal Light and the executions of prisoners by Iran authorities, in July, 1988.

WHOS IS PROTECTED BY THE GENEVA CONVENTION

The protection established by the 1949 Geneva Convention reaches all those who, for different reasons, hold the position of **non-combatants** or **who no longer act as such**, as for example health teams, wounded, sick combatants or prisoners. There must be a link between the offence and an international or internal armed conflict.

These norms consist of a disciplinary instrument on combat methods and on restricting the use of certain weapons, in addition to regulating the treatment to be given to non-combatants or persons who no longer participate in them. In addition, defining the holders of their protection (non-combatants and ex-combatants), the Geneva norms define as perpetrators of war crimes those soldiers who violate the rights of their enemies, including civilians; and also civilians who act against the military and other civilians considered enemies. The configuration of a war crime demands an objective link or connection between the offence and the armed conflict. The absence of the mentioned connection do not allow the recognition of a war crime. Antonio Cassese explains⁹:

⁹ CASSESSE, Antonio. *International Criminal Law*. Oxford University Press, 2003, p.49.



Special attention should be paid to crimes committed by civilians against other civilians. They may constitute war crimes, provided there is a link or connection between the offence and the armed conflict. If such a link is absent, the breach does not amount to a war crime, but simply constitutes an 'ordinary' criminal offence under the law applicable in the relevant territory.

The proof of the link between criminal actions and the course of an armed conflict, whether international or non-international, is an indispensable objective element in order to consider the hypothesis of typifying "war crimes" and, consequently, the incidence of the International Humanitarian Law (IHL).

OPINION ON THE TOPICS AND QUESTIONS PRESENTED

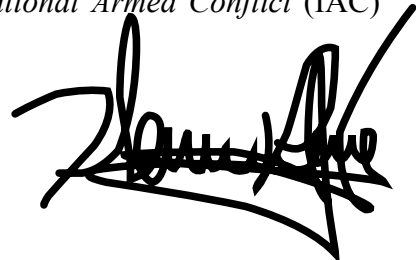
Considering the facts and the legal aspects above, the questions presented by this legal consultation are now answered, as follows:

1. What was the legal status of MeK before 2003, especially in the 1980s when it was engaged in terrorist attacks against Iranian civilians?

R: Considering the facts narrated and the legal considerations presented, MeK acted as a terrorist group, specially in the 1980s. At the time of the outbreak of Operation Eternal Light (1988), the organization MeK had received training, funding and equipment from the Iraqi State, as well as military air support for the offensive over the territory of the Islamic State of Iran, in the final phase of the war between the two states, when Iraq had not yet expressed its agreement with United Nations Security Council Resolution n° 598. Therefore, under such a context, the MeK/NFL acted under a typical legal scenario of international armed conflict as an organized combat group.

2. What is the legal qualification of Operation Eternal Light?

R: The legal qualification of Operation Eternal Light, considering the elements and arguments listed above, can be characterized as one of the last relevant battles of the Iran-Iraq war, that is, an *International Armed Conflict* (IAC) scenario,



3. May it be classified as a part of an international armed conflict while there was no actual armed conflict between Iraq and Iran from July 25, 1988, to July 28, 1988?

R: The existence of an International Armed Conflict can be recognized even if one of the States does not do it. *On July, 17th, 1988, Iran notified the Secretary-General of its formal acceptance of Resolution 598 (1987), expressing the need to save life and to establish justice and regional and international peace and security. The following day, Iraq also reaffirmed its agreement with the principles embodied in the resolution.*¹⁰ Nevertheless, the effective Iraq military support and direct involvement in the Operation Eternal Light, allows the conclusion that the mentioned military operation was part of a broader context of an international warfare and already in its final stage.

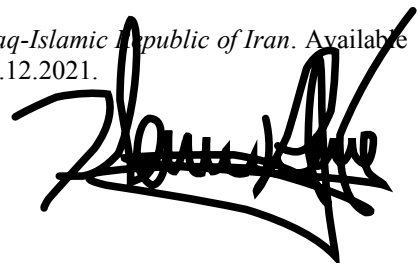
4. May it be classified as non-international or international armed conflict?

R: The Operation Eternal Light must be classified as an international armed conflict, due to the reasons and outlines listed above.

5. If the operation is qualified as an armed conflict- whether international or non-international, is there any nexus between the executions - starting from 1981 - and Operation Eternal Light?

R: According to the information listed in this legal consultation, there are no clear, objective and proven connections between Operation Eternal Light and the executions that took place in Iranian prisons, including in July 1988. The causal link between the executions that took place in Iran's prisons - especially in July 1988 - and Operation Eternal Light will remain demonstrated in the hypothesis of the execution of MeK fighters eventually arrested during the Operation, a hypothesis in which, in theory, the Geneva Law could be applied.

¹⁰ United Nations Peacemaker. *Security Council Resolution 598: Iraq-Islamic Republic of Iran*. Available in <https://peacemaker.un.org/iraqiran-resolution598>. Accessed in 20.12.2021.



Flávio de Leão Bastos Pereira

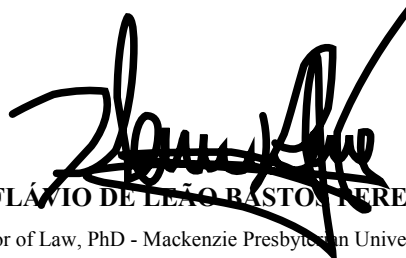
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It is not possible to extract from the information presented in this legal consultation clear elements that indicate the existence of a direct relationship between the military offensive by the MeK group and the NFL, called Operation Eternal Light, which began on July 25, 1988 and the executions that took place in Iranian prisons in the same period. In this sense, two scenarios must be considered. Under a first interpretation, even though Operation Eternal Light is considered as the last battle of the Iran-Iraq War, therefore, an international conflict, it is not possible to see the link suggested by the issue, since the data provided by the legal consultation under analysis indicate that the aforementioned executions were a consequence of the functioning of the Judiciary Branch of the Islamic Republic of Iran (IRI), a hypothesis in which no relationship between such executions and Operation Eternal Light is supported.

In a second scenario, if considered, the element of connection between the executions and the military offensive of July 25, 1988 is present. However, supposed evidence that supports the aforementioned nexus is not mentioned by the questioning under analysis.

It is our Opinion.

This Legal Opinion is exclusively based on the information presented by the consultation and its questions.



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