

**REPORT- Session 8**  
**2 Credit Certificate Course on IHL**

Date: 11<sup>th</sup> March 2023

Speaker: Prof (Dr.) Marco Sassòli

On his second lecture, Prof (Dr.) Marco Sassòli gave a thorough introduction to non-international armed conflicts. He commenced the session by clearly defining non-international armed conflict, and how they may be distinguished from international armed conflicts. He focused on the categories of IHL, with special emphasis on Protocol II, for the purpose of applying humanitarian law of International armed conflicts to non-international armed conflicts.

Further, he discussed the historical development of non-international armed conflicts and to what degree humanitarian law for international armed conflict advanced the development of law for non-international armed conflict. He also steered the discussion towards the limitations of drawing distinctions between international and non-international armed conflicts as the affected persons have very similar needs and the distinction often proves to be objectively difficult, controversial and delicate. Furthermore, he deliberated on the fact that states tended to insist upon drawing a distinction between international humanitarian law as applicable in international armed conflicts and non-international armed conflicts as non-international armed conflicts tend to have a much lesser detailed treaty law and the lack of combatant status and consequent immunity provided by NIAC.

Further elaborating on this distinction, Professor Sassòli particularised the consequences of a lack of status as a combatant or as a prisoner of war in the conduct of hostilities in non-international armed conflict. Further, humanitarian law concerning non international armed conflict gives no status of protected civilian in the power of the enemy. Additionally, there is a paucity of rules regarding the fashion in which an armed group may and must administer a territory. He described the inherent deficiency in law regarding non-international armed conflict due to a lack of definition of civilians, or of military objectives, and the fact that there is no obligation of 'fighters' to distinguish themselves from civilians.

He went on to specify the contributing factors that are presently bringing the humanitarian law of international armed conflict closer to non-international armed conflict, including the jurisprudence of international criminal tribunals, some recent international humanitarian law treaties, ICRC customary law study, influence of international human rights law, etc. He also drew a parallel between IHL and NIAC as they both provide fundamental guarantees of human treatment once in the power of a party, including prohibition of murder, rape, torture and taking of hostages and the right of whoever is to be tried to benefit from judicial guarantees. It provides for the wounded, sick and shipwrecked to be respected, collected and cared for and specifies the rules on the conduct of hostilities and equality of belligerents before international humanitarian law.

Here, he stopped for questions, especially regarding the distinction of categorisation of armed conflict into international and non-international conflicts, and regarding the role of non-state actors in armed conflict. He answered these queries in reference to current scenarios of conflict between Naxals who fought with Central reserve police and 9/11 attacks. He also answered queries in regard to the aspects of compliance of IHL upon rebel or non-state actors in cases of NIAC.

After answering all the questions, he moved on to the substantive rules applicable to NIACs, highlighting Article 3 common, which concerns itself with humane treatment and prohibition of violence to life and person, murder, cruel treatment, torture, and also outrages upon personal dignity, along with humiliating and degrading treatment. Thereafter he went on to delineate the substantive rules applicable to Non international armed conflict together with Additional Protocol II, and the fact that it has more details than Article 3 common. He began by tracing the drafting history of protocol II and the judicial guarantees it provides, including the rules specific to the wounded and sick and protection of children and those regarding protection of medical personnel, medical duties, medical units and of the emblem of the red cross and the red crescent. It prohibits forced displacements, provides for relief actions, prohibition of starvation of civilians as a method of combat and protection of objects indispensable to the civilian population, as well as protection of cultural heritage.

He further described the theoretical need to find these rules separately from those applicable to IACS along with possible reasons for convergence in practice and informed that The ICRC Study on customary IHL ascertained that 136 (possibly even 141) out of 161 rules are the same in IACS and NIACS. He also described the necessity of analogies between IACs and NIACs, but also the limits it places on the non-international armed conflict as it leaves with unsolved practical problems in non-international armed conflicts. For instance, may a member of an armed group be attacked (and therefore be killed) as under IHL IACS, as long as he or she does not surrender or is not otherwise hors de combat? Or may lethal force only be used, as International Human Rights Law , subsidiarily, when he or she cannot be arrested? May a captured fighter be detained, as by analogy to a PCW under IHL of IACs, until the end of active hostilities, without any individual decision? Or by analogy to a civilian in an A for imperative security reasons after Individual decision? Or must the fighter, as prescribed by HRL, be tried or at least (in case of derogations) have an opportunity to challenge his or her detention before a judge?

Dr Sassòli further described the rules on providing humanitarian access and assistance by bodies such as International Committee of red-cross when the civilian populace is suffering undue hardships owing to a lack in essential supplies. He ended the lecture with discussing techniques to engage non state armed groups to obtain their compliance in rules of IHL. He discussed possible ways to obtain compliance as well as obstacles such as unwillingness to expect such rules and lack of sufficient authority structures in such groups. Before ending the lecture, he took some final questions regarding reforms and amendments in IHL and if they were dependent on crisis and circumstances.