

A ONE SEMESTER INTERACTIVE IHL COURSE AT THE MASTER LEVEL GIVEN BY PROFESSOR MARCO SASSÒLI AT THE UNIVERSITY OF GENEVA

LESSON 1

To prepare:

- Read **MNs 1.01-1.11** in the Textbook (Marco Sassòli, *International Humanitarian Law: Rules, Controversies, and Solutions to Problems Arising in Warfare*, Cheltenham, Edward Elgar, 2019);
- Ask any question on what you have read for lesson 1 through the **forum** set up on Moodle.

Content:

- Presentation of the course and the subject;
- Discussion of the teaching, learning and evaluation methods;
- Lecture on the sources of International Humanitarian Law (IHL);
- Lecture on the classification of conflicts: whether the conflict constitutes an international armed conflict (IAC) or a non-international armed conflict (NIAC);
- Reflection on things learned on that day.

LESSON 2

To prepare:

- Read (minimal programme, **obligatory**): **MNs 1.01-1.11 (if not yet done); 3.02-3.09; 3.14-3.18; 3.34-3.36; all BITs in Chapter 4; MNs 4.03-4.06; 4.08-4.20; all bold introductory texts (BITs) in Chapter 6; MNs 6.02-6.07; all BITs in Chapter 7 in the Textbook;**
- Read (enhanced programme, **optional**): **MNs 1.01-1.11 (if not yet done); Chapter 2; MNs 3.01-3.09; 3.14-3.43; all BITs in Chapter 4; MNs 4.01-4.20; all BITs in Chapter 6; MNs 6.01-6.30; all BITs in Chapter 7 in the Textbook;**
- Ask any question on what you have read for lesson 2 through the **forum** set up on Moodle.

Content:

- The professor answers any questions raised by the readings;
- Lecture on the classification of persons: whether the individual is a combatant or a civilian;
- Lecture on the protection of persons: wounded, sick and shipwrecked; combatants and POWs; civilians in the power of the enemy (including in occupied territories);
- Reflection on things learned on that day.

LESSON 3

To prepare:

- Read (minimal programme, **obligatory**): **MNs 3.28-3.33; 3.37-3.43; MNs 4.34-4.40; all BITs in Chapter 5; MNs 8.284-8.306; 8.319-8.324; 8.329-8.334; all BITs in Chapter 8 in the Textbook;**
- Read (enhanced programme, **optional**): **MNs 4.34-4.46; all BITs in Chapter 5; MNs 8.284-8.356; all BITs in Chapter 8 in the Textbook;**
- Ask any question on what you have read for lesson 3 through the **forum** set up on Moodle.

Content:

- The professor answers any questions raised by the readings;
- Lecture on the rules of IHL regulating the conduct of hostilities;
- If time permits: Overview of the implementation mechanisms of IHL;
- Reflection on things learned on that day.

LESSONS 2-5: OVERVIEW OF IHL THROUGH A DISCUSSION OF CONTEMPORARY PROBLEMS OF IHL ARISING IN THE ARMED CONFLICT BETWEEN RUSSIA AND UKRAINE, BASED UPON THE FOLLOWING DOCUMENTS:

1. Extracts from the first yearly report of the UN Independent International Commission of Inquiry on Ukraine of 15 March 2023,
Source: https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/coiukraine/A_HRC_52_62_AUV_EN.pdf
2. Extracts from Report on Violations of International Humanitarian and Human Rights Law, War Crimes and Crimes Against Humanity, committed in Ukraine since 24 February 2022, in the framework of the OSCE Moscow Mechanism, <https://www.osce.org/files/f/documents/f/a/515868.pdf>
3. Extracts from the Third OSCE Experts Report on Violations and Abuses of International Humanitarian and Human Rights Law, War Crimes and Crimes against Humanity, related to the Forcible Transfer and/or Deportation of Ukrainian Children to the Russian Federation, of 25 April 2023, https://www.osce.org/files/f/documents/7/7/542751_0.pdf
4. Extracts from Office of the United Nations High Commissioner for Human Rights, Report on the Treatment of Prisoners of War and Persons Hors de Combat in the Context of the Armed Attack by the

Russian Federation against Ukraine, 24 February 2022 – 23 February 2023 (24 March 2023), <https://www.ohchr.org/sites/default/files/documents/countries/ukraine/2023/23-03-24-Ukraine-thematic-report-POWs-ENG.pdf>

5. Anaïs Maroonian, Destruction of the Kakhovka Dam: Disproportionate and Prohibited (Articles Of War, 29 June 2023), <https://lieber.westpoint.edu/destruction-kakhovka-dam-disproportionate-prohibited/>
6. Amnesty International, Press Release, 'Ukraine: Ukrainian fighting tactics endanger civilians', 4 August 2022, <https://www.amnesty.org/en/latest/news/2022/08/ukraine-ukrainian-fighting-tactics-endanger-civilians>
7. The White House, Press Briefing by Press Secretary Karine Jean-Pierre and National Security Advisor Jake Sullivan (7 July 2023) on the transfer, by the US of cluster munitions to Ukraine, <https://www.whitehouse.gov/briefing-room/press-briefings/2023/07/07/press-briefing-by-press-secretary-karine-jean-pierre-and-national-security-advisor-jake-sullivan-5/>
8. ICC, Situation in Ukraine: ICC judges issue arrest warrants against Vladimir Vladimirovich Putin and Maria Alekseyevna Lvova-Belova, <https://www.icc-cpi.int/news/situation-ukraine-icc-judges-issue-arrest-warrants-against-vladimir-vladimirovich-putin-and>

LESSON 4

To prepare:

- Read (minimal programme, **obligatory**): **MNs 3.10-3.13; MNs 6.61-6.62; MNs 8.50-8.53; 8.61-8.66; 8.68-8.72; 8.78; 8.89-8.95; 8.189-8.194; 8.215-8.223; 8.268-8.282 in the Textbook;**
- Read (enhanced programme, **optional**): **MNs 3.10-3.13; MNs 6.61-6.75; MNs 8.50-8.124; 8.189-8.194; 8.215-8.225; 8.268-8.282; MNs 9.89-9.115 in the Textbook;**
- Try to answer the following questions based upon the documents mentioned above:

I. Conflict classification, applicable law and scope of obligations of the conflict parties

1. How would you classify the conflict between Russia and Ukraine? What are the legal rules applicable to the conflict? Are there some rules binding Ukraine when fighting Russia but not binding Russia when fighting Ukraine? Is the customary IHL binding Russia exactly the same than that binding Ukraine, or may Russia take its past practice in Chechnya and Syria into account when determining those rules?
2. Did states supporting either party to the conflict as well become parties to the conflict? In which circumstances could a supporting state become a party to an IAC? In case the supporting states do not qualify as parties to the conflict, do they nevertheless have any obligations under IHL with regards to the conflict in question?
3. Under IHL, what is the difference between the situation in Ukraine and those in Yemen (see <https://www.rulac.org/browse/conflicts/non-international-armed-conflicts-in-yemen>) and Ethiopia (<https://www.rulac.org/news/a-non-international-armed-conflict-in-ethiopias-tigray-region>)? (*GCs, Common Arts 2 and 3; AP II, Art 1*)
4. Do Russia and Ukraine have exactly the same obligations under IHL?
 - (a) Although Russia has attacked Ukraine and Ukraine is defending itself?

- (b) When conducting hostilities to get or regain control over a village? May a Ukrainian commander targeting Russian forces to liberate a Ukrainian village, when calculating whether the expected incidental risks for the civilians inhabiting the village compared with the military advantage of liberating the village take the interest of the inhabitants not to live under Russian occupation into account?
- (c) Once Russia has occupied a Ukrainian village or Ukraine has liberated it, do they have the same obligations concerning the treatment of the inhabitants of the village?

(GCs, Common Arts 1 and 2, GC IV, Art 4; AP I, preambular paragraph 5, HR, Arts 42 and 43)

5.

- (a) When does IHL of military occupation start to protect a Ukrainian civilian against Russian forces? *(HR, Art. 42)*
- (b) What is the impact of an annexation on the IHL obligations of an occupying power? *(GC IV, Art. 47)*

II. Prisoners of war and their treatment

6. What must Ukraine do with the body of a dead Russian soldier?
7. Who is a prisoner of war? Are only members of regular armed forces prisoners of war? *(GC III, Art. 4; PI, Arts 43 and 44)*
8. Are the members of the “Wagner Group” mercenaries? Are they combatants or civilians? *(GC III, Art. 4(A)(2); AP I Arts 43 and 47)*
9. If the videos mentioned in those paras showed POWs making the statements genuinely voluntarily, would they have been lawful under IHL? *(GC III, Arts 7 and 13(2))*
10. May prisoners of war be held in prisons or in cells? In close confinement? If yes, under which circumstances? *(GC III, Arts 21(1) and 22(1))*

Content:

- Discussion on Case Study: **UKRAINE/RUSSIA, OSCE REPORT (Questions 1-10)**;
- Reflection on things learned on that day.

LESSON 5

To prepare:

- Read (minimal programme, **obligatory**): **MNs 8.96-8.97; 8.102-8.105; 8.146-8.158; 8.177-8.183; 8.235-8.238; 8.247-8.251; 8.261-8.262 in the Textbook**;
- Read (enhanced programme, **optional**): **MNs 8.125-8.188; MNs 10.158-10.170 in the Textbook**;
- Try to answer the following questions based upon the documents mentioned above:

II. Prisoners of war (continued)

11. Who committed which violations of IHL when the penal colony was hit by explosive weapons near Olenivka? If the latter was targeted by Russia? If it was targeted by Ukraine? (*GC III, Arts 13, 23, 30, and PI, Arts 48 and 49(1) and (2)*)
12. Could Ukrainian POWs be tried by Russia for mere participation in hostilities? Before courts of Russian-affiliated armed groups? By Russian civil courts? (*GC III, Arts 84 and 102, PI, Art. 43(2)*)
13. May Russian soldiers be punished by Ukraine for having killed Ukrainian soldiers in hostilities? For having participated in the Russian aggression? For having deliberately killed civilians? Could Russian POWs who belonged to Russian-affiliated armed groups be tried for mere participation in hostilities? Does it make a difference whether those POWs joined those groups voluntarily or were forcibly recruited? (*AP I, Art 43 and 85(3)(a)*)
14. What are the risks and advantages of exchanging POWs during the armed conflict? When must the captivity of a POW normally end? May a POW refuse to be repatriated? During the hostilities? At the end of active hostilities? How is the authenticity of their will monitored? May exchanged POWs join the armed forces again, if they so wish? (*GC III, Arts 109(4), 117, 118, 126(4)*)

III. Civilians in armed conflicts

15. Is the treatment of Ukrainians believed by Ukraine to sympathize with Russia governed by IHL? (*GC IV, Art 4; AP I, Art 75*)
16. Who is a "protected civilian"? May an occupying power escape from its obligations towards "protected civilians" by granting them its nationality? (*GC IV, Art. 4*)
17. Could all or some of the practices of summary executions, attacks against persons on move, confinement, torture and inhuman treatment, sexual and gender-based violence described in the report possibly not violate IHL: if the victims were combatants and not civilians? Did IHL possibly not apply because the conduct had no nexus to the conflict? What is the difference between summary executions and attacks?
18. For what reasons may enemy civilians be deprived of their liberty under IHL?

IV. IHL of military occupation

19.
 - o (a) May Russia forcibly evacuate civilians from occupied Ukrainian territory to Russia? From one part to another part of an occupied territory? In which circumstances?
 - o (b) Is there a difference in this regard between adult civilians and children?
 - o (c) When is a transfer "forcible"?
 - o (d) When must children who have been lawfully transferred be returned?

(*GC IV, Arts 49 and 50; AP I, Art 78*)

20. May an occupying power favour or permit the adoption of children from the occupied territory on its own territory? (*GC IV, Art. 50, AP I, Art. 78*)

Content of Lesson 5:

- Discussion on Case Study 1 (continued): **UKRAINE/RUSSIA CONFLICT (Questions 11-20)**.
- Reflection on things learned on that day.

LESSON 6

To prepare:

- Read (minimal programme, **obligatory**): **MNs 8.239-8.246; 8.252-8.255; 8.259-8.260; MNs 10.198-10.210 in the Textbook;**
- Read (enhanced programme, **optional**): **MNs 8.195-8.214; 8.226-8.267; MNs 10.198-10.210 in the Textbook; new text on sieges and humanitarian corridors (on Moodle);**
- Try to answer the following questions based upon the documents mentioned above:

IV. IHL of military occupation (continued)

21. What legislation may Russia introduce in Ukrainian territory newly occupied after 24 February? May it arrest, detain and try inhabitants? May it replace mayors? Arrest them? Enlist them into local police forces? (*GC IV, Art. 64; HR Art. 43*)
22. May Russia requisition private property in Ukrainian territory newly occupied after 24 February? For what purposes? May it use public property? (*HR, Arts 46(2), 52 and 55*)

V. Conduct of hostilities

23. Why is it more difficult to establish whether IHL on the conduct of hostilities was violated? How could the OSCE Mission nevertheless establish that the attack on the Mariupol Theatre and that on the Mariupol maternity house and children's hospital violated IHL?
24. When is an air, missile or artillery attack unlawful under IHL? (*Arts 48, 51 and 57 AP I*)
25. Did the targeting of the Ukrainian energy infrastructure constitute attacks against civilian objects, violate the proportionality rule or both? (*AP I, Arts 51 and 52*)
26. Could the destruction of a civilian house be lawful under IHL? Could an attack targeting a military objective nevertheless violate IHL?
27. When is it lawful to attack a TV tower?
28. When attacking a Ukrainian army headquarter in midst of an urban area, must Russia take the civilians living around the headquarters into account? The Ukrainian soldiers present in the headquarters? The waterpipe placed under the headquarters and serving the civilian population?

VI. Sieges

29. Is it unlawful under IHL to besiege Mariupol? If it is defended by Ukrainian troops? If it is not?
30. What problems arise in a besieged town for the civilian population? How can these problems be solved

under IHL?

- (a) What are the advantages and challenges in establishing humanitarian corridors?
- (b) May Russian forces attack Ukrainian forces defending Mariupol? Even while Mariupol is still full of civilians? Even if it is not feasible to spare those civilians while attacking the Ukrainian soldiers defending Mariupol?
- (c) Must Russia allow supplies into besieged Mariupol? Whom may those supplies benefit? May Russia insist upon a control of the distribution of those supplies?
- (d) May civilians leave besieged Mariupol? Is it in the interest of besieging Russian forces that civilians leave Mariupol? Is it in the interest of the besieged Ukrainian forces that all civilians leave Mariupol?

31. Is an evacuation voluntary when a village is under siege?

Content of Lesson 6:

- Discussion on Case Study 1 (continued): **UKRAINE/RUSSIA CONFLICT (Questions 21-31)**.
- Reflection on things learned on that day.

LESSON 7

To prepare:

- Read (minimal programme, **obligatory**): **MNs 8.24-8.29; 8.67; 8.311-8.313; 8.334-8.342; 8.351-8.356; MNs 10.171-10.172; 10.180; 10.186-10.192 in the Textbook;**
- Read (enhanced programme, **optional**): **Chapter 5; MNs 8.24-8.29; MNs 10.171-10.195 in the Textbook;**
- Try to answer the following questions based upon the documents mentioned above:

VII. Passive precautions and the use of human shields

32. If 20 times more civilians were killed in 2022 in Ethiopia than in Ukraine, does this indicate that Russia respected IHL better than government forces and rebels in Ethiopia? That the passive precautions taken by Ukraine to protect its civilian population were better than those taken in Ethiopia?
33. May Ukrainian troops defend a town even while all civilians remain present? Does Ukraine have an IHL obligation to protect those civilians from the effects of Russian attacks? May Ukraine never position military objectives or combatants in midst of civilians? When does the latter practice violate IHL? (*AP I, Art 58*)
34. What is a human shield? May the defender use human shields? May the attacker use human shields? (*AP I, Art. 51(7)*)
- (a) Does an individual violate IHL if he or she acts as a human shield?
 - (b) Do Russian forces violate the prohibition of using human shields if they force civilians in villages they invade to remain in the basements of their houses?

VIII. Arming the civilian population

35. May civilians defend their daughter? Their house? Their town? If they do so, is it lawful, under IHL, for the Russian invaders to target them? (*See also Art. 51(3) of AP I*)
36. May Ukraine encourage civilians to prepare defending their towns? Even without integrating them into its armed forces? If those civilians then resist Russian invading forces with Molotov cocktails, are they legitimate targets of attacks by Russian forces? Will they be prisoners of war if they fall into the power of Russia? Are their houses from which they launch the Molotov cocktails legitimate targets of attacks under IHL? May other civilians in those same houses who do not resist be killed? (*GC III, Art. 4(A)(6)*)

IX. Specially protected objects

37. In what respect are the rules on attacking a hospital different from those on attacking a residential house? May a hospital be used for military purposes? Does that include soldiers eating and resting in a hospital? If it is so used, does it lose its protection? Where is the difference in all those respects with a civilian house? (*PI, Arts 10(1), 12(1) and 13*)
38. May Russian forces take control of a Ukrainian nuclear power station under IHL? May they attack it if Ukrainian troops defend it? Are there IHL rules on how the Russian forces have to run the nuclear power station once they control it? (*API, Art. 56, HR, Art. 43*)
39. (E) Which IHL rules were violated by the destruction of the Kakhova dam? If it was attributable to Ukraine? If it was attributable to Russia? If it was deliberate? If it was destroyed by negligence? (*GC IV, Art. 53, AP I, Art. 56, HR, Art. 43*)
40. May cultural property ever be targeted? (*AP I, Art. 53*)
41. May schools be targeted under IHL? May they be used by the military under IHL? May civilian houses be used by the military under IHL?

LESSON 8

To prepare:

- Read (minimal programme, **obligatory**): **MNs 5.145-5.150; 5.154-5.157; 5.163; 5.168-5.173; 5.175; 5.181-5.184; 5.204-5.208; 5.210-5.213; 5.236-5.242; MNs 8.366-8.367; 8.391-8.397; 8.400; 9.04-9.13; 9.17-9.22; 9.26-9.33; 9.43-9.48; MNs 10.97-10.102; 10.268-10.269 in the Textbook;**
- Read (enhanced programme, **optional**): **MNs 8.366-8.415; 9.01-9.72; MNs 10.97-10.102; 10.268-10.269 in the Textbook;**
- Try to answer the following questions based upon the documents mentioned above:

X. The use of weapons

42.
 - (a) Did Russia violate IHL by using cluster munitions? Would Switzerland violate IHL if it used cluster munitions? Under which circumstances would it be lawful for Russia under IHL to use cluster munitions?
 - (b) May the US give Ukraine cluster munitions? What do you think from an IHL point of view of the

arguments made by the US that Ukraine needs to defend itself, that civilians incur greater risks if Russia prevails, that it promised not to use them in populated areas, that the munitions it transfers have rate of unexploded duds below 2.35 percent, that a major demining effort will anyway be needed after the conflict?

43. May Ukraine use antipersonnel landmines? May Russia do so?
44. Is the use of explosive weapons with a wide area effect in urban areas prohibited? According to Western States? According to the ICRC? According to you?

XI. Violations of International Human Rights Law

45. Does International Human Rights Law (IHRL) apply during armed conflicts?
 - o (a) What objections may Ukraine raise against the full applicability of IHRL to its conduct during the Russian invasion?
 - o (b) What objections may Russia raise against the full applicability of IHRL to its conduct while invading Ukraine?
 - o (c) Does IHRL protect Ukrainians in a Russian occupied territory? Ukrainians killed by a Russian air attack? According to the European Court of Human Rights, does IHRL protect Ukrainians shot by Russian troops while invading their village? Ukrainians shot by Ukrainian troops while liberating a Ukrainian village?
46. When does a killing in an armed conflict violate IHRL?
 - o (a) Does the killing by Russia of a Ukrainian soldier fighting against Russian forces invading Ukraine violate that soldier's right to life? Does it violate IHL?
 - o (b) When Ukrainian forces liberate a Ukrainian village and knowingly kill some civilian villagers, do they violate the right to life of those villagers, even if those deaths are not excessive compared to the military advantage of getting control over the village and it was not feasible to avoid those deaths? Do they violate IHL?

XII. IHL enforcement

47. What is the role of the ICRC in IHL? Must it be allowed to visit prisoners of war and protected civilians? Does it denounce violations of IHL? Does it inform whether or not it has access to prisoners of war in conformity with IHL? (*GC III, Arts 9 and 126(4); GC IV, Arts 10 and 143(5); see also MNs 5.168-5.176 and 5.181-5.184 of the Textbook*)
48. What is the difference between a violation of IHL and a war crime?
49. Who has the primary responsibility to investigate alleged war crimes committed by Russian soldiers in Ukraine? May Ukraine do so even if the suspect is a prisoner of war? May Switzerland do so? When may the ICC do so? (*GC III, Arts 85, 99 and 129(2); GC IV, Art 147*)
50. Why do you think has the Prosecutor of the ICC requested and obtained an arrest warrant against suspects of the forcible transfer of children and not of massacres such as that in Bucha or indiscriminate attacks? May the ICC try a national of Russia, which is not a State party, for alleged crimes committed in Russia?
51. May Germany take sanctions against Russia because it violated IHL? Must it do so? Are the rights and obligations the same concerning Ukraine? Must the U.S. ensure that Ukraine does not violate IHL with weapons it transfers to Ukraine? (*GCS, Common Art. 1*)

Content:

- Discussion on Case Study 1 (continued): **UKRAINE/RUSSIA CONFLICT (Questions 42-51)**;
- Reflection on things learned on that day.

LESSON 9

To prepare:

- Read (minimal programme, **obligatory**): **MNs 3.19-3.27; MNs 6.31-6.39; 6.42-6.44; MNs 7.01-7.08; 7.13-7.22, 7.58-7.67; MNs 8.112-8.124; 10.284-10.301; 10.303-10.304 in the Textbook;**
- Read (enhanced programme, **optional**): **MNs 6.31-6.44; MNs 7.01-7.22, 7.58-7.67; MNs 10.20-10.57; 10.284-10.308 in the Textbook;**

Read **Case Study** United States, The Obama Administration's Internment Standards and try to answer questions appearing at the end of the case study.

Content:

- Discussion of the Case Study;
- Reflection on things learned on that day.

LESSON 10

To prepare:

- Read (minimal programme, **obligatory**): **MNs 6.46-6.53; 6.80-6.85; 8.314-8.318; 10.62-10.72; 10.259-10.267; 10.270-10.283 in the Textbook;**
- Read (enhanced programme, **optional**): **MNs 6.46-6.53; 6.80-6.85; 8.314-8.318; 10.62-10.72; 10.259-10.267; 10.270-10.283 in the Textbook;**
- Read **Case Study** General Assembly, The use of drones in counter-terrorism operations and try to answer questions appearing at the end of the case study.

Content:

- Discussion of the Case Study;
- Reflection on things learned on that day.

LESSON 11: Mock pleadings on the armed conflict in and around the Gaza Strip that started on 7 October 2023

LESSON 12

To prepare:

- Read (minimal programme, **obligatory**): MNs 8.04-8.23; 8.34-8.45 in the Textbook;
- Read (enhanced programme, **optional**): MNs 8.01-8.23; 8.34-8.49; MNs 10.197-10.132 in the Textbook;
- Read **Case Study: YEMEN, OBSTRUCTING MEDICAL CARE** (<https://casebook.icrc.org/case-study/yemen-obstructing-medical-care>) and try to answer questions appearing at the end of the case study.

Content:

- Discussion of the Case Study;
- Reflection on things learned on that day.

LESSON 13

To prepare:

- Read (minimal programme, **obligatory**): MNs 5.136-5.137, MNs 6.67-6.75; MNs 7.09-7.12; 7.36; MNs 10.218-10.232; 10.302 in the Textbook;
- Read (enhanced programme, **optional**): MNs 6.67-6.75; MNs 7.23-7.57; MNs 10.218-10.258 in the Textbook;
- Read **Case Study Sweden/Syria, Can Armed Groups Issue Judgments?** and try to answer questions appearing at the end of the case study (other than question 1b).

Content:

- Discussion on Case Study;
- Reflection on things learned on that day.

LESSON 14 (Revision Class)

To prepare:

- Send the questions (optional) that you have to the course assistant

Content:

- The professor answers questions received.

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