



**Lexsitus Lecturer:** SONG Tianying (European University Institute)

**Topic:** ICC Statute Article 8(2)(f)

**Level:** Introductory

**Date of recording:** 30 August 2017

**Place of recording:** Florence

**Duration of recording:** 02:43

**PURL of film:** [www.cilrap.org/cilrap-film/8-2-f-song](http://www.cilrap.org/cilrap-film/8-2-f-song)

**PURL of English transcript:** [www.legal-tools.org/doc/93c017/](http://www.legal-tools.org/doc/93c017/)

The first sentence of sub-paragraph (f) repeats sub-paragraph (d), which explicitly states that internal disturbances and tensions do not constitute non-international armed conflicts, and thus do not meet the precondition of applying the law of war crimes in sub-paragraph (e). Sub-paragraph (f) then sets out a concrete threshold of non-international armed conflict, which requires protracted armed conflict between parties and the non-State armed group must have some degree of organization. This formulation is from the ICTY Appeals Chamber's decision in the *Tadic* case, which defines a 'non-international armed conflict' as "protracted armed violence between governmental authorities and organized armed groups or between such groups within a state". 'Protracted' means the armed struggle must last for a certain period of time. And for the requirement of organization of a non-State armed group, article 1, paragraph 1 of Additional Protocol II to the Geneva Conventions gives the key indicators:

1. whether the armed group is under "responsible command",
2. whether they "exercise such control over a part of its territory to enable them to carry out sustained and concerted military operations",
3. whether they are capable of implementing relevant rules of international humanitarian law.

Although sub-paragraph (f) includes additional requirements of non-international armed conflict, it is doubtful if it creates a different or a narrower definition of non-international armed conflict than sub-paragraph (d). The definition of non-international armed conflict is well-established in the case law of the *ad hoc* tribunals and the ICC.