

Armed Conflict related Questions



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

The group could be categorised as a political group until 20 June 1981, the date when it is proved that they considered the attacks as form action against the Islamic Republic of Iran. The importance of the organizational element in the group is major because the capacity to organize terrorist attacks should be accompanied by the possibility to divide tasks and create a hierarchical structure within the group.

The jurisprudence of the International Criminal Tribunal for the former Yugoslavia has evolved and it has analyzed the organization criterion on several occasions, i.e. Tadić,¹ Čelebići,² Milošević,³ Halilović,⁴ Limaj et al.,⁵ Hadžihasanović and Kubura,⁶ Martić,⁷ and Mrkšić et al.⁸ The Tribunal described the list of the factors to take into account given a specific group or armed group.

In general, “trial Chambers have relied on several indicative factors, none of which are, in themselves, essential to establish whether the “organization” criterion is fulfilled. Such indicative factors include the existence of a command structure and disciplinary rules and mechanisms within the group; the existence of a headquarters; the fact that the group controls a certain territory; the ability of the group to gain access to weapons, other military equipment, recruits and military training; its ability to plan, coordinate and carry out military operations (...).”⁹

However, this is not a single element to take into account for the determination of the existence of an armed group. The specific element should be analyzed in a case-by-case base. Given the information available, the MeK the political activities changed once the terrorist activities started. This status was not unique and stable until 2003. Its capacity to activate one cell to provoke terror in the population proves the power of an organized group and not a simple political entity.

¹ Tadić Trial Judgement, paras 562-563.

² Čelebići Trial Judgement, paras 110, 112, 118, 182-188.

³ Slobodan Milošević Rule 98 bis Decision, paras 14, 17, 22f, 22-25, 40.

⁴ Halilović Trial Judgement, paras 162, 165-166, 168-172.

⁵ Limaj et al. Trial Judgement, paras 83, 93, 171 172.

⁶ Hadžihasanović and Kubura Trial Judgement, paras 14, 20, 25.

⁷ Martić Trial Judgement, paras 41, 343-345, 347.

⁸ Mrkšić et al. Trial Judgement, paras 39, 40, 407, 408, 410, 412, 414, 415, 417.

⁹ Ramush Haradinaj et al., ICTY, Trial Chamber I, Judgment of 3 April 2008, Case No. IT-04-84-T, para. 60.

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

Given the intensity of the hostilities at the different moment of the general conflict, it is not possible to provide a general answer to this question. However, the elements of the international and non-international armed conflict could be identify in the case under analysis.

As established by the jurisprudence of the International Criminal Tribunal for the former Yugoslavia, there are categories to be taken into account at the moment of the attributing the capacity of a non-state actor in a given conflict. The “the number, duration and intensity of individual confrontations, the type of weapons and other military equipment used, the number and calibre of munitions fired, the number of persons and types of forces partaking in the fighting, the number of casualties, the extent of material destruction, and the number of civilians fleeing combat zones. The involvement of the UN Security Council may also be a reflection of the intensity of a conflict.”¹⁰

In conclusion, the intensity of the hostilities is not fulfilled in the case under analysis. Even with the support of Iraq and the connections with the Saddam Hussein’s regime for specific actions during the hole conflict.

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

As it was described by several public sources of information, the Operational Eternal Ligth advanced from Iraq inside Iran reaching Kermanshah. The creation of the National Liberation Army signified a big change in the conflict and the intensity of the hostilities again the Islamic Republic of Iran.

Given the information available, the Operation Eternal Light could be identified as a terrorist attack with the characteristics of an internal disturbance. The jurisprudence of international tribunals and the doctrine identified the specific elements to take into account for the analysis of hostilities as the Operation Eternal Light. In the case of Professor Schindler, he explains that “practice has set up the following criteria to delimit non-international armed conflicts from internal disturbances. In the first place, the hostilities have to be conducted by force of arms and exhibit such intensity that, as a rule, the govern- ment is compelled to employ its armed forces against the insurgents instead of mere police forces”.¹¹

As in the case under analysis, the hostilities initiated by a group against another group or a State “(...) are meant to be of a collective character, that is, they have to be carried out not only by single groups. In addition, the insurgents have to exhibit a minimum amount of organisation. Their armed forces should be under a responsible command and be capable of

¹⁰ Ramush Haradinaj et al., ICTY, Trial Chamber I, Judgment of 3 April 2008, Case No. IT-04-84-T, para. 49.

¹¹ Dietrich Schindler, *The Different Types of Armed Conflicts According to the Geneva Conventions and Protocols*, Recueil des cours, Martinus Nijhof, Brill, 1979, Vol. 163/ii, p. 147.

meeting minimal humanitarian requirements. Accordingly, the conflict must show certain similarities to a war, without fulfilling all conditions necessary for the recognition of belligerency.”¹²

(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?

We could only answer this question positively if we consider Operation Eternal Light the action starting the international armed conflict. As this is not clear, given the situation in the ground and the information available from public sources, it should not be classified to the previous or posterior armed conflicts.

The International Criminal Tribunal for the former Yugoslavia established that “a violation of the laws or customs of war may therefor occur at a time when an in a place where no fighting is actually taking place. (...) It would be sufficient, for instance for the purpose of this requirement, that the alleged crimes were closely related to hostilities occurring in other part of the territories controlled by the parties to the conflict”.¹³

The Kunarac case is the most important reference to take into account for the analysis of this question in the case of the Operation Eternal Light. The appeals decision clearly establishes that “hat ultimately distinguishes a war crime from a purely domestic offence is that a war crime is shaped by or dependent upon the environment – the armed conflict – in which it is committed. It need not have been planned or supported by some form of policy. The armed conflict need not have been causal to the commission of the crime, but the existence of an armed conflict must, at a minimum, have played a substantial part in the perpetrator’s ability to commit it, his decision to commit it, the manner in which it was committed or the purpose for which it was committed. (...)”¹⁴

The acts and actions in the conflict should be connected to the general armed conflict to be part and to be covered by the international humanitarian law. For this reason, the jurisprudence prescribes that “in determining whether or not the act in question is sufficiently related to the armed conflict, the Trial Chamber may take into account, *inter alia*, the following factors: the fact that the perpetrator is a combatant; the fact that the victim is a non-combatant; the fact that the victim is a member of the opposing party; the fact that the act may be said to serve the ultimate goal of a military campaign; and the fact that the crime is committed as part of or in the context of the perpetrator’s official duties”.¹⁵

¹² Idem.

¹³ Kunarac et al. Appeal Judgement, para. 57.

¹⁴ Kunarac et al. Appeal Judgement, para. 58.

¹⁵ Kunarac et al. Appeal Judgement, para. 59.

Finally, as defined by a public document of the ICRC, non international armed conflicts are “protracted armed confrontations occurring between governmental armed forces and the forces of one or more armed groups, or between such groups arising on the territory of a State (party to the Geneva Conventions). The armed confrontation must reach a minimum level of intensity and the parties involved in the conflict must show a minimum of organization.”¹⁶

As explained in previous paragraphs, the Operational Eternal Light do not fulfil the requirements of intensity and, even more, its nexus with the armed conflict cannot be established.

(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?

Even if we try to follow the position of the majority of the authors, before 25 July 1988, there is no possible legal nexus between the executions and the Operation Eternal Light. The reasons behind the activation of the Operation Eternal Light by the Mek are not part of this document, in any case, if any execution happened after the Operation they should be analysed in a different stage, in a different period of time and, in consequence, in a different document.

The doctrine explain that the protection of the international humanitarian law of civilians or members of organized groups has, in some cases, restrictions. As established by Ms. Pejic, “in addition to the restraints imposed by IHL on specific means and methods of warfare, and without prejudice to further restrictions that may arise under other applicable branches of international law, the kind and degree of force that is permissible against persons not entitled to protection against direct attack must not exceed what is actually necessary to accomplish a legitimate military purpose in the prevailing circumstances.”¹⁷

Therefore, the executions starting from 1981 until 25 July 1988 were not covered by IHL, these actions should be analysed under the legal framework of the Islamic Republic of Iran and, eventually, by the International Human Rights legal framework.

¹⁶ How is the Term ‘Armed Conflict’ Defined in International Humanitarian Law? ICRC Opinion Paper, March 2008, available at: <http://www.icrc.org>

¹⁷ Jelena Pejic, “The protective scope of Common Article 3: more than meets the eye”, International Review of the Red Cross, Volume 93 Number 881 March 2011.