



CRIMES AGAINST DOMESTIC SECURITY IN THE IRAN'S MILITARY PENAL CODE AND CRIMINAL LAWS

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ABSTRACT

The enactment of the military penal code is an attempt to stabilize and establish order in the armed forces. The second chapter of this code deals with the commission of crimes against internal and external security by the armed forces, which, despite improvements over the Islamic Penal Code and the former codes, is associated with some weaknesses. In addition, some crimes against security are criminalized in the Islamic Penal Code as well. In the present article, attempts are made to study the articles laid down in Chapter II of military Penal Code and other relevant articles in the Islamic penal code (the fifth edition), in order to make amendments to this code and achieve a higher level of national security in the armed forces.

Keywords: Security, Foreign Security, Iran Criminal Law.

INTRODUCTION

The military Penal Code consists of thirteen chapters, the second chapter of which deals with "crimes against internal and external security" (2), this implies the fact that internal security is inseparable from external security. (3) The above-mentioned code includes some innovations and has succeeded in overcoming some of the ambiguities and shortcomings of the former code. the amendments in the new code include: the criminalization of crowd gathering to disturb the public order(Article 19), act of espionage for foreigners (Article 24), participation and cooperation in the crime of espionage (Notes 1 and 2 of Article 24), Definition of enemy (Article 25), and the act of Intelligence Debriefing by enemies or aliens (Article 28) However, this code also includes some shortcomings that will be discussed and categorized into crimes against internal security and crimes against external security in the present article.

Moharebeh

The criminal offense of Moharebeh has many extensions that can be categorized into six sections.

Subversion of the Government of Islamic Republic of Iran

According to Article 17 of the military Penal Code: "Any military officer who devises a plan for subversion (transition or elimination) of the government of the Islamic Republic of Iran, gathers or administers a crowd for this purpose, or even takes part and contributes to the activities of such a crowd, shall be labeled as Mohareb.

Subversion refers to all political movements that provide the grounds for the collapse of a government. In a political system, two groups may embark on subversion actions, first, the parties; and second, pressure groups that intend to influence the political policy of the government, and don't seek subversion; on the contrary, the parties mainly demand political power (Jamrahsi, Farahani, 1995: 10).

In another definition, subversion refers to all insurgent activities in one country. But this concept basically refers to the activity of the dissatisfied groups of people in a country, with the support or organization of foreign countries, for undermining the government in the country. (Roshandel, 1995: 12). The physical behavior in this article is the gathering and management of crowds which is seemingly regarded as material plurality of crime. Accomplice a person who contributes to the crime by inciting, persuading, and threatening of the public to have active contribution or participation in the crime. in this article, however, the punishment foreseen for the accomplice is the same as the one considered for abetting. This kind of criminalization and the like can be interpreted in two ways: first, this type of criminalization can be legitimized from the perspective of the importance of crime against national security, because, considering the importance and characteristics of such crimes, it can be argued that the blame principle is preferable to the harm principle. this point that has also been taken into account in legislations associated with other crimes against national security such as criminalization of independent complicity in Article 33 of this code or consideration of attempted felony punishments that are comparable to accomplished felony punishments in the aforementioned article, or Article 20: On the other hand, considering the of the narrow scope Hudud and the specific features of these crimes, the development of criminalization in these cases is contrary to the rules and principles of the Shari'a, and this has also been confirmed by jurists. . For example, in the jurisprudential texts, the spy guards and scouts and those who lurk along the caravan roads to inform the thieves, are not always labeled as Mohareb (Moosavi Khomeini, Bfta, volume 2: 492).

In case a military officer devises a plan for subversion of the Government of the Islamic Republic of Iran or make attempts to do so, but doesn't gather crowds for this purpose, their deed will not be subjected to this article. In this article, "participation in the crowd activities" is not specifically defined, and it is not clear whether contribution to the material element is a crime or mere membership in such a crowd is enough to label the perpetrator as criminal. Also, if the term "effective" is considered applicable to the act of abetting as well, mere membership in such crowds without active partition in their activities shall hardly be subjected to this article. However, considering the need for severe punishments for Moharebeh, the legislator is supposed to take decisive measures in this regard.

- ***Armed measures against the Islamic Republic of Iran***

According to Article 22 of the military Penal Code: "Any military officer who takes armed measures against the government of the Islamic Republic of Iran shall be considered a Mohareb".

The crime described in this article is an absolute crime in terms of the material element, and mere physical behavior or attempts to carry out such a crime shall bring about criminal liability. If the act is committed against one of the elements of the government, it will only be subjected to the afore-mentioned article if the perpetrator intends to confront the government in general. The armed action in this article is described in absolute terms, but it seemingly



refers to criminal acts committed by means of a gun and the criminal acts committed by melee weapons are covered in the material element of such crimes. Moreover, the intention to act against the Islamic Republic of Iran is the specific mens rea of the crime.

The Ja'fari jurists define Moharebeh as: "drawing weapons to intimidate people" (Maki Ameli 1989: 263; Allameh Helli 1999; volume 5: 379; Ibn-e Idriss, 1989; volume 3: 505; Majlesi-ye Thani; B'ital: 43). Therefore, weapon drawing and intimidation intentions serve as the necessary conditions for realization of moharebeh (Jabal Ameli, 1992, p 15: 5). Ja'fari jurists have provided different interpretations for the term "weapon". According to a Imam Sadiq: "once a man invaded a house with a torch in his hand and set everything in the house on fire, when asked to serve as a judge, Amir al-Mu'minin (peace be upon him) gave the man a death sentence after having him compensate for the loss he had caused " Ameli, 1988, Volume 28: 315). Drawing on this saying, some jurists believe that, stone, stick and any other similar tool could be weapon. Shahid-e Thani provides a broader interpretation in this case and believes that ability and power serve as the necessary criteria for fulfilment of Moharebeh (Jabal Ameli, 1991, p. 9: 290).

On the contrary, some believe that acts such as intimidation of people by means of scourge or stick should not be deemed as an act of Moharebeh (Mousavi Khomeini, Bitā, volume 2: 492). Some also believe that weapon includes any tool that is used to fight (Fazel Esfahani, 1995, volume 10, 636). Similarly, some jurists believe that even in cases where an individual intends to do something against the Islamic Republic of Iran, The utilization of fake weapons similar to real weapons used to loot people , in an attempt to play havoc with public security, should not be deemed as an act of Moharebeh. According to another fatwa: "fake weapon doesn't serve a valid criterion for marking people as Mohareb, frequent use of fake weapons, however, could serve as a sufficient criterion for giving the label of mufsid fi l-'ard to individuals (vice-chancellor for Education in the Judiciary, 2002: 48).

- *Forcing or provoking to escape*

According to Article 23 of the military Penal Code "any military officer who compels or incites military or non-military staff to escape or surrender or refrain from performing their military duties, or even facilitates their escape or harbors them while knowing that they are fugitives, shall be treated as a Mohareb in case they try to perform subversive acts or provide the ground for the enemies to defeat the national forces, otherwise they will be sentenced to imprisonment for 15 years. The intention to subvert the government or support the enemy against the friendly forces are the specific mens rea of the crime and in case it is found out that the perpetrator doesn't have any mens rea, he shall be sentenced to imprisonment. Compulsion or incitement to escape or surrender or refrain from performing military duties are considered to be absolute crimes in terms of the material element. Consequently, it does not matter whether compulsion or sanctions lead to escape or surrender or non-performance of military duties, because this article is usually recognized and examined as the independent complicity. Therefore, if the perpetrator doesn't know that the people he is dealing with are actually military officer or are somehow affiliated with armed forces, his actions shall not be subjected to this article; compulsion or sanction must effectively contribute to the act of escaping, surrendering or failing to perform military duties, otherwise the perpetrator would not be subjected to this article.



- *potential measures to disrupt the territorial integrity of the Islamic Republic of Iran*

According to Article 20 of the military Penal Code: "Any military officer who takes measures to detach part of the territory of the Islamic Republic of Iran or to impair the territorial integrity or independence of the Islamic Republic of Iran, shall be punished as a Mohareb".

The territory of the Islamic republic of Iran covers land, air and sea territories. This article is deemed absolute in terms of its final consequences, and mere attempt to detach part of the territory or impair the territorial integrity or independence of the country shall bring about criminal liability

- *Collaboration with enemies*

according to Article 21 of the military Penal Code: "military officer's who commit the following crimes, shall be punished as Mohareb in case they seek to subvert the government or collaborate with the enemy, otherwise they shall be sentenced to three to fifteen years or imprisonment:

- A. Any military officer who surrenders his subordinate personnel, the base or place under his control or protection, or reveals the military equipment, maps, documents and military secrets
- B. Any military officer who collates with enemies to help them achieve their goals.
- C. Any military officer who assists the governments, militants and Moharebs at war with Iran or provides them with military forces or the necessary equipment, or encourages other individuals to join enemies or corruptors, "

The Crime described in this article is an absolute crime and mere physical behavior or attempts to carry out such a crime will bring about criminal liability. In clause (c) of this Article, no distinction is made between contributions made by Iranian or foreign elements. The intention to overthrow the regime and cooperate with the enemy is the specific mens rea of the crime. Hence, in case the perpetrator merely intends to overthrow the system, but does not intend to cooperate with the enemy (or vice versa) he will not be subject to the criminal punishment considered for Moharebs in this article. In other articles of this code, however, mere intention for subversion of the government shall bring about enough criminal liability for realization of Moharebeh. The mens rea and the criminal intentions of the perpetrator shall be authenticated and proved by the judge. Therefore, if his perpetrator denies his intentions to overthrow the government and cooperate with the enemy, the judge shall be required to prove the potential subversion intentions of the perpetrator. If a military officer colludes with enemies for purposes other than the enemy's objectives, and this collusion leads to fulfilment of enemy's objectives, this crime shall not be subjected to the present article, because the intention to collude with enemy to fulfill the enemy objectives, is the specific mens rea applicable to paragraph B.

- *Repentance before making attempts to impair the order and security of society*

According to Article 18 of the military Penal Code: "in case any of the individuals laid down in Article 17 repents before the plot is discovered, and introduce and reports the details to the police, they shall be exempted from the Hodud considered for Moharebeh (if his repentance is established in the court of law). If the acts committed by the perpetrator disrupt the order and security of the society or bring about concerns of possible disobediences in the future, they shall be sentenced to one to five years of imprisonment"



If the Mohareb repents before he/she is arrested, they will be exempted from the Hodud, but he will still have to pay compensation for all the financial damages and embrace criminal liabilities such as Qisas, if the perpetrator repents after he has been arrested, he/she will not be exempted from Hodud punishments, because exemption of Hodud punishments is only applicable before the Mohareb is arrested (Khoiyi, 2001, volume 1: 389).

Gathering of crowds to undermine the security of the country

According to Article 19 of the military Penal Code: "Any military officer who gathers crowds consisting of more than two individuals in order to undermine the security of the country (through intimidation, rioting and murder), shall be sentenced to three to fifteen years of imprisonment (in case they are not found guilty of Moharebeh). The members of the crowd who are aware of its objectives shall be sentenced to two to five years of imprisonment if they are not found guilty of Moharebeh. "

The Crime discussed in this article is an absolute crime and the intention to undermine the security of the country is the specific mens rea of the crime, and the deliberate or non-deliberate gathering or management of crowds constitutes the general mens rea of the crime. Mere Awareness of the crowd members of the objectives (undermine the security of the country) shall bring about criminal liability, this will hold true even when the crowd seeks other objectives and the crowd members are not aware of them. The number of crime partners is therefore not subject to this article as long as there are two persons and one person is also known as a deputy of the offender. The abettors (in case there are two abettors) and the accomplice will not be subjected to this article.

The Legislators must distinguish between members of the crowd who are aware of their goals and perform more effective activities in pursuit of the crowd goals, and other members who have merely joined the crowd, but don't play any active role in it. This important issue that is not been taken into account by the legislator, is a serious objection to the code. In case a military officer gathers and manages such a crowd, his action will amount to material plurality of crime.

Espionage

According to Article 24 of the Military Penal Code: "the following persons are considered as spies and shall be sentenced to the following penalties:

- A. Any military officer who provides the enemies or aliens with documents or information or objects of great intelligence value, and consequently undermines the military operation or security of facilities, fortifications, bases, factories, permanent or temporary arsenals, Temporary military stopover, military buildings, ships, aircraft, or military ground transportation vehicles or the security of the national defense facilities, shall be punishable as a Mohareb;
- B. Any military officer who manages to acquire documents or information for enemies or foreigners, but fails, for any reason, to surrender them to the enemies, shall be sentenced to three to fifteen years of imprisonment;
- C. Any military officer who submits military, political, security, economic or industrial secrets associated with the armed forces to the domestic or foreign enemies or foreigners or informs them of the provisions thereof, shall be punished as a Mohareb;



D. Any military officer who enters the top secret sections to acquire classified document or information in favor of the enemy or aliens, shall be sentenced to two to ten years of imprisonment, if not punishable by more severe penalties under other laws

Note - Any military officer who entered the document storage site either intentionally or inadvertently, shall be sentenced to six to three years of imprisonment;

E. Any alien who enters bases, factories, arsenals, military camps, armed forces units, temporary military stopovers, military defense buildings, and ground, airborne and maritime vehicles or enters the places where the documents or information are stored, shall be sentenced to execution and otherwise to one to ten years of imprisonment.

Note 1: anyone who abets the military officer in the crime of espionage, shall be punishable in the military courts in the same way as the main military criminals and shall be sentenced to the same penalties considered for the military officer.

Note 2- complicity in the act of espionage or hiding or harboring a spy is a crime and the perpetrator shall be tried in military courts, and in cases where the spy is sentenced to execution as a Mohareb, the accomplice shall be sentenced to three to Fifteen years of imprisonment. "

The documents or information in paragraph "b" of this article are classified. In paragraph (b), it is not specified whether the person who attempts to collect information for enemy or aliens, is still punishable after he reports to the police and contributes to discovery of the crime.

Paragraph "C" deals with domestic or foreign enemies, but in other cases, such as paragraph "B" of Article 21, the legislator describes enemy or enemies in absolute terms. ; The reason for this dichotomy is not known.

The death penalty in paragraph "e" is a T'azir punishment and is therefore commutable. The term "otherwise" in paragraph "e" refers to cases where the alien enters the afore-mentioned places inadvertently or with intentions other than collecting information for enemy. It is not specified in this clause whether the term "alien" refers to civilian or foreigners, or a military person who is not authorized to enter that place. In case this term includes civilians, the jurisdiction of military courts has increased, in contrast to Article 172 of the Constitution, unless it is believed that civilian affairs are handled in public courts. Given that in Article 503 of the Islamic Penal Code, similar punishments have been considered for such a crime, the latter interpretation will be quite unlikely

Enemy and national security

in Article 25 of the military Penal Code: " enemy is defined as: the hooligans, groups and states that are at war with the Islamic Republic of Iran or intend to overthrow it or act against national security of the country. .

Note - Whenever the court of law is unable to authenticate the adversary or the hostile state, the matter will be brought to the attention of the supreme national Security Council through the inquiries made by the judiciary "

The hooligans and groups in this article can be either domestic or foreign. The note allows the court to act on its own discretion and, in case the court fails to identify the hostilities, they will have to inquire the ideas of the Supreme National Security Council. The final judgment on authentication of enemy is made by the judge of the court, and therefore if the Supreme National Security Council recognizes and declares a given state as the enemy, the judge is



required to accept it. In the inquiry of the Supreme National Security Council's idea, the crime commitment time should also be announced, so that the council can provide an adequate response in accordance with the time of the crime.

National security mainly relies on political and military dimensions, and the government plays the main role in recognition of this phenomenon. Of course, the social, economic, cultural and other aspects of it must also be taken into consideration (Malmir, 2002: 90).

Efforts to limit the scope of the term "national security" to any of its levels, regardless of other dimensions, will disrupt the perception of the national security (Mandel, 1998: 51). According to the definition of national security, this concept is a relative condition. In other words, no individual, at the micro level, and no country, at the macro level, can claim to enjoy complete security (Kazemi, 1994: 115). National security is defined as protection of material, political and cultural existence against the aggression of other nations (Behzadi, 1989: 99). Some believe that national security is crystallization of public interests within the territory of the country (SeifZadeh, 1991: 97). Others consider it a multifaceted concept, and believe that the sense of freedom from fear or sense of security is the most obvious form of recognition of national security (Mandel, 1998: 44). Some believe that national security is protection against risk (objective security), the sense of safety and mental security, and the sense of freedom from doubt (trust in personal revelations) (Buzan, 1999: 57).

Disclosure of confidential secrets

According to Article 26: "Any person who submits documents, negotiations, decisions or classified information to the non-authorized individuals, or inform them of the provisions thereof. Shall be sentenced as follows:

- A. If the documents, negotiations, decisions or information are top secret, they shall be imprisoned for three to fifteen years;
- B. If the documents, negotiations, decisions or information are secret, they shall be imprisoned for two to ten years;
- C. If the documents, negotiations, decisions or information are highly confidential, they shall be imprisoned from three months to one year;

Note 1- If the documents, negotiations, decisions or information are confidential, they shall be disciplined by the commander or president

Note 2: in case the above acts require more severe punishment according to other codes, the perpetrator shall be sentenced to more severe punishments

Note 3: Classification and changes in the classification of documents, negotiations, decisions and information, as well as the manner of classified document storage shall be determined in accordance with the instructions provided by the General Staff of the Armed Forces after it is approved by the Commander-in-Chief.

This crime is absolute in terms of the material element, and mere submission of documents to non-authorized persons shall bring about criminal liability, and if the perpetrator fails to submit the documents, his action will not be subject to the present article. However, considering the importance of the issue, it would be better to consider a more lenient penalty for the latter case as well. The intention to act against internal or external security is the specific mens rea of this crime, and deliberate and non-deliberate submission of documents, negotiation details, and decisions or classified information to unauthorized persons, is the



general mens rea of this crime. If a military officer undergoes intelligence debriefing due to negligence or recklessness, they shall not be subject to this article.

The highly confidential classification (11) refers to information and documents, such as intelligence and counter-intelligence reports and figures related to forces that could undermine the interests of the country, in case they are disclosed in an unauthorized way. Confidential classification (12) refers to information and documents that must never be publicly available and requires a degree of protection lower than what is considered for highly confidential information (Rustami, 1999: 551). According to the above-mentioned points, if the judge doubts whether the information are top secret or highly confidential, and fails to make sure about it even after thorough investigations, he should resort to the ascertained ordinances and consider them highly confidential. In addition, it should be noted that the crime occurrence time should be taken into account when dealing with top secret, secret or highly confidential categories. If a military person provides unauthorized individuals with top secret, secret and highly confidential information, these criminal acts should be regarded as a subdivision of crimes against domestic and foreign security.

Recklessness in protection of classified information

According to Article 27 of the military Penal Code: " any military person who discloses information and decisions, or eliminates the documents referred to in article 26 out of recklessness, negligence or non-compliance with public regulations, shall be punished as follows (depending on the importance of disclosed information and documents):

- A. If the documents, negotiations, information or decisions are secret, they shall be imprisoned for six months to two years;
- B. If the documents, negotiations, information or decisions are secret, they shall be imprisoned for three months to one year;
- C. If the documents, negotiations, information or decisions are highly confidential, they shall be imprisoned for two to six months.

Note- If the documents, negotiations, information or decisions are confidential, they shall be subject to disciplinary punishment by their commander. "

Recklessness is often used in contrast to negligence, in other words negligence mainly deals with inaction while recklessness is mainly related to action and is defined as taking an action without foresight (as to the prohibited consequence) which must be observed (Sanei, 1992: 116). The term "negligence" in this article seems to be redundant and criminal acts or transgressions mainly result from recklessness or non-compliance with public regulations. Moreover, a situation in which negligence is separable from recklessness is hardly conceivable. According to Articles 616 and 714 of the Islamic Penal Code (1996) fault or criminal error includes recklessness, inconsideration, lack of skill, and failure to comply with public regulations., while in this code, lack of skill is not considered as fault or criminal error and should therefore be taken into account by the legislator. Therefore, according to this article, the military officer can only be convicted when recklessness, inconsideration and failure to comply with public regulations on the part of him can be proved, and when it has been proven that the criminal action has resulted in the elimination of documents.

Intelligence debriefing

According to Article 28 of the military Penal Code: "Any military officer who is debriefed by enemies or aliens (after receiving the necessary training on protection of classified information) due to inconsideration and non-observance of the protection principles, shall be sentenced to one to six months of imprisonment. "

The crime of Intelligence debriefing was first taken into consideration in The Penal Law on Dissemination and Disclosure of Classified Information and Documents (1974). According to this article, disclosure of the provisions of the documents due to non-observance of the regulations or due to negligence and inconsideration on the part of the agent responsible for protection of the documents, is punishable by three to six months of imprisonment. In this crime, act or failure to act (omission) don't take place deliberately, but recklessness and the failure to observe the regulations lead to commission of the crime, and this article does not cover the punishment of the person who performs the act of Intelligence debriefing. In this case, it is generally argued that: "the perpetrator of Intelligence debriefing is charged with the act of intelligence acquisition that serves as the material element of the crime (committed by the government agent), and the government agent who is responsible for protection of the information, is punishable as the abettor to the spiritual element of the crime "(Goldouzian, 2001: 475). According to the above-mentioned points, this argument is subject to an objection: in case the military officer doesn't receive the necessary training on the protection of classified information, and is subjected to intelligence debriefing due to inconsideration, recklessness and non-observance of the protection, this article shall not be applicable to them. According to the article, a military officer who has access to classified information can be the agent of personnel or archiving department, or serve in other sections of the military unit. In this article, enemies and aliens could be both domestic and foreigner, and the term alien refers to an individual who is not qualified to have access to classified information.

The military officers who are subject to military debriefing after receiving the necessary training on the storage of classified information, shall be sentenced to one to six months of imprisonment, but in the previous article, more serious penalties are considered for the perpetrator while The criminal offense seems to of less serious than that in the previous article

CONCLUSION:

The commission of crimes against domestic and external security on the part of armed forces will lead to serious, and sometimes irreparable damages to the national security of the country. In the second chapter of the military Penal Code, The legislator has tried to prevent the commission or development of such crimes by criminalizing different derivatives of measures against national security and considering appropriate penalties for them. . This code has largely succeeded in achieving its goals, but some ambiguities and shortcomings in this code require further reflections and revisions. these shortcomings include the lack of a specific definition for political crime, assignment of the repentance of the Mohareb to Article 17, lack of a definite standard for judgment on participation in the crowds for subversive purposes (Article 17), uncertainty about the state of war (Article 22), and uncertainties about the term alien (Article 24), the necessity of criminalization of criminal acts associated with intelligence



debriefing (Article 28), which, considering the importance of crimes against national security, requires further revisions.

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