

## THE ROMANIAN REVOLUTION OF 1989 - AN ARMED CONFLICT?

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**Abstract:** *The violent events of December 1989 in Romania, which led to the removal of the Communist regime from power are still shrouded in mystery today. The social disorder and the political chaos of those days overlapped with the violent use of the armed forces that used all kinds of weapons. During the armed confrontations, many casualties (military and civilian) and destruction of goods, including cultural ones, took place. In the years following these events a series of theories, hypotheses, controversies, and trials have emerged, but no one has clearly defined the legal nature of this social-political crisis. The purpose of this scientific approach is not to analyze the events and crimes committed in December 1989, but to determine whether and to what extent the international humanitarian law can be applied to these events.*

**Keywords:** the 1989 Romanian Revolution, international humanitarian law, non-international armed conflict

### 1. Introduction

The violent events of December 1989 in Romania, which led to the removal of the Communist regime from power, are still shrouded in mystery. The social disorder and the political chaos of those days overlapped the violent use of the armed forces that used all kinds of weapons. During the armed confrontations, many casualties (military and civilian) and destruction of goods, including cultural ones, occurred. In the years following these events a series of theories, hypotheses, controversies, and trials have emerged, but no one has clearly defined the legal nature of this social-political crisis. What happened in December 1989: internal tensions and disturbances or a non-international armed conflict (NIAC)? Why are we interested in this issue? First of all, one needs to know the applicable law and the correctness of the use of the armed

force, and secondly, one must determine what kind of crimes were committed.

The 1989 Revolution began in Timișoara, on December 16, with protest demonstrations, initially peaceful. The authorities' response was brutal, a retaliation, including using war ammunition. In the early days, dozens of protesters died. Events spread throughout the country, culminating in the revolt of the capital's population on December 22. At this point, a revolutionary body made its presence felt, the National Salvation Front, which assumed the leadership of the revolutionaries and the subordination of the armed forces. After the dictator's escape, and even after his capture and execution, the fighting continued with armed groups supporting the former regime until the end of December. In total, the violent events of December 1989 produced more than 1,200 deaths and thousands of injured.

## 2. Hypothesis of non-international armed conflict

In the classical theory of international law (prior to the adoption of the Geneva Conventions of 1949) a distinction is made between rebellion, insurgency and belligerency, only the latter being considered an armed conflict [1]. Rebellion is a riot, reduced in intensity, duration and participation of the population, with a brief organization of the rebels, often spontaneous, and its repression is reduced to the use of police forces. The rebellion is not considered an armed conflict, being subject to the applicable internal law during peacetime. When the state fails to restore order, the rebellion is considered to have reached the insurgency level [2]. Insurgency has a higher level of intensity and participation of the population, with a form of organization sufficient to represent a serious threat to the government. Such a situation draws the attention of foreign states and the international community. Insurgency can reach a level of struggle and an organization of parties leading to the recognition of the state of war and the application of international humanitarian law (IHL). In fact, a revolt can go through all phases, starting with the rebellion (Timișoara 1989), becoming insurgency, and then belligerency. Belligerency, as a form of NIAC accepted in the doctrine and practice of traditional international law, must be given formal or tacit recognition so that IHL can be applied [3].

Compared to traditional international law, the application of the rules of IHL in the case of insurgency is now recognized [4].

In order to determine the moment of the beginning of the NIAC, there are no regulations, each state assessing, on a case-by-case basis, the existence of this moment, especially through the internal or international courts, when it does not do so during the fightings.

As far as internal tensions and disturbances (peacetime crisis situations) are regarded, the Additional Protocol II of 1977 (not

applicable to the 1989 Revolution, but guiding the clarification of certain issues) does not provide clear criteria for determining the difference between them and the situations of armed conflict either. This issue has been addressed by the case law of international criminal tribunals that specified that in order to establish the existence of an NIAC, unlike in the case of internal disturbances and tensions, two criteria must be considered: the intensity of the conflict and the organization of the parties [5].

In the case of the first criterion, the **intensity of the conflict**, the jurisdiction of the international criminal tribunals states that:

„Relevant for establishing the intensity of a conflict are, *inter alia*, the seriousness of attacks and potential increase in armed clashes, their spread over territory and over a period of time, the increase in the number of government forces, the mobilisation and the distribution of weapons among both parties to the conflict, as well as whether the conflict has attracted the attention of the United Nations Security Council, and if so whether any resolutions on the matter have been passed” [6].

The level of armed violence required for the application of Article 3, common to the Geneva Conventions of 1949 (ratified by the Romanian state in 1954) (Com.Art.3), must be high enough to exclude isolated or sporadic violence, but sufficiently low to include situations of internal conflict in which hostilities do not necessarily take place continuously [7].

However, IHL can not be applied to any form of manifestation of violence in society. The coercive force of the state must be applied gradually and in proportion to the intensity of the violence, with respect for human rights. Recourse to armed forces and to lethal weapons is ultimately to be made when non-lethal means of re-establishing order have failed. Although it would be to the advantage of states to declare any social violence as a state of

armed conflict, in international practice, jurisprudence and doctrine such situations are not acceptable [8]. Determining the character of NIAC should be made with as much objectivity as possible. Even though states use the armed forces in some situations of tension and internal disturbances, not all of these situations can be considered NIAC.

In international jurisprudence we encounter situations where confrontations, of short duration and reduced as geographical areas, are considered NIAC (the case of an Argentine rebel group that captured a government military base for two days - La Tablada, a case solved by Inter-American Human Rights Commission) [9]. It is important to note, given that the events took place in the same year as those in Romania - 1989 - but during a shorter period of time, taking place on a smaller area and with less intensity.

With respect to the second criterion, **the organization of the parties**, the idea of the minimum organization of the parties taking part in the NIAC is generally accepted, but there is no consensus on the level of organization required for the application of the Com. Art.3 [10]. In connection with this issue, we must ask ourselves what is ahead: the aggressor's obligations or the rights of the victims? If aggressors (generally insurgents) do not have the capacity to assume and comply with Com. Art.3 or do not want to do so, it is illogical to deny the victims the protection that IHL offers.

In assessing the organization level, in the jurisprudence of the International Criminal Tribunal for the former Yugoslavia (the Limaj case), a particular emphasis was placed on the existence and role of a central body of leadership and on the coordination of the actions of the non-state armed group. The functions of this body include the appointment of area commanders, the provision of weapons, the issuance of political declarations and communications, the transmission of directives and rules to units, the authorization of military action

and the attribution of tasks to the organization, the manner in which members of the central body were involved in negotiations with representatives of the European Community and those of other States [11]. In the Milosevic case, for the organization of the non-state armed group "With respect to the organisation of the parties to the conflict, Chambers of the Tribunal have taken into account factors including the existence of headquarters, designated zones of operation, and the ability to procure, transport, and distribute arms"[12].

For the war crimes represented by the other serious violations of the laws and customs applicable to NIAC within the framework established by international law, Article 8 (f) of the Statute of the International Criminal Court provides that these are to be committed only in armed conflicts "that take place in the territory of a State when there is protracted armed conflict between governmental authorities and organized armed groups or between such groups."

Another example that supports our approach is the so-called war on terrorism waged by the US against Al-Qaeda. The perspective of the American authorities on the existence of this (extraterritorial) NIAC, as well as the idea of the organization of the parties and the intensity of the conflict are worth taking into consideration. This conflict is subject to the provisions of Com. Art.3.

Going beyond the legal and political controversy over the existence of this NIAC [13], we can see that the US administration acts taking into consideration a series of isolated violent events that take place over a period of several years as part of an NIAC (the U.S.S. *Cole* bombing in October 2000, the 1998 Embassy bombings in Kenya and Tanzania, crimes committed on September 11, 2001). In this respect, the respective crimes were given to the jurisdiction of military tribunals constituted under the law of armed conflicts [14]. The authors cited here (Laurie R. Blank & Benjamin R.

Farley) question two essential issues for an NIAC, especially when the state decides to punish the crimes committed: the moment of the beginning of the NIAC (the moment when war crimes can be judged) and whether the state may set an earlier date of the beginning of the NIAC (“claw back”), in order to be able to judge, under the power of IHL, past acts that are considered in connection with this conflict [15].

Although, theoretically, until the US Army's attack on Afghanistan in October 2001, there can be no armed conflict between the US and al-Qaeda, with isolated and sporadic attacks over three years, the US government and the military commissions empowered with the investigation of these facts, considered them part of the armed conflict [16].

In the work entitled *Indefinite War: Unsettled International Law on the End of Armed Conflict* [17], a synthesis table is presented with the organizational requirements of the parties and the intensity of the conflict that are necessary for an armed confrontation to be considered NIAC. These criteria found in the table are neither mandatory nor cumulative, but they have been used as tools to determine the existence of NIAC by different international courts. As far as the organization of the parties is concerned, the following are mentioned: the existence of a command structure, the existence of military (operational) capacity, the existence of logistical capacity, the existence of an internal disciplinary system and the ability to implement IHL, the ability of the group to speak with one voice. In terms of the intensity of the hostilities, the following are mentioned: the use of armed forces, the seriousness of the attacks and whether there has been an increase in armed clashes, the type of weapons, ammunition, and other military equipment used by the parties, the effects on the civilian population.

In the above-mentioned paper, authors remark that both the International Criminal

the Tribunal for the Former Yugoslavia and the International Criminal Court believe that in order to regard domestic violence as armed conflict, it is not necessary to have a territory controlled by insurgents or responsible headquarters, but one factor that has to be taken into account for the existence of the NIAC is the ability to impose discipline [18].

These tools are very useful in our effort to determine the character of the violent events of December 1989 in Romania and therefore the law that can be applied to them.

### **3. The legal nature of the events of December 1989**

The problem of establishing the type of violence (crisis) in December 1989 is circumscribed to Com. Art.3, customary IHL and national law. At that time, Romania did not ratify the Additional Protocols of 1977 (which were published in the Official Gazette No 68-69 of 14.05.1990). In view of the lack of a definition of NIAC from the Com. Art.3, the absence of elements to determine the parties to the conflict and the existence of the conflict itself, the decision on the legal nature of the violent events lies with the State [19].

Although the decisions of the international criminal courts mentioned above were adopted after the events of December 1989, they help us to understand and draw the minimum parameters that we can take into account in the application of Com. Art.3.

In international law, the following minimum requirements for the application of Com. Art.3 are accepted: rebel forces have a minimal politico-military organization, act on a certain territory and show respect for the rules of IHL; the government should use regular armed forces. But these criteria are indicative. There is no limitation on the application of Com. Art.3 to conflicts in which weapons are used, as well as there are no clear criteria for the organization of the parties or

a clear assumption of responsibility by the government's opponents. These criteria are imperative for the application of Protocol II of 1977, which is not the case for the events in question.

The Com. Art.3 is directed to the protection of people who do not participate or no longer participate in hostilities, without emphasizing relations between the opposing parties. This protection is obligatory for all the parties to the conflict. The only delicate problem is declaring the crisis as an NIAC. As it is clear from international practice, this qualification of the type of crisis is a matter of authority.

The International Criminal Tribunal for the former Yugoslavia first analyzed and determined the type of crisis (NIAC or international armed conflict, at different times and situations) and when IHL became applicable. Unfortunately, there is no official vision of the NIAC in our country. We do not have an official definition nor the legal parameters to declare and differentiate between internal tensions and disturbances.

At the time of the decision of the Romanian authorities to use the army to restore order in December 1989, they took into account the interference of third states in support of the rebels, but also the presence of a number of foreign citizens having hostile intentions who had entered the country before the events. The reality of this information is not relevant, but the decision taken on its basis. The authorities at the time acted in front of an enemy recognized by them as such and convinced of his external military support. Even though this alien enemy remains unidentified, the authorities declared the "state of war" and acted accordingly [20]. The authorities even supervised the borders with the neighboring states and monitored their military maneuvers, preparing for a military intervention. Hence the insistence of the state's leadership that the army intervene with war ammunition. Even if during the first days, in Timișoara, the level of NIAC

was not reached, the central authorities reacted as such. This can be considered, in our opinion, to be an assumption of the application of IHL.

The situation changed with the emergence of a political body that assumed the revolutionary leadership - the National Salvation Front. This body assumed its political power in the state after the escape of the dictator. The former governing bodies were dissolved, it took over the leadership of the Ministry of National Defense, and the armed forces were subordinated to it. Moreover, the organization and conduct of the military operations against the armed elements of the former dictator began, and a Council of War was established. During the following days, especially between December 22-24, intense battles took place and there were many victims. After the execution of the Ceausescus, on December 25th, the fighting diminished in intensity, ending at during the last days of December. The period after December 22 is, in our opinion, subject to the application of Com. Art.3. The elements of an NIAC are present, even if for a short period of time, in our opinion, the state was deconstructed.

Actions after December 22 must be considered an NIAC, and the crimes committed in connection with it are war crimes, that is, they are imprescriptible. Moreover, following the US model for terrorist attacks prior to September 11, 2001, we can treat the government-led war munitions attacks on civilians as armed conflict, and therefore they should be treated as crimes of war, and, where appropriate, crimes against humanity. This legal framing should be done by the political and judicial authorities of Romania.

Another element to be considered under the Com. Art.3 is the trial and execution of the Ceausescu couple, and the authorities must establish whether this trial was conducted by "a regularly constituted court, affording all the judicial guarantees which are

recognized as indispensable by civilized peoples."

#### 4. Conclusions

Consideration of the violent events of December 1989 as NIAC is possible, under Com. Art.3. What is necessary, however, in our opinion, is an official definition of the NIAC under the power of Com. Art.3 and an official recognition of the December 1989 violence as NIAC. This act of authority may emerge from the Supreme Court in Romania.

Even though events up to December 22 require a political and moral effort to fall under the power of IHL, events after December 22 may be considered NIAC. Until December 22, the existence of the revolutionary organization could not be clearly identified, even if the intensity of the struggle had reached the minimum level

necessary to consider the events as an NIAC (in terms of the area, time, types of weapons used).

It is only on December 22 that there was an organized revolutionary group that assumed the role of command and subordinates a part of the armed forces. After the taking of power by this group, the struggle with armed groups of the former dictator continued. This second period, after December 22, meets the criteria for being considered under the power of IHL, that is to say, an NIAC governed by Com. Art.3. Nevertheless, considering the attitude of the communist authorities to act against the demonstrators by activating war-related procedures, we appreciate that the Romanian State may extend the application of the Com. Art.3 to events prior to 22 December 1989.

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