ETHNIC CUSTOMARY LAW IN RELATION TO POLITICAL, MILITARY AND SECURITY ISSUES

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Abstract: According to anthropology and ethnology, the customary law itself originated long before the emergence of the state and laws applied by official authorities. In the absence of statehood, different ethnicities may have found forms of customary justice, through written or unwritten customary law. These customary laws have been embodied in the culture and tradition, and may also accept other substrates, such as religious norms. The purpose of this paper is to show the reflections of the customary law of the Pashtuns and the Chechens on political, military and security issues.

Keywords: customary law, pashtunwali, adat, cross-border cooperation, insurgency.

Introduction

Depending on the historical circumstances that an ethnic group may have gone through, it has also developed in its tradition many aspects of the finding of the solutions to have a form of justice within the collective. The essential difference between the various traditions is the existence or non-existence of stable state authority or how this authority has applied justice. It is important to know, if such authority existed, how it was accepted, was it a superior instance of justice or just a partially implemented code.

A few reflections are presented on the customary law of ethnic Pashtuns (Pashtunwali) and the system of Chechen customary codes and norms (Adat). Some of the recent wars show that the study of the pledge of honor among various ethnic groups is essential for the later managing of aspects that might have implications on the behavior of the members of an ethnic population during the armed conflict.

Research methodology

The study is subject to the application of analysis, comparative approach, synthesis, and abstraction as the main methodological heuristic toolkit. The conclusions are based on analysis.

Results

The culture of ethnicity, cannot be understood without knowing the customary law and other traditions in this regard which the members of the

ethnicity obey. Consequently, neither the actions regarding the political, military and security issues cannot be clarified without addressing this integral part of ethnicity. This is especially evident when it comes to cooperation between members of the same ethnic keen involved in a war, regardless it is just a context inside one country or may include cross-border cooperation, too. Moreover, cross-border cooperation during the circumstances of the war finds its stronger support exactly on the customary law.

The customary law of ethnic groups covered as case studies in this research, reveals to us the fact of ethnic solidarity which is not limited by state borders. On the contrary, the feeling of helping the ethnic cause is reinforced even more when an ethnic group ethno-territory is stretched on more than one country.

In many cases, it is the customary code and tradition that traces the contours and actions of both the collective and the individual. Among the cultures where customary code is in written form, the probability of the norms being unchanged is higher. Moralist books have well-founded intergroup and intragroup hypotheses[1].

Over time, this has not only become part of the general social ethnic culture but has also determined the behavior of the individual inside the ethnic group. These codes and traditions continue to have very serious implications not only in matters of security but also to give direction to many decisions and actions from politics to the military aspects.

Depending on the principles that the code is imposing on the individual or collectivity, in many cases, it also has an impact on the behavior of certain parties, which is especially sensitive in war circumstances. Certain peoples react more conservatively to the presence of a foreign authority. In many cases, the presence of a foreign authority is treated as interference with local customs and on the other hand, inaction is treated as a sign of weakness and shame.

In any possible involvement before studying many other features, security professionals should take very seriously the determining social circumstances which affect the population. Relevant authorities or institutions cannot consider a plan to be completed without proper cultural knowledge about the population structure. According to Ross, cultural learning organizations must exist before the conflict[2].

In the conditions of guerrilla warfare, the hospitality and shelter that can be provided to the fighter are essential for his survival and further readiness for war. A guerilla fighter does not spend his entire time in warfare. In the circumstances when the enemy has superior authority over the territory, then the hospitality and shelter are more than important. According to "Field Manual 3–24: Counterinsurgency" of the U.S. Army,

counterinsurgents can use cultural forms to shift perceptions, and gain or reduce support for them[3].

In a country embroiled in guerrilla warfare, residents of a particular settlement have to choose between official law, on the one hand, and their ethnic code and tradition on the other. The latter carries with it the possible persecution by the authorities, however likely it will be the decided option. In many societies, the greatest punishment is to face shame and hostility from the social circle because such sanctions often affect the position within the family, and do not recognize the time limit.

Pashtunwali

The Pashtuns have an ethnic social structure that has greatly influenced not only their relationship to various political and security circumstances, but this has kept their connection very active on both sides of the Afghan-Pakistani border which divides their ethnic territory. At the very center of this social structure, functioning as an arbitrator for all matters from the family and civil life to politics lies their traditional code called Pashtunwali. Literary can be translated as "the way of Pashtun"[4].

This traditional code for most Pashtuns is the code of honor. A customary code very similar to the Pashtuns also is present among Baluchis in the southwestern end of Afghanistan[5]. But not all ethnic groups in Afghanistan have a similar social "arbiter", including the second largest ethnic population, the Farsi-speaking Tajiks. Instead, unlike the Pashtuns, the Tajiks do not have a defined social structure nor any memory of the previous tribal system[6].

Pashtunwali has its roots in very ancient culture, not in religion, as it often might be misunderstood. Even though Pashtunwali dates back to pre-Islamic times and many sources are telling us that this is a history spanning seventeen hundred years, however, it is integrated with the Islamic tradition of southern Afghanistan, or more precisely the Islam is received as an addition to the code, and became an integral part of Pashtun culture and way of life or rule of behavior.

Pashtunwali rules are part of the everyday life of Pashtuns, both in Afghanistan and Pakistan. Although not exclusive, the following are the most important norms of Pashtunwali: Hospitality (*melmastyá*), Asylum (*nənawā́te*), Justice (*nyāw*), and Revenge (*badál*)[7]. The other principles which gave the entire shape to the code are bravery, loyalty, kindness, arbitration, faith, respect, pride, honor, courage, chivalry, country, etc.

Ethnic Pashtuns regardless of their tribal affiliation, adhere to the Pashtun culture and submit to Pashtunwali. Even though Pashtun's ethnic homeland is divided by the Duran line (1893), they were jointly active while resisting foreign authorities[8]. No matter of tribe or sub-tribe they affiliate

with, practically all Pashtuns obey Pashtunwali. An individual must comply with the code if wants to be respected inside the tribe. Those who try to avoid the rules of Pashtunwali whatever the reason may have, become isolated and unfavorable to the rest of the tribe.

As it has a powerful impact on the collective life of the Pashtuns, in new modern historical events, including conflicts and wars in the region, the code has a direct impact on the security issue, mostly the negative ones. If a community defense can be effectively produced to a higher extent to be able to impact so firmly achieving this without the institutions of a state, then Pashtunwali is a typical example.

Pashtuns still see their land as a terrain of resistance. Outsiders claiming control over the area have either allowed the Pashtun to govern themselves perhaps claiming a form of nominal authority with little control, or they faced increasing resistance. After the retreat of the Taliban in 2001, Pashtunistan became the heart of the resistance to NATO coalition forces. Afghan and Pakistani governments were extremely challenged by the easiness of the Taliban to find shelter in tribal areas where Pashtunwali has strict implementation. Hoverer, not just in the recent history with the Taliban insurgency, but also in earlier times the obligation to protect the visitors, even it was the case when authorities pursue insurgents, leads their hosts to join in the resistance[9].

From the early days of the Taliban, when they initially took the control of the Pashtun inhabited areas of southern Afghanistan, no one opposed them as hospitality was considered the norm and practice. Pashtun-dominated areas have never been a threat to the Taliban regime, largely because of the very close way of life and not just because of the ethnic identity. Tribal laws were indeed understood as if they were analog to the practiced Islam, or at least introduced by the Taliban. The real opponents the Taliban started to confront, appeared only when they took control over ethnically mixed territories.

Misinterpretation of Pashtunwali poses challenges to Pakistan too by "promoting" terrorism and extremism and it also serves as an obstacle to the integration of Pashtuns in the inter-ethnic political life[10]. Pashtunwali was transformed into a security challenge both in Afghanistan and Pakistan. That is why the Pakistan Army during 2002–2004 conducted military operations in certain tribal areas, in which foreign terrorists were pursued. They as foreigners benefited from one of the main components of Pashtunwali, hospitality[11].

Earlier before the American invasion, the Taliban leader Mullah Mohammed Omar, rejected the U.S. Government's request to hand over Osama bin Laden, claiming that this would violate the Pashtun tradition of asylum. This may have been unfounded reasoning because

according to some interpretations Pashtunwali considers the protection of the weak[12].

As will be seen by many, Pashtunwali in the background has poured oil on the fire of war[13]. Although they did not respect it, the Taliban have used the code so shallowly in their interpretation and many individuals have felt compelled to assist. But not always the blame for incidents in the Pashtun areas can be attributed to the code of honor. Extensive instances during the US military presence in Afghanistan show situations where soldiers have seen the benefits of Pashtunwali.

The Pashtun code of honor has been so present in cases when the foreign soldiers might need help during their experience in the vast rural territories. This positive benefit from Pashtunwali has not gone unnoticed in the cinematography, as in "Beast" and "Lone Survivor". Driven by the norm of hospitality, there have been cases when even in the most conservative mountainous areas, villagers helped and sheltered wounded soldiers.

Adat

Beliefs and behaviors of the Chechens greatly revolve around a system of customary codes and norms – Adat. Regarding their strict relation to tradition, the Chechens are not a unique case in the Caucasus. But the fierce wars that took place in Chechnya, made the relationship with the customary code system more special and with a direct impact on security. As a collective extremely connected to the family and the clan (teip), the Chechens take meaningful care of the tradition that they pass on through the generations. The survival of Chechen norms is ensured between generations even when the population was deported during the Stalin era. Adat survived all phases of Russian rule in Chechnya. In a first touch with the territories inhabited by Chechens, Russian authorities used imperial legislation only if a solution was impossible to find within the soc-cultural mechanisms[14].

Despite the decline of traditionalism that might have a chance after some urban industrialization, again archaic patterns of social organization have remained virtually almost untouched among the Chechens. There is a persistence of several key phenomena: clan identity, the concept of honor, habits associated with blood feuds, silence, and hospitality.[15] But as the recent history proved, the collective conscience finally joins individuals at the point when the honor of homeland (Daimokh) is questioned. This call for freedom was also the obstacle to a politically logical move toward any compromise with Russia for a long time. The Chechens considered the breakup of the Soviet Union, to be the last call to gain sovereignty over

their homeland since for them the lack of freedom rejects other attributes of honor.

Gammer (2006) confirms this when asserts that freedom is a central element of the Chechen collective consciousness. He reminds us of the importance of freedom in the daily life of a Chechen even in the way how they welcome or greet a guest: "Marsha woghilyla" (literally, enter in freedom); goodbye is "*Marsha ghoyla*" (go in freedom) [1] .

Freedom is an integral part of all norms that compromise the sense of honor and meaning over it. All elements of the Chechen code of honor imply the freedom to behave, act and protect. According to Johnston (2008), the military courage of the Chechens in the wars was a reflection of these different cultural scenarios expressed in modern warfare, adding also the religious element as an infusion to these qualities [2] .

However, until the radicalization occurred among some mostly young commanders during the Second Chechen war or before it, the movement for independence from Russia was mainly secular. Independent Ichkeria was not a state based on the sharia, but rather had a constitution that guaranteed religious freedoms. This state structure was corresponding with Adat, an originally non-religious code of honor in which the religious aspects do not prevail. Yemelianova thinks that the Zoroastrian and early Christian components intertwined with Islamic law resulted in a unique version of Chechen culture[16].

After the Russian army took control over Chechnya following the elimination of the pockets of territorial resistance, the active insurgency continued to be active despite its lowered intensity. Researchers find that the potential, scope, and magnitude of mobilization for violent action are "retaliation" and insurgent popular support relies on "hospitality and silence" as elements of Adat. These norms were essential for any prospect of success for insurgents when considering the overall culture of honor[17].

During the insurgency in Chechnya, two concepts had a great impact: *nokhchalla* (Chechenness) and *admalla* (humaneness). When it comes to the mechanisms implemented to fulfill these two concepts and Adat in general, then it can be said that the key in this regard was: the code of retaliation, the code of silence, and the code of hospitality.

The destruction of settlements during the fierce military campaigns and the discriminatory actions against the civilians during the pursuit of the insurgents created waves of desire for retaliation. In such a situation, the individual is not left with much choice. Along with the surrounding social pressure, the individual remaining loyal to tradition, felt the desire to take revenge aware of the consequences. Retaliation is very often the driver of violent mobilization during wars. In Chechnya, this was more pronounced, due to the weighty role of the code of retaliation.

If in the framework of the Chechen codes, revenge can be considered the most common mechanism for mobilization. Further, the code of silence is the second most mechanism in a row. Population resisted by not providing any inside information regarding the insurgents. The impact was that the code of silence has given a lot of breath to the insurgents, but has further infuriated the authorities since has incited the brutality as it has made the attacks even more non-selective.

The radicalization that took place among the new Chechen commanders led to a confusing situation in the system of socio-cultural norms. Wahhabism rejects the traditional Sufi Islam combined with Adat. Zurcher (2007) argues that Wahhabism brought considerable social explosiveness. [3] About 80% of those who have succumbed to Wahhabi ideology were young people coming from families where socio-cultural codes have not been respected. Respectively, the new Wahhabi adherents during the war-torn Chechnya were people who were largely unfamiliar with Adat[18].

However, adat as a norm has not been overturned when it comes to anti-Russian sentiments. In the late phase of the guerrilla war, cases of adat-based support for the pro-insurgency movement, were not uncommon[19]. Since the period of de facto independent Chechnya 1996–1999, Chechen President Maskhadov was quite critical not only of the Wahhabi presence among some Chechen units but was also concrete in deconstructing their intentions. Maskhadov stressed that the Wahhabis want to rob Chechen customs, traditions, and adat[20]. Maskhadov was aware that Wahhabi infiltration that was at odds with Chechen traditions and customs was strongly damaging Chechnya's security. However, the fragile institutions that emerged after the war were powerless to expel Wahhabism. Consequently, after the Wahhabi invasion of Dagestan (1999), Russian authorities found the pretext to regain control of Chechnya and eliminate the secular elite.

Conclusions/Discussion

The Customary ethnic laws highlight the stand of an individual or entire group on security issues. In many ethnic traditions, some may judge that is much more affordable to stand against security authorities rather than face family or social circle sanctions.

Conclusion

The customary ethnic laws have undergone changes with the modernization of life and with the waves of urbanization. But this is not likely to happen with the same dynamics when it comes to societies strongly based on tribal or clan concepts. In societies where the absence of state

authorities or non-loyalty toward them has imposed the creation of traditional mechanisms, the customary law as part of a broader socio-cultural system is surviving through generations. In the cases presented here, it is seen that customary laws may pose serious security challenges.

The undertaking of operations, which has not addressed the ethnic specifics, is condemned to face many unexpected difficulties. In the case of Afghanistan, the years-long inability to quell the Taliban insurgency as a result of their exploitation of the Pashtunwali beneficiaries brought about an overthrow of the entire system. Social pressure, ethnic solidarity, and position within the tribe, have pushed individuals and entire collectives to offer shelter to the Taliban. Afghanistan's security conceptualists have underestimated the power of customary code and the impact it can have on national security.

When it comes to Chechnya, Adat somehow preserved the vitality of Chechen identity through history. The influence of respect for customary norms and traditions, especially in the First War, has an unquestionable impact. Such respect for tradition could only be broken by asymmetric infiltrations of foreign extremist traditions and ideologies. The Wahhabi infiltration divided the society and complicated the meanings of customary law. Russian policymakers who broke the Chechen resistance created a contingent of extremists who, as evidenced by the war in Syria, were willing to extend their activities to a broader context.

A genuine National Security implies a positive approach to ethnic specifics by clearly distinguishing the civil population from the circles that violate security.

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