

Review Article

The Application of International Human Rights and Humanitarian Law to the Current Las'anod Conflict

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Abstract: In the last days of January 2023, an armed conflict has broken out between the Somaliland government and the local population in the city of Las'Anod, the administrative capital of Sool region of Somalia. Serious acts of violence jeopardizing well-being and lives of people living there have been widely reported by media. This Article focuses and explains how international law protects life, property and human dignity in such critical situations. It presents the applicable human right standards as well as rules of war that must be observed during an armed conflict. Finally, the Article addresses possibility of classifying the situation as violations of international humanitarian law.

Keywords: International Law, Human Rights, International Humanitina Law, International Human Rights Law, War Crimes, Non-interntional Armed Conflict.

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1.0 INTRODUCTION

Both International Humanitarian Law (IHL) and International Human Rights Law (IHRL) strive to protect the lives, health and dignity of individuals, albeit from a different angle. It is therefore not surprising that, while very different in formulation, the essence of some of the rules is similar, if not identical. For example, the two bodies of law aim to protect human life, prohibit torture or cruel treatment, prescribe basic rights for persons subject to a criminal justice process, prohibit discrimination, comprise provisions for the protection of women and children, regulate aspects of the right to food and health. On the other hand, rules of IHL deal with many issues that are outside the purview of IHRL, such as the conduct of hostilities, status of combatants and prisoners of war, etc. Similarly, IHRL deals with aspects of life in peacetime that are not regulated by IHL, such as freedom of expression, the right to assembly, to vote, and to strike [¹]. However, an armed confrontation has erupted between Somaliland's [²] armed forces and the

people of Las'Anod in Somalia's Sool region. It has been reported that many violations of human rights occurred during the war including large-scale displacement, civilians killed, medical facilities targeted, and other abuses. Therefore, this Article discusses the international law applicable to non-international armed conflicts and in particular to the situation in Las'Anod.

2.0 THE NATURE OF THE CONFLICT

Las'Anod is the administrative capital of the Sool region of Somaliland. The city is a matter of dispute by two Somali states: Puntland and Somaliland. Puntland invokes blood ties between the Dhulbahante clan populating Las'Anod and the dominant clan in Puntland, the Harti, both being sub clans of Darood. Somaliland grounds its claim on the long lasting territorial division going back to the times of former British Somaliland Protectorate. Since 2008, Las'Anod under the control of the Somaliland authority after being taken over by Puntland, its neighboring eastern regional government. Since then, Las'Anod has experienced relative stability and remarkable economic development. However, the city and the region as a whole have been heavily militarised and army barracks are ubiquitous in and around Las'Anod. In the end of December 2022, a young politician was murdered in Las'Anod by an unknown perpetrator. This was the latest targeted killing in a long line of similar attacks

¹ICRC, "International Humanitarian Law and International Human Rights Law: Similarities and differences, advisory service on international humanitarian law, 2003

² Somaliland is an autonomous region in northern Somalia, which broke away and declared independence from Somalia in 1991. No foreign power recognises Somaliland's sovereignty, but it is self-governing with an independent government, democratic elections and a distinct history.

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that had not been prevented, or at least prosecuted and solved by the Somaliland authorities in the city. In response, Las'Anod residents began protesting against the prevailing insecurity in the city. The situation escalated into violence when Somaliland troops controlling the site began shooting at protesters, killing around 15 and injuring others (mostly youths). Somaliland forces finally withdrew from Las'Anod in early January 2023, leaving the site self-governing [3]. The latest clashes come after traditional elders and leaders declared that the Sool, Sanaag, and Cayn (SSC) regions are not part of Somaliland, which the Somaliland government rejected. The fighting resumed in the early hours on Tuesday February 7th, as local forces managed to capture several government buildings including the office of the governor [4].

The local forces were organized like a regular armed formation, with clear chain of command. Their actions were well planned and coordinated. They took control over the whole city, and organized effective policing by their units acting as patrolling and traffic control units. Although the duration of the clashes was not long, their intensity was significant. Heavy machine guns and even artillery were used by both sides. Number of casualties comprising of combatants and civilians was relatively high and amounted to few hundreds [5]. This, according to the commonly accepted definition [6] gives the conflict the status of a non-international armed conflict (NIAC) [7].

In a non-international armed conflict or internal conflict, international humanitarian law applies. The aim of this body of law is to restrict the methods and means of warfare and to protect people who are not or no longer taking part in combat operations. In addition, the non-international armed conflicts are provided for and regulated in Common Article 3 of the four Geneva Conventions of 1949 and in the Additional

³ African Arguments, "Crisis in Las'Anod: Border Disputes, Escalating Insecurity and the Future of Somaliland, Markus Virgil Hoehne, February 6, 2023

⁴ Horseed Media, Available: <https://horseedmedia.net/somalia-second-day-of-fighting-in-lasanod-sool-377404>, (Accessed 14.02.2023)

⁵ Anadolu Agency, Available: <https://www.aa.com.tr/en/africa/at-least-82-killed-in-somaliland-conflict-doctor/2818629>, (Accessed 14.02.2023)

⁶ See: Katrin Lawaand Internal conflicts or other situations of violence – what is the difference for victims? International Review of the Red Cross 10 December 2012, Available: <https://www.icrc.org/en/doc/resources/documents/interview/2012/12-10-niac-non-international-armed-conflict.htm> (Accessed 15.02.2023)

⁷ See Article 1 of Additional Protocol II to the Geneva Conventions of 1949

Protocol II of 1977 to the Geneva Conventions, which contains twenty-eight articles that complete the guarantees of Common Article 3 for victims of non-international armed conflicts.

Nevertheless, consideration should be given, whether the situation at hand amounts to occurrence of crimes against humanity. Unlike war crimes, crimes against humanity may take place even outside the context of armed conflict [8]. What makes acts of violence that meet definitions of grave breaches of IHL to be classified as crimes against humanity is a nature of hostile actions taken by authorities that exercise factual control over certain territory against the population living there. The crimes against humanity occur if such actions are a part of a systematic or widespread attack. Crimes against humanity apply mostly to acts which are committed by or on behalf of authorities. However, even deliberate tolerance of them by the authorities should be considered a form of perpetration.

3.0 THE APPLICABLE INTERNATIONAL LAWS

All parties to the conflict are bound by common Article 3 of the 1949 Geneva Conventions, which provides for compliance with the minimum standard and humane treatment without adverse discrimination of all persons who are not or no longer actively participating in hostilities. It prohibits murder, mutilation, torture, cruel, inhuman and degrading treatment, hostage-taking and unfair trials. Furthermore, all parties are bound by customary international humanitarian law applicable to non-international armed conflicts. In addition to international humanitarian law, international human rights law continues to apply in times of armed conflict. Somalia is a party to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights [9]. Any organization exercising authority inside clearly defined boundaries and claiming recognition of its authority as a territorial state by other states outside those boundaries has an obligation to prevent and investigate suspected violations, including by non-state actors. Non-state armed groups are increasingly seen as bound by international human rights law when exercising *de facto* control over specific areas.

3.1 Application of Common Article 3 of the Geneva Conventions

Common Article 3 of the Geneva Conventions applies as a set minimum standard to be observed during

⁸ See Article 7 of Rome Statute of the International Criminal Court

⁹ Ratified on January 1990, UN Treaty Body Database, Available: https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=161&Lang=EN, (Accessed 21.02.2023)

non- international armed conflict 'take place in the territory of 'the state-party to the Conventions. In the view of international law Somaliland continues to be bound by the accession to the Conventions signed by The Republic of Somalia [10]. While the conflict must take place on the territory of a State Party, it does not have to involve the armed forces of the state, but could involve two or more armed groups. Common Article 3 sets out a number of rules which must be applied during an internal armed conflict. But at what point does a conflict become a non-international armed conflict to which common Article 3 applies? The Article does not specify the conditions it applies, nor stipulates that the conflict must be of a particular scale or duration. According to the ICRC Commentary on the common Article 3, certain conditions must be satisfied before Article 3 is applicable. They include the requirements that non-state actors possess an organized military force and an authority responsible for its acts, act within a determinate territory, and have the means of respecting and ensuring respect for the Convention. However, these criteria are not obligatory and are intended as indicia only. According to the Commentary, the scope of application of the Article must be 'as wide as possible'. At the very least, there must be an armed conflict of a certain intensity, and the Commentary alludes to conflicts which have some resemblance to classic inter-state conflicts, with at least two armies facing each other off [11].

Once the conflict crosses the threshold to become a conflict of not of an international character, it applies regardless of the rebels' consent to be bound. While common Article 3 applies automatically once a conflict becomes a non-international armed conflict, the Parties do not need to apply only that Article and should ignore the other Articles of the Conventions. Contrary, they are encouraged and should endeavour to apply the Conventions in their entirety. They can bring all or part of the Conventions into force by the adoption of special agreements. However, the 'application of the preceding provisions shall not affect the legal status of the Parties to the conflict' [12].

It can be argued that it would be very difficult for rebels to comply with all of the provisions of the Geneva Conventions or to apply them in their entirety. In particular, for many rebel groups, the strict

conditions of the Third Convention concerning prisoners of war would be challenging to meet. It is also unlikely that many states would be willing to grant prisoners of war status to rebels. It would also be difficult to apply in the case of a non-international armed conflict the provisions relating to aliens in the territory of a Party to the conflict. Indeed, the definition of 'protected person' in Article 4 of the Fourth Convention is inapposite in the case of a non-international armed conflict. Common Article 3 does not offer any definition of protected persons, although the civilian population enjoys protection under the Article against prohibited acts [13].

The inclusion of the clause that the application of all or parts of the Conventions by the Parties shall not affect their legal status was considered essential by states attending the 1949 Geneva Diplomatic Conference. Many were opposed to any international regulation of non-international armed conflicts, despite the humanitarian imperatives. Without this clause, common Article 3 would never have been included. It means that rebels can be punished for the fact of taking up arms, even if they comply with the laws of war.

3.1.1 Obligations of Parties Under Common Article 3

Common Article 3 sets out a general obligation on Parties to non-international armed conflicts, followed by specific prohibitions and a specific obligation. The general obligation in paragraph 1 extends towards all persons taking no active part in hostilities, including members of the armed forces who have laid down their arms and those placed *hors de combat* by sickness, injury, detention, etc. Such persons must in all circumstances be treated humanely, without any adverse distinction being made, based on race, colour, religion, sex, birth or wealth, etc. This general obligation of humane treatment is in fact one of the fundamental principles of international humanitarian law, which applies in all types of armed conflicts. While what constitutes 'humane treatment' is not defined in the Article, examples of inhumane treatment are given in the sub- paragraphs (a) to (d). Sub-paragraphs (a) through (d) enumerate a number of specific prohibitions. The following acts are and shall remain prohibited at all times and in any place whatsoever:

1. *Violence to life and person, in particular, murder of all kinds, mutilation, cruel treatment and torture;*
2. *Taking of hostages;*
3. *Outrages upon personal dignity, in particular, humiliating and degrading treatment;*
4. *The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are*

¹⁰ Somalia became a party to the Geneva Conventions in 1962. See United Nations Treaty Collection, Available:

<https://treaties.un.org/pages/showdetails.aspx?objid=0800000280158b1a> (Accessed 17.02.2023)

¹¹ See ICRC commentary on common Article 3, Available: <https://ihl-databases.icrc.org/en/ihl-treaties/gciii-1949/article-3/commentary/2020?activeTab=undefined#9> (Accessed 06.02.2023)

¹² Ibid

¹³ Ibid

recognized as indispensable by civilized peoples.

These prohibitions, particularly (a) and (c) are general enough to include a variety of treatment; it was felt that to include a restrictive list of prohibitions would be to limit the protection afforded by the Article. Paragraph 2 of Article 2 imposes a specific obligation: the wounded and sick shall be collected and cared for. An impartial humanitarian body, such as the ICRC, shall be able to offer its services to the Parties to the conflict. The obligation extends not only to sick and wounded of the Parties to the conflict but also to the civilian population.

3.2 The Adoption of Additional Protocol II

Additional Protocol II of 1977 was adopted to address some of the deficiencies in the law regarding non-international armed conflicts. As an entire Protocol, as opposed to a single article, it regulates in greater detail than common Article 3 situations of armed conflict within a single state. However, especially in comparison with Protocol I, which is applicable to international armed conflicts, it is very inadequate. It leaves unaddressed many aspects of non-international armed conflicts, in particular, the permissible methods and means of warfare, and also lacks a criminal enforcement mechanism equivalent to the grave breaches provisions.

3.2.1 Field of Application of Additional Protocol II

According to its Article 1, Additional Protocol II applies to armed conflicts which take place on the territory of a High Contracting Party and which involve the armed forces of the state and one or more armed rebel groups. The Protocol thus does not apply to situations of fighting between or more armed groups but not involving the armed forces of the state. This requirement is a major limitation on the application of the Protocol, particularly as contemporary conflicts often are waged between rebel groups without the involvement of the state. A further limitation on the Protocol's applicability, as compared with common Article 3, is the stated requirement that the rebel groups must operate under a responsible command and control a portion of the national territory. The logic of this requirement is that if the rebel group does not control some territory, then, as a practical matter, it will probably not be in a position to carry out sustained and concerted military operations and to implement the Protocol. However, the control requirement may also make some states less willing to admit the applicability of the Protocol, since for a state to admit the application of Protocol II is to concede that it has lost control of a part of its national territory [¹⁴].

¹⁴ See General Introduction to the Commentary on Protocol II, Available: <https://ihl-databases.icrc.org/en/ihl-treaties/apii-1977>

The requirements of having a responsible command and exercising control over territory are probably a practical necessity, since without meeting these conditions; most rebels will not be able or willing to apply the Protocol. Many of the types of rebel groups operating today are very loosely organized, with sometimes a deliberately unstructured command in order to avoid criminal responsibility of the leaders or are engaged in activities which deliberately aim at violating the law. However, according to the ICRC Commentary on Additional Protocol II [¹⁵], an organization akin to that of a regular army is not necessary [¹⁶].

The requirement in Article 1 that, in order for the Protocol to apply, the fighting be sustained means that operations should be kept going continuously. According to the Commentary, at the beginning of a conflict, military operations rarely have such a character, and thus in most cases only common Article 3 will apply to the first stages of a conflict. The Protocol does not apply automatically when the above conditions are met; instead, there is an additional criterion: the armed groups opposing the state must evidence their willingness to be bound by the Protocol (this willingness could be indicated by actually applying its terms or by making a declaration that they intend to be bound). Unless the rebels claimed to be the legitimate government, in which case it could bind them automatically even without their consent, the Protocol only kicks in once they demonstrate their willingness to be bound by it [¹⁷].

Whereas common Article 3 specifies that the application of its provisions or even the application by agreement of all or part of the Conventions does not affect the legal status of the Parties to the conflict, Protocol II does not contain an equivalent provision. This was not considered necessary as nowhere in Protocol II is there a reference to the "Parties" to the conflict. The application of Protocol II by the parties does not constitute recognition of belligerency nor does it change the legal nature of the relations between the parties involved in the conflict. Protocol II does not establish any special category of protected persons or create any special legal status. All persons deprived of their liberty for reasons relating to the armed conflict enjoy the same legal protection. The Protocol applies automatically once the objective criteria for its application have been met. Of course, in practice, it can be difficult to make such an objective assessment, and there is no body invested with the power to make it.

¹⁵ See ICRC Commentary of 1987, Available: <https://ihl-databases.icrc.org/en/ihl-treaties/apii-1977/preamble/commentary/1987>, (Accessed 15.02.2023)

¹⁶ Ibid

¹⁷ Ibid

3.2.2 Protected Persons

The persons enjoying the protection given by the Protocol are 'all persons affected by an armed conflict as defined in Article 1'. All such persons shall benefit equally from the Protocol. The Protocol must be applied 'without any adverse distinction founded on race, colour, sex, language, religion or belief, political or other opinion, national or social origin, wealth, birth or other status, or on any other similar criteria (...)'. The Protocol applies to all residents of the country engaged in a conflict, irrespective of their nationality, including refugees and stateless persons.

Prohibited acts and guarantees Protocol II sets out a list of fundamental guarantees in Article 4. It states, as a general principle, (1) that 'All persons who do not take a direct part or who have ceased to take part in hostilities, whether or not their liberty has been restricted, are entitled to respect for their person, honour and convictions and religious practices. They shall, in all circumstances, be treated humanely, without any adverse distinction. It is prohibited to order that there shall be no survivors.' Article 4 prohibits several acts, specifically, violence to the life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal treatment; collective punishments; taking of hostages; acts of terrorism; outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault; slavery and the slave trade in all their forms; pillage; threats to commit any of the foregoing acts.

Under paragraph 3, children shall be provided with the care and aid they require. The Article stipulates what this means, including education and reunion with their families if possible. Most importantly, subparagraph (c) prohibits recruiting children younger than 15 into the armed forces or armed groups or involving them in hostilities. Under subparagraph (d), children younger than 15 who do participate in hostilities shall not lose their special protection. Article 5 of Protocol II sets out some additional guarantees relating to persons whose liberty has been restricted. Article 6 regulates penal prosecutions and guarantees the rights of due process to all persons accused of crimes relating to the armed conflict.

Part IV of the Second Protocol deals with the protection of the civilian population. Pursuant to Article 13:

1. The civilian population and individual civilians shall enjoy general protection against the dangers arising from military operations. To give effect to this protection, the following rules shall be observed in all circumstances.
2. The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary

purpose of which is to spread terror among the civilian population are prohibited.

3. Civilians shall enjoy the protection afforded by this Part, unless and for such time as they take a direct part in hostilities.

Article 14 prohibits the starvation of civilians and attacks on objects indispensable for the survival of the civilian population. Article 15 prohibits attacks on works and installations containing dangerous forces. Article 16 prohibits directing attacks against cultural or religious sites. Article 17 prohibits a forced movement of civilians. Protocol II also prohibits collective punishments. There is also a provision relating to the protection of objects indispensable to the survival of the civilian population. Starvation of the civilian population is prohibited.

4.0 VIOLATIONS OF THE APPLICABLE INTERNATIONAL LAWS

4.1 Violation of International Human Rights Laws

International human rights law (IHRL) governs the obligations of States towards citizens and other individuals within their jurisdiction. Human rights law enshrines the highest of human ideals, that every human being has a set of rights and freedoms. Human rights thus cannot be taken away by States and apply at all times (although specific derogations and limitations are permitted to certain rights and freedoms [¹⁸]) set forth in the Universal Declaration of Human Rights and a host of core treaties, IHRL plays a crucial role in the protection of all people. However, the following section discusses the violation of International Human Rights Law that is committed by the Somaliland authorities.

a. *Extra Judicial Killings*

Extrajudicial, summary, or arbitrary executions, meaning the deliberate killing of individuals outside of any legal framework, are a violation of this most fundamental right. On 20 December 2012 the UN General Assembly adopted Resolution 67/168 on extrajudicial, summary or arbitrary executions. The resolution calls upon all states to prevent extrajudicial, summary or arbitrary executions and to comply with their obligations under the relevant provisions of international human rights instruments. Resolution 67/168 also acknowledges that: "*extrajudicial, summary or arbitrary executions may under certain circumstances amount to genocide, crimes against humanity or war crimes, as defined in international law, including in the Rome Statute of the International Criminal Court, and recalling in this regard that each individual State has the responsibility to protect its populations from such crimes*" [¹⁹].

¹⁸ See Article 4(1) of the ICCPR

¹⁹ UN General Assembly Resolution 67/168 on extrajudicial, summary or arbitrary executions, 60th plenary meeting 20 December 2012, Available: <https://documents-dds->

For the past 15 years, the residents of Las'Anod have been complaining about such killings. They accused the Somaliland government of being slow in apprehending the criminals; they say this may show that the government has committed such killings, and this sparked the protests in the city of Las'Anod. More than 80 people have been killed since 2010, when Somaliland took control of the city of Las'Anod. Most of the people who were killed were the city's elite [20]. This situation calls for a meticulous investigation, because this scale of tolerance for lethal violence, both in terms of time and number, raises a reasonable probability of a deliberate policy of committing crimes against humanity by simply failing to react. This omission should be seen as an incentive for the actual perpetrators of the murder to continue their evil activities, since they could count on impunity.

a. *Killing of Peaceful Protestors*

Freedom of expression is a core human right which is guaranteed under international law and by virtually every constitutional bill of rights in the world. It is key to human development, dignity, personal fulfilment, the search for truth, and a fundamental prerequisite for democracy and good governance. It facilitates free debate about and between competing political parties, enables citizens to raise concerns with authorities, and ensures that new policies and legislation may be scrutinized. The quality of government is enhanced by free speech because it helps to ensure that authorities are competent and honest and allows individuals to voice concerns about and debate government action. To put differently; democratic values are under threat when information and ideas are not permitted to flow freely [21].

The right to freedom of expression is recognized in all of the main international and regional human rights treaties. This includes, most notably, the Universal Declaration of Human Rights (UDHR), which was adopted unanimously by the United Nations General Assembly in 1948. While the UDHR is not formally legally binding on States, its guarantee of freedom of expression is widely regarded as having acquired legal force as customary international law. Article 19 of the UDHR states: *Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas*

ny.un.org/doc/UNDOC/GEN/N12/488/68/PDF/N1248868.pdf?OpenElement, (Accessed 20.02.2023)

²⁰ Muxammad Sugaal Baaruud, Hadhwanaag Media, October, 2021, Available:

<https://hadhwanaagnews.ca/mobile/articles/27605/Dilalka-Qarsoon-Ee-Laascaanood>, (Accessed 09.02.2023)

²¹ Freedom of Expression as a Human Right, Centre for Law and Democracy International Media Support (IMS), p.2

through any media and regardless of frontiers. Similar language is used in Article 19 of the International Covenant on Civil and Political Rights (ICCPR), a formally legally binding treaty ratified by 168 States as of April 2014:

1. *Everyone shall have the right to freedom of opinion.*
2. *Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of his choice.*

Freedom of expression is also protected in regional human rights treaties, including the African Charter on Human and People's Rights [22], the American Convention on Human Rights [23] and the European Convention on Human Rights [24].

However, the freedom of expression was violated by the Somaliland government when 20 people, mostly civilians, were killed and around 30 wounded in clashes between protesters and Somaliland security forces. While protesters have been on the streets of Las'Anod demanding the expulsion of Somaliland security forces and the handover of the town, police have used live ammunition to disperse them [25].

b. *Massive Displacement*

Internally displaced people are those who have been forced or obliged to leave their homes behind, notably for reasons related to armed conflict or other violence, and who remain within the borders of their country. There is no universal, legally binding instrument equivalent to the 1951 Refugee Convention that specifically addresses their plight. Nonetheless, internally displaced people are protected by international human rights law and domestic law and, in situations of armed conflict, by international humanitarian law (IHL) [26]. Residents of the city of Las'Anod began fleeing their homes after continued clashes between anti-government protesters and

²² See Article I of the Declaration of Principles on Freedom of Expression in Africa, African Commission on Human and Peoples' Rights,

²³ See Article 13

²⁴ See Article 10

²⁵ Anadolu Agency, Available: <https://www.aa.com.tr/en/africa/at-least-20-killed-30-hurt-as-somaliland-forces-clash-with-protesters/2778085#>, (Accessed 10.02.2023)

²⁶ Internally displaced persons and international humanitarian law, ICRC, 2018, Available: <https://www.icrc.org/en/document/internally-displaced-persons-and-international-humanitarian-law>, (Accessed 19.02.2023)

security forces in Las'Anod, the administrative capital of the Sool region. The UN Office for the Coordination of Humanitarian Affairs (OCHA) said more than 185,000 people have been displaced [²⁷]. Under Principle 6 of the UN Guiding Principles on Internal Displacement, "Every human being shall have the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence". This means states and non-state actors have an obligation to follow these principles and not cause displacement.

4.2 Violation of International Humanitarian Laws

International humanitarian law (IHL) applies in situations of armed conflict, which can be divided into two types: international armed conflicts (IAC) and non-international armed conflicts (NIAC). However, classification can get complicated because in some situations both an IAC and NIAC can exist in one place or evolve into the other depending on the course of the conflict.

4.2.1 Defining International Armed Conflict (IAC)

The basic requirement for an International Armed Conflict (IAC) is that there must be an armed conflict between two or more states. Common Article 2 of the Geneva Conventions sets out the commonly accepted definition of an IAC. In addition to the provisions which shall be implemented in peace-time, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them. The Convention shall also apply to all cases of partial or total occupation of the territory of a state-party to the Convention, even if the said occupation meets with no armed resistance. Aside from occupation, where there needs to be no armed resistance, the level of violence between two states to amount to armed conflict is generally undefined. However, it is generally accepted that even "two shots" fired across a border could lead to the application of IHL [²⁸].

The threshold of violence is a question of practical relevance. For example, if during a training exercise an army patrol accidentally went into the territory of another state and returned without any engagement with the other state, IHL would have no role to play. However, if that mistake led to an exchange of fire between the two armed forces, the

²⁷ Reliefweb, Available: <https://reliefweb.int/report/somalia/somalia-flash-update-no-2-fighting-laas-caanood-sool-region-14-february-2023>, (Accessed 18.02.2023)

²⁸ " ICRC, "How is the Term "Armed Conflict" Defined in International Humanitarian Law?" Opinion Paper, March 2008, pp.1-2, Available: <https://www.icrc.org/en/doc/assets/files/other/opinion-paper-armed-conflict.pdf>, (Accessed 21.02.2023)

applicable rules of IHL would apply. It is important to note that the rules on international armed conflicts are more extensive and more detailed than those covering internal armed conflicts, given that they include those set out in the Hague Conventions of 1907, the four Geneva Conventions and the First Additional Protocol to the Geneva Conventions of 1977 [²⁹].

4.2.2 Defining Non-international Armed Conflicts (NIAC)

The majority of today's armed conflicts are non-international armed conflicts. The reluctance of states to accept international legal oversight into their internal affairs often means that the threshold of violence and organization required to define a situation as an armed conflict is significantly higher than what would be needed for a IAC. Common Article 3 tells us what does not qualify as an armed conflict, namely internal disturbances or tensions. Internal disturbances are riots, demonstrations, and isolated, sporadic acts of violence that take place inside the territory of a state [³⁰].

Case law, especially by the International Criminal Tribunal for the Former Yugoslavia (ICTY), has clarified the elements of a NIAC. This allows for the assertion that a non-international armed conflict exists when there is a situation of protracted armed violence between governmental authorities and organized armed groups, or between such groups within a state. Hence, there are two key elements needed for a NIAC: protracted armed violence, and the involvement of an organized armed group. In the case of *Haradinaj* [³¹], the tribunal set out some possible factual indicators to help assessing if a NIAC exists [³²].

4.3 Violations to the Additional Protocol II of 1977

Additional Protocol II (APII) of 1977 deals with internal armed conflicts. To apply the provisions of APII, the non-international armed conflict must occur between a state and an armed group (or two armed groups for Common Article 3 ruled out). In addition, the conflict must take place on the territory of a High Contracting Party to the Geneva Conventions, and the armed group has to control a part of the territory. However, we will briefly discuss the possible violation of the Additional Protocol II of 1977 and

²⁹ Ibid, p.2

³⁰ ICRC, "How is the Term "Armed Conflict" Defined in International Humanitarian Law?" Opinion Paper, March 2008, pp.3-4, Available: <https://www.icrc.org/en/doc/assets/files/other/opinion-paper-armed-conflict.pdf>, (Accessed 21.02.2023)

³¹ See ICTY, Appeals Chamber, Prosecutor v. Haradinaj et al., Case No. IT-04-84-A, Judgement of 19 July 2010, Available: <https://www.icty.org/en/case/haradinaj>, (Accessed 17.02.2023)

³² Ibid, p.3

Customary International Humanitarian Law, which are the specific laws governing the current Las'Anod conflict.

a. Indiscriminate Attacks

There have been reports of Somaliland forces carrying out indiscriminate strikes. Residential homes, mosques, and other civilian facilities have been targeted. This is a severe violation of international humanitarian law. Humanitarian law prohibits any kind of indiscriminate attacks. Such attacks do not distinguish between military objectives and civilian persons or property. Such attacks are defined and prohibited in detail in Article 51 of the 1977 Additional Protocol I to the Geneva Conventions as well as in Rules 11, 12 and 13 of ICRC Customary IHL study:

- *Attacks that are not directed at a specific military objective;*
- *Attacks that employ a method or means of combat that cannot be directed at a specific military objective;*
- *Attacks that employ a method or means of combat whose effects cannot be limited;*
- *Attacks by bombardment, by any methods or means, that treat as a single military objective a number of clearly separated and distinct military objectives located in a city, town, village, or other area containing a similar concentration of civilians or civilian objects;*
- *Attacks that may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof and that would be excessive in relation to the concrete and direct military advantage anticipated.*

Customary humanitarian law has established precautionary measures that shall be taken against the effects of attacks:

- **Rule 18:** *"Each party to the conflict must do everything feasible to assess whether the attack may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilians objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated."*
- **Rule 19:** *"Each party to the conflict must do everything feasible to cancel or suspend an attack if it become apparent that the target is not a military objective or that the attack may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilians objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated."*
- **Rule 22:** *"The parties to the conflict must take all feasible precautions to protect the civilian population and civilian objects under their control against the effects of attacks."*

Those three rules are applicable in international and non-international armed conflicts.

b. Shelling Medical Facilities

Medical facilities such as hospitals have also been targeted by Somaliland forces. Images published on social media show the bombing of the Las'Anod main hospital wounding people who were treated there. Moreover, The Somalia Red Crescent said one of its doctors was killed in the shelling of Las'Anod [33]. It constitutes a grave breach to Article 11(1) of the Additional Protocol II to the Geneva Conventions of 1949. It prohibits targeting medical facilities, the Articles states: *"Medical units and transports shall be respected and protected at all times and shall not be the object of the attack"*. Medical units are also protected under rule 28 of the Customary International Humanitarian Law.

c. Torturing and Humiliating Prisoners of War

Both sides in the conflict have committed abuses against prisoners of war. Video recording showing abuses against prisoners of war have been circulated on social media. The Additional Protocol II, relating to non-international armed conflicts, does not directly refer to the definition of prisoners of war but includes clauses that aim to protect detained persons or persons deprived of their liberty in relation to the conflict, prohibit ill-treatment, and set out fundamental guarantees and judicial guarantees granted to such persons, regardless of whether they have taken part in hostilities. All persons not covered by more favorable provisions are at least entitled to the fundamental guarantees and hence have the right to respect their person, their honor, their religious convictions and practices, and their right to be treated humanely, without any adverse distinction [34]. According to Article 5 of the Additional Protocol II, Persons deprived of their liberty for reasons related to the armed conflict are protected against ill treatment and benefit from specific guarantees.

d. Attacks on Water facilities

Somaliland forces stationed at Gojacade military base have attacked Las'anod Water Supply Company which supplies water to Las'aanod city. According to media reports, Somaliland forces destroyed parts of the company's premises and looted some of its equipment³⁵. This is a grave breach of

³³ ICRC Africa, Available: https://twitter.com/ICRC_Africa/status/1624384960223227905, (Accessed 18.02.2023)

³⁴ Geneva Convention I-IV Common Article 3, Additional Protocol II, Article 4

³⁵ Farah Abdulkadir, Available at: https://www.facebook.com/story.php?story_fbid=pfbid02WtGzdUr9os7H3VW9c2fCHVmgmtmvp3zpTbpCaJG3rHuErEaM

Article 14 of the 1977 Additional Protocol II which prohibits starvation of civilians as a method of combat. For this purpose, the article prohibits attacking, destroying, removing or disabling objects essential to the survival of civilians, such as food, agricultural land for food production, crops and drinking water facilities. In addition, the intentional use of starvation of civilians as a method of warfare by depriving them of items essential to their survival is a war crime.³⁶

5.0 THE BINDING FORCE OF INTERNATIONAL HUMAN RIGHTS AND HUMANITARIAN LAWS

5.1 State Obligations

If violations of international human rights and humanitarian law constitute international crimes, states have a series of legal obligations and responsibilities that stem from international criminal law to follow [37]. First of all, states have the duty to investigate violations [38] and, if there is sufficient evidence, the duty to submit to prosecution the person allegedly responsible for them and to punish the perpetrator in accordance with the law, to exclude the possibility of amnesty for certain perpetrators, and to offer remedy and reparation to victims or their families [39]. The obligation to seek accountability includes a responsibility for States, in accordance with international law, to cooperate with one another and assist international judicial organs competent in the investigation and prosecution of these violations [40].

5.2 Organised Non-State Armed Groups and their Obligations

Organized non-State armed groups are bound – as parties to non-international armed conflict – by common Article 3 and Additional Protocol II (if the threshold for its application is met) provided that the State to which they belong is party to the treaties in question. In any case, they are also bound by customary IHL rules pertaining to non-international armed conflicts [41].

5.3 Individual Obligations

The binding force of IHL on individuals has been recognized for a long time. Since individuals are

punished for war crimes [42] it is clear that they bear duties that flow directly from International Humanitarian Law [43]. Such duties apply to all individuals, whether they possess the formal status of combatants in an international armed conflict as members of the armed forces of a party to such an armed conflict, whether they are members of armed forces in a Non-international Armed Conflict (NIAC), or whether they are civilians [44].

6.0 CONCLUSION

In conclusion, the current Las'Anod conflict meets the non-international armed conflict conditions stated in Article 1 of Additional Protocol II. The parties to the conflict are bound by Common Article 3 of the Geneva Conventions and Additional Protocol II. Any violation of these rules will lead to international prosecution. However, human rights violations and war crimes are reported to have occurred. Therefore, the study recommends that the Somalia Federal Government take its responsibility under the constitution for preventing crimes against humanity perpetrated within its territory and by its citizens and bring those responsible to justice. In addition, it should work with international bodies to conduct a thorough investigation into the violations committed and those responsible. Although the United Nations Commission on Human Rights has ordered that an investigation be carried out regarding Las'Anod conflict, it still remains important to take more action to stop these violations and continue to bring the perpetrators to justice. Lastly, the international non-state organization such as Human Rights Watch should pay attention to what is going on in Lasanod and conduct investigations into the possible IHL and IHL violations.

REFERENCES

Legal Instruments

National Laws

- Provisional Federal Constitution of 2012

International Laws

- *The Four Geneva Conventions* of 1949;
- The Protocols Additional to the four 1949 Geneva Conventions, 1977
- The Universal Declaration of Human Rights (UDHR), 1948
- International Covenant on Civil and Political Rights, 1966
- The Rome Statute of the International Criminal Court, 1998
- Hague Conventions of 1907

2ywShuerKYJ4zVZgl&id=100000482911474&mibextid=Nif5oz&_rdr. Accessed: 08.03.2023

³⁶ See Article 8(2)(b)(xxv) of Rome Statute

³⁷ Jean-Marie Henckaerts and Louise Doswald-Beck, Customary International Humanitarian Law, Volume I, Rule 150

³⁸ Ibid, Rule 158

³⁹ See Article (111)I, 3(A) of the Provisional Federal Constitution of 2012

⁴⁰ Jean-Marie Henckaerts and Louise Doswald-Beck, Customary International Humanitarian Law, Volume I, Rule 161

⁴¹ "International Humanitarian Law- Answers To Your Questions", ICRC, pp.31

⁴² See Article 8(1) of the Rome Statute of the International Criminal Court

⁴³ See Article 49 of the 1949 Geneva Convention I, Article 50 of the 1949 Geneva Convention II, Article 129 of the 1949 Geneva Convention III and Article 146 of the 1949 Geneva Convention IV.

⁴⁴ Ibid

- UN General Assembly Resolution 67/168 on extrajudicial, summary or arbitrary executions. December, 2012

Cases

- ICTY, Appeals Chamber, Prosecutor v. *Haradinaj et al.*, Case No. IT-04-84-A, Judgement, 19 July 2010. Available: <https://www.icty.org/en/case/haradinaj>, (Accessed 17.02.2023)

Books and Journals

- "HOW DOES LAW PROTECT IN WAR?", Cases, Documents and Teaching Materials on Contemporary Practice in International Humanitarian Law, by Marco Sassòli Antoine A. Bouvier Anne Quintin, Volume I, Third Edition, ICRC.
- "The Law of Non-International Armed Conflict," Sandesh Siv Akumaran, Oxford University Press.
- "An Introduction to the International Law of Armed Conflicts", Robert Kolb and Richard Hyde, Oxford—Portland Oregon 2008, ISBN: 978-1-84113-799-5
- "Freedom of Expression as a Human Right", Centre for Law and Democracy
- "International Humanitarian Law and International Human Rights Law...Similarities and differences", ICRC, 2003.
- "The Right to Protest: Principles on the protection of human rights in protests" The Article 19, 2016.
- "The Applicability of International Humanitarian Law to Organized Armed Groups", Jann K. Kleffner, International Review of the Red Cross, Volume 93, Number 882, June 2011.
- "Customary International Humanitarian Law" Jean-Marie Henckaerts and Louise Doswald-Beck, Volume I: Rules, Cambridge University Press, 2005.
- "International Humanitarian Law Answers To Your Questions", ICRC.
- "State Responsibility For Human Rights Violations Committed", The Geneva Academy of International Humanitarian Law and Human Rights, December 2018, ISBN: 978-2-9701003-8-6

Internet Sources

- Katrin Lawaand Internal conflicts or other situations of violence – what is the difference for victims? International Review of the Red Cross 10 December 2012, Available: <https://www.icrc.org/en/doc/resources/documents/interview/2012/12-10-niac-non-international-armed-conflict.htm> (Accessed 15.02.2023)
- Anadolu Agency, Available: <https://www.aa.com.tr/en/africa/at-least-82-killed-in-somaliland-conflict-doctor/2818629>, (Accessed 14.02.2023)
- Horseed Media, Available: <https://horseedmedia.net/somalia-second-day-of-fighting-in-lasanod-sool-377404>, (Accessed 14.02.2023)

- United Nations Treaty Collection, Available: <https://treaties.un.org/pages/showdetails.aspx?objid=0800000280158b1a> (Accessed 17.02.2023)
- ICRC commentary on common Article 3, Available: <https://ihl-databases.icrc.org/en/ihl-treaties/gcii-1949/article-3/commentary/2020?activeTab=undefined#9> (Accessed 06.02.2023)
- General Introduction to the Commentary on Protocol II, Available: <https://ihl-databases.icrc.org/en/ihl-treaties/apii-1977>
- ICRC Commentary of 1987, Available: <https://ihl-databases.icrc.org/en/ihl-treaties/apii-1977/preamble/commentary/1987>, (Accessed 15.02.2023)
- Muxammad Sugaal Baaruud, Hadhwanaag Media, Ocotober, 2021, Available: <https://hadhwanaagnews.ca/mobile/articles/27605/Dilalka-Qarsoon-Ee-Laascaanood>, (Accessed 09.02.2023)
- Anadolu Agency, Available: <https://www.aa.com.tr/en/africa/at-least-20-killed-30-hurt-as-somaliland-forces-clash-with-protesters/2778085#>, (Accessed 10.02.2023)
- United Nations Human Rights, office of the High Commissioner, Displacement, OHCHR and the right to adequate housing, Available: <https://www.ohchr.org/en/housing/displacement#:~:text=OHCHR%20and%20the%20right%20to%20adequate%20housing,-Overview&text=Every%20human%20being%20shall%20have,or%20place%20of%20habitual%20residence.&text=Internal%20displacement%20affects%20some%2025%20million%20people%20worldwide.>, (Accessed 05.02.2023)
- Reliefweb, Available: <https://reliefweb.int/report/somalia/somalia-flash-update-no-2-fighting-laas-caanood-sool-region-14-february-2023>, (Accessed 18.02.2023)
- ICRC Africa, Available: https://twitter.com/ICRC_Africa/status/162438496023227905, (Accessed 18.02.2023)
- ICRC, Internally Displaced Persons and International Humanitarian Law, 2018, Available: <https://www.icrc.org/en/document/internally-displaced-persons-and-international-humanitarian-law>, (Accessed 19.02.2023)
- UN Treaty Body Database, Available: https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=161&Lang=EN, (Accessed 21.02.2023)
- ICRC, "How is the Term "Armed Conflict" Defined in International Humanitarian Law?" Opinion Paper, March 2008, pp.1, available: <https://www.icrc.org/en/doc/assets/files/other/opinion-paper-armed-conflict.pdf>, (Accessed 21.02.2023)

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