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LEGAL OPINION

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A. Introduction

1. The present document is a legal opinion requested by Professor Heybatollah Najandimanesh, from the Allameh Tabatab'ei University (Tehran, Islamic Republic of Iran) on the identification and classification of the facts concerning the Operation Eternal Light, the details of which will be presented later, due to the processing of a legal case under the care of the Swedish authorities.

2. The specific questions submitted were:

(A) *What was the legal status of MeK (Mojahedin-e Khalq) before 2003, especially in the 1980s when it was engaged in terrorist attacks against Iranian civilians?*

(B) *May the hostilities between the Islamic Republic of Iran and the MeK be classified as international or non-international armed conflict?*

(C) *What is the legal qualification of Operation Eternal Light?*

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(D) May Operation Eternal Light be classified as a part of an international armed conflict while there was no actual armed conflict between Iraq and Iran from 25 July 1988 to 28 July 1988?

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

3. Therefore, the main question that permeates all the secondary questions is whether the death of prisoners in 1988, based on the history of conflicts, qualifies as war crimes.
4. To this end, an analysis will be made regarding the qualification of the facts presented by the consultant, to then determine, based on the information received, whether the branch of law entitled International Humanitarian Law, also called International Law of War and Armed Conflicts, applies to the specific case, that is, whether there is a sufficiently clear causal link between the acts and the armed conflict that took place at the time, to conclude whether there were war crimes.
5. It is worth mentioning that the present legal opinion will not be dedicated to analyzing the possible different criminal qualification of the narrated acts, if they are not war crimes, according to the opinion of this expert.
6. I will start, in item B, with the narration of the facts submitted for analysis, already with a sectorial view of the information for subsequent classification. Then, in item C, I will present an overview of the legal status of the MeK, with legal and doctrinal grounds. In item D, I will explain the conceptualization of international armed conflict and non-international armed conflict, in order to determine the labeling of the narrated facts. Afterwards, in item E, information about Operation Eternal Light and its possible classification before the IHL will be presented. Finally, item F will consider the possibility of the operation being classified as part of this armed conflict, in order to be able to face the existence or non-existence of a nexus between such combat and the murders, and then offer my conclusion in item G.

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B. On the available factual information

7. The consultant provided the following documents to assist the analysis:

(i) The file called "Armed Conflict related Questions – Operation Eternal Light", consisting of four pages, with a summary of the facts and the five questions already mentioned in item A.

(ii) The file entitled "Durtvå Rapport", which contains documents from the court case and the legal opinions of Professor Jann Kleffner and Doctoral candidate Sally Longworth on the prosecutor's side, consisting of 203 pages, of which 144 are in Persian or Swedish, although they are often repeated documents due to the need for translation.

8. It is imperative to say that there is no single accessible source that narrates absolutely all the details of the Operation, the armed conflict and the surrounding facts in the place and time analyzed, which substantially hinders a deeper analysis. Therefore, only the information passed directly by consultant to this expert will be used, and, in addition, other information found on the web - unfortunately, the site that most presents information about the 1988 military operations is Wikipedia, which has a collaborative editing, that is, all web users can change, remove and add information on the page, and there are many "citation needed" warnings in key parts of the explanation, which makes this source unreliable.

C. Legal Status of MeK

9. According to the facts given, "The Mojahedin-e Khalq (MeK)- also known as People's Mujahedin Organization of Iran (PMOI)- was founded in 1965 by a group of Iranian students whose radical ideas centered on armed revolt against Shah of Iran, whom they regarded as a U.S. puppet responsible for the growth of Western influences in Iran." It firstly supported the republic's founder Ayatollah Khomeini, but after Massoud Rajavi

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– its leader – was barred from standing in the first presidential election, the group turned against the government.

10. The group, in 1971, planned to attack for the first time since its creation some electric power grids in Tehran, but the police was successful in preventing it, although the narration of the facts point out that it was not a pacific action, since many members of the MeK were killed, including its three founding members. Other attacks in the 1970s were carried out against Iran's government at the time and western targets, such as U.S. Army officers and civilians.
11. In one of those cases, in 1981, the group issued a military-political declaration and called on its members and supporters to come to the streets without authorities' authorization – which seems to be the legal procedure for demonstrations in Iran – entering a confrontational phase against the government, and also targeting civilians such as local sellers and farmers. In another case, there was an attack against the Islamic Republic Party, killing more than 70 members of the leadership.
12. It can also be detached from the facts narrated by the consultant that "[s]ince 1981 many of the members and supporters of the MeK were arrested and tried by the Iranian courts. They received different sentences of imprisonment. The high-ranking officials of the MeK, who feared being arrested and tried, fled to France, where Rajavi and Banisadr formed the National Council of Resistance of Iran (NCRI), an umbrella organization of Iranian dissident groups opposed to the Iranian government".
13. After invading Iran in 1980, Saddam Hussein, at the time the elected president of Iraq, brought many MeK members to Camp Ashraf, in Iraq, near the Iranian border, including Rajavi. And during the Iran-Iraq war, several armed attacks were carried out by Iraq in some type of coordination with the MeK, later called National Liberation Army (NLA). As states the fact given, "Some sources claim that Saddam provided the MeK with protection, funding, weapons, ammunition, vehicles, tanks, military training, and the use (but not ownership) of land. This claim is not supported by any evidence. The Islamic Republic of Iran denies such a claim."

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14. The MeK's relationship with the West has been complex, since the U.S. and European Union listed them as a terrorist organization during the pro-reform presidency of Iran's Khatami, but reversed the decision under his successor Mahmoud Ahmadinejad. Later in history, in name of protection, the group even relocated to Camp Liberty, a former U.S. military base near Baghdad, and since 2003, it is considered by the same U.S. a group advocating democracy.
15. Well, since the consultant requested an analysis regarding MeK's activities before 2003, we will stick to the information related to 1980s. In my opinion, there are two types of classification: (i) terrorist organization and non-terrorist organization, and (ii) State armed actor and non-State armed actor. The first one is not exactly a legal status, since there is no formal international definition on the meaning of terrorism, terrorist acts and terrorist organization; but the second one is crucial for the upcoming analyses on the type of armed conflict and the incidence of International Humanitarian Law.

The lack of a precise international definition of terrorism

16. The term "terrorism" is confusing, dangerous and, at the same time, indispensable. Confusing because it has many different meanings to different interpreters, and time has changed its scope of meaning over the years. Dangerous because it easily becomes an object of propaganda, in the sense of persuasive promotion of disinformation, as well as a means of avoiding delving into the causes and forms of political violence. Indispensable, after all, as it is a real, current and recurrent phenomenon that threatens the pillars of contemporary society.
17. In this sense, Michael Reisman warns that definitions of Terrorism are important and particularly sensitive, because they tend to delimit the range of possibilities for legitimate responses to them, that is, the scope of meaning of the term delimits not only the phenomenon itself, but also when and to what extent it is possible to act in its

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repression.¹ The UN General Assembly, in resolution 42/159 of 1989, condemns international terrorism, highlighting the relevant task of the international community in establishing a definition of terrorism: “the effectiveness of the fight against international terrorism can be increased by the establishment of a universally accepted definition of terrorism”, and in resolution 60/288 of 2006, states that Member States have a duty to: “consistently, unequivocally and strongly condemn terrorism in all its forms and manifestations, committed by whomever, wherever and for whatever purposes, as it constitutes one of the most serious threats to international peace and security”. At no time, however, does it explain the definition of terrorism, and even if it did, it is not an international treaty that binds such a definition to the signatory countries.

18. The first document that placed terrorism as an international crime was the Convention for the Prevention and Punishment of Terrorism, which did not enter into force as only India ratified the agreement. According to article 1.2 of the document, acts of Terrorism are “criminal acts directed against a State whose objective or nature is to provoke a state of terror in certain personalities, in groups of people, or in the general public”. Note that this is not a definition of terrorism, but of acts of terrorism.

19. The International Convention on the Suppression of the Financing of Terrorism, not signed by Iran, says in art. 2 (1) (b) that any person commits an offence within the meaning of the Convention when the carry out “[a]ny 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.”²

¹ REISMAN, W. Michael. “International Legal Responses to Terrorism”, **Houston Journal of International Law**, vol. 22, 1999, p. 9.

² United Nations. **International Convention on the Suppression of the Financing of Terrorism**, 2009. Available at <https://treaties.un.org/doc/db/terrorism/english-18-11.pdf>

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20. The Dictionary of Public International Law, book by Jean Salmon, defines international terrorism as the illegal act of serious violence, provided that it is committed by "an individual or group of individuals, acting individually or with the approval, encouragement, tolerance or support of a State". against persons or goods for an ideological objective that is likely to endanger international peace and security."³ But what we actually have , are definitions and criminal typifications of acts of terrorism spread around the world, in the internal legal systems of the countries.
21. As if the wide diversified range of definitions of the terrorist phenomenon were not enough, whether from doctrine, legislators, the international community, jurisprudence, politics or the social sciences, it is also worth remembering that what some consider terrorism, others may see as an act heroic fight for freedom, as stated in the aphorism "one man's terrorist in another man's freedom fighter".
22. The definition of terrorism most used today - albeit from a comparative and non-international perspective - is that of the US Department of Defense, coined in 2010, namely: the unlawful use of violence or threat of violence to instill fear and coerce governments or societies. Terrorism is often motivated by religious, political, or other ideological beliefs and committed in the pursuit of goals that are usually political."⁴
23. Among the reflections of a single and international definition of terrorism, there are pitfalls regarding the practical use of the term. Adam Roberts warns of the stereotyping of terrorism to activities or movements in which there is a clear distinction of behavior, such as the United Kingdom and the United States of America, which, between 1987 and 1988, labeled the African National Congress, in South Africa, as a terrorist : "a superficial and silly categorization, easily dismantled with the emergence of Nelson Mandela as Chief Executive."⁵

³ SALMON, Jean. **Dictionnaire de Droit International Public**. Bruxelles: Bruylant, 2001, p. 1081.

⁴ U.S. Code § 2656f - **Annual country reports on terrorism**. Legal Information Institute. Available at: <https://www.law.cornell.edu/uscode/text/22/2656f>

⁵ ROBERTS, Adam. **Countering Terrorism: A Historical Perspective** in BIANCHI, Andrea; KELLER, Alexis (coord.). **Counterterrorism: Democracy's Challenge**. Oxford: Hart Publishing, 2008.

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24. Therefore, as per the non-internationally accorded definition of terrorism, one could say that MeK activities during the 1980s was, indeed, that of a terrorist organization, essentially because the attacks were designed to destabilize the government, with the aim of overthrowing it, targeting both military and civilians, causing terror and fear in the population.
25. But there are not enough elements, based on the facts given to this expert, to label it an organization that commits international terrorism, that is, whose action takes place outside its country of creation, with the objective of reaching other countries, governments and populations - the fact that, for a time, they had its members being physically elsewhere (in Iraq, in France) does not necessarily imply that these countries sheltered them for the purpose of using their organization for their own purposes, which perhaps configures the use as a proxy in an international armed conflict (as will be discussed in item D).

Non-state armed actors

26. Since the MeK is clearly not a State armed actor, we must analyze whether it falls into non-State armed actor definition. "A definition of non-state armed actors has proven difficult owing to their many types and characteristics. Generally speaking, non-state armed groups are defined as distinctive organizations that are (i) willing and capable to use violence for pursuing their objectives and (ii) not integrated into formalized state institutions such as regular armies, presidential guards, police, or special forces. They, therefore, (iii) possess a certain degree of autonomy with regard to politics, military operations, resources, and infrastructure."⁶

⁶ HOFMANN, Claudia & SCHNECKENER, Ulrich. "Engaging non-state armed actors in state and peace-building: options and strategies". **International Review of the Red Cross**, 93 (883), 2011, pp. 603-612, p. 604.

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27. This does not mean that the group acts alone: “They may, however, be supported or instrumentalized by state actors either secretly or openly, as happens often with militias, paramilitaries, mercenaries, or private military companies. Moreover, there may also be state officials or state agencies directly or indirectly involved in the activities of non-state armed actors – sometimes for ideological reasons (e.g. secret support for rebels), sometimes because of personal interests (such as political career, corruption, family or clan ties, clientelism, and profit). Nevertheless, despite close relationships with state actors, these groups can still be seen as non-state actors since they are not under full state control.” (underline added, because we will talk about this control in item D).⁷

28. All in all, the implications of labelling MeK as a terrorist organization and a non-State armed actor are what the ICRC explains: “IHL prohibits in war most acts that would be called ‘terrorist’ if committed in peacetime. In this context, IHL applies both to armed forces and to non-State armed groups. Acts of terrorism in other situations may be subject to other bodies of law, in particular domestic criminal law.”⁸ That is, terrorism itself, especially domestic, is not subject to International Humanitarian Law, but other branches of Law, mainly local - information beyond the scope of this opinion, and, if it relates to a non-international armed conflict, the IHL provisions are limited, as will be explained in item E.

⁷ HOFMANN, Claudia & SCHNECKENER, Ulrich. “Engaging non-state armed actors in state and peace-building: options and strategies”. **International Review of the Red Cross**, 93 (883), 2011, pp. 603-612, p. 605.

⁸ International Committee of the Red Cross. **Terrorism**. Available at <https://www.icrc.org/en/war-and-law/contemporary-challenges-for-ihl/terrorism>.

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D. The classification of the conflict MeK - Islamic Republic of Iran

29. This expert's opinion abides with the general acknowledgment regarding both conflicts: there was an International Armed Conflict between Iran and Iraq, precisely called Iran-Iraq War (22 September 1980 – 20 August 1988), and a Non-International Armed Conflict between the MeK and Iran in times that overlap the ongoing war (as will be discussed in item E), and this non-international armed conflict would only jump to an international one based on the relationship between the MeK and Iraq immediately prior to the execution of prisoners in the second semester of 1988. Then, all States' obligation before IHL would be applied to the actions of the non-State group or organization (as per Common Article 2 of all Geneva Conventions of 1949: "Although one of the Powers in conflict may not be a party to the present Convention, the Powers who are parties thereto shall remain bound by it in their mutual relations."), and the intervening/controlling State would be obliged to ensure that these rules are respected by the them.

30. Non-State actors can indeed operate closely to States as allies, and the facts given indicate that the MeK and Iraq might have worked in collaboration with each other for some punctual operations. In addition to the unclear evidence in this regard, based on the facts given, this alone does not have the power to transform the classification of the conflict. In other words, the fact that the MeK operated from within Iraqi territory or even received sporadic funding and/or weapons is not enough to claim that the Mek acted as Iraq's proxy, and thus change the label of the conflict to International.

31. This is because even a hypothetical clear and direct action by a State does not necessarily substantiate the need to consider the conflict, from that moment on, international, unless it is a central attack on the State's territory with the third party clearly used, the actor does not -state as a proxy. What can happen is to create an international incursion into a non-international armed conflict, but a single international act does not take on the essence of a long internal conflict.

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32. It is not clear, therefore, what is the level of control necessary to consider that a country has started to use the non-state actor as part of a non-international armed conflict as a proxy and, therefore, make that conflict international. However, it is desired that this nexus be clear, so as not to commit injustices.

International legal precedents on the consideration of a non-State actor as proxy of a State in an armed conflict: the test of control

33. In international judicial decisions, stated in art. 38 (1) (d) of the International Court of Justice Statute as a source of international law, there has been long and complex debates on the *test of control* that should be applied in order to discover whether a third State has enough control over the non-State actor to transform an ongoing non-international conflict in an international one. The International Court of Justice (ICJ), the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Court (ICC) all have cases in which this matter was faced.

34. In the judgment *Military and Paramilitary Activities in and against Nicaragua* (Nicaragua v. USA), the United States, on the matter of admissibility, wanted to convince the ICJ that “the activities of ‘groups indigenous to Nicaragua’ that have their own motivations and are beyond the control of any State” (para. 99), but the Court decided that it had jurisdiction to entertain the case and that the Application was admissible (para. 113).⁹

35. In *Prosecutor v. Duško Tadić, Case, Judgment of the ICTY Appeals Chamber*, on 15 July 1999, not only did the Tribunal use Nicaragua’s case before the ICJ, but it also stated that “The content of the requirement of ‘belonging to a Party to the conflict’ is far from clear or precise. The authoritative ICRC Commentary does not shed much

⁹ International Court of Justice, **Military and Paramilitary Activities in and against Nicaragua** (Nicaragua v. USA) (Merits), Judgment of 27 June 1986, ICJ Reports 1986. Available at: <https://www.icj-cij.org/public/files/case-related/70/070-19841126-JUD-01-00-EN.pdf>.

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light on the matter, for it too is rather vague. The rationale behind Article 4 was that, in the wake of World War II, it was universally agreed that States should be legally responsible for the conduct of irregular forces they sponsor (...) The Appeals Chamber thus considers that the Third Geneva Convention, by providing in Article 4 the requirement of “belonging to a Party to the conflict”, implicitly refers to a test of control. (...) It is nevertheless imperative to specify what degree of authority or control must be wielded by a foreign State over armed forces fighting on its behalf in order to render international an armed conflict which is prima facie internal.” (para. 93, 95 and 97). In the end, it decided that “control by a State over subordinate armed forces or militias or paramilitary units may be of an overall character (and must comprise more than the mere provision of financial assistance or military equipment or training). (...) The control required by international law may be deemed to exist when a State (or, in the context of an armed conflict, the Party to the conflict) has a role in organising, coordinating or planning the military actions of the military group, in addition to financing, training and equipping or providing operational support to that group” (para. 137).¹⁰

36. Also, in the Application of the Convention on the Prevention and Punishment of the Crime of Genocide Judgement (Bosnia and Herzegovina v. Serbia and Montenegro or Application of the Genocide Convention 2007), the ICJ used the ICTY’s doctrine of “overall control test” to state that “In this regard the “overall control” test is unsuitable, for it stretches too far, almost to breaking point, the connection which must exist between the conduct of a State’s organs and its international responsibility” (para. 406).¹¹

¹⁰ International Criminal Tribunal for the former Yugoslavia, **Prosecutor v. Duško Tadić**, Case No. IT-94-1-A, Judgment, Appeals Chamber, 15 July 1999. Available at: <https://www.icty.org/x/cases/tadic/acjug/en/tad-aj990715e.pdf>

¹¹ International Court of Justice, **Application of the Convention on the Prevention and Punishment of the Crime of Genocide** (Bosnia and Herzegovina v. Serbia and Montenegro), Judgement, ICJ Reports 2007. Available at: <https://www.icj-cij.org/public/files/case-related/91/091-20070226-JUD-01-00-EN.pdf>

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37. The ICC, on the Judgement pursuant to Article 74 of the Statute – case *The Prosecutor v. Thomas Lubanga Dyilo*, of 15 March 2012, also using the Tadić judgment by the ICTY, stated that “As regards the necessary degree of control of another State over an armed group acting on its behalf, the Trial Chamber has concluded that the “overall control” test is the correct approach. This will determine whether an armed conflict not of an international character may have become internationalised due to the involvement of armed forces acting on behalf of another State. A State may exercise the required degree of control when it “has a role in organising, coordinating or planning the military actions of the military group, in addition to financing, training and equipping or providing operational support to that group” (para. 541).¹²

38. It is obvious that a non-international armed conflict becomes international when another State intervenes in that conflict through its troops (also called direct intervention) or if some of the participants in the internal armed conflict act on behalf of that other State (also called indirect intervention), but this link has to be clear, precise, and sufficient to state that “one is a puppet and the other is the puppet master”. Even the International Committee of the Red Cross and the Red Crescent (ICRC) uses this method: “The ICRC has consistently opted to apply the overall control criterion for the purpose of determining the legal classification of a conflict situation under IHL when there seemed to be a close connection, if not a relationship of subordination, between a non-State party and a third power. (...) The option chosen by the ICRC is therefore in line with recent international jurisprudence of the ICJ, the ICTY and the ICC”.¹³ Antonio Cassese reminds us that this test is of paramount importance because “Attribution ensures that the intervening power is prevented from hiding behind a

¹² International Criminal Court, **The Prosecutor v. Thomas Lubanga Dyilo**, Case No. ICC-01/04-01/06, Judgment pursuant to Art. 74 of the Statute, Trial Chamber I, 14 March 2012. Available at: https://www.icc-cpi.int/CourtRecords/CR2012_03942.PDF.

¹³ FERRARO, Tristan. “The ICRC’s Legal position on the notion of armed conflict involving foreign intervention and on determining the IHL applicable to this type of conflict”. **International Review of the Red Cross**, 97 (900), 2015, pp. 1227-1252, p. 1238.

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proxy to avoid its international obligations and responsibilities under IHL and from refusing to be considered a party to the conflict.”¹⁴

39. In the case analyzed in this opinion, there is not enough available information that prove that Iraq used the MeK as its proxy to carry out Operation Eternal Light in Iran in the context of the then existing armed conflict, the end of which had already been formally agreed. This position is supported by the fact that even the air support Iraq was giving to the group was abruptly ceased, which at least raises a level of doubt as to whether the Operation was carried out under the control of Iraq – since their State did not support its entirety – and could also imply that Iraq’s actions were separate from MeK’s ones, at most coordinating with them, but not commanding.

40. Therefore, the control test fails when it only finds information that deals with some type of financing, weapons, the time proximity and the use of Iraqi territory, which, as seen in the decisions above, is not enough to characterize an Iraqi control of the operations engendered by the MeK against Iran, and therefore make the non-international conflict international. Shared political and/or military objectives does not create a sufficient link of direction, supervision or command of the MeK by Iraq, nor does the gathering of information about the MeK by Iraqi intelligence service, since this is essentially their job.

Some words on ceasefire agreements and the end of an armed conflict

41. It is worth mentioning that, according to the ICTY Boškoski and Tarčulovski Trial Judgment, relying solely on the formal existence of ceasefire, armistice or peace agreements to determine the date of the end of an international or non-international

¹⁴ Antonio Cassese, “The Nicaragua and Tadić Tests Revisited in Light of the ICJ Judgment on Genocide in Bosnia”, **European Journal of International Law**, Vol. 18, No. 4, 2007, p. 656.

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armed conflict can lead to the premature end of the applicability of humanitarian law in situations where, in the world of facts, conflict substantially continues.¹⁵

42. However, based on the facts reported, there is no narration of the continuation of the armed conflict as a whole, but small and punctual provocations that no longer reach the desired level to receive the label of an armed conflict of international interest, mainly after the ceasefire agreement and the discontinuation of the ongoing war. Therefore, in the legal dimension, the conflict was suspended, and in the factual dimension, there was sufficient mirroring of this legal provision.

E. Operation Eternal Light: a part of a conflict of which nature?

43. The characterization of an armed conflict, whether international or non-international, depends directly on the circumstances present in each specific case, since the ICRC works exactly in a case-by-case approach. “If they are detained in an international armed conflict, the ICRC must be granted access to them under the relevant IHL rules. When the fight against terrorism involves a non-international armed conflict, the ICRC offers it humanitarian services to the parties. Outside armed conflict situations, the ICRC exercises its right of humanitarian initiative to request access to persons detained.”¹⁶

44. As per the Opinion Paper of March 2008, written by the ICRC, “international armed conflicts, opposing two or more States, and · non-international armed conflicts, between governmental forces and nongovernmental armed groups, or between such groups only. IHL treaty law also establishes a distinction between non-international armed conflicts in the meaning of common Article 3 of the Geneva Conventions of

¹⁵ ICTY, **Boškoski and Tarčulovski Trial Judgment**, 2008, para. 293 and 294, especially: ‘[T]he temporal scope of the armed conflict covered and extended beyond 12 August and the Ohrid Framework Agreement of 13 August to at least the end of that month.’

¹⁶ International Committee of the Red Cross. **Challenges for IHL – terrorism: overview**. Available at <https://www.icrc.org/en/war-and-law/contemporary-challenges-for-ihl/terrorism>.

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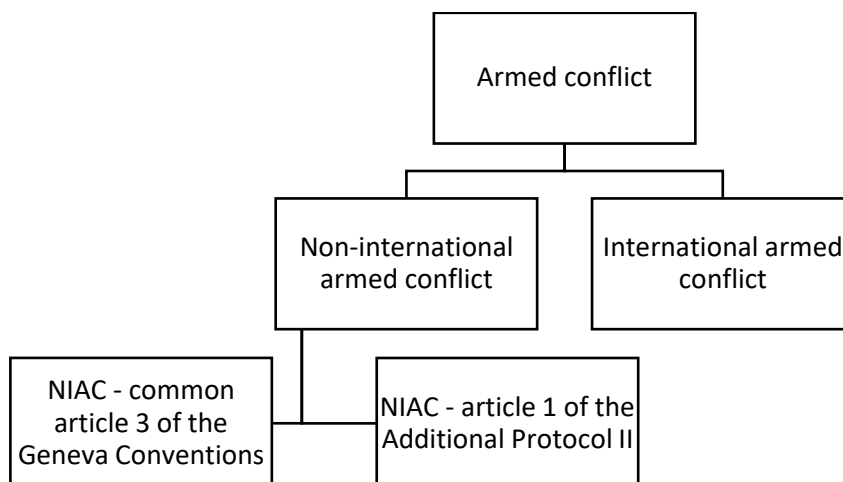
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1949 and non-international armed conflicts falling within the definition provided in Art. 1 of Additional Protocol II." That is, in a simple scheme:



45. An international armed conflict occurs when one or more States have recourse to armed force against another State, regardless of the reasons or the intensity of this confrontation. That is certainly the case of the Iran-Iraq war, as stated in item D. On the other hand, a non-international armed conflict counts on the existence of a non-State armed actor, such as a militia, a domestic terrorist group, paramilitary organizations etc., like MeK in this expert's opinion.

Non-international armed conflicts within the meaning of Common Article 3 of the Geneva Conventions of 1949 versus non-international armed conflicts of article 1 of Additional Protocol II

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46. Common Article 3 applies to “armed conflicts not of an international character occurring in the territory of one of the High Contracting Parties”, that is, since the Geneva Conventions have been broadly ratified – including Iran and Iraq -, this territorial requirement is almost a given assumption. One or more non-governmental armed groups are involved, being a confrontation between themselves, or between a State and themselves.
47. It differentiates 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, because there is a use of military force – instead of only police ones, and there is a minimum organization to the armed forces. There two criteria used by the ICRC were established by the ICTY in the aforementioned Tadić judgement.
48. As to the armed violence that occurred between the MeK and Iran in Operation Eternal Light, the facts given suggest that the terrorist organization displayed degree of organization required by the law of non-international armed conflict. At that period of time, the MeK possessed a command structure, which included Massoud and Maryam Rajavi as its commanders.
49. Operation Eternal Light took place in July 1988, six days after Ayatollah Khomeini had officially announced his acceptance of the UN brokered ceasefire resolution, that is, both Iran and Iraq, regarding their international armed conflict, accepted Resolution 598 of the United Nations Security Council, whose text determined: “[The Security Council] 1. Demands that, as a first step towards a negotiated settlement, the Islamic Republic of Iran and Iraq observe an immediate cease-fire, discontinue all military actions on land, at sea and in the air, and withdraw all forces to the internationally recognized boundaries without delay.”
50. Having failed the *control test* explained in item D, due to lack of available and reliable information that prove that Iraq used the MeK as its proxy to carry out Operation Eternal Light in Iran in the context of the then existing armed conflict, the end of which had already been formally agreed, there are no means of affirming that there was as

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international armed conflict, rather than a non-international one, since MeK is an group Iranian attacking Iran.

51. This position is supported by the fact that even the air support Iraq was giving to the group was abruptly ceased, which at least raises a level of doubt as to whether the Operation was carried out under the control of Iraq – since their State did not support its entirety – and could also imply that Iraq's actions were separate from MeK's ones, at most coordinating with them, but not commanding. Also, only the number of MeK killings are mentioned in the Wikipedia entry on the matter, no Iraqi air forces personnel killings or deaths are included.

52. The Operation, hence, based only on the information available, cannot be a part of an international armed conflict (Iran-Iraq war), since it was formally suspended by the ceasefire, and because there was direct actions from a non-State armed group not demonstrably under Iraqi control, but acting in cooperation with it, which consists of a non-international armed conflict between MeK and Iran, contemporary with the international one.

A few words on non-international armed conflicts within the meaning of article 1 of Additional Protocol II

53. Additional Protocol II, on the other hand, was not signed nor ratified by Iraq, and was only signed by Iran, which jeopardizes its applicability to the case, but its definition of non-international armed conflict is a simpler and more restrictive one, that is, 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".

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54. This definition is narrower than the Common Article 3 one because it requires territorial control by the non-state armed group, and also because the conflict has to be between State armed forces and dissident armed forces or other organized armed groups, excluding conflicts between two or more non-state armed groups. Additional Protocol II, as its name suggest, develops and supplements Common Article 3, without, by any means, modifying its existing conditions of application.

F. A nexus between the executions from 1981 onwards and Operation Eternal Light?

55. As per the facts given "It is worthy to mention that the Iranian judiciary system had started the trial of the members and supporters of the MeK in Tehran and some other cities since 1981. Some of these had been sentenced to capital punishment. The execution of some convicted had been done including in July 1988 and afterwards".

56. If we consider Operation Eternal Light as a part of MeK-Iran non-international armed conflict, within the logical framework that this opinion is building, the prisoners that Iran took since 1981, not only after Operation Eternal Light - and prosecuted according to its domestic law - were not prisoners of war (POW), since this term refers to a special status afforded by the Third Geneva Convention of 1949. As states the ICRC on this matter: "**In a non-international armed conflict, are captured enemy fighters considered prisoners of war?** No. The term "prisoner of war" refers to a special status afforded by the Third Geneva Convention to captured enemy soldiers ("combatants") in international armed conflicts only. Prisoners of war cannot be prosecuted for acts that are lawful under IHL (for example, for having attacked enemy forces). In contrast, in a non-international armed conflict, IHL does not prevent the prosecution of captured rebel fighters for the mere fact of having taken up arms (...)." ¹⁷

¹⁷ International Committee of the Red Cross. **Internal conflict or other situations od violence – what is the difference for victims?.** Available at <https://www.icrc.org/en/doc/resources/documents/interview/2012/12-10-niac-non-international-armed->

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57. Rather, they are legal or political prisoners, depending on the means of Iran's persecution against former MeK members being according to their law – due process, full defense, etc. Also, there was a subjective enlargement, other leftist parties and their members were also prisoners and part of the murders, which also implies that the Operation and the killings might not be related.

G. Conclusion

58. Based on all the above and arguments, here are the objective answers to the questions presented by the consultant:

(A) What was the legal status of MeK (Mojahedin-e Khalq) before 2003, especially in the 1980s when it was engaged in terrorist attacks against Iranian civilians?

The MeK, according to comparative and international law, as per the analysis conducted in this opinion, in that period of time, can be considered a terrorist organization and a non-State armed group.

(B) May the hostilities between the Islamic Republic of Iran and the MeK be classified as international or non-international armed conflict?

The hostilities between the Islamic Republic of Iran and the MeK, according to the facts given, is a non-international armed conflict, since there is not enough link that proves that MeK was being used and proxy by Iraq, even if their objectives might have been the same

conflict.htm#:~:text=In%20a%20non%2Dinternational%20armed%20conflict%2C%20are%20captured%20enemy%20fighters,in%20international%20armed%20conflicts%20only.

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at some point, and if there might have been financial and weaponry support, because international jurisprudence states this is not enough.

(C) What is the legal qualification of Operation Eternal Light?

Operation Eternal Light, according to the facts given, can be considered a hostility between MeK and Iran as a part of a non-international armed conflict, since the proper international armed conflict (Iran-Iraq war) was legally suspended by Resolution 598 of the UN Security Council, and it is not sufficiently proven that Iraq controlled MeK, using it as proxy.

(D) May Operation Eternal Light be classified as a part of an international armed conflict while there was no actual armed conflict between Iraq and Iran from 25 July 1988 to 28 July 1988?

No. As already stated in the answer to question (C), according to the facts given, Operation Eternal Light can be classified as part of a non-international armed conflict between MeK and Iran, since the *test of control* as to prove Iraq would be in charge of the operation was not proven nor the information available is enough to characterize this bond, conforming to international legal precedents and the applicable law.

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

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Based on the facts given, it is not possible to confirm that the executions conducted by Iran from 1981 are linked to Operation Eternal Light, since they began much earlier, their targets were broader than only MeK members, and there were two contemporary conflicts: an international armed conflict between Iran and Iraq, and a non-international armed conflict between MeK and Iran. Based on the limited information available, it is not possible to know if the people who interpreted the facts only found a similarity of designs, in the sense that they saw similarities in the objectives of Iraq (until the end of the war) and in the objectives of the MeK, and therefore, irresponsibly inferred that Operation Eternal Light is "the last act of the Iran-Iraq war", or, as web users who edited the Wikipedia page about it say, "The MEK-Iraqi Operation Eternal Light".

This is my opinion.



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31 January 2022