

# LEGAL ASPECTS OF CONFLICT ANALYSIS AND RESOLUTION: THE CASE STUDY OF TAJIKISTAN

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**ABSTRACT:** *The article deals with theoretical and practical aspects of armed conflict, its qualification and types. It analyses the situation in Tajikistan right before the conflict, the phases the conflict has gone through and the applicability of laws in each phase of conflict. The article considers the mechanisms of conflict resolution which proved to be effective in Tajikistan. The purpose of this article is to present a conceptual framework for legal view on armed conflicts, apply it for the conflict analysis and resolution in the Republic of Tajikistan and draw conclusions and lessons from the case study.*

**KEYWORDS:** *Non-international armed conflict. Geneva Conventions of August 12, 1949 and Protocols Additional to them. Commission on National Reconciliation. International organization. Contact state.*

## 1 CONCEPTUAL FRAMEWORK FOR LEGAL VIEW

According to the law of armed conflicts (sometimes this branch of law is called the Law of War or International Humanitarian Law) all conflicts are divided into international and non-international ones.

The main international legal documents determining the types of the above-mentioned armed conflicts are the four Geneva Conventions of August 12, 1949 for the protection of war victims and two Additional Protocols to them of June 8, 1977.

The Republic of Tajikistan joined the mentioned instruments 13 January 1993 and took obligations on implementation of the norms, contained in them, in its national (domestic) legislation and to observe them strictly.

The Geneva Conventions of August 12, 1949 and Additional Protocols to them of 1977 provide objective facts and on the basis of these objective criteria one may classify armed conflicts.

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According to these international instruments the situations that will lead to the international armed conflict are as follows:

1. Armed conflict between two or a number of states.<sup>1</sup>
2. Armed conflict in which peoples are waging national liberation wars in the exercise of their right of self-determination against colonial domination, alien occupation and racial regimes.<sup>2</sup>

It should be noted that since the end of the World War II most of armed conflicts were of non-international character, i.e. they did not take part between states but inside the states. These fratricidal conflicts (civil wars) caused a lot of sufferings and resulted in significant number of victims.

Conflicts of non-international character fall into two types depending on the degree of intensity and scale of military actions.

The first type of non-international conflict is characterized by confronting parties where on the one hand governmental armed forces and on the other hand dissident (anti-governmental) armed forces or organized armed groups. In such situation the latter should:

1. be under responsible command;
2. exercise control over a part of its territory;
3. enable them to carry out sustained and concerted military operations;
4. implement Protocol II.<sup>3</sup>

The second type of non-international armed conflict is characterized by the fact that it has not reached the extent of intensity, but still represents itself as an internal armed conflict. This type of non-international conflict is regulated by Article 3 common

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1 See Article 2 (2) common to the four Geneva Conventions of August 12, 1949 // Geneva Conventions of August 12, 1949. – Switzerland: International Committee of the Red Cross, 1992. – 245 p.

2 See Article 1 (4) of Additional Protocol I of 1977// Protocols Additional to the Geneva Conventions of August 12, 1949. – Switzerland: International Committee of the Red Cross, 1992. – 134 p.

3 Additional Protocol II of 1977, Art. 1(1).

to the 1949 Geneva Conventions for the protection of war victims, instruments on human rights and domestic norms.

In this type of conflict, probably there do not exist such criteria as high organization of armed groups (though a certain level of organization is a must), control over the territory (just the presence on the territory is not qualified as control in the sense of Protocol II).

It is necessary to make clear that the following is excluded from the notion of non- international armed conflict:

- a) cases of violation of internal order;
- b) situation of internal tensions, such as disturbances, isolated and sporadic acts of violence.<sup>4</sup>

Situation of the first type includes such violations of public order as demonstrations and processions without beforehand agreed plan, separate actions of protest, collisions and other similar actions.

Situation of the second type includes situations of serious political, social and economic tension which are characterized by the following indicators: mass arrests, a great number of detained persons, announcement of emergency situation, application on disappearances, etc.<sup>5</sup>

These kinds of situations actually are regulated by International law of human rights and corresponding provisions of domestic law.

Thus the sphere of the application of the International humanitarian law does not cover the internal disorder and situations of tension. However this does not mean that there does not exist international legal protection applicable in such situations. These cases fall under the effect of the instruments on human rights.

Concerning Article 3 it should be emphasized that it is a corner-stone of the humanitarian law, applicable during non-international armed conflicts. It is a great achievement in the field of IHL.

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4 Additional Protocol II Article 1(2).

5 See Commentaries to Additional Protocol II. –Moscow: ICRC, 1998, p.68-69.

Article 3 common to the 1949 Geneva Conventions for the protection of war victims is regarded as a minimum standard that should be observed by all parties during any types of armed conflicts and its provisions are considered as the norms of customary law.<sup>6</sup>

Now we summarize some of expressed thoughts. First of all, armed conflicts differ by the juridical status of the conflicting parties.

In situation of international armed conflicts the participants are sovereign states or states and nations who are struggling in the exercise of their right of self-determination.

In situations of non-international armed conflicts the participants of military actions are not sovereign states, but the government of a single state which entered the conflict with one or more armed groups in its territory.

One of the determining factors for the qualification of international and non – international armed conflicts is the state frontiers. In case of the first type conflict there is a violation of the territorial integrity of a state but in case of the second type conflicts actions take place basically within the territory of a state.

It should be specially stressed that the humanitarian law shall not affect the legal status of the territories where the conflict is going on and the application of its rules shall not mean the recognition of the Parties to the conflicts as the subjects of International law and cannot claim for such status on the other bases.

Now it is time for the transition from theory to practice and consider the armed conflict in Tajikistan (1992-1997) in a legal dimension.

## 2 THE TAJIKISTAN CASE STUDY

The swift changes connected with the collapse of the Soviet Union in 1991 led to the destruction of the political, economic and social structures of once a powerful state. As the result there were created favorable grounds for struggling over the power, its re-division and change of character. The unplanned and non- civilized

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6 See “Nicaragua v. the USA”//1986 Nicaragua case, ICJ Reports, p.114, available at: <<http://www.icj-cij.org/docket/files/70/6503.pdf>>. (last visited 4.08.2017).

transition to the market economy led to the impoverishment of people, fall of production, unemployment, destruction of social protection system, health protection and education. All these events in combination with many other factors (geographical, Islamic, regional and etc.) exposed Tajikistan to the abyss of the civil war that deprived lives of thousands of people, created problems of refugees and displaced persons, caused huge economic damages and aggravated the heavy situation of the Republic more and more.

Before the beginning of the civil war the situation in the Republic of Tajikistan has gone a number of changes. It can be characterized as violation of internal order and situation of internal tension. For instance, during the February 1990 events in Dushanbe demonstrators demanded the resignation of K. Mahkamov, the first secretary of the Central Committee of the Communist Party of Tajikistan that accompanied by separate and sporadic actions of violence, burning out the means of transport, robbery of shops and etc.<sup>7</sup> At that time, the government of the republic resorted to militia forces and even internal troops in order to restore order in the capital of the country.

In our opinion the legal qualification of this particular phase of the situation development in the republic was the following: we were dealing with the internal disorders and the situation characterized with its tension. However violation of the International Humanitarian Law was not the case at that particular time, in other words Article 3 common to the 1949 Geneva Conventions and the 1977 Additional Protocol II to them. At that time, the situation was under the effect of the domestic law (Constitution and Criminal Code of the Republic of Tajikistan), international and regional instruments on human rights (Bill of Human Rights, Final Act of the Conference on Security and Cooperation in Europe and etc.).

The situation destabilized more and more in spring 1992 after many days of mass meetings and confrontation of two squares – Shahidon and Ozodi in Dushanbe city and it represented the manifestation of contradictions (political, ideological, economical,

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7 See Ponomarev V. Kolokola nadezhdy // "Pravda", 10-11.05.1990.

national – territorial, religious and others) of Tajik society after gaining its political independence.<sup>8</sup>

It was impossible to retain the situation within the frame of internal tension. It intensified and turned into the civil war that characterized by the division of the society into two conflicting parties. At this stage the internal armed conflict had the following features: the participants of the military actions were governmental regular forces, pro- governmental People's Front of Tajikistan under the command of Sangak Safarov from one side and anti-governmental armed units of Islamic Renaissance Party of Tajikistan, Democratic Party of Tajikistan, "Rastokhez" people's movement groups and "Lali Badakhshan" association from the other side.

By its objective and subjective criteria (short duration and low intensity of war actions, non-control of the territory and etc.) the situation can be characterized as non-international armed conflict, which automatically fell under the effect of Article 3 common to the 1949 Geneva Conventions for the protection of war victims.

In a new lap of intensity the situation in Tajikistan was characterized by such parameters as certain level of representatives and organized armed units of the United Tajik Opposition (UTO), the existence of dissident government with its headquarters in Talukan city (Afghanistan), vertical subordination to UTO leader Said Abdullo Nuri the field commanders (Mirzo Ziyaev, Mirzokhuja Nizamov, Muhammad Ruzi Iskandarov and others), issuing orders and instructions, publication of periodical editions (newspapers and magazines), control of a part of the territory of the country (Karategin valley, Tavildara district).

The Government of the Republic of Tajikistan declared the state of emergency, mobilized security and internal forces for fighting against opposition.

At this stage, the threshold of intensity of military actions was quiet high as the situation characterized by all the criteria described in part 1 of Article 1 of the 1977 Additional Protocol II

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8 See Tajikistan v ogne. – Dushanbe: Irfon, 1993, pp.178-185; G. Haidarov, I.Imonov. Tadjikistan: tragediya i bol naroda. - St. Petersburg: Shareholders society LINCO, 1993, p.74-86.

to the 1949 Geneva Conventions, namely it was a conflict between the government and anti-government forces. The opposition forces being under responsible command exercised such control over some parts of the country that it enabled them to carry out sustained and concerted military actions and implement Additional Protocol II.

Thus, the non-international armed conflict in Tajikistan has passed three phases of development:

1. a stage of internal tension and disorder at the initial phase when the rules of the domestic legislation and international human rights law are applied;
2. a stage of the conflict with low intensity when Article 3 common to the 1949 Geneva Conventions is applicable;
3. a stage when the conflict has reached the highest point of violence and when the rules of the Additional Protocol II as well as customary norms of IHL are applicable in non-international armed conflict.

On 27 June 1997 under the auspice of the United Nations Organization President of the Republic of Tajikistan Emomali Rahmon and the leader of UTO Said Abdullo Nuri signed an instrument which is called “General Agreement on Establishing Peace and National Accord in Tajikistan” and represents a package of the following 9 instruments (Protocols and Agreements):

1. Protocol on the Fundamental Principles of Establishing Peace and National Accord in Tajikistan, signed on 17 August 1995;
2. Agreement between the President of Tajikistan and the leader of UTO on the results of the meeting held in Moscow on 23 December 1996;
3. Protocol on the Main Functions and Powers of the Commission on National Reconciliation, signed on 23 December 1996 in Moscow;
4. Statute of the Commission on National Reconciliation, signed 21 February 1997 in Mashhad (Iran);
5. Additional Protocol to the Protocol on the Main

Functions and Powers of the Commission on National Reconciliation, signed on 21 February 1997 in Mashhad (Iran);

6. Protocol on Refugee Related Issues, signed on 13 January 1997 in Tehran (Iran);
7. Protocol on Military Issues, signed on 8 March 1997 in Moscow;
8. Protocol on Political Issues, signed on 18 May 1997 in Bishkek;
9. Protocol on the Guarantees of Implementation of the General Agreement, signed on 28 May 1997 in Tehran (Iran).<sup>9</sup>

Among these instruments the basic and effective mechanism for conflict resolution in Tajikistan was the Commission on National Reconciliation. According to its Statute it was a temporary body, created for the implementation of the General Agreement on Establishing Peace and National Accord in Tajikistan in transition period. The Status of the Commission on National Reconciliation stipulated the creation of four sub-commissions: a) on political issues; b) on military issues; c) on refugee related issues; d) on legal issues.

The sub-commission on legal issues consisted of six members and included even quantity of representation from each Party: Otakhon Latifi – head of the legal sub- commission (UTO), Kiyomiddin Ghoziev – member of the legal sub-commission (UTO), Faiziddin Imomov - member of the legal sub-commission (UTO), Khalifabobo Homidov – member of the legal sub-commission (Government of RT), Zarif Aliev – member of the legal sub-commission (Government of RT ) and Shermahmad Shoev - member of the legal sub-commission (Government of RT).<sup>10</sup>

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9 See General Agreement on Establishing Peace and National Accord in Tajikistan. – Dushanbe, UNMOT, 1997, p.6-7.

10 See General Agreement on Establishing Peace and National Accord in Tajikistan. – Dushanbe, UNMOT, 1997, p.36-42.

The duty functions of this sub-commission included the resolving of the following problems:

- to restore the rights of refugees and displaced persons – citizens of the Republic of Tajikistan (including giving back their homes and properties) as well as not to bring to custody the returning refugees and displaced persons for their participation in political confrontation and civil war according to the legislation of the Republic of Tajikistan in force;
- to grant amnesty to those who participated in civil conflict and political confrontation;
- to excise control over the full exchange of prisoners of war, detainees and to set free those who are forcibly detained;
- to remove sanctions and restrictions imposed on the activities of political parties and movements belonging to UTO as well as their mass media, which shall be functioning within the frame of Constitution and acting laws of the Republic of Tajikistan.<sup>11</sup>

As we see a solid base was created and a legal mechanism for the resolution of armed conflict in the Republic of Tajikistan was worked out. It should be noted that the Tajik Government took measures in order to implement its international obligations coming from the 1949 Geneva Conventions and the 1977 Additional Protocols to them. For instance, paragraph 5 of Article 6 of the 1977 Additional Protocol II reads: “At the end of hostilities, the authorities in power shall endeavor to grant the broadest possible amnesty to persons who have participated in the armed conflict, or those deprived of their liberty for reasons related to the armed conflict, whether they are interned or detained”.

In full accordance with this legal provision and for its implementation the Commission on National Reconciliation

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11 See General Agreement on Establishing Peace and National Accord in Tajikistan. Annex 11. – Dushanbe, UNMOT, 1997, p.52-53.

recommended the Government of the Republic of Tajikistan to adopt two important legal acts: “Act on Mutual Forgiveness” and “Law on the Amnesty of Participants of Political and Military Confrontation in the Republic of Tajikistan”. These acts were adopted by the Parliament in 1997 and 1999 which affected 21.500 accused and they were released from prisons. On 23 August 2001 Majlisi Namoyandagon (Assembly of Representatives) of Majlisi Oli (the Parliament) of the Republic of Tajikistan adopted the Act “On General Amnesty” which influenced 19.000 of the accused.<sup>12</sup>

It is necessary to emphasize that the participants of political and military confrontation in the Republic of Tajikistan accused of the crimes envisaged by Articles 63 (act of terrorism), 74 (banditry), 76 (contraband), 96 (large-scale embezzlement of state or public funds), 104 (willful murder with aggravating circumstances), 105 (willful murder without aggravating circumstances), 121 (sexual assault), 240 (illegal production, possession, trafficking or sale of narcotic drugs), 240<sup>1</sup> (theft of narcotic drugs), 240<sup>2</sup> (inclining of underage persons to narcotic drug addiction), 241 (illegal sowing or harvesting drug containing plants), 241<sup>1</sup> (neglecting of illegally grown drug containing plants) of the Criminal Code of the Republic of Tajikistan were not released from punishment and criminal charges according to paragraph 4 of the Amnesty Act.<sup>13</sup>

The 1949 Geneva Conventions established concrete obligation for the State-members “undertake to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches”.<sup>14</sup>

In order to implement these obligations the Republic of Tajikistan worked out a new Criminal Code which stipulates penal sanctions for persons committing the grave breaches of the Geneva Conventions and Additional Protocols which are considered as war crimes. The criminal legislation of the Republic of Tajikistan

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12 Business and politics, 30 August 2001.

13 See Accord, No.10, 2001, p. 106-107.

14 See Articles 49, 50, 129 and 146 of the 1st, 2nd, 3rd and 4th Geneva Conventions of August 12, 1949 respectively// Geneva Conventions of August 12, 1949. – Switzerland: International Committee of the Red Cross, 1992. – 245 p.

corresponds to the IHL with regards to the determination of the responsibility for war crimes. These grave breaches of the IHL are indicated in articles 50, 51, 130 and 147 of Geneva Convention I-IV and in articles 11 and 85 of Additional Protocol I, and repression of them is found in section XV (chapter 34): “Crimes against peace and security of mankind” of the new Criminal Code of the Republic of Tajikistan. This section of the Criminal Code of the Republic of Tajikistan determines criminal responsibility for the following war crimes:

- deliberate violation of the norms of IHL, committed in time of armed conflict (art. 403);
- deliberate violation of the norms of IHL committed in time of international or non-international conflicts with the threat of health or physical mutilation (art. 404);
- other violations of the norms of IHL (art. 405).<sup>15</sup>

The new Criminal Code of the Republic of Tajikistan came into effect 1 September 1998.

The civil war in Tajikistan has brought not only catastrophic consequences in the sphere of economy but also in the legal sphere. The criminality has become one of the destabilizing factors of social development in Tajikistan and threatened the implementation of national accord and reconciliation process in the country. In this respect a number of presidential decrees and legislative acts were adopted in order to reduce the level of criminality in the republic: “On the volunteer hand over and withdrawal of arms, ammunitions and military technical equipment from the population of the Republic of Tajikistan” of 2 December 1994, “On emergency measures for strengthening of struggle against the illegal circulation of narcotic drugs” of 12 April 1996, the State Program “On working out and realization of measures for the struggle against terrorism and sabotage in the objects of transport, energy, communication and other strategically important objects” of 13 August 1997, the

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15 See for more details Rajabov S.A. War Crimes as Grave Breaches of the Rules of IHL. - Dushanbe: Russian –Tajik Slavonic University, 2001, p. 6-7.

law of the Republic of Tajikistan “On struggle against terrorism” of 16 November 1999, the law of the Republic of Tajikistan “On struggle against corruption” of 11 December 1999, etc.

In the years of 1995-2000 more than 8000 crimes in the sphere of economy were revealed and the injury caused by them was more than 100 million US dollars.<sup>16</sup>

In the years of 1993-2000 the Border Troops of Russian Federation withdrew from circulation about 10 tons of various narcotic drugs (In 1991-2005 the frontiers of Tajikistan were guarded by the Border Troops of Russian Federation).

In 1999 the Agency on Drugs Control was established under the President of the Republic of Tajikistan. If only 8 kg of heroin was revealed in 1996 but in the year of 2000 the amount of heroin constituted 2 tons.

The struggle of the law enforcement bodies of Tajikistan has shown the world that only prevention of crimes and keeping social control over them may lead to stabilization of life because such an active position of the state lays the ground to national reconciliation, social accord and resolution of all kinds of conflicts in the society.

And finally the process of preparation and adoption of the 1994 Constitution of the Republic of Tajikistan, the amendments made through the referendums in 1999, 2003 and 2016 made great contribution to ensuring of unity, stability and peaceful development of the Tajik society. The Constitution as the main juridical document containing the basis of accord, peace and unity is the highest act of accordance which binds every member of society.

### **3 CONCLUSIONS AND LESSONS LEARNED FROM CASE STUDY OF TAJIKISTAN**

Thus the analysis of juridical aspects of achieving peace and accord in Tajikistan shows that for the successful resolution of the armed conflict a solid international and domestic legal basis has been worked out and implemented. All this promoted the resolution of

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16 See Works of Higher School of the Ministry of Internal Affairs. Vol.3. - Dushanbe, 2000, p.51.

discord and contradictions arising during the negotiation process in the frame of law, keeping the letters and spirit of the achieved agreements, in the spirit of respect to human rights and basic freedoms.

It should be noted that international organizations (UN, OSCE, OIC), Contact States (Afghanistan, Iran, Kazakhstan, Kyrgyzstan, Pakistan, Russia, Turkmenistan and Uzbekistan) as well as international non-governmental organizations (International Committee of the Red Cross, Agha Khan Foundation, Caritas, etc.) have made their contribution to the legal, political, social, economic and humanitarian aspects of conflict resolution in Tajikistan, working very hard with both parties to the armed conflict.

20 years have passed since the signature of “The General Agreement on Establishing Peace and National Accord in Tajikistan”. The lessons of peace and national harmony are not only of theoretical but also of practical significance. The Founder of Peace and National Unity, the Leader of the Nation, President of the Republic of Tajikistan Emomali Rahmon, in his Address to Majlisi Oli (Parliament) of January 23, 2015 stated: “Studying the causes and factors of the civil war in our country is one of the most important tasks of scientists. The authoritative research of scientists in this question, and not articles, books and “creations” of certain persons, which in most cases mislead the reader, should play a decisive role”.<sup>17</sup>

The results of negotiations have proved to the whole world that the most difficult armed conflicts can be resolved peacefully. Peaceful solution of the civil war in Tajikistan has not only of regional, but of international importance. According to the former UN Secretary General Kofi Annan the Tajiks’ unique peace experience is an example for other countries and nations. It is a great honor that Tajiks’ peace culture has been received by the United Nations as a rare model for human peace experience.<sup>18</sup> The

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17 Address by the Leader of Nation, His Excellency Emomali Rahmon, President of the Republic of Tajikistan, to Majlisi Oli (Parliament) of the Republic of Tajikistan, 23.01.2015 <[www.prezident.tj](http://www.prezident.tj)> (last visited 4.08.2017).

18 See Nazarov T. *Tadjikistan: economica, politica, mezhdunarodnoe sotrudnichestvo.* – Dushanbe, 2001. – P.153-154.

history of civilization does not remember that the civil war had been terminated in such short time; the conflicting parties have become friends and been working for prosperity of their country hand in hand. The Tajiks' peace process as the finest practice has already been studying by the interested parties in troublesome bleeding points of the world (Afghanistan, Iraq, Lybia, Syria, and Yemen).