

Legal Opinion on whether Alleged Executions and Torture of prisoners in Gohardasht prison between July and September 1988 can be regarded as war crimes



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A. Introduction

1. This Legal Opinion, requested by the Defence team, addresses the question of whether the alleged executions and torture of prisoners in Iranian Gohardasht prison between July and September 1988 can be regarded as war crimes.
2. In order for an offence to qualify as a war crime it must have a close or sufficient nexus with an armed conflict.¹ This nexus is a contextual element which distinguishes it from ordinary domestic crimes and also differentiates it from other international crimes.² While the word ‘nexus’ is not used in the Statutes of international military tribunals, the nomenclature ‘war crime’ indicates a link with armed conflict³ and jurisprudence from all international criminal tribunals has reiterated the nexus requirement. Hathaway *et al* comment that heretofore, ‘the most common approach to defining a war crime has been to identify a war crime as a violation of the law of war that has been “criminalized”’.⁴
3. This Opinion will first set out the factual background to the alleged executions and torture of prisoners in Gohardasht prison between July and September 1988 (Section B). It will then discuss how international criminal tribunals have dealt with the question of the nexus between offences and armed conflict and will also address the customary nature of the nexus requirement (Section C). It will provide some commentary on the nexus requirement (Section D) before applying the legal framework to the facts of the current case (Section E). Some conclusions are then found in Section F.
4. The section on the factual background will draw on evidence from several sources, including a report by Amnesty International, entitled *Blood Soaked Secrets* (hereinafter ‘AI Report’)⁵ and a report by Geoffrey Robertson (hereinafter ‘Robertson Report’).⁶ It is difficult to find additional verifiable English-language information on the alleged instances of killings and torture in Iranian prisons in 1988 and no official documentation or primary legal sources were identified which fully support the claims included in these reports. It is also important to point out potential bias of witnesses whose evidence is analysed in these reports.⁷ The Opinion will also rely on decisions of international criminal tribunals in its

¹ In respect of the history of the prosecution of war crimes, see Theodor Meron, ‘Reflections on the Prosecution of War Crimes by International Tribunals’, 100(3) *The American Journal of International Law* 2006, pp. 551-579.

² See Harmen van der Wilt, ‘War Crimes and the Requirement of a Nexus with an Armed Conflict’, 10(5) *Journal of International Criminal Justice* 2012, pp. 1113-1128. See also Antonio Cassese, ‘The Nexus Requirement for War Crimes’, 10(5) *Journal of International Criminal Justice* 2012, pp. 1395-1418; Theresa Velardi, ‘War Crimes and the Nexus Requirement: Exploring the Nexus Requirement and Advocating for a Broader Definition and Application of the Nexus Requirement’, (2021). *Law School Student Scholarship* 1189, https://scholarship.shu.edu/student_scholarship/1189.

³ See G. Mettraux, ‘Nexus with Armed Conflict’, in A. Cassese *et al.* (eds), *Oxford Companion to International Criminal Justice* (OUP, 2009), at 435.

⁴ Oona A. Hathaway, Paul K. Strauch, Beatrice A. Walton, Zoe A. Y. Weinberg, ‘What is a War Crime?’, 44(1) *The Yale Journal of International Law* (2019), pp. 53-113, p. 54.

⁵ Amnesty International, *Blood-Soaked Secrets*, 2017.

⁶ Report of an Inquiry Conducted by Geoffrey Robertson QC, *The Massacre of Political Prisoners in Iran*, (Abdorrahman Boroumand Foundation: 1988).

⁷ In respect of reliability of information from NGOs, see James McGann and Mary Johnstone, ‘Public Benefit Organizations. The Power Shift and the NGO Credibility Crisis’, 8(2) *The International Journal of Not-For-Profit*

discussion on the nexus requirement of war crimes, in addition to peer-reviewed journal articles.

Law, 2005, available at: <https://www.icnl.org/resources/research/ijnl/the-power-shift-and-the-ngo-credibility-crisis>, accessed 27 March 2022. This article states: 'The problem is that this information can be unsystematic, unreliable, and/or tainted by the interests of those who are disseminating it.' (np). This article also states that 'NGOs are hardly neutral on issues of policy formation. Due to their varied nature, NGOs often play the interesting dual role of providing information and acting as an agent of political pressure on the government, leading to potential conflicts of interest.' (np).

B. Factual Background

5. The People's Mojahedin Organization of Iran (PMOI) or the Mujahedin-e-Khalgh (MeK) was founded on September 6, 1965, by Mohammad Hanifnejad, Saeid Mohsen and Ali Asghar Badizadegan, and became 'the principal and longest-standing Iranian opposition movement'.⁸
6. In 1981, Khomeini's regime began a widespread and violent crackdown on all opposition groups.⁹
7. In response, on 21st June 1981 the PMOI/MeK announced armed struggle against the Islamic Republic and assassinated a number of senior officials.¹⁰ However, 'many sympathizers of the organization were not armed and did not participate in armed conflict.'¹¹
8. In 1981 the PMOI/MeK leadership based itself in France.
9. In early 1986, after the PMOI/MeK leaders were expelled from France, they based themselves in Iraq.
10. The PMOI/MeK created an armed force called the National Liberation Army (NLA) in June 1987.
11. During the Iran-Iraq war, the NLA launched a number of armed incursions into Iranian territory from Iraq.
12. The last major offensive was on 25 July 1988, Operation 'Eternal Light'.
13. On July 28th 1988, 3 days after Operation 'Eternal Light', it is claimed that a *fatwa* was issued, which ordered the establishment of a 3-person committee in each region of Iran,¹² comprising a *Shari'a* judge, the prosecutor general or his assistant prosecutor, and a representative from the ministry of intelligence. The *fatwa* ordered the execution of prisoners who remained "steadfast" in their support for the PMOI. Prisoners in Iranian prisons were brought before these commissions across the country.¹³
14. It is claimed that a second wave of executions and torture took place in August/September 1998. It is claimed that the first wave focused mainly on PMOI/MeK sympathisers and the

⁸ A primer on the history of the People's Mojahedin Organization of Iran', available at: <https://english.mojahedin.org/a-primer-on-the-history-of-the-peoples-mojahedin-organization-of-iran/>, accessed 8 March 2022.

⁹ About the People's Mojahedin Organization of Iran (PMOI/MEK), available at: <https://english.mojahedin.org/about-the-peoples-mojahedin-organization-of-iran-pmoi-mek/>, accessed 8 March 2022

¹⁰ Rand Corporation, *The Mujahedin-e Khalq in Iraq. A Policy Conundrum*, (Library of Congress Cataloging-in-Publication Data, 2009), p. 83. Fig. C1

¹¹ Amnesty International, *Blood-Soaked Secrets*, 2017, p. 34.

¹² Amnesty International, *Blood-Soaked Secrets*, 2017, p. 10.

¹³ Amnesty International, *Blood-Soaked Secrets*, 2017, p. 10.

second focused mainly on the issue of apostacy.¹⁴ No *fatwa*, relating to the alleged second wave of executions has been identified

15. The AI report states that prisoners who had been sentenced as a result of their political activities and ideologies were asked by the 3-person committee if they would denounce their political views. In some cases, they were also asked if they were prepared to execute or inflict harm on other dissidents. Those who did not renounce membership of the organization and assisting it were condemned to death and executed.¹⁵
16. It is alleged that in prisons in the Tehran region hundreds of men affiliated with leftist opposition groups were also executed, but their interrogation by the 3-person committee focused on religion, rather than politics, as they were asked if they were Muslim or if they prayed? Some were condemned to death for deserting Islam while others were spared the death penalty but were flogged until they agreed to pray.¹⁶
17. Leftist women were asked similar questions about religion, and they were lashed 5 times every prayer time until they agreed to pray regularly.¹⁷
18. In Kurdistan and West Azerbaijan provinces, the alleged executions and torture also focused on prisoners affiliated with the Kurdish opposition groups Komala and the Kurdish Democratic Party of Iran.¹⁸
19. According to the AI Report “[m]ost of the prisoners killed were serving lengthy prison terms imposed because of their political opinions and peaceful activities such as distributing opposition newspapers and leaflets, taking part in demonstrations, collecting donations for prisoners’ families or associating with those who were politically active. Others had been held for years without trial or had completed their sentences and were due to be released. Some had served their sentences but were told they would not be released until they were “sufficiently repentant””.¹⁹

¹⁴ See Report of an Inquiry Conducted by Geoffrey Robertson QC, *The Massacre of Political Prisoners in Iran*, (Abdorrahman Boroumand Foundation: 1988), p. 41 and p. 63.

¹⁵ Amnesty International, *Blood-Soaked Secrets*, 2017, p. 10.

¹⁶ Amnesty International, *Blood-Soaked Secrets*, 2017, p. 10.

¹⁷ Amnesty International, *Blood-Soaked Secrets*, 2017, p. 10.

¹⁸ Amnesty International, *Blood-Soaked Secrets*, 2017, p. 10.

¹⁹ Amnesty International, *Blood-Soaked Secrets*, 2017, p. 2.

C. The Armed Conflict ‘Nexus’ Requirement of War Crimes

20. An offence must have a nexus to an armed conflict to qualify as a war crime.²⁰ This means that the context in which the offence was committed must be considered before a valid war crimes prosecution can occur.²¹
21. A nexus between an offence and an armed conflict in order to establish a war crime has been a requirement in all international criminal tribunals, including at the International Military Tribunal, which pre-dates the current case, although an explicit discussion of the nexus requirement has not always been undertaken in each case in which war crimes have been prosecuted.²²
22. Hathaway *et al* comment that ‘[a]cross commentary and cases, it is widely recognized that for conduct to amount to a violation of IHL to which criminal responsibility can attach, there must be a sufficient “nexus” between the conduct at issue and the relevant armed conflict.’²³
23. They explain the rationale for this nexus requirement, stating that it ‘helps establish a connection between the violation of IHL, which is a body of law generally applicable to the behavior of States, and the act committed by an individual.’²⁴
24. The Prosecution of War Crimes and the Armed Conflict Nexus
Cassese comments that ‘[p]rosecuting authorities in criminal proceedings dealing with alleged war crimes will have to prove the existence of this nexus beyond reasonable doubt on the basis of various indicia.’²⁵
25. These indicia have been analysed in various cases from international criminal tribunals, which are discussed below. While the events in question in the current case predate the adoption of these Statutes and the decisions in these cases, apart from that of the International Military Tribunal, the approach to the definition of war crimes in these tribunals is acknowledged as customary law in Rule 156 of the ICRC’s IHL Customary Law Study.²⁶

²⁰ In respect of the history of the prosecution of war crimes, see Theodor Meron, ‘Reflections on the Prosecution of War Crimes by International Tribunals’, 100(3) *The American Journal of International Law* 2006, pp. 551-579.

²¹ See Harmen van der Wilt, ‘War Crimes and the Requirement of a Nexus with an Armed Conflict’, 10(5) *Journal of International Criminal Justice* 2012, pp. 1113-1128. See also Antonio Cassese, ‘The Nexus Requirement for War Crimes’, 10(5) *Journal of International Criminal Justice* 2012, pp. 1395-1418.

²² See Antonio Cassese, ‘The Nexus Requirement for War Crimes’, *Journal of International Criminal Justice*, 10(5) (2012), pp. 1395-1418. See also A. Obote-Odora, ‘Prosecution of War Crimes by the International Criminal Tribunal for Rwanda’, *Murdoch University Electronic Journal of Law* 8(2) (2001) and Larissa van den Herik and Elies van Sliedregt, ‘Ten Years Later, the Rwanda Tribunal still Faces Legal Complexities: Some Comments on the Vagueness of the Indictment, Complicity in Genocide, and the Nexus Requirement for War Crimes’, *Leiden Journal of International Law* 17(3) (2004), pp. 537-557.

²³ Oona A. Hathaway, Paul K. Strauch, Beatrice A. Walton, Zoe A. Y. Weinberg, ‘What is a War Crime?’, 44(1) *The Yale Journal of International Law* (2019), pp. 53-113, p. 84.

²⁴ Oona A. Hathaway, Paul K. Strauch, Beatrice A. Walton, Zoe A. Y. Weinberg, ‘What is a War Crime?’, 44(1) *The Yale Journal of International Law* (2019), pp. 53-113, p. 84.

²⁵ Antonio Cassese, ‘The Nexus Requirement for War Crimes’, 10(5) *Journal of International Criminal Justice*, 10(5) (2012), pp. 1395-1418, p. 1395.

²⁶ See Rule 156 ‘Definition of War Crimes’, ICRC Customary Law Study Database, available at: https://ihl-databases.icrc.org/customary-ihl/eng/docindex/v2_rul_rule156.

26. The International Military Tribunal

Discussing the IMT's convictions of war crimes, Cassese notes that 'It would appear that the pivotal element to establish the required nexus was, in such cases, that the crimes occurred during an armed conflict, that the persons in question were protected by IHL, and that the attacks against them were carried out pursuant to the persecutory policy underpinning the conflict - **and were not motivated by reasons extraneous to the war.**'²⁷

27. The International Criminal Tribunal for the Former Yugoslavia (ICTY)

The ICTY stated in the case of *Tadić* '[f]or an offence to be a violation of international humanitarian law, [...] this Trial Chamber needs to be satisfied that each of the alleged acts was in fact **closely related to the hostilities.**'²⁸

28. In its judgment in the *Krajišnik case* in 2006, the ICTY Trial Chamber stated the following in respect of the nexus requirement: 'The alleged crime need not have occurred at a time and place in which there was actual combat, so long as the acts of the perpetrator were "closely related" to hostilities occurring in territories controlled by parties to the conflict. The existence of this close relationship between the crime and the armed conflict will be established where it can be shown that **the conflict played a substantial part in the perpetrator's ability to commit the crime, his or her decision to commit it, the manner in which it was committed, or the purpose for which it was committed.**'²⁹

29. The Appeals Chamber in the *Kunarac* case stated that 'if it can be established, as in the present case, that the perpetrator acted **in furtherance of or under the guise of the armed conflict**, it would be sufficient to conclude that his acts were closely related to the armed conflict.'³⁰ The meaning of 'guise of the armed conflict' was further elaborated on by the International Criminal Tribunal for Rwanda (ICTR) in the *Rutanga* case, mentioned below.

30. The Chamber stated in the *Sefer Halilović* case that, in order for an action to amount to a war crime, '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.**'³¹

31. ICTR

The earlier case law of the ICTR insisted 'on a **direct relation between the act and the armed conflict**'.³² This approach changed slightly with the case of *Rutanga*. Here the chamber agreed with the approach in the *Kunarac* case, set out above. However, it clarified some points, including the meaning of the phrase 'under the guise of the armed conflict',

²⁷ Antonio Cassese, 'The Nexus Requirement for War Crimes', *Journal of International Criminal Justice*, 10(5) (2012), pp. 1395-1418, p. 1399.

²⁸ *The Prosecutor v. Dusko Tadić*, IT-94-1, Appeals Chamber, Decision, 2 October 1995, para. 573.

²⁹ *The Prosecutor v Momčilo Krajišnik*, Judgment, Case No. IT 00-39-T, 27 September 2006, para. 846.

³⁰ *The Prosecutor v Kunarac, Kovac and Vuković*, Appeal Judgment, Case No. IT-96-23-A & IT-96-23/1-A, A.Ch., 12 June 2002, para. 58.

³¹ *The Prosecutor v Sefer Halilović*, Judgment, Case No. IT-01-48-T, 16 November 2005, para. 726.

³² Larissa van den Herik and Elies van Sliedregt, 'Ten Years Later, the Rwanda Tribunal still Faces Legal Complexities: Some Comments on the Vagueness of the Indictment, Complicity in Genocide, and the Nexus Requirement for War Crimes', *Leiden Journal of International Law* 17(3) (2004), pp. 537-557, p. 552.

which it understood to mean ‘**at the same time as the conflict**’, or ‘**in all circumstances created by the armed conflict**’.³³

32. The Special Court for Sierra Leone (SCSL)

At the SCSL, the Chamber in *Fofana and Kondewo* stated that the nexus requirement ‘is satisfied where the Accused **acted in furtherance of or under the guise of the armed conflict**. The expression “**under the guise of the armed conflict**” **does not mean simply “at the same time as an armed conflict” and/or “in any circumstances created in part by the armed conflict”**’.³⁴ The Chamber follows the ICTY / ICTR approach to interpretation, stating that ‘the nexus requirement is fulfilled if the alleged violation was closely related to the armed conflict.’³⁵

33. The International Criminal Court (ICC)

The Elements of Crimes of the ICC includes the nexus requirement, both in the context of conflicts of an international character and in conflicts not of an international character, stating that that in order to qualify as a war crime, the conduct must have been committed ‘in the context of and associated with’ an armed conflict.³⁶

34. In its Decision on the Confirmation of Charges in the *Lubanga* case in 2007, the ICC Pre-Trial Chamber stated that a war crime ‘...**is committed if there is a nexus between the criminal act in question and the armed conflict** ... the Elements of Crimes require that the conduct in question took place in the context of and was associated with an armed conflict.’³⁷ It further stated that ‘[i]n this respect, **the Chamber follows the approach of the jurisprudence of the ICTY, which requires the conduct to have been closely related to the hostilities occurring in any part of the territories controlled by the parties to the conflict**. The armed conflict need not be considered the ultimate reason for the conduct and the conduct need not have taken place in the midst of battle. Nonetheless, **the armed conflict must play a substantial role in the perpetrator’s decision, in his or her ability to commit the crime or in the manner in which the conduct was ultimately committed**.’³⁸

35. It then stated that, once the existence of an armed conflict has been established, ‘in order for a particular crime to qualify as a war crime within the meaning of article 8(2)(b)(xxvi) and 8(2)(e)(vii) of the [1998 ICC] Statute, at this stage, **the Prosecution must establish that there are substantial grounds to believe that there is sufficient and clear nexus between that crime and the conflict. In other words, it must be proved that there are substantial grounds to believe that the alleged crimes were closely related to the hostilities**.’³⁹

³³ *The Prosecutor v Rutaganda, Appeal Judgement*, Case No. ICTR-96-3-A, A.Ch., 26 May 2003, para. 570.

³⁴ *The Prosecutor v Fofana and Kondewa*, Trial Chamber Judgment, SCSL-04-14-T, 2 August 2007, para. 129.

³⁵ *The Prosecutor v Fofana and Kondewa*, Trial Chamber Judgment, SCSL-04-14-T, 2 August 2007, para. 129.

³⁶ Article 8, International Criminal Court (ICC), Elements of Crimes, 2011, ISBN No. 92-9227-232-2, available at: <https://www.refworld.org/docid/4ff5dd7d2.html> [accessed 25 March 2022].

³⁷ *The Prosecutor v Thomas Lubanga Dyilo*, ICC-01/04-01/06, 19 January 2007, para 286.

³⁸ *The Prosecutor v Thomas Lubanga Dyilo*, ICC-01/04-01/06, 19 January 2007, para 287.

³⁹ *The Prosecutor v Thomas Lubanga Dyilo*, ICC-01/04-01/06, 19 January 2007, para 288.

36. In *Ntaganda*, the Trial Chamber stated: ‘As a consequence of the prohibition against rape and sexual slavery being peremptory norms, such conduct is prohibited at all times, both in times of peace and during armed conflicts, and against all persons, irrespective of any legal status. However, **this does not mean that any rape or instance of sexual slavery occurring during an armed conflict constitutes a war crime. In respect of the Defence’s argument that rape and sexual slavery may constitute ‘ordinary’ crimes or crimes against humanity, but not war crimes, the Chamber recalls that the nexus requirement of the contextual elements of war crimes, namely that the alleged conduct took place in the context of and was associated with an international or non-international armed conflict, will have to be satisfied in all cases, which is a factual assessment which will be conducted by the Chamber in analysing the evidence in the case.**’⁴⁰

37. Customary Law

Rule 156 of the ICRC’s IHL Database on Customary Law, states that ‘[s]erious violations of international humanitarian law constitute war crimes.’⁴¹ The Database also states that ‘State practice establishes this rule as a norm of customary international law applicable in both international and non-international armed conflicts.’⁴²

38. As international humanitarian law only applies in situations of armed conflict, this means that war crimes can only be committed in situations of armed conflict, whether that be an international armed conflict or a non-international armed conflict but cannot be committed in situations of internal disturbance or tension or when no armed conflict exists.

39. Swedish Law

The ICRC’s IHL Database includes a Swedish case in which the issue of the nexus between an offence and an armed conflict in respect of war crimes is discussed.⁴³ This affirms the need for a ‘close connection’ between the offence and the armed conflict (translated from Swedish ‘nära koppling’).⁴⁴

⁴⁰ *The Prosecutor v Ntaganda*, CC-01/04-02/06-1707, 4 January 2017, para. 52.

⁴¹ ICRC, IHL Database on Customary IHL, available at: https://ihl-databases.icrc.org/customary-ihl/eng/docindex/v1_rul_rule156#:~:text=The%20Statute%20of%20the%20International,1%5D%20The%20Statutes%20of%20the, accessed 12 March 2022.

⁴² ICRC, IHL Database on Customary IHL, available at: https://ihl-databases.icrc.org/customary-ihl/eng/docindex/v1_rul_rule156#:~:text=The%20Statute%20of%20the%20International,1%5D%20The%20Statutes%20of%20the, accessed 12 March 2022.

⁴³ Case No. B 4770-16, Svea Court of Appeal, 5 August 2016, SVEA HOVRÄTT, DOM 2016-08-05 Stockholm.

⁴⁴ Translated via Google Translate, 15 March 2022.

D. Commentary on the Nexus Requirement

40. In comparing the interpretations of the nexus requirement at the ICTY and the ICTR, van den Herik and van Sliedregt comment that '[o]ne should bear in mind that the determination of a nexus is a factual affair...and that the factual context in which the ICTY operates is of a different nature than that of the ICTR.'⁴⁵
41. The establishment of a nexus has, therefore, always been assessed on a case-by-case basis at international tribunals, depending on the context of the situation being addressed by them. Therefore, the exact parameters of the nexus may vary slightly, depending on the context in which the alleged crime took place.
42. However, it can be seen from the above discussion that, while international tribunals have taken slightly different approaches to the nexus concept in the jurisprudence, the common element which each tribunal focuses on is a '**close relationship**' between the armed conflict and the activity of the accused in order for a war crime, rather than a 'normal crime' to have been perpetrated.
43. Reviewing the jurisprudence of the international criminal tribunals, it is clear that not all offences committed during the time an armed conflict, whether international, or non-international, is ongoing, are war crimes. The 'close relationship' can be deduced if the offence was committed in furtherance of the armed conflict, or if the armed conflict played a significant role in the ability to commit the offence, but this relationship cannot be proven if the motivation for the committal of such an offence is not related to the armed conflict.

⁴⁵ Larissa van den Herik and Elies van Sliedregt, 'Ten Years Later, the Rwanda Tribunal still Faces Legal Complexities: Some Comments on the Vagueness of the Indictment, Complicity in Genocide, and the Nexus Requirement for War Crimes', 17(3) *Leiden Journal of International Law* 2004, pp. 537-557, p. 552.

E. Application of the Legal Framework to the Facts

44. In order for the existence of war crimes to be proved, a ‘close relationship’ between the armed conflict (whether an international armed conflict or a non-international armed conflict) and the alleged executions and torture of prisoners in Iran in 1988 must be established.

45. Evidence

A number of reports and memoirs have detailed the events surrounding the alleged executions and torture in Gohardasht prison in 1988, which provide details from victims and witnesses. This Opinion relies on, in particular, the AI Report *Blood Soaked Secrets*,⁴⁶ and an audio recording of an alleged 1988 meeting of Iranian officials in Tehran, the transcript of which is in the AI report.⁴⁷

46. Can the alleged execution and torture of prisoners in Gohardasht prison in 1988 be regarded as war crimes?

As shown above, an offence can only amount to a war crime if it has a close relationship with an armed conflict. The alleged execution and torture of Iranian prisoners happened towards the end of the Iran-Iraq war and at a similar time to an armed incursion by the PMOI/MeK into Iranian territory from its base in Iraq. **The relevant question is, therefore, was there a ‘close relationship’ between the alleged executions and torture and either or both of these armed conflicts (if it is proven that an armed conflict existed)?**

47. While the Iranian government repeatedly denied undertaking mass executions, when further questioned on the matter, officials commented that some executions of PMOI/MeK members who had taken part in an armed incursion against Iran, i.e., Operation ‘Eternal Light’, had taken place.⁴⁸

48. The AI report suggests that executions and torture took place,⁴⁹ and considers that the executions and torture were planned long in advance of Operation ‘Eternal Light’.

49. To support this point, it should be noted that most of the prisoners were serving lengthy sentences as a result of political opinions and ideological support for the PMOI/MeK and had been in prison long before the armed incursion.⁵⁰

50. Therefore, the majority of victims were political prisoners, who had not been actively involved in any use of violence, although some supported the ideology of the PMOI/MeK. This view is supported by the UN Special Representative on the situation of human rights in Iran between 1986 and 1995, Reynaldo Galindo Pohl, who reported in January 1989 that he had received, since July 1988, ‘persistent reports... about a wave of executions of

⁴⁶ Amnesty International, *Blood-Soaked Secrets*, 2017, p. 8-9.

⁴⁷ Amnesty International, *Blood-Soaked Secrets*, 2017, p. 9.

⁴⁸ Various examples of Iranian government officials’ statement claiming that the executions were of PMOI fighters are included in Amnesty International’s report - see, Amnesty International, *Blood-Soaked Secrets*, 2017, pp. 66-69.

⁴⁹ Amnesty International, *Blood-Soaked Secrets*, 2017.

⁵⁰ Amnesty International, *Blood-Soaked Secrets*, 2017, 11.

political prisoners... by various sources, including nongovernmental organizations in consultative status with the Economic and Social Council and other bodies directly concerned by the alleged wave of executions.’⁵¹

51. The Special Rapporteur also noted that numerous victims had no link to the PMOI/MeK but were members of other opposition groups, such as the Tudeh Party, the People’s Fadaiyan Organization, Rahe Kargar and the Komala Organization in Iranian Kurdistan. Crucially, the UN Special Rapporteur also commented that ‘[m]any of the people said to have been executed had been serving prison terms for several years, while others were former prisoners who were rearrested and then executed. It would therefore seem unlikely that these persons could have taken part in violent activities against the Government, such as participation in the [PMOI] incursion into the western part of the Islamic Republic of Iran in July 1988.’⁵²
52. The AI report also states that ‘[a]nother group of those killed had been released several years earlier but were then rearrested in the weeks leading up to or shortly after the PMOI’s armed incursion on 25 July 1988.’⁵³
53. Amnesty International provides evidence that Operation ‘Eternal Light’ was used as a **pretext** by the Iranian government for **pre-planned executions** of those who disagreed with their ideology, both those who were ideologically aligned with the PMOI/MeK, and those who had other ‘Left’ or apostatic views. They point to evidence from prisoners of a pattern between late 1987 and July 1988, **pre-dating Operation ‘Eternal Light’**, of unexpected interrogations on political opinions, with prisoners being told they would be ‘cleansed’ and ‘dealt with’.⁵⁴
54. Amnesty International states that a number of former prisoners believe that Iranian officials engaged in an exercise to categorise prisoners by transferring people between prisoners, thus facilitating easy identification of prisoners of a particular ideology who could later be ‘cleansed’.⁵⁵
55. Supporting the view that the executions and torture were pre-planned and not motivated by, or linked with an armed conflict is an audio-recording released by Ahmad Montazeri, of a high-level official meeting on 14 or 15 August 1988 of a conversation between Iranian officials. Hossein Ali Montazeri stated: ‘In my view, this is something that the Ministry of

⁵¹ *Report on the human rights situation in the Islamic Republic of Iran, prepared by the Special Representative of the Commission on Human Rights*, 26 January 1989, UN Doc. E/CN.4/1989/26, www.un.org/en/ga/search/view_doc.asp?symbol=E/CN.4/1989/26, para. 15. It should be noted that the UN General Assembly also recognised the victims as political prisoners. It expressed ‘grave concern... that there was a renewed wave of executions in the period July-September 1988 whereby a large number of persons died because of their political convictions.’ UN General Assembly, *Situation of human rights in the Islamic Republic of Iran*, A/RES/43/137, www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/43/137, para. 5.

⁵² *Report on the human rights situation in the Islamic Republic of Iran, prepared by the Special Representative of the Commission on Human Rights*, 26 January 1989, UN Doc. E/CN.4/1989/26, www.un.org/en/ga/search/view_doc.asp?symbol=E/CN.4/1989/26, para. 17

⁵³ Amnesty International, *Blood-Soaked Secrets*, 2017, p. 2.

⁵⁴ Amnesty International, *Blood-Soaked Secrets*, 2017, 92.

⁵⁵ Amnesty International, *Blood-Soaked Secrets*, 2017, 92.

Intelligence had in mind and invested in and Mr Ahmad [Khomeini], the son of Mr [Rouhollah] Khomeini, was persistently saying from three or four years ago that Mojahedin [PMOI members and supporters] must all be executed, including those of them who read [PMOI] newspapers, magazines and pamphlets. This is the thought that they had, and now, **they are taking advantage of the opportunity presented by the events related to the attack** of the monafeqin on us.⁵⁶ This illustrates that the ministry of intelligence was using the PMOI's armed incursion as a **pretext** for dealing with PMOI/MeK members and members of other groups.⁵⁷

⁵⁶ This transcription of the audio-recording is included in Amnesty International, *Blood-Soaked Secrets*, 2017, 95. The Report comments that audio file is available, in Persian, on Radio Zamaneh, "Audio file of Ayatollah Montazeri's meeting with the officials responsible for the executions of the summer of 1988", 9 August 2016, 2:56, soundcloud.com/radiozamaneh/yakydru8jded

⁵⁷ See also Report of an Inquiry Conducted by Geoffrey Robertson QC, *The Massacre of Political Prisoners in Iran*, (Abdorrahman Boroumand Foundation: 1988), p. 83, which supports this argument.

F. Conclusions

56. In conclusion, if it is accepted that an armed conflict existed during the period when the alleged executions and acts of torture were committed against prisoners in Iran (July-August 1988), such alleged acts were not closely related to an armed conflict.
57. Rather, Operation 'Eternal Light' (whether regarded as an armed conflict or not) was used as a pretext by the Iranian authorities to carry out pre-planned attacks and was not motivated by the Operation. This is evidenced by the prior categorisation of prisoners in Iranian prisons for 'cleansing' purposes (para. 54) and also by the lack of a *fatwa* in respect of the alleged second wave of executions and torture of 'leftist' prisoners in August / September 1988, which was carried out several weeks after the end of Operation 'Eternal Light' (paras. 13-14).
58. Therefore, if Operation 'Eternal Light' is regarded as an armed conflict, there is no nexus between it and the alleged executions and acts of torture against the Iranian prisoners.
59. Therefore, such acts cannot amount to war crimes.



