

Can the People's Mojahedin Organisation of Iranian (PMOI) be regarded as a terrorist organization?

Legal opinion by Eric DAVID

At the request of the National Council of Resistance of Iran (NCRI), the undersigned, Professor Eric David, President of the Centre for International Law at l'Université libre de Bruxelles, has the honour to present his view on the question of knowing whether the People's Mojahedin Organization of Iran (PMOI) could be judicially qualified as "terrorist" from the standpoint of international law.

The question is to know if the armed actions perpetrated by PMOI against the Iranian regime since the 1980's can be qualified as "terrorist" and thus justify their inclusion by the European Union in the list of terrorist organizations. This examination will be made in view of the international legal instruments which apply to terrorism. This analysis intends to remain purely legal and will not come to a conclusion about the political legitimacy of the armed actions of the PMOI.

Considered separately, and apart from the Iranian context, the armed actions of the PMOI can seemingly fall under certain definitions of terrorism, but placed within the framework of the Iranian situation, they seem to be acts of war and not acts of terrorism *stricto sensu*.

Armed actions conforming to certain definitions of terrorism

The armed actions of the PMOI presented as "terrorist" have mainly consisted of actions that led to the wounding or killing of certain specific individuals - military and senior officials of the Iranian government - or to the damaging of certain locations (refineries, factories, etc). These actions were principally intended to force the Iranian regime to establish a democratic and secular system, respectful of human rights. Do these acts fall under the jurisdiction of international instruments which prosecute terrorism?

One can put aside the various instruments which concern a particular category of acts generally described as "terrorist": Hijacking (1), attacks on the safety of civil aviation (2) or navigation (3), attacks against internationally protected persons (4), hostage taking (5), etc. (6) . None of the actions attributed to the PMOI and which the undersigned could be informed of, fall under any of these qualifications.

The PMOI being presented as "terrorist" by Iran and the EU without any other precision, one has to know if there is a general definition of terrorism applicable with the armed actions of the PMOI. The armed actions of the PMOI could, on the other hand, correspond to the incidents of terrorism defined by the European Convention on the Suppression of Terrorism of January 27, 1977, and by the framework decision of the European Union (UE 2002/475/JAI) of June 13, 2002 relating to the fight against terrorism (7).

In the case of EU's 2002 Framework Decision, the armed actions of the PMOI bear a resemblance to certain actions targeted in the first article, namely "attacks upon a person's life which may cause death, and "attacks upon the physical integrity of a person", since these acts were carried out with the aim of " unduly compelling a Government or international organization to perform or abstain from performing any act" or "seriously destabilizing or destroying the fundamental political, constitutional, economic or social structures of a country." (Article 1, § 1, a-b).

One wonders how armed actions intended to establish a democratic and secular system, respectful of human rights, could be described as "undue".

Armed actions which qualify as acts of war

The armed actions of the PMOI should in fact be considered within the framework of a war which has been waged by the Iranian government on its opponents. However, during the 25 years that this conflict has been going on, it appears to be a war with sometimes international and sometimes internal character.

The armed actions of the PMOI certainly had the appearance of an international conflict when raging in 1987 and 1988 during the Iraq -Iran conflict. But before 1987, and after the cease-fire agreement concluded on August 20, 1988, by Iraq and Iran, the conflict between PMOI and the Iranian regime remained purely internal. Thus we must see if these operations can be considered a "non international armed conflict" (n.i.a.c.).

PMOI has been campaigning for nearly 25 years against the Iranian regime. Moreover, PMOI is an organized movement with a hierarchy and has a responsible chain of command and a well-known leadership. Contrary to terrorist groups, PMOI is not a clandestine movement, made up of cells vaguely connected to one another, without authority ready to represent the movement at the national or international level. PMOI is a true "party to the conflict" in the full meaning of this expression. It corresponds precisely to the criteria defined recently by the International Committee of the Red Cross distinguishing between a "party to the conflict" and a terrorist group.

With regard to its capacity to respect and apply International Humanitarian Law, PMOI is equipped with a "code of conduct for the military operations" by which it has enforced a self-imposed ban on any action that might jeopardize the lives of civilians.

The armed actions of the PMOI thus fall under the definition of n.i.a.c. as in article 3 (common to the four Geneva Conventions of 1949, to which Iran is a state party).

It should be remembered that for nearly 25 years, the theocratic regime of Iran has arrested tens of thousands of people, on an arbitrary basis, for violation, true or alleged, of religious values. These people are often subjected to torture; they don't face trial and if they do, it is a sham trial not respecting any of the guarantees enshrined by the rule of law; many were condemned to capital punishment for crimes of opinion or of religion, when they were not simply executed without any trial.

Such **serious** and **massive** violations of the most elementary human rights seem to be a permanent aggression of this regime against its population. Perhaps this violence does not take the form of an

open or collective hostility of one army against another army, but by its extent, its recurrence and its gravity, it constitutes a war. When we speak of 120 000 people massacred in 20 years (supra § 16), one can no more qualify this situation as "simple" internal tensions or sporadic and isolated acts of violence, because violence is general and permanent. Armed violence with such a large scale against the population which is not able to defend itself is necessarily constitutive of an armed conflict.

This qualification is perfectly compatible with the situation envisaged by the common art. 3, but not defined by it. The silence of the text leaves great latitude for interpretation of its field of application provided that it is a reasonable interpretation and in good faith. *In casu*, this situation will not be a lack of good faith if one describe the Iranian situation as an n.i.a.c.

This situation of war without confrontation is comparable with certain phases of the Second World War. Thus, it was never disputed that the aggression made by Germany against Czechoslovakia, with the annexation of Bohemia-Moravia in 1939, or against Denmark in 1940, generated a war, although in both cases, not a single bullet was shot (8).

The case is transposable to Iran: absence of open clashes between the Iranian forces and PMOI cannot mask the existence of a permanent aggression of the Iranian regime against its population in the form of arbitrary arrests, torture, summary judgments and executions which, by their sheer numbers, seem a massive violation of human rights. This massive violation is perfectly comparable to a situation called c.a.n.i. and referred to by common art. 3.

In this context, the armed actions of PMOI seem elements of the war and cannot be compared to acts of terrorism within the meaning of the international instruments which target terrorism.

On the other hand, the EU framework decision of 2002, regardless of the doubtful character of its application to the armed actions of the PMOI (supra § 26), expressly excludes from its field of application "the activities of armed forces in time of war".

PMOI being an armed force and the Iranian situation being, as one has just seen it, comparable to a situation of war, the 2002 EU framework decision would not apply to PMOI.

The actions targetted in Article 1 (e) of the framework decision must be "infringements", meaning acts that violate the common law. However, in a war, acts of violence related to this conflict lose their infractional nature, for as much, of course, they respect the applicable law, namely the IHL. Even if armed actions do not respect the IHL, they do not become terrorist act. If the armed actions of the PMOI were perpetrated against objectives that one can qualify as "military objectives", they constitute, therefore, neither acts of terrorism nor war crimes. If, on the other hand, they deliberately took for target simple civilians which have nothing to do with the Iranian regime, then, it is a war crime. That does not make it possible, however, to qualify PMOI as "terrorist", within the meaning of the relevant instruments, any more than it is possible to qualify the Iranian government as "terrorist", even though the Iranian regime practices a true policy of terror: the situation of armed conflict covers the actions of PMOI as much as those of the Iranian authorities.

As far as the Iranian regime is concerned, however, one can point to innumerable violations of rights and countless "war crimes" (because there is an armed conflict) and "crime against humanity". These include acts of grave violence such as "murder", "extermination", "torture", etc, committed in a

"multiple" way "against a civil population, in pursuit of a policy of the State or of an organization" (Statute of the CPI, Article 7).

Conclusions

For nearly 25 years, PMOI has been fighting against the Iranian regime. This struggle includes recourse to armed violence. Judicially, this violence does not relate to terrorism, because:

- PMOI is a political organization having grassroots presence in countries where it has opened offices; its leaders are known and do not seek to hide; they are ready to assume responsibility for all actions of PMOI;

- the Iranian regime, by the policy of repression and terror in Iran against all those who dispute its rule, has created a situation comparable to an armed conflict;

- this situation is referred to by art. 3 (common to the four Geneva Conventions of 1949 to which Iran is a state party);

- while resisting by armed actions this policy of institutionalized violence, PMOI identifies itself as a "party to the conflict"; its actions cannot therefore be compared with terrorism;

- *a fortiori* this refers to the NLA, the armed wing of the PMOI, because it is a real army;

- the instruments relating to terrorism, in particular, the EU framework decision of June 13, 2002 (preamble, § 11) and the draft of a general convention of the UN on terrorism (Article 18) exclude from their field of application the actions of the armed forces; the armed actions of NLA are thus not intended by these instruments.

¹ Convention pour la répression de la capture illicite d'aéronefs, La Haye, 16 décembre 1970.

² Convention pour la répression d'actes illicites dirigés contre la sécurité de l'aviation civile, Montréal, 23 septembre 1971.

³ Convention pour la répression d'actes illicites contre la sécurité de la navigation maritime, Rome, 10 mars 1988.

⁴ Convention des NU sur la prévention et la répression des infractions contre les personnes jouissant d'une protection internationale, y compris les agents diplomatiques, 14 décembre 1973 ; Convention des Nations Unies sur la sécurité du personnel des Nations Unies et du personnel associé, 9 déc. 1994.

⁵ Convention internationale des NU contre la prise d'otages, 17 décembre 1979

⁶ Voy., e.a., Convention des NU sur la protection physique des matières nucléaires, 3 mars 1980 ; Convention des NU pour la répression des attentats terroristes à l'explosif, 12 janvier 1998 ; Convention des NU pour la répression du financement du terrorisme, 9 décembre 1999

⁷ JO L 164 du 22 juin 2002, p. 3.

⁸ DAVID, op. cit., § 1.51 et les réf

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Representing of Belgium before TPIR in the capacity of amicus curiae in various cases. (Bagosora, Ntuyahaga, Semanza, etc) (since 1997).

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