

Non-state actors in law of armed conflict.

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Introduction.

Nowadays, in the overview of International law it is quite interesting to discuss Non State Actors. In fact, the aim of this work is to bring the reader deep inside the reasons as to why non state actors have achieved the attention of a relevant part of the academic world, and a position in the international policy. For this reason, our attention will focus on the definition of Non-State actors.

First of all, non-states are subjects of International Humanitarian Law. IHL is the "branch of the law" which regulates and governs the armed conflicts between States and Non-state actors. Classifying and recognizing these two subjects of international law, in order to regulate them, is the task being performed directly and indirectly by states, through regulations, international treaties and agreements, in order to define this type of relationship. The recognition of a state actor is not a business as complicated as the one of a non-state actor's. In primis, because a well-established definition of State already exists, (the State is a political entity that rules and exercises the power of the sovereign on a given territory and the subjects belonging to it), and secondly for States there is a specific recognition in standard international law.

The same speech is not possible for non-state actors, for which a real definition does not exist.

However, among the authors who have attempted to present a definition of non-state actors we see the authoritative opinion of Andrew Clapham . Clapham likens non state actors to rebel groups, insurgent groups and belligerents who are sometimes regarded by international lawyers according to a graduated scale of importance and power, proportionated on their capacity to organize and control the territory, taking into account the ability of territorial control that would ensure their recognition proportionally. Greater the territory "controlled" by these groups, then greater will be the recognition by the states. In addition, August Reinsch says, this mind set of lawyers nationalist or internationalist, is deeply rooted in the concept of human right. According to A. Reinsch, "International as well as national lawyers have traditionally been trained to conceive of human right as fundamental guarantees and standards of legal protection for individual against the power, and particularly, against the abuse of power of state".

Furthermore, Antonio Cassese recognizes non state actors as subjects of international humanitarian law according to the level of organization and intensity of the conflict. In fact, A. Clapham stressed that in recent years, there has been a tendency to submit these actors as no longer under traditional international law, but rather simply calling them belligerent, with all the rights and obligations that will follow, hence they are governed by international law of armed conflict.

The same is not relevant for the international law; in fact, when the two requirements are met, (Intensity of Conflict and Level of Organization), the considered group of belligerents can be classified as a Non-State Actor.

Summarizing, a generally accepted definition of Non State Actor exists; according to the International Committee of Red Cross, non-state actors can be accommodated under international humanitarian law, if

they meet the following certain requirements:

1. Organization of the armed group, namely:

- a) Existence of a command structure;
- b) Presence of internal rules;
- c) Skill to recruit new fighters;
- d) Ability to train new forces;

2. Intensity of a conflict, that is, the collective nature of the same, and the use of armed force by states, most detailed:

- a) Duration Conflict;
- b) Still weapons;
- c) Frequency Attacks;
- d) Number Of victims;

There are differing views in addition to this definition. For example, Heather Wilson has a distinct point of view. Heather Wilson says that since the First World War, the old rules of international law are more theoretical than practical. In her opinion, it makes more sense to no longer provide a distinction between rebel and insurgent groups, but rather speak of "rebels" directly subordinated to the rules of international humanitarian law. However, this concept is expressly contained in Article 3 common to the four Geneva Conventions of 1949, and the Second Additional Protocol of 1977, or in art. 19 of the Hague Convention on Cultural Property of 1954. Whereby it deduces as a main principle the protection of civilians rather than the classification of all the kind of armed groups. The safeguard of civilians becomes the first star in the treaty, and the contracting parties are brought to the background.

Ruth Wedgwood has the same mind set; actually he explains how the notion of state, international or actor, is now a matter that affects numerous more lawyers, expert jurists or sociologists of law; moreover, the new rules of the Non-Governmental Organizations (NGOs) and non-state political entities within the international systems must be critically scrutinized. In particular, the act of giving voice to these non-state actors (such as enabling them to control a territory officially), help, or vice versa, is deeply assessed in relation to any hindrance to the task of the United Nations in solving internal and international conflicts, in order to strengthen human rights.

Then, why is it so important and considered a necessity to provide a definition for non-state actors?

First, the requirement for a definition is dictated by the fact that during these armed conflicts, the number of victims is quite large, and very often there is confusion between who are the fighters, rebels or groups of insurgents, to ordinary civilians. At the risk of falling into banality, it must be remarked that the main purpose of international organizations, including the United Nations, is the protection of human rights, clearly including the leitmotif of the reduction in the number of victims, more so for the victims who are not directly involved in conflicts of this type.

Evidently, this is the main reason as to why the international and European policies are cohesively present throughout this topic. The interest in this field is directly proportionated to the number of victims. In fact, all the European Union institutions, as well as the international organizations are in trouble in recognizing the right of self-determination of non-states, and at the same time to protect civilians from the indiscriminate attacks of non-states. It is easy to see the huge task the international organization is dealing with; actually on the basis of their statutes, they have to guarantee the respect of human rights as

well as the respect of the population. This does mean that, on one hand they need to control non-states actors in their dangerous activities, (otherwise the civil population becomes an indirect target of their actions), and on the other hand to guarantee the respect of the right of self-determination of non-states, that is one of the reasons of armed conflicts.

Also, the "prisoners" are often victims of conflicts, which even affect them personally. It is also interesting to note that on one hand, there is a part of the doctrine that supports the necessary recognition and definition of non-state actors, (see Heather Wilson), rather states do not seem to have an interest in recognizing non-state actors. The reasoning followed by the governments is quite simple, if not obvious to anyone involved in international politics.

In fact, if states recognized non-state actors as entities of international law, they would declare implicitly that they exist, which therefore gives a power and a say in the matter. As Clapham writes in an eloquent metaphor, "This seems as likely as turkeys voting for Christmas." Recognizing a non-state actor implies somehow admitting that the same cannot be simply objects, but rather subjects in conflicts. Regardless, what concerns states the most is that this kind of recognition, to be understood as subjection to international standards, creates the risk that they declare themselves independent, and then over time can be recognized as such in the international community. States, in essence, seek to primarily protect their sovereignty which is one of the "musts" of the life of the state, for example they would seek to protect a head of state's right to govern.

As previously stated in the introduction of this work, we also aim to point out as to why non-states have caught the attention of the academic world. According to what has been explained above, the reason is understandable. First, there is not a specific definition of non-states in the academy, but just a well-established and accepted one. Secondly, there is not a precise regulation. Last, but not least, it is a very new theme of international law. On this basis, there have been in the last decades several studies on this subject, perseverating on the target to guarantee the protection of human rights.

The last reason why non-state actors are frequently discussed nowadays, a reason that was not considered in the introduction of this work, is about the influence of non-state actors in the law making process. In fact, non-state actors exert an increasingly important influence on formal international law-making process; they play a relevant role in the game of the implementation and enforcement of international instruments. In addition, the investigation of the role of non-state actors is therefore crucial to understand how the international legal system works in practice. These matters have become the object of much scholarly attention.

1. Discipline of Non-state actors.

A proper definition of non-state actor does not exist, or at least not a generally recognized notion, (by states, non-governmental organizations, lawyers, sociologists of international law, lawyers, and judges). The following analysis will focus on the "discipline" of non-state actors, presenting the necessity to distinguish between the internationalist and nationalist discipline. The first to take into account of this obvious difference has been Andrew Clapham.

Clapham believes it is impossible to exclude the application of international law on non-state actors, and more precisely on armed groups, which are primarily rooted in the concept of international law. Actually, there could not be any other discipline than international law. On the other hand, Clapham stressed that these people do not take part in the normal treaty-making process, meanwhile they are subjected, or more

precisely, subdued to it.

In fact, States have no interest in sharing the process of building regulations with rebels or with other insurgent groups; just for the simple reason that there is no necessity, and above all because in this way States would recognize non-state actors as pure subject, allowing them to access in the treaty-making process actively and not just passively.

Non-state actors are essentially disciplined by rules, (with charges and fees), that they did not choose. As Clapham explains States do not need them to join the law making-process. In fact, when an armed group violates a rule of international law, it has already committed a violation based on a national law. Taking as example the Italian legislation, a terrorist attack organized by an armed group will be primarily a breach of national law [see, e.g., art. 270-bis c.p. (Italian criminal code) association for purposes of terrorism, including international or subversion of democracy], and then a violation of an international treaty/agreement.

There is a significant debate between states, (who do not want the participation of non-state actors in the normal treaty-making process), and non-state actors (who would prefer to do so). That debate terminates through a general tacit acceptance or semi-tacit acceptance of customary law; of course, if a state-actor acquired the control of a relevant part of a territory, it would gain the legal recognition by states. However, it is possible that even with the control of the territory, they are not recognized, (or at least not an official recognition).

2. The recognition of Non State actors.

Originally, International law attributed rights, obligations and charges to the rebels only when they exceed the level of mere insurgency. Clearly non-state actors have attributed some rights and obligations that are independent from this basic "status". When insurgent groups have been recognized, they acquire all rights and obligations of international law .

Nowadays, these systems of recognition have been replaced by mandatory rules of international humanitarian law, which applies when the conflict reaches a certain intensity and relevance. Ingrid Deter suggested the idea that the application of international law in armed conflict is no longer related to the recognition of the belligerents. Although, a possibility remains for states to confer rights and obligations to the rebels, through their recognition as a "belligerent" or "insurgent groups", currently it makes more sense to simply regard them as rebels, then subjecting them to contemporary international humanitarian law, and in particular to obligations contained in art.3 common to the four Geneva Conventions of 1949 and the Additional Protocol to the Conventions of 1977 and article 19 of the 'Hague Convention on Cultural Property of 1954.

Presently, international law imposes obligations on parties to an internal armed conflict, regardless of the recognition of the state where the conflict takes place or from third-party recognition. The problem is that governments are often reluctant to admit the existence of the conditions for the application of international law; the above admission is in fact seen as a loss of sovereignty or at least control of part of the territory and at the same time as a "raising" of the status of the rebels.

In some cases, written agreements have been part of the legislation conflicted during or after the beginning of the armed conflict. These may contain mutual commitments to respect not only the laws of armed conflict, but they may also contain human rights. These agreements are less focused on old issues of recognition and have the simple goal of building "confidence", placing the protection of these

individuals at the centre of these measures. These types of agreements are sometimes designed based on the ability of the rebels to respect them.

See for example the San José Agreement on Human Rights, between El Salvador and the Frente Farabundo Martí para la Liberación Nacional (FMLN), which includes the following paragraph:

"Bearing in mind that the FMLN has the capacity to respect them and protect them, assumes the commitments to respect the inherent attributes of the human person".

In this case, the agreement was also signed by the Representative of the UN General-Secretary (Alvaro de SOTO), and this together with the agreements for the United Nations Monitoring, suggests that a government agreement between entities of international law recognized with the requirements and the "status" assumes international rights and obligations under international law. This eloquent example shows how international law has shifted behind the recognition of insurgents during an armed conflict coming and ending with purposes of humanitarian law.

It is more than plausible to argue that, the definition of Non State Actors and their own discipline is directly related to the recognition itself. In fact, as a non-state actor is defined as that organization territorially connected to a faction or political movement, fighting for the end of the attainment of independence, or even to oust a dictatorship, obtaining recognition when it respects the requirements of 'intensity of the conflict and the organization of the armed group.

In addition, with the recognition we should also discuss the application rules of international law, such as the rules of international humanitarian law and which one covers the subject in question.

3. How to recognize non-state actors? Weapons and tools of non-state actors.

One of the most interesting methods, and at the same time effective, to recognize or classify a non-state actor, is to study their tools and weapons. In the case of instruments, we must understand that these weapons are utilised to achieve a purpose, that is, insurgency or liberation.

Despite the more or less consistent development of advanced technology, presently the majority of armed conflicts are fought with no means of transport, employing rather simple technology, or well-defined methods of guerrilla warfare. The Landmines are regarded as signs of recognition in the uprisings in the global landscape of international law.

Moreover, landmines are substantially "random" weapons, which does not make any kind of discrimination on the targets of the attacks. This makes them ideal weapons for spreading terror in the local community. In fact, organized armed groups of this kind have no interest, (generally), to hit a specific target, but simply aim to turn the tables on the political government, with weapons or instruments of all kinds, targeting innocent as guilty without any kind of distinction nor prejudice. This is particularly significant in the on land fighting by non-state actors. Indeed, landmines prevent access to land and infrastructure, increase the difficulties of survival of the rest of the population and even worse, prevent any kind of post-war recovery, hampering post-conflict development that is crucial to a country. Instead, the purpose of this destruction is economic, political and cultural, performed by non-state actors, it is easy to understand; States and civil population, as well as NGOs (non-governmental organizations), or all those who should fight the insurgents, come in the long term a situation of exasperation / resignation, which almost forces them to accept voluntarily "invaders".

Most of the wars fought in the second half of the twentieth century, or even the wars that have fought with non-state actors, non-state and stateless persons were outside the control of the government and

outside any kind of UN control.

The Non-State Actors Working Group (NSAWG) of the International Campaign to Ban Landmines (ICBL) have held that landmines are mainly used by non-state actors, rather than by state actors, and especially those that have been used by non-state actors are dangerous, being artisanal or homemade and uncontrolled industrially, this according to the experiences of non-governmental organizations (NGOs).

Otherwise, who are non-state actors? Conflicts nowadays often involve armed opposition groups acting independently of the government. In this category we can distinguish groups of rebels, armed groups, dissident armed forces, guerrillas, insurgents, national liberation movements, freedom fighters and government bodies. In fact, the NSAWG believes that today there are about 190 recognized non-state actors; however drug traffickers and many other smaller non-state actors, with organizations and free structures are not included. The ideology, goals, strategies, the level of organization, the support base, the legitimacy and the level of international recognition vary greatly. Terrorist groups can be defined as: organizations that commit acts of violence that apparently have no purpose other than to strike terror in the civilian population. Actually, the acts of violence that terrorists commit are not directed to military troops or other military targets (bases, barracks, soldiers, fleets, airports). The sole purpose is to destroy the social fabric, instilling a high level of fear among the civilian population.

The main feature of landmines, or rather the feature that most interested non-state actors pushing them to use it as a primary means of insurrection and guerrilla warfare, is that they are immensely destructive as economic tools. In addition to the destructiveness, already being a good reason for fear to the international organizations, a problem that is feeding greater concern is the fact that, essentially being "homemade" weapons, they disregard any rules of safety. In fact, it often happens that non-state actors themselves become victims of their own weapons.

Moreover, all international organizations are very active in the fight against these types of weapons that are more than ever negative and destructive. They try to reach compromises or agreements, between states and non-states actors, that clearly oblige non-state actors to respect them. On the other hand, it is essential that they have the same terms of the basic requirements that, under the rules of international law, allow to consider them as binding, namely:

- The treaty should provide for criminal sanctions;
- The language of the treaty must be clear and unambiguous;
- The state, (in which the conflict is going on), has to be part of the international treaty;
- Who does verify a proper execution of the treaty?

The NSAWG is part of Geneva Call, which supports the accession of non-state actors to a total ban on the use of landmines; within the same treaty it was later found a way to verify when and how the NSA are subject, or rather subordinate to the agreements signed by those people, whether war or peace agreements. According to Elisabeth Reusse-Decrey, co-chairman of NSAWG and President of Geneva Call: "We try, we hope to bridge the gap in international law so theoretically non-state actors cannot be part of the Treaties".

Non-state actors have expected to sign an agreement in which they declare to renounce the use of landmines. In fact, this approach does call for a humanitarian point of view, human ethics, of what is right and what is wrong.

Although the armed opposition groups cannot sign international treaties, they can sign national treaties,

be it peace treaties or agreements with government forces on ceasefire. These treaties can and should be mainstream human rights and humanitarian law, including a policy of use of land mines. The NSAWG supports this approach because "the acceptance of human rights and humanitarian norms, either before or during the negotiation of national agreements, is a measure of confidence building, assisting the peaceful settlement of disputes."

4. Why should we be concerned with non-state actors?

The dynamics of terror and the importance of non-state actors require a global perspective. When Non-state actors fight their causes, they do so on the entire globe, and not only to their country of origin; despite the terror that some non-state actors are capable of inflicting, this does not affect the general policy of various countries. Rather it is their existence, the use of weapons and the chaos that can be created is often intimidating to international policy. The international community now faces a challenge "deep and unequivocal" for global stability that is orchestrated by groups of many civilians. For all countries, the new global reality adds another complex dimension to regional stability. Landmines are one of the many combinations of threats across the spectrum of internal stability.

The main reasons why it is important to approach non-state actors are for not only accession or compliance with the use of mines. Rather the real reason for involving insurgent groups is to introduce them into the political arena in a legitimate way. The NSAWG happily understood this concept of self-preservation, and has developed a framework approach to insurgent groups.

The community can attest to the annual report, is the Landmine Monitor for the excellent information provided. The NSAWG uses the same standard of excellence in organizing its database on the NSA. The approach of a non-state actor will be developed in consultation with affected communities. Involving non-state actors in the number of land mines provides the framework for engagement in the process of conflict resolution and peace building. The problem of landmines becomes the starting point for the biggest issues of peace-building and infrastructure development. Again, it should be noted that there are some non-state actors that cannot be committed because of ideological view. A dialogue can only be based on common principles and objectives, if this is missing, nothing can be achieved.

In this rapidly changing world, insurgent groups come to power, they become state actors, then they disappear from the map of the world, they are absorbed in other political parties, or are used, but the legitimate political parties that actively support them and also deny their existence. Many NSA are a surrogate force of the State or of another State. In both cases, when the group surrogate approaches, it could be a mean of production to involve the state itself. Some rebel groups could eventually become governments or have already done so in the areas under their control.

Because many non-state actors operating in different countries may be linked to an ideological or religious ideology, by engaging in the process of peace-building can open the door to engage other groups that share a similar vision. This case happened in many countries, once peace is restored many non-state actors were called upon to assist demining in areas under their control or to work within their communities to fight against landmines.

In the Central Americas, the resolution of the conflict has allowed several non-state parties, such as El Salvador and Nicaragua and, subsequently, Guatemala, to recognize the conflict of a regional problem and to come together to collaborate on the effort of de-mining. The involvement of irregular combatants demobilized in the work of de-mining in Namibia, Mozambique and Zimbabwe is in fact, well known.

Some non-state actors have recognized the necessity to reconsider their use of landmines. Among other, unilateral declarations and bilateral agreements with clear references to the mines were made by non-state armed groups for the ICBL (International Campaign to Ban Landmines), in Sudan, Philippines, Somalia, Colombia, Western Sahara, Kosovo / Yugoslavia and in Afghanistan. Some of these groups are already publicly committed to the ban on the use of landmines. Others have indicated their willingness to make a renunciation of the use of mines, subject to the renunciation by governments of opponents to do the same. Whilst others seem willing to support demining programs and assistance to victims in areas under their control. While the ICBL sees this as a promising development for their cause, it may also be seen as an attempt by non-state actors to integrate into the world political stage.

The involvement of non-state actors is a persuasive and inclusive process of dialogue and training, which appeals to the chance to get points of reference legal and regulatory requirements; political interest can be found in an effort to limit their power, (non-state actors), and jointly limit the use of landmines. Since September 11th, the vision of the world has changed dramatically because of not state actors. In the opinion of many, non-state actors limiting the use of mines are expected to lead to a general limitation of the power of the same. However, this cannot solve the problem, but rather the opposite might create isolation and martyrdom in which many of these groups thrive.

The NSAWG believes that, as far as possible, non-state actors must be addressed in consultation with the affected communities. Particular attention must be given to the political context and to the impact on the population.

Thanks to the enormous wealth of knowledge we have available, we can avoid the horrors and tragedies of the armed conflicts of the past. We only need to pay attention to the experience of the past encapsulated in existing human rights and humanitarian rules. Communicating human rights and humanitarian norms, the participants of an armed conflict are communicating the wisdom of civilization accumulated from the depths of the past and the human suffering .

The situation of the communities affected by mines is not easily distinguishable from the community imposed by the war and impoverishment. There are wars and impoverishment that set the stage for militants and radical NSA, earning momentum and a loyal following. While governments, donors and NGOs can undertake humanitarian demining and integrated action plans, it is often politically and economically impossible for de-mining organizations tackle the root causes of conflict and impoverishment. This factor opens directly or indirectly the way for the proliferation of NSAs and the wars that followed them.

5. Successes of the rebels and other insurgent movements.

The article of the International Law Commission (ILC), on "Responsibility of States for International Acts illegitimate", explains well the responsibility of the states in the event that an insurrectionary movement becomes the new government, or acquires a legitimacy that justify this recognition. However, non-state actors are still responsible for the unlawful acts that have been made during the period that were not yet recognized as real state. The new government is recognized in the case of a declaration in its favour; it is at this point that the insurgency is treated and governed as if it was already a government at the time of the unlawful act. The obligations in question would include not only the rules of international humanitarian law, but also international law .

The issue of liability attribution has to do with the practice of the state to declare the damage caused by

an insurgent group that has been successful. In fact, the background of this rule of responsibility attribution concerns the protection of strangers to conflict, rather than the application itself of international law. Nowadays, the substantive law deals with protection of strangers to conflict, especially in the field of human rights, making it as easy and as smooth as possible, aiming to the implementation and respect of human rights against the winning insurgent groups .

John Dugard in his interesting analysis on the protection of human rights explains how today, in international law, the respect for human rights is identical for both the people who live in the state in which it made the conflict, both for foreigners, which meet the standards set out in a previous era by Western Powers. This does not abolish the old procedures of recognition of rights and obligations to foreigners. In fact, through these mechanisms, more than ever diplomatic protection has focused on the arsenal of human rights. As long as the States remain the dominant actors in international relations, the combination of the requests of States for violation of the rights of their citizens remains an effective remedy for the promotion of human rights. Instead of weakening the solutions of international law, and recruiting them to divest deprecated features survived, every effort should be aimed at strengthening the trade and the diplomatic protection of human rights.

Echoing the speech of A. Clapham , we believe that the definition given of "dissident armed forces" is to capture the essential idea of insurrectionary movement. The ILC Commentary suggests that a guide to the fate of the groups that are covered by these rules can be found on the threshold criteria contained in Protocol II of the Geneva Conventions. Protocol II covers armed conflicts in which participating forces, or subjects, that are part of the Treaties and "dissident armed forces and organized armed groups which control part of the territory and are able to handle it and organize it." Article 1 (2) states that, "This protocol shall not apply to situations of violence and other acts of a similar nature, as not being armed conflicts", essentially the use of this protocol is reserved only for cases of armed conflicts. Despite this vision leading to the exclusion of certain movements from the application of international law, the International Law Commission is concerned to ensure that even if the insurgent group fails in its liberating movement, it's held responsible for violations of the international law.

The Protocol has also been applied "in all armed conflicts which are not covered by Article 1 of the Additional Protocol to the Geneva Conventions of 12 August 1949, and is connected to the Protection of Victims of International Armed Conflicts (Protocol I), which takes place in field of High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise some kind of control over their part of the territory allowing it to make livelihoods, concerning military operations, as well as to improve the Protocol. This last will not be applied in the case of situations of internal disturbances and tensions, such as rebels, or isolated and sporadic attacks of violence and other facts of a similar nature, which are not armed conflicts". The protocol was applied in Russia (Chechnya), Colombia, El Salvador and Rwanda.

6. Recognition of non-state actors. Can they benefit from the status of State-Actor? A different view on the latter.

Previously, we have attempted to delve into the bowels of international and humanitarian law in order to understand if there is a definition, a recognition, and about the discipline of non-state actors. The same project, on the other hand, cannot be considered finished, because the opinions are often discordant and only rarely fit together. In this section we aim to deal with the role of non-state actors after their

recognition. The reference text is by M. Cherif Bassiouni . First, Bassiouni clarifies how and when non-state actors can or should be subject to the rules of international law or the international conventions governing the matter in question. In fact non-state actors who fight alongside, or as part of an armed conflict, with individuals belonging to the High Contracting Party of the Geneva Conventions, they are considered full-fledged combatants, with attached benefits and charges, which respect the Article 4 (2) of the Third Geneva Convention, namely:

- They are under the command of a person responsible for his subordinates;
- They have an uniform recognizable even from a distance;
- Bear arms openly;
- Their operations have been conducted in compliance with law and customs of war.

Actually Bassiouni in this case does not give a real different view, rather it is the same line of most lawyers / experts of international law, except his view indicates the possibility that non-state actors are subject to the rules of international law, even when they fight next to the subject of the agreements, and not only when they are active participants.

Returning to the purely legal discussion, we must turn back to Article 44 of the First Protocol, which adds additional requirements:

3. In order to promote the protection of the civilian population from the effects of hostilities, combatants are obliged to distinguish themselves from the civilian population while they are engaged in an attack or in a military operation preparatory to an attack. Recognizing, however, that there are situations in armed conflicts where, owing to the nature of the hostilities an armed combatant cannot so distinguish himself, he shall retain his status as a combatant, provided that, in such situations, he carries his arms openly:

- (a) during each military engagement, and
- (b) during such time as he is visible to the adversary while he is engaged in a military deployment preceding the launching of an attack in which he is to participate.

Acts which comply with the requirements of this paragraph shall not be considered as perfidious within the meaning of Article 37, paragraph 1 (c).

4. A combatant who falls into the power of an adverse Party while failing to meet the requirements set forth in the second sentence of paragraph 3 shall forfeit his right to be a prisoner of war, but he shall, nevertheless, be given protections equivalent in all respects to those accorded to prisoners of war by the Third Convention and by this Protocol. This protection includes protections equivalent to those accorded to prisoners of war by the Third Convention in the case where such a person is tried and punished for any offences he has committed. Once the conflict ends of international law, non-state actors, previously identified with the status POW (Prisoner of War), but that continue to be committed in the armed conflict, are no longer identified with the previous status and outbuildings benefits, and become subjects of criminal law.

The next question is: is there a law framework for non-state actors in the internal armed conflicts? If yes, how do you relate and differ it from international armed conflicts?

The legal bases we refer to again is the Geneva Conventions. The Article 3 common to the four Geneva Conventions provides the basic structure of international humanitarian law. The article makes the protection of fighters and civilians equivalent, instead not guaranteeing the same rights that non-state actors have in international conflicts, namely the status of Prisoner of War.

Here, all the people who are hors de combat are treated humanely, and in particular there are inhibitions against murder, mutilation, cruel treatment, torture and other forms of violence, hostage-taking, humiliating and degrading treatment, as well as judgments and extrajudicial executions. Protocol II further develops the law applicable in non-international armed conflicts, offering certain clarifications which indicate the application of this type of protection. The Article I of Protocol II states that his predictions apply to all non-international armed conflicts, ("except for wars of national liberation", covered by the First Protocol), which takes place between the armed forces of the contracting parties and other armed groups "under responsible command, and exercise control over its territory as to enable them to carry out their livelihoods and concerning military operations or implement this Protocol".

Then there are regulatory efforts, doctrine and jurisprudence in order to fill the gaps and overlaps the applicable regimes in international conflicts and internal conflicts. By now it was already held that internal conflicts are not governed by the Article 3 Common to the Geneva Conventions. This means that international humanitarian law does not extend even the slightest protection to non-state actors in this kind of conflict. The Article 3 distinguishes between those who are actively engaged in hostilities, and those who refuse an active role in the conflicts . An increasing trend of case law and doctrine combines the IHL with the IHRL, and extends their respective caps, in order to reduce the damaging effects of armed conflicts and violent interactions, not respectful of the legal characterizations.

This concept is based on the fact that there are no compelling basic concepts to distinguish between the protection for people and the respect of international rules. This difference exists because governments wish to avoid in recognizing a legal status to non-state actors, which would provide them legitimacy. This is why governments argue that the use of violence by the insurgent groups is "terrorism", and for this reason, to this group, it can be denied not only the legitimacy / recognition, but also the protection of fundamental rights and the protections contained in the regulation of armed conflict.

The ICTY (The International Criminal Tribunal for the former Yugoslavia), has extended the customary law applicable to internal armed conflicts in the Tadic case, considering that the violations of laws and customs of war including violations in internal armed conflicts.

Subsequently, the court holds that common law prohibits attacks on the civilian population in the internal armed conflict.

The International Criminal Tribunal of Rwanda, ICTR, which has its undisputed jurisdiction to pursue violations of the laws of war in internal conflicts, has applied international humanitarian law to non-state actors. The Article 4 of the Statute of the ICTR and the Protocol II, has also changed its outlook from minimum standards predictions strengthening the credibility of the International Criminal. The jurisprudence of the International Criminal Tribunal for the former Yugoslavia believes that civilians are those taking no active part in hostilities, that definition applies regardless of the different types of conflict. An expert summarized the complexity Combatant Status in this way:

"It is clear that in respect of the relevant conventions provided and of customary international law, the status of "combatant" does not apply to internal armed conflicts. Similarly, the status of combatant and its consequences fall in the area which international humanitarian law, has not developed behind the dichotomy, international armed conflict / non-international, despite the imprecise use of the term fighter in some texts, which concern both types of conflicts. So in non-international armed conflicts, acts legal under the laws of armed conflict, such as killing a member of the armed force of the state, or damage, or

destruction of a military objective, it is in principle punishable under the national law. These rules of armed conflict encourage (not force), "The authorities in power", to grant the broadest possible amnesty to people who have taken part in the armed conflict, provided that they have not committed war crimes, which states are obliged to investigate and prosecute".

In addition, those who participated in the hostilities in a non-international armed conflict and were subsequently interned or detained are not entitled to the status of prisoner of war. The reason of the lack of status of combatants in non-international conflict is quite obvious: the States are not willing to allow their citizens, let alone to others who might encourage the fighting on behalf of a group does not state the right to do so (fight, encourage, etc...). Nor they are willing to grant them any other type of law further in case of capture. Everything else could be the eyes of the states, undermining their monopoly on power, which would promote the development of non-state armed groups from those who are disenchanted, and encourage people to join such groups. In short, none of the above aspects of combatant status, (privileges, fighters and prisoners of war), are therefore relevant to non-international armed conflicts. This differs only in situations in which, those who directly participate in hostilities on behalf of a part of a non-international armed conflict, are guaranteed with this status on the basis of a special agreement envisaged under common Article 3, paragraph 3, or by virtue of a unilateral act of one or more parties to the conflict.

Compared with the situation according to the law of international armed conflict, the lack of status of combatants in non-international armed conflict creates an imbalance between the parties, in accordance with national law, with all its negative implications for compliance with the laws of armed conflicts, which rests fundamentally on equality and mutual interests of the warring parties. It reinforces the perception of state of the armed forces who commit crimes that unlike them, have no right to fight, rather than engaging "in the way" of those who represent a state and its government. Members of non-state armed force, on the other hand, may be inclined to ask: "When according with law of armed conflict, I cannot keep out of prison, why should we respect it?" In other words, the imbalance between the state and non-state armed forces, undermines the idea that the parties are legally facing each other as equals. It needs to be pointed out right away that this inequality of the parties to a non-international armed conflict is purely a matter of national law. On the contrary, the laws of armed conflict accord equal rights, and impose the same requirements on all parties to an armed conflict.

A source to be used, or to be considered addressing the issue of which we are concerning, is the Rome Statute of the International Criminal Court, (The Rome Statute of the International Criminal Court), which establishes the most recent statement of international law Humanitarian during a non-international conflict, or during an internal conflict. As the ICTR Statute, the Rome Statute makes violations of Common Article 3 and Article 8 illegal. This includes a list of twelve acts, which constitute war crimes in armed conflicts, including: civilian targets, the medical units, humanitarian assistance to workers or members of pacifist missions, looting, rapes, slavery, forced prostitution, forced maternity, forced sterilization and other forms of sexual violence; recruiting or enlisting children under the age of fifteen, forced displacement, not giving asylum, subjecting people to physical mutilation, or unjustified or dangerous medical treatments, or scientific experiments of any kind, and finally destruction, or taking of property of each opponent . Furthermore, the Statute of the ICC uses a broader definition of internal conflict with respect to Protocol II, stating that, predictions apply to "armed conflicts that take place in the territory of

a State when the armed conflict continues between government authorities and armed groups organized or just between them ." These and other distinctions of international humanitarian law, their doctrinal elaboration and the jurisprudence of the ICTY and the ICTR, and the gradual codification of international humanitarian law in the Article 8 of the Statute of the ICC reveal legal complexities about non state actors in the various forms of armed conflict. Assuming that non-state actors can understand these complexities and have a clear understanding of the law of armed conflict is absurd. Treaties distinguish between civilians and combatants, defining civil parties as non-members of the armed forces, but they did not provide a clear definition of civil as well. The study ICRC "Customary Law" shifts the focus from the definition of who is a civilian, the conditions that causes the loss of civil legal protections of international humanitarian law. Regarding, in its generic sense, the term fighter has been applied in all the statutory provisions of international humanitarian law, indicating the people who do not enjoy the protections granted to civilians, which implies the acquisition of the status of combatant or status of prisoner of war, for those who are engaged in non-international conflicts or domestic. The studies of the ICRC focus on how a civilian may lose this status and the related protection. The fifth norm under ICRC studies states "people who are not members of the armed forces, are civilians. However, it is not clear if the people of the armed opposition group are subjected to civilian rule 6, under the loss of protection in case of direct participation in the attack, or if the members of these groups are responsible for the attack, regardless of the application Rule 6. None of these efforts have yet resolved the problems of gaps and overlap of many statutory and sub regulations applicable to non-international conflicts and domestic. Therefore, the status of non-state actors in these conflicts remains the same, which could partially explain why these fighters feel they have no incentives for compliance. However, this conclusion does not mean that non-state actors will comply with international humanitarian law in view of the asymmetric forces and culture of the new wars.

7. Non State actors: the military structure and strategy of violence.

The methods and ways, by which non-state actors are involved in the fourth season of the war, are determined by their strategies, regardless of the goals of each group, the aims and ideologies. They focus on the indiscriminate use of violence in such a way as to cause fear in a given population, inflicting damage indiscriminately against society as a whole, or against one segment, a small part of it, demonstrating the vulnerability and weakness of the governments, while they are draining its resources. The inability of the government to protect the civilians and public/private property, reveals their inability to fight the development tactics of violence. In order to overcome this situation, governments often behave the same way or in a similar way to illicit international level, the use of force and even committing violations of the law. However, this result is anything else than profitable for the government, which is discredited and loses credibility and legitimacy because of non-state actors. The result is that the government has placed on the same moral level of the Non-state actors, which is clearly what non-state actors aim . State actors resort to conventional war because they seek legitimacy or at least to appear to be legitimate, and they are clearly more likely to respect international humanitarian law and to reduce its violations. Members of regular armed forces who commit violations of international humanitarian law, usually justify their behaviour as "military necessity", or as a military strategy, or as obedience to superior orders. Even if they know or should know that the necessity for military has its constraints, and according to the international humanitarian law, obeying military superior orders does not justify, except in cases

when it can be considered a form of real compulsion .

Statistical data reveal that the consensus among fighters' opinions on violations of international humanitarian law, is that they did not believe it was also a moral violation. Generally they recognized the illegality of their conduct, that regardless it would still be justified by the necessity or because either way, the end justifies the means. They are comforted by the knowledge or belief that their superiors will ignore these violations. In addition, the fighters separate the legality and morality of international humanitarian law by their behaviour, which reflects the dichotomy between the recognition of morality and illegality and acceptance de facto a kind of practice for the above reasons. This gives explanation to the lack of recognition of international humanitarian law on the part of state actors and non-state actors.

8. Strategies of violence: examples from the recent past.

In order to understand the strategies of violence by non-state actors, below are some examples of this kind of war. In the conflict in the former Yugoslavia (1993-1994), there were 89 paramilitary groups that operated alongside six armed groups regularly. Some of these paramilitary groups used tactics similar to those of organized crime. They engaged in the sale and in the black market, with smuggling and looting, as a way to reward the volunteer fighters belonging to these units. This was particularly evident in the former Yugoslavia, where these units were called the "Tigers", led by "Arkan" (Zeljko Raznatovic), engaged in one of the worst acts of ethnic cleansing, with civilian killings, rapes, looting and destruction of property. The fighters were encouraged to plunder as a reward for volunteering. Even after the war ended, "Arkan" remained wealthy, because he developed a black market network of important and vital food supplies. It is believed that he used paramilitary operations for drug trafficking.

Even nowadays, this is quite evident in the conflict in Iraq, where some militias affiliated with political parties and other splinter groups have been allowed to engage in various activities related to organized crime .

Although the results were similar, there has been a different evolution in the internal conflict in Afghanistan , beginning with various resistance movements against the Russian occupation of 1979. After the Afghan fighters successfully forced the 'USSR to withdraw in 1989, an internal conflict broke out between the warlords that brought the Taliban to control the country. From 1989-2002, the warlords and the Taliban were guilty of violations of IHL, IHRL and LCI. After the American-led invasion and the fall of the Taliban, these warlords were near legitimacy from the United States, (a useful way to establish alliances at the local level), some of these groups, warlords, and local commanders have become warlords. In this way they reached this type of process and organization .

9. Non-state actors such as United Surrogates.

Throughout the history of warfare, it is possible to verify that states have always used mercenaries or other armed groups, in order to make them work on their own. After World War II, it became one of the features of the Cold War. This was the strategy of both the Soviet Union and the United States. They used non-state actors, whether or not linked to a state, in order to achieve their foreign policy objectives in other countries, without taking on the responsibilities that fell on these surrogate groups . Usually, the Soviet Union supported national groups engaged in wars of national liberation. In contrast, the US has only rarely supported these types of groups; indeed, they have usually supported paramilitary groups deployed in favour of the existing regime, especially in Latin America. This strategy has allowed the two superpowers to take part in these conflicts through ("United") substitutes, and in a territory other than

their own, so that in the meantime they were implicitly deployed in the conflicts, the harmful consequences of the wars were experienced by others, especially when taking into account the number of victims . Even more significant and interesting is that the two superpowers could euphemistically refer to a "plausible deniability," and that allowed them to justify some degree of plausibility of their "non-intervention" or non-participation in the run of these armed groups . Therefore the two superpowers, on one hand, could not deny their responsibility for their actions, but on the other, they could protect their "surrogate", (organized armed groups they support), from responsibility for violations of international humanitarian law. In practice, on the battlefield, leaders and various commanders have been protected from political and military subjects, which they acted for. Consequently, non-state actors were acting under immunity de facto for their international crimes. This protection eliminates a priori any type of incentive to comply with the norms of international law. Statistically, it can be argued that this type of policy has resulted in the commission of the highest violations of international law, (humanitarian or others), also in terms of human casualties, more than in any other type of conflict. Knowledge or awareness of these practices, known for the parties to other conflicts, it resulted in a total of the broadest violations of international humanitarian law, and proportionally the largest number of casualties and economic destruction.

There is only one international court case regarding this type of activity of the two superpowers, and the United States are involved in it; it is the Nicaragua's case. Nicaragua appealed to the International Court of Justice against the United States, complaining among others, the support that they gave to a group called "Contras" - a non-state armed group that made several military operations in Nicaragua - including the deposit of mines in the port of the country . The US armed, funded, equipped and trained the "Contras", who had their base of operations in some US military bases in Honduras. Essentially, the "Contras" were nothing more than surrogates used by the US in the fight to oust the elected government of Nicaragua - "Sandinistas". In reality, behind this "small" conflict is the largest extended global conflict, the Cold War between the United States and the Soviet Union . In this case, the discipline is that of the principles of customary law. Can the relationship between the United States and Nicaragua be considered as an agency relationship? The ILC draft (International Law Commission), on the responsibility of States takes over the rules of customary international law, stating that the agency relationship requires that the state exerts control over the actions of the agent . The fact that we encourage and support, as well as have an agency relationship in which the principal controls the action of the agent, are factors that determine the basis of the responsibility of non-state actors. In Nicaragua, the International Court of Justice gave importance to the responsibility of Member States both directly and indirectly, to have hurt and killed citizens of Nicaragua with the support of the Contras, and having laid mines and other explosives. As for the indirect responsibility, the International Court of Justice considered that the legislative and executive branch of the United States funded the strategy and tactics of the Contras forces. Although, the United States argued not to be involved in support funding, the Court noted that as a result of funding received from the United States, the number of men belonging to the Contras grew exponentially, from an initial group of 500 men, to 10 000 at their peak. Although the funding of the Contras was a bargain initially unknown in the United States, or rather we should say well hidden, later became the subject of specific legislative provisions and subject to a conflict between the legislative and executive bodies of the United States . The power of the United States on Contras through funds, logistical support, training and military

tactics, has been discussed in this case as in that of the Contra operations. The International Court of Justice noted that, although not every single operation launched by the Contras was totally designed by the United States:

"In the judgment the Court stated that the support of the authorities of United States for activities of the Contras took various forms over the years, such as logistics support, the provision of information regarding the location and movements of the Sandinista troops, sophisticated methods of communication, the development of networks of field transmission, radar coverage, etc. The Court considers that a number of military and paramilitary force for this was decided and planned, if not by consulting the US, at least in close cooperation with them, and on the basis of intelligence and logistical support that the United States have been able to offer, in particular the supply airplane to the mobile Contras".

Although the Court noted that the acts of the Contras were not directly attributable to the United States, it asserted that the United States violated the rules of customary international law, intervening with training, equipping, financing and support of the Contra forces, or even encouraging and supporting the paramilitaries. It follows that the support of non-state actors is sufficient evidence for the violation of international law. Following the "Nicaragua's Case", states can no longer hide behind the "plausible deniability" in order to avoid international responsibility. In essence, the previous common law has become standard through the concrete experience of the United States.

10. Armament and financing of non-state actors.

The military and civil structure of non-state actors is directly related and proportional to their financial base, and access to resources that they have. Included in this group are both the weapons and monetary funds coming from domestic and foreign sources. One of the techniques used by these groups for finance, is using and controlling certain natural resources in areas under their power. A recent example of this financing form, occurred in 1960 in Congo, where a faction attempted to control the region of Katanga, rich in precious stones. It was also evident in the conflicts in Liberia and Sierra Leone, with regard to the control of diamond mines, whose products were used to fund the rebel war. The diamonds were smuggled abroad and sold to "lawful" businesses in the West, and proceeds were recycled through banks in the West. A considerable number of conflicts is also an alternative financial resource, directly from the drug market or providing protection to drug traffickers, as in Colombia, as well as in the case of the CPP in the Kurdish areas of Turkey, and that of the Afghan warlords. Although the financing of terrorism is prohibited, it does not appear that these efforts have had any impact on limiting terrorism in various parts of the world. In addition, small arms have flooded the world market; they are easily available on the black market, and in many cases, it has been made available by the governments concerned or accomplices. Even more significant, small arms are cheap. International embargoes and limitations on the sale of such weapons proved ineffective. It is well known, that traders of illicit weapons have spread a large amount of small arms throughout Africa, who have not only contributed to the number of conflicts, but more significantly led to the increase in the number of victims. Yet paradoxically, rejection of weapons from a given group is attacked or another group or government forces tends to increase the number of victims. Trafficking weapons, although illegal, is in part made possible by funding received from laundering money. This new category of non-state actors who are not directly involved in the fighting, but whose role is essential for the flight of livelihood of the conflict has developed in relation to financial transactions, money laundering and arms trafficking. This category of participants also involves lawyers, accountants,

financial advisers, bankers and others. When they engage in the same or similar activities in the national context, they are considered criminals, more specifically "white collar" criminals. International criminal law and national criminal law haven't proved effective against those who should be considered part of the group of non-state actors. If they are held responsible for the conduct of others, it would be liable under international humanitarian law. Nowadays, we can say that without the funding of the latter, or without their support many military and strategic conflicts would not exist at all. The funds and weapons are what produce conflicts, as they are also the ones that produce the damage.

11. Hate as a source of armed conflict in which non-state actors are involved.

Hate has always been a factor of incitement to violence. Recently, however, the hatred has couched in religious or racist terms. History reveals how many times there have been wars in the name of religion. Veiled euphemistic techniques and incitement to violence has found hatred in Nazi propaganda to the military core in society. The first, (the type of hate propaganda), was also clearly evident in the Rwandan genocide of the Hutu against the Tutsi monarchy. Whatever its basis, hate is a significant factor in almost all conflicts and it is an almost indispensable component of the process of dehumanization, which makes acts of violence against people easier to commit. Experience shows that with lower level of education in a given society, the greater the prospect of spreading hatred and dehumanization of the targeted enemy. This leads to a higher level of recognition of the humanity of the enemy. Regardless of source, the process of dehumanization seems to have been the major driving force and motivation factor in non-international conflicts and purely involving internal non-state actors. The politics of hate leads its protagonists to rely on ethnic distinctions, religious and social, to fuel the fire of hatred, which in turn increases the level of indiscriminate violence against civilian populations protected under international humanitarian law, IHRL, and ICL. In these contexts, governments have sometimes used the technique of public dissemination of hatred as a way to stimulate spontaneous reactions of the public, as was the case with the hatred of Nazi propaganda against Jews, and between the Tutsis and Hutus. The incitement to violence always escalates, generating circulation and mutual self-justification. Acts of revenge and reprisals perceived as justifiable fuels the escalation of violence. These shares are included in international humanitarian law, which the protagonists cannot morally or legally justify itself, but rationalize through the distortion in perception caused by the propaganda. Because many of these fighters are young and ignorant, the impact of hate propaganda is more efficient, and the ordinary inhibitions easily changes against violence, and thus intensifies the aberrant human behaviour.

12. Conclusion.

In conclusion, it can be said that even though there are several distinctions between states and non-states actors, the prospect for the future is to overcome the distinction among the different kinds of conflicts and ensure the protection of victims in all the armed conflicts. Through the collaboration of international humanitarian organizations, we need to achieve the respect of human rights, regardless of the place and the time where the human rights violations have been committed. To do so, it will be important to monitor the sentences of international tribunal and the praxis of the application of international humanitarian law by states and non-states.

"pour une personne civile, il importe peu que le conflit soit de caractère international o non international. Elle ne se préoccupe pas de savoir si la mine sur la quelle elle pose le pied a été en place par ses

compatriotes ou l'armée d'un autre Etat, si elle a été bombardée par l'artillerie ou l'aviation "amie" ou "enemie". Elle est cependant en droit de se demander pourquoi les parties à un conflit dans propre pays utilisent des méthodes et des moyens de guerre qui sont bannis dans un conflit international" (Pfanner) .

<https://www.diritto.it/non-state-actors-law-of-armed-conflict/>