

The Legality and Humanitarian Consequences of Ethiopian Armed Intervention in Somalia

The Legality and Humanitarian Consequences of Ethiopian Armed Intervention in Somalia

Biruk Paulos*

Abstract

The legality and the humanitarian consequences of Ethiopian armed intervention (alleged invasion) in Somalia (2006 to 2009) has been highly contested at the international fora as the intervention has repercussions even today. Despite the controversies that hover around the legality of intervention and the consequent violations of the law of armed conflicts by all parties engaged in the war in Somalia, Ethiopia has always invoked two tenacious justifications for the legality of the intervention: the right to self-defense and intervention by invitation. Besides, contrary to the reports by some International Medias such as Amnesty International and Human Rights Watch, Ethiopia has never acknowledged the violations of international humanitarian law by the Ethiopian Military in Somalia throughout the war. Thus, this article delves in to the context of the conflict (war) in Somalia and the motives (rationale) behind the intervention in order to objectively examine the legality of the intervention and the humanitarian issues related to the Ethiopian Military operation in Somalia in light of international humanitarian law.

Keywords: legality, humanitarian consequences, armed intervention, law of armed conflicts, and self-defense, and intervention by invitation

Received: November 7, 2019 **Accepted:** November 25, 2019

* Ethiopian Civil Service University, Institute of Federalismm and Legal Studies, brookcanada2017@gmail.com, ORCID ID: 0000-0001-6059-972X

Introduction

The legality and humanitarian consequences of Ethiopian armed intervention in Somalia (2006 to 2009) has been the subject of academic debate for over a decade. As regards the legality of the intervention, Ethiopia claims two grounds for justifying the legality of the armed intervention in Somalia (2006-2009). First, Ethiopia claims that she has the right to self-defense from existential threat of jihadist attack from the Islamist Militants in Somalia (particularly the Union of Islamic Courts (UIC)); and secondly, Ethiopia claims to have intervened in Somalia by the request of the legitimate government of Somalia, the Transitional Federal Government (TFG), to fight against insurgent groups, especially the Islamist Militants of the ICU. Although the Ethiopian government invokes the right to self-defense and intervention by invitation to legalize the military intervention in Somalia, the intervention was widely criticized, by the Somali elites and the international community at large, for the breach of international law. Besides, the Ethiopian military presence in Somalia was highly contested, particularly by the Somali people and international human rights organizations, because of the breach of the law of armed conflicts (international humanitarian law). Despite the vehement criticisms and doubts that all of the parties in the armed conflict including the Transitional Federal Government (TFG) Forces, Ethiopian National Defense Force (ENDF), and other Insurgent groups (primarily the UIC) have committed war crimes by acting beyond the limits of the Geneva Conventions¹ and the Additional Protocols² on the laws of armed

¹ The Geneva Conventions and their Additional Protocols, also known as the Humanitarian Law of Armed Conflicts, constitute part of Public International Law. The chief purpose of these Conventions is to provide minimum protections, standards of humane treatment, and fundamental guarantees of respect to individuals who become victims of armed conflicts. The Geneva Conventions are a series of treaties on the treatment of civilians, prisoners of war (POWs) and soldiers who are otherwise rendered *hors de combat* (French, literally "outside the fight"), or incapable of fighting.

² Under Protocol I, the signing Nations agreed to further restrictions on the treatment of "protected persons" according to the original Conventions, and clarification of the terms used in the Conventions was introduced. In Protocol II, the fundamentals of "humane treatment" were further clarified. Additionally, the rights of interned persons

The Legality and Humanitarian Consequences of Ethiopian Armed Intervention in Somalia

conflict, none of them has been charged for a war crime neither at domestic courts nor at International Criminal Court (ICC).

International humanitarian law (the laws of war³) imposes upon parties to an armed conflict legal obligations to reduce unnecessary suffering and protect civilians and other non-combatants. All armed forces involved in a conflict, including non-state armed groups, must abide by international humanitarian law. Individuals who violate humanitarian law with criminal intent can be prosecuted in domestic or international courts for war crimes. In light of humanitarian law, the conflict in Somalia, involving Ethiopian and Somali Transitional Federal Government (TFG) forces against insurgent armed groups, is considered a non-international (internal) armed conflict. The Ethiopian forces have been viewed internationally as acting at the invitation of, and in coalition with, the TFG, rather than directly using force against another sovereign state. The international law relating to the conduct of hostilities is now recognized as largely the same whether it is applied to an international⁴ or a non-international armed conflict. Thus, in reference to the pertinent rules of international law, this article strives to precisely explore and analyze the motives behind the Ethiopian military intervention in Somalia, the legality of the intervention and the alleged breaches of the law of armed conflicts.

were specifically enumerated, providing protections for those charged with crimes during wartime. It also identified new protections and rights of civilian populations. Finally, Protocol III was adopted in 2005 to add another emblem, the "red crystal," to the list of emblems used to identify neutral humanitarian aid workers (Blokhina, 2019).

³ Convention I protects wounded and infirm soldiers and medical personnel who are not taking active part in hostility against a Party. Convention II, on the other hand, extended the protections described in the first Convention to shipwrecked soldiers and other naval forces, including special protections afforded to hospital ships. Besides, Convention III defined "Prisoner of War," and accorded such prisoners proper and humane treatment as specified by the first Convention. Finally, under Convention IV, civilians are afforded the same protections from inhumane treatment and attack afforded to sick and wounded soldiers in the first Convention. It prohibits attacks on civilian hospitals, medical transports, etc. It also specifies the rights of internees (POWs) and saboteurs. Finally, it discusses how occupiers are to treat an occupied populace (Blokhina, 2019).

⁴ An international armed conflict is one between two or more states.

1. The Conflict in Somalia

1.1 The Conflict and the Context of Intervention

In order to understand the conundrum of the state of Somalia, one needs to see the root causes of the conflict. Though it is beyond the intention of this article to analyze the conflict in Somalia, it is imperative to comprehend the context of the Ethiopian military intervention in Somalia. Throughout history, Somalis and Ethiopians (particularly Highlanders) have had unstable and poor relations. The two countries have ethnic and religious differences. From the Somali people's perspective, Ethiopia is one of the colonial powers that partitioned Somalia into five parts (Afyare Abdi Elmi, 2010). Somalia, as a state was forged in 1960, out of a former British protectorate and an Italian colony. From its inception, its claim to ethnic Somali inhabited regions of Ethiopia, Kenya and Djibouti has put it on war footing particularly with Ethiopia (Milkias, 2007). Soon after its establishment in 1960, the Somali state sought to seize the Ogaden from Ethiopia on ethnic and cultural grounds (Tareke, 2000). In 1977, under the dictatorial leadership of Siyad Barre, Somalia invaded the Ogaden region of Ethiopia penetrating 437 miles into the Ethiopian territory. Ethiopia countered the invasion by fighting a bloody war to defend her territorial integrity. In 1991, President Barre was forced into exile after the United Somali Congress overthrew his military regime in Mogadishu. After the downfall of the Barre's regime in 1991, Somalia went into series of internal conflicts among the different clan based military factions. The factions among the different warlords finally resulted in a prolonged civil war in Somalia. The Somali civil war has multiple and complex causes including political, economic, cultural and psychological factors. Various external and internal actors have played different roles during the various stages of the conflict. The root causes of the Somali conflict are competition for resources and/or power, a repressive state and the colonial legacy. Besides, there are contributing causes such as the politicized clan identity, the availability of weapons, and the large numbers of unemployed youth (Afyare Abdi Elmi, 2010). Thus, segmentation stands as the root cause of the reason the Somalis have recurrently failed to form a central national government for nearly two decades now, despite much active trying, principally because the

The Legality and Humanitarian Consequences of Ethiopian Armed Intervention in Somalia

underlying social fabric of the Somali polity stands against centralization (Samatar, 2007).

Fifteen successive efforts at facilitating a peace process in Somalia have failed largely because they have been imposed from outside, to suit groups of external interests and actors (Jakkie Cilliers, 2010). Five of these (Djibouti 1991, Addis Ababa 1993, Cairo 1997, Arta 2000 and Eldoret/Mpegati 2002-2004) were the major conferences to which the international community lent its wider support. Each produced some sort of peace agreement and a new proposed government in Somalia. However, all of the agreements failed except for the recently concluded Mpegati conference to establish the TFG, which later on has faced serious challenges. Further, conflict eventually led to protracted talks in Kenya, which resulted in the establishment of a Transitional Federal Government (TFG⁵) and other institutions (TFIs) in 2004. The TFG also experienced difficulty in establishing its control and legitimacy, partly because it was depicted as a proxy of external parties, partly because its leaders hailed from the Puntland region and were seen as hostile to Mogadishu's clans, and partly because its constituent warlords refused to concede their military or financial power to the TFG. Internal strife and sporadic destructive violence made the TFG vulnerable to a coalition of Islamic courts, which emerged in an effort to restore some sort of order, in conjunction with traditional clan mechanisms. By late 2006, these formed the Islamic Courts Union (ICU) and were ready to challenge the largely discredited TFG, which had requested Ethiopian military advisers. Injudiciously, some of the more radical among the ICU leadership also threw down the gauntlet to Ethiopia, arguing for the proclamation of a jihad and the revival of irredentist claims to Ethiopia's Ogaden region. In December 2006, Ethiopian forces entered Somalia to support the besieged TFG at the invitation of the TFG, a move tacitly supported by a US Administration alarmed at the ICU's alleged links to al-Qaeda. The ICU forces were quickly ousted and the TFG returned to take control of Mogadishu and much of the south and central regions of Somalia. This

⁵ Transition Federal Government (TFG) was created in 2004 at the Mbaghati peace process (2002-2004). The TFG was the outcome of the 14th external attempt to rebuild the state in Somalia. Kenya led the Somalia National Reconciliation Conference, which resulted in the creation of the TFG.

did not end the insurgency, however, but moved it in more violent and radical directions, partly because of the insurgents' success in linking ideological and nationalist aims, and also because of the destruction and heavy civilian losses inflicted during the TFG's military reaction (Jakkie Cilliers, 2010, p. 2).

1.2 Parties in the Conflict

The armed conflict in Somalia is first and foremost a complex civil war in which domestic parties fight each other to gain territorial advantage and control over governance (Eriksson, 2013). Somalia is mainly divided into three big parts: Somaliland (a de facto state in Northern Somalia), Puntland (independent territory in North Eastern Somalia) and Jubaland (Southern and Central part of Somalia). Since the downfall of Siad Barre's regime in 1991, the warlords in these regions have been incessantly fighting to establish their own government in Somalia. However, the faction among the militants have never remained only an internal struggle for power; rather, there has always been an external intervention by foreign actors in the internal armed struggle for power.

Although the current civil war was fought primarily between the Islamic Courts Union (ICU) and the Transitional Government of Somalia (TFG), external actors especially from the neighboring countries of Somalia including Ethiopia, Eritrea, and Kenya were involved in it. Like many other modern civil wars, Somalia has also been a battleground where a number of *secondary* and *third-party* actors are actively engaged in the conflict. *Secondary* parties in this regard are external actors that side with the primary parties. For example, beside its open support for the TFG, Ethiopia supports groups such as Ahlu Sunna Wal Jamaa (ASWJ, the People of the Sunna and the Majority) and Marehan (Hirale) clan militias. Kenya, on the other hand, supported Ogaden-based actors (Madobe and Ghandi), the Ras Kamboni militia and the Isiolo militia, including the Azania regional administration. Typically, these secondary parties engaged either actively as warring parties or through proxy support for various local actors in the civil war. 'Secondary parties' can sometimes shift to become primary or third parties, depending on their motives. 'Third parties' are actors that have interests in the conflict, but which can act as impartial actors, e.g. mediators or facilitators, such as the UN or

The Legality and Humanitarian Consequences of Ethiopian Armed Intervention in Somalia

IGAD. The US can be considered both a primary and a secondary party, although judging from its own self-view (statements and behavior) it can sometimes be understood as only a third party (Eriksson, 2013).

1.3 External Interventions in the Conflict

As a result of the severity of the conflict, including regional spillover, external actors, most notably Somalia's regional neighbors Ethiopia, Eritrea, Djibouti, Kenya and most recently, Uganda, have become entrenched in the conflict. In addition, a number of other actors such as the African Union (AU), the European Union (EU), the United Nations (UN) and the United States (US) have committed themselves to intervene in Somalia's statehood process. These actors have played the role of both secondary and third party actors as discussed in the previous section (Eriksson, 2013). The interests and strategies of the external actors differ. For instance, Uganda is clearly pursuing a different strategy in Somalia than Kenya and Ethiopia. While Uganda is interested in a stable and strong state in Somalia, Kenya and Ethiopia have their own distinct agendas that are at odds with the political priorities of Uganda and the TFG. There is clear empirical evidence that both Kenya and Ethiopia are trying to create buffer zones, and to increase their own influence over various regions of Somalia at the cost of Somalia itself (Eriksson, 2013). Besides, in November 2006, the UN Monitoring Group reported suspicions that the governments of Djibouti, Egypt, Ethiopia, Iran, Libya, Saudi Arabia and Syria had all been involved in the supply of arms to Somali armed groups despite they vehemently denied it. Some arms supplies have been provided directly by backers in neighbouring states. In particular, Eritrea is thought to have supplied arms and other assistance to Somali opposition groups. The Monitoring Group's March 2010 report also states that Eritrea has provided significant and sustained political, financial and material support, including arms, ammunition and training, to armed opposition groups in Somalia since at least 2007. Eritrea's involvement is generally described as an attempt to counter Ethiopian influence in the region, especially because it perceives the TFG as a proxy for the Ethiopian Government. The poisonous relations⁶ between Ethiopia and

⁶ Though Ethiopia and Eritrea were at odds due to the border war of 1998, today the two countries have become close friends after the appointment of the new Ethiopian

Eritrea have greatly contributed to Somalia's crisis. Eritrea has treated Somalia primarily as a useful theater of proxy war against Ethiopian forces in the country, while one of Ethiopia's reasons for intervening was a fear that an ICU-dominated Somalia would align itself with Eritrea and shelter Ethiopian rebel fighters as Eritrea has done. Thus, Ethiopia, on the other hand, has reportedly been a principal state supplier of arms, ammunition and training to the TFG since 2005. Since 2007, Ethiopia has not notified the Sanctions Committee of its supplies to the TFG and reliable information on the materiel involved is not available (Human Rights Watch, 2008). Between 2006 and 2013, neighbouring countries' interventions in Somalia have led to the perpetration of human rights' violations against Somali citizens, refugees and those of Somali origins. More specifically, Ethiopia, Kenya and other parties to the conflict (the previous TFG Security Forces and AMISOM) have been accused of committing abuses against civilians in Somalia (Human Rights Watch, 2007; 2008; 2012; 2013). Ethiopia, between 2006 and 2009 and thereafter through its incursions into Somali territory near the border, and Kenya since 2011, firstly with Operation Linda Nchi (Protect the Country) and then as a troop contributing country to AMISOM, have both perpetrated human rights abuses against Somalis inside Somalia (Dias, 2013).

Aside from the neighboring states, intergovernmental organizations were highly engaged to help the establishment of a central government in Somalia. Although the capital city of Somalia (Mogadishu) was under the control of the Islamic Courts Union (ICU), the international community looked to the Transitional Federal Government (TFG) to restore peace and stability to the country as of 2004. Thus, there was a strong ambition that the TFG would take a strong hold to be an effective government in Somalia. It entertained a wider support and recognition from the international community. Accordingly, between 2005 and 2007, the Intergovernmental Authority on Development (IGAD), the African Union (AU) all attempted to intervene in Somalia in support of the TFG. In January 2005, IGAD requested a mandate from the AU to deploy an IGAD Peace Support

Prime Minister Dr. Abiy Ahmed Ali in 2018. As it is known, Dr. Abiy Ahmed won the Nobel Peace Prize 2019 mainly for ending the two decade long 'no war no peace' situation between the two countries.

The Legality and Humanitarian Consequences of Ethiopian Armed Intervention in Somalia

Mission in Somalia (IGASOM); one week later, the AU Peace and Security Council (PSC) issued an authorization. Although neither IGAD nor the AU ever formally sought U.N. Security Council authorization to intervene, the President of the Security Council issued a statement “commending” IGAD and the AU for their support for the TFG. It was never clear, however, whether IGASOM would have been deemed internationally lawful, had it been undertaken without Security Council authorization, as a multiplicity of obstacles prevented IGASOM from ever deploying. That question became moot when the Security Council authorized the deployment of IGASOM in December 2006. After the failure of the IGASOM initiative, Ethiopia undertook unilateral action. When the ICU made strategic advances towards the TFG in mid-December, Ethiopia launched a large-scale offensive into Somalia against the ICU. The Ethiopian Prime Minister invoked self-defense and the consent of the host government (the TFG) to justify its intervention although it was highly controversial. Secretary-General of the UN, the AU, the League of Arab States, and IGAD all called on Ethiopia to withdraw its troops, and the U.N. Security Council “welcomed” the withdrawal once it began in 2009. A few weeks after Ethiopia’s incursion, the AU Peace and Security Council (PSC) authorized the deployment of the African Union Mission in Somalia (AMISOM). The AU PSC never specifically requested Security Council authorization, though it did request the Security Council to “provide all the support necessary” for AMISOM. One month later, the U.N. Security Council authorized the AU to take “all necessary measures” to protect the TFG. Only after this authorization was AMISOM deployed. Despite the fact that unauthorized intervention has been highly criticized and condemned, there have been armed interventions in Somalia by foreign actors including the neighboring states and intergovernmental peace keeping forces such as the UN, AU, and IGAD (Reisman, 2015). Between 2005 and 2007, the Intergovernmental Authority on Development (IGAD), the African Union (AU), and Ethiopia all attempted to intervene in Somalia in support of the TFG (Eriksson, 2013).

2. The Rationale for Ethiopia’s Intervention in Somalia

2.1 The Ethiopian Express Intent

As the Ethiopian Constitution declares that the country shall promote mutual respect for national sovereignty and equality of states and non-interference in the internal affairs of other states⁷. In case of external aggression, the Ethiopian Parliament has the constitutional mandate to declare war⁸. In line with this, the Ethiopian parliament had declared war against the ICU and authorized the Ethiopian National Defense Forces (ENDF) to take military action against the ICU in November 2006. Following this, in 2006, the Ethiopian military intervened in Somalia after it was authorized by the Ethiopian parliament to take all the necessary steps to ensure that the Islamic Courts Union (ICU) was dealt with before it posed no significant threat to Ethiopia (Hussein, 2017). The Ethiopian government claiming the fundamentalist organization presented “imminent and existential ” threat to its sovereignty, intervened in Somalia and conquered the visible elements of the Islamic courts and went in to a brink of a civil war that is currently raging (Milkias, 2007). To justify his actions, Meles Zenawi (the then Prime Minister of Ethiopia) said that Ethiopia was merely giving military support to the legitimate, UN-backed government in Baidoa that had been put together after long negotiations (Milkias, 2007). Accordingly, Ethiopia argued that four reasons drove her to intervene in Somalia. First, before reconciliation with Ethiopia in 2018, Eritrea had always been there to destabilize the northern border area with Ethiopia. Secondly, the declaration of *jihad* by UIC against Ethiopia was seen by Ethiopia as a ‘clear and present’ danger to her territorial sovereignty. Thirdly, Ethiopia was worried by the presence in Somalia of Ethiopian insurgents (like the Ogaden Liberation Front) which seek to overthrow the government of Ethiopia by force; and fourthly, the presence and continued influx of foreign terrorist groups with the view to advancing the extremist agenda of the ICU created a state of “immediate and existential threat” triggering its lawful right to self-defense under international law (Allo, 2010). Therefore, the Ethiopian regime justified the non-authorized intervention in Somalia on the grounds of the right to individual and collective self-defense against a terrorist threat from a regime that could harbour terrorists. In

⁷ Article 85(2) of the FDRE Constitution

⁸ Article 55(9) of the FDRE Constitution

The Legality and Humanitarian Consequences of Ethiopian Armed Intervention in Somalia

addition to this, it was also argued that the intervention was in response to a request by “Abdullahi Yusuf, the TFG leader, for a military force to help the government (Sousa, 2014).

2.2 The US Patronage

It is believed by many political analysts, academicians and the international community at large that the Ethiopian intervention in Somalia was backed by the United States of America. As early as December 10, 2001 the U.S. had decided to expand its presence in the Horn of Africa (Milkias, 2007). Following this, the Bush administration had declared Ethiopia the United States' principal ally in fighting against terrorism. The US has been interested in Ethiopia's geopolitical location as she is situated closer to the Red Sea and the Middle East countries. Ever since the US declared 'global war on terror', Ethiopia has been considered as one of the most important strategic partner to fight Islamic extremists particularly in Somalia. Thus, Ethiopia has for long been supported by the US for promoting the agenda of 'fighting terrorism and extremism' in the Horn of Africa. The fact that the U.S. Agency for International Development (USAID) donated \$460 million to Ethiopia in food aid and assistance in fiscal year 2005 referring to the country as being of strategic importance to the United States because of its geographic position and the cornerstone to stability in the Horn of Africa and the Global War on Terrorism; and that the United States allowed Ethiopia to purchase weapons secretly from North Korea in January, 2007, shows that the US was behind the Ethiopian intervention in Somalia in 2006. The United States permitted the deal because Ethiopian troops were in the middle of an offensive against Islamist militias in Somalia (Milkias, 2007). More to the point, Military experts estimate the extent of American support for Ethiopian military to be more than for any other country in Sub-Sahara Africa. This is a fact admitted even by the US officials. For example, Pentagon spokesman Lt. Cmdr. Joe Carpenter, had told USA that the U.S. and Ethiopian militaries have such 'a close working relationship,' that includes intelligence sharing, arms aid and training the Ethiopians. As to him, this became necessary because they need to have the capacity to defend their borders and intercept terrorists and weapons of mass destruction (Milkias, 2007, p. 7). Some media outlets even contend that the Ethiopian intervention was an agenda sponsored by US. For

instance, WikiLeaks contended that Ethiopia had no intention of invading Somalia in 2006 *but was encouraged/pressured* to do so by the United States which pushed Ethiopia behind the scenes. Already bogged down in wars in Iraq and Afghanistan at the time, the Bush Administration pushed Ethiopia to invade Somalia with an eye on crushing the Union of Islamic Courts, which was gaining strength in Somalia at the time (Prince, 2010). Although it is frequently said that this intervention was undertaken with the direct sponsorship of the United States, the type of support provided by the US is far from being clear and even recognized by both parts. This question of the US involvement is not easy to elucidate, as it is neither easy to know how many soldiers were effectively deployed during the different phases of the intervention, nor how many casualties there were. In fact, the decision process around the issue has been characterized by its secrecy as the Ethiopian Parliament was asked in November/December 2006 just to approve the measure. Although some opposition deputies tried to question the intervention, they had no capacity to impede the resolution, as any questioning of the decision implied an accusation of betrayal (Aimé, 2013). The Ethiopian government has claimed it received no foreign support, but at the same time fueled the obscurity. *The Ethiopian Herald* showed strong support by the international society towards the decision to intervene in Somalia, while exposing the renewal and increase of foreign aid flows. Nevertheless, although the Ethiopian intervention in Somalia is frequently associated with US sponsorship or direction, no evidence has been made public as yet. This does not mean that the US had no knowledge of the Ethiopian decision to intervene but it seems worth not overstating the American factor in the intervention. Menkhaus (2009) argues that though the Ethiopian intervention was not an instance of the US ‘subcontracting the war of terror’ to a regional ally as has sometimes been falsely depicted. Rather, Ethiopia pursued her own interests and would have acted with or without US approval. The US did provide diplomatic, intelligence, and possibly other support to the Ethiopian government in this operation. Therefore, as bulk of evidences unveiled, the US has supported the Ethiopian offensive on Somalia in 2006 to overthrow the Islamic Courts Union and reestablish the TFG as she feared Islamic orientation of Somalia might foment terrorism (Besteman, 2019). The United States, which denounced ICU leaders for harboring wanted terrorists,

The Legality and Humanitarian Consequences of Ethiopian Armed Intervention in Somalia

supported Ethiopia's actions with political backing and military assistance (Human Rights Watch, 2008).

2.3 The Somali's View

Many Somalis see Ethiopia as an enemy ever since they fought a bloody war in 1976-78 over Ogaden territory during Siad Barre's regime in Somalia. The Somalis have never seen Ethiopian National Defense Force (ENDF) as their protector. Milkias (2007), commenting on the Ethiopian intervention in Somalia, contends that a country that has been construed as an enemy for decades cannot be instantly transformed into a protector (Milkias, 2007, p. 20). Thus, the Ethiopian intervention in Somalia was not readily accepted by the Somali community. The Somali diaspora community living abroad had been seriously opposing and criticizing the Ethiopian intervention labeling the intervention as 'invasion' by Ethiopia. The opposition from the Somali people has seriously constrained the success of Ethiopian unilateral mission in Somalia. For instance, even though Ethiopia had to drastically increase its force level to as many as 20, 000 troops to deal with the ICU, she could not achieve her goals because of the lack of acceptance of the TFG and the fact that the Somali people viewed the Ethiopian forces as foreign invaders. The Ethiopian troops were seen as foreign occupiers and increasingly unpopular with the local population. They were even accused by Somali people of committing widespread violations of international humanitarian law and human rights abuses and were soon faced with a rapidly growing insurgency (Jakkie Cilliers, 2010; Grubeck, 2011).

2.4 The Circumstantial Reasons

Although Ethiopia has always fervently claimed the right to self-defense and intervention by invitation from the legitimate government of Somalia (the TFG), the real motives of Ethiopia are not yet well captured. Self-defense, which Ethiopia claims as reason for its military action, raises doubt and compels an examination of the real motives for its actions in Somalia. Thus, what is the real reason for Ethiopia to intervene in Somalia in 2006? This requires an objective empirical investigation of all possible reasons which can be inferred from the circumstantial evidences surrounding the phenomenon. It is beyond any question that Ethiopia has a legitimate security interest in Somalia. Prior

to 2006, Ethiopia has attempted to establish a central government in Somalia which could possibly protect the Ethiopian national interest. In this context, Ethiopia intervened in Somalia in late 2006 in order to ensure that only a pro-Ethiopian regime could thrive in Mogadishu. This follows from historical patterns of conflict between the two countries that encompass territorial disputes, proxy rebel movements, and a fight to control the fate of Islamic political organizations in Somalia. Ethiopia preferred the warlord-dominated Transitional Federal Government (TFG), which it helped create, to the Islamic Courts Union (ICU), which could become a political and military liability if allowed to prosper (Frenkil, 2015). Thus, Ethiopia intervened not only to aid the internationally-recognized Somali government based in the city of Baidoa but also to demolish the ICU. The Transitional Federal Government of Somalia (TFG) was opposed by the Islamic Courts Union (ICU), an Islamist group which seized control of the national capital of Mogadushu earlier in 2006 from a coalition of warlords. Thus, it is evident from the circumstances that Ethiopia intervened largely to prevent Islamist forces from gaining full control of Somalia (The History Guy, 2012). Furthermore, Napoleon A. Bamfo (2010) offers probable reasons why Ethiopia intervened in Somalia by analyzing three questions concerning the motives that could have prompted the government to undertake such an impudent action. He analyzed the motives of Ethiopian intervention from three viewpoints: first, Ethiopia's security interest; second, Ethiopia's benevolence to end the anarchy in Somalia; and third, whether Ethiopia was doing the bidding of the United States' 'war on terror' (to destroy the Islamic Militants' stronghold in Somalia). According to him, first, the long history of rivalry and conflict between Ethiopia and Somalia over territorial issues⁹ (Ogaden area) has partly driven Ethiopia to invade Somalia for security interests. Secondly, Ethiopia had a short-term diplomatic and strategic objective of installing a government in Somalia (the Transitional Federal Government) that it believed would be deferential by ending the anarchy and restoring peace in the country. Thirdly, the United States and Ethiopia's security concerns in the Horn

⁹ In 1977, Siyad Barre's Somalia started a war with Mengistu Haile Mariam's Ethiopia over the Ogaden region in Ethiopia, where a majority of citizens of Somali origin lived.

The Legality and Humanitarian Consequences of Ethiopian Armed Intervention in Somalia

have become intertwined by their common suspicion of Islamist-backed militias gaining ascendancy in war-torn Somalia (Bamfo, 2010).

Ethiopia's motive for engagement in Somalia is mainly one of geopolitical self-interest rather than any deep benevolence towards Somalia. As a pivotal actor in the region, it currently finds itself with the political, military and intelligence capacity to prevent possible threats and contain regional spillover through offensive engagements in Somalia. Faced with a weak Somalia on several levels; on political, economic, and social and security levels, Ethiopia was interested to shape the conflict dynamic in Somalia to her own advantage. However, pursuing national interests *alone* could not be a working formula for a stable Somalia. As the geopolitical landscape is reconfigured, such unilateral action risked undermining each-others interests (Eriksson, 2013).

Therefore, the circumstances show that the Ethiopian decision to intervene in 2006 was driven by several factors. It was significantly motivated by the ICU's position on calls for jihad against Ethiopia; appeals to the people of Ethiopia to overthrow its government; close links with Eritrea; the provision of logistical support and bases to two armed insurgent groups¹⁰ opposing the Ethiopian Government, which had increased activity in the country; and a revival of the "greater Somalia" project, with territorial claims in all of Somalia's neighbouring countries, but especially to the Ogaden region, over which Ethiopia and Somalia fought between 1977 and 1978 (Menkhaus, 2007). Moreover, the possibility of a stable Islamic-inspired country emerging in Somalia could be seen as a platform to strengthen the Muslim population of Ethiopia, the biggest group after the orthodox Christians (Sousa, 2014). Some writers even argued that a more immediate motivation for Ethiopia's intervention was associated with the contested elections of Ethiopia's Zenawi regime in May 2005 and the subsequent crackdown on the opposition with serious human rights violations. This resulted in strong international criticism, particularly from the United States Congress which discussed in early 2006 the possibility of Ethiopia losing United States aid (Aimé, 2013).

¹⁰ The Ogaden National Liberation Front (ONLF) and the Oromo Liberation Front (OLF)

By assuming the role of the regional power fighting the “war on terror” Prime Minister Meles Zenawi, the then Ethiopia’s Prime Minister, assumed an important role, which outweighed concerns over human rights. In the end, the Ethiopian regime would continue to receive aid and diplomatic support from the international community, including the United States. The securitization of Somalia by the Ethiopian regime situated Ethiopia on an equal footing with other states in the global war on terror and helped to legitimize its role in the international society. Thus, despite there was serious criticism on human rights violations in Ethiopia, neither the African Union (AU) nor the UN Security Council condemned Ethiopian intervention in Somalia (Aimé, 2013).

3. The Legality of the Armed Intervention

3.1 The Right to Self-Defense

The argument of self-defense and in particular its application and interpretation is found in Article 51 of the UN charter. This Article provides the legal argument for the use of force. The Article states that a nation is allowed to use force only under the condition that it is strictly for the defense of the state. Article 51 of the UN Charter provides that a state may exercise a right of self-defense against another state. However, it fails to mention the nature of the party responsible for the attack or action triggering this right to self-defense. Since international relations are based on several norms key among them is the principle of Sovereignty and the inherent right of a nation to protect itself from any internal and external aggression, a state can claim the right to self-defense when it is facing a ‘clear and imminent’ threat to its sovereignty and territorial integrity (Hussein, 2017). However, Awol Allo (2010) argues that Ethiopia’s claim to self-defensive measures does not seem to be in line with the requirements of the UN Charter because it fails to meet the requirement of an occurrence of an attack of a significant *scale* and *effect* before recourse to the self-defensive measure. Under customary international law, although Ethiopia could be seen to be under an imminent threat of attack triggering the right of recourse to a proportionate response, it certainly went beyond what is necessary to remove the threat and used a disproportionate force (Allo, 2010). For unilateral acts and the multilateral use of force outside of the UN framework, Article 51 of the UN Charter refers to an inherent right of self-defense against armed attack, permitting defensive actions until

The Legality and Humanitarian Consequences of Ethiopian Armed Intervention in Somalia

the Security Council addresses the matter, and requires that such a defensive use of force be reported to the Security Council. The literal language of Article 51 seems to roll back the customary right of self-defense, requiring that an armed attack have occurred before self-defense can be exercised, and implying that unilateral self-defense is an interim measure until the Security Council addresses the situation. Some commentators argue, however, that by referring to an "inherent" right of self-defense the UN Charter simply retains pre-existing international law regarding self-defense, including anticipatory self-defense (Welsh, 2003).

All States have an inherent right to defend themselves when they face an 'armed attack' from another State, or by State-sponsored armed groups, in accordance with Article 51 of the UN Charter. Initially, the right was meant to address an attack from a State. There is no consensus on the scope of Article 51 of the UN Charter. While some argue that the article encompasses only the right of self-defense in response to an 'armed attack', others contend that the phrase 'inherent right' preserves the pre-charter customary right that authorizes 'anticipatory self-defense'. However, the terrorist attack against the US of 11 September 2001 and its aftermath have brought terrorist actions within the domain of the notions of self-defense and there may be an 'armed attack', irrespective of whether the terrorists are sponsored by a State. After the 9/11 incident, the Bush administration declared global "war on terror". Following this, the United States initiated the doctrine of pre-emptive self-defense also known as the "Bush doctrine". This doctrine goes far beyond the anticipatory self-defense which enables a state to act forcibly against an imminent attack (Cher, 2012). The United Nations Security Council in its Resolution 1373 of 28 September 2001 determined that international terrorism constitutes a threat to international peace and security. It also affirmed 'the inherent right of individual or collective self-defense as recognized by the Charter of the United Nations'. In Resolution 1516 of 2003, the Council avowed the need to combat by all means 'threats to international peace and security caused by terrorist acts'. Even so the rules and requirements of self-defense apply in such circumstances: necessity, proportionality and immediacy of the actions (Yihdego, 2007). Ethiopian claim of self-defense was clearly not self-defense against an armed attack by

government forces but apparently self-defense as part of the “war on terror” against the threat posed by the Union Islamic Courts and against its past terrorist attacks. Therefore, Ethiopia’s claim of inherent self-defense for her unilateral intervention in Somalia can only be justified in the context of the ‘war on terror’ instead of the traditional concept of self-defense in case of ‘armed attack’ from a non-state actor in Somalia (the ICU).

3.2 Intervention by Invitation

One of the two arguments used by Ethiopia to legitimate the presence of its troops in Somalia was ‘intervention by invitation’. It is a common practice for a state to give consent to another state to intervene forcibly in its territory. Such intervention is justified by the consent of the state where the intervention takes place. Even though the legality of such intervention is widely supported by academic experts, the legality of intervention by consent still remains questionable (Cher, 2012). Ethiopia has insisted that she intervened in Somalia by the direct invitation of the legitimate (the internationally accepted) government of Somalia to fight insurgency. It is important to note that one may question the validity of the consent given by a state to another state in order to intervene militarily in its territory. If a state has validly expressed consent for another state to use armed force on its territory, it may be argued that such intervention would not be against the territorial integrity and political independence of the state. Ethiopia claimed that its intervention is allowed by the invitation of the ‘internationally recognized’ government of Somalia (Allo, 2010). As Awol Kassim Allo has analyzed, the legality of the intervention might be questioned by the doubtful legitimacy of the TFG government itself as the representative of the Somalia state (Allo, 2009). Contrary to Allo, the UN, the AU, the United States and the international community at large recognized the then Transitional Federal Government (TFG) of Somalia as the legitimate government in Somalia. Accordingly, the TFG could give a valid consent requesting foreign military intervention in Somalia. Thus, if Ethiopia has intervened in Somalia by the valid consent of Somalia, the intervention would be in line with the UN Charter. Thus, the prohibition on the use of force contained in Article 2(4) of the UN Charter, for example, should be understood as a prohibition on the coercive use of force, that is, on force used

The Legality and Humanitarian Consequences of Ethiopian Armed Intervention in Somalia

without the consent of the affected state. Therefore, it does not fall within the scope of the prohibition of the use of force embodied in Article 2(4) of the UN Charter. Indeed, the Ethiopian government succeeded in using the communicative and legitimizing functions of international law, sending a message to the international society of its compliance with international standards and framework, and appeasing any possible opposition (Aimé, 2013). State practice over the past decade has not evinced a clear move away from the requirement of Security Council authorization prior to intervention. Like the UN Security Council did in the Ethiopian case, some unilateral actions have been approved post hoc. In the few instances, states have tried to argue that the host state had consented to the intervention, that they were acting in individual or collective self-defense, or that the relevant Security Council authorization encompassed their actions. While some unilateral actions may have received a degree of informal or post hoc approval, practice indicates that the international community continues to view unilateral interventions undertaken without the authorization of the United Nations Security Council as presumptively unlawful, though sometimes subject to retroactive validation (Reisman, 2015). Therefore, even though it is contended that a government without effective control over its territory (de facto government) cannot give a valid consent, Ethiopia's intervention by a valid consent of the de jure government in Somalia (TFG) seems to be tenable before international law. The validity of the consent or the invitation is subject to two requirements (Yihdego, 2007): first, it must be a valid expression, and secondly, the expressed consent must be internationally attributable to a state. Thus, since Somalia still remained a sovereign state and the legitimacy of TFG was not questioned by the international community, the validity of the invitation by TFG could not be unjustifiable in international law.

In principle, international law permits third-State intervention by force into another State if there is clear consent from the government of the State where the intervention takes place. If a State is encountering a foreign military attack or an attack from internal armed rebels who get assistance from foreign forces, it can lawfully be assisted by a third-State to repel the attack by way of collective self-defense. On the other hand, a military intervention by invitation into a civil war situation poses very problematic questions of fact and law. In most cases, these

interventions are illegal unless the inviting government is a constitutionally installed government, which has made a clear invitation to the intervening State, the invitation is given on an ad hoc basis, the intervention is not contrary to Article 2 (4) of the UN Charter (the prohibition of the use of force) and the intervention does not run against peremptory norms, for instance, violations of humanitarian law. Although TFG was not constitutionally elected government, it enjoyed strong support and recognition from the international community. ICU, on the other hand, was relatively stronger in power than TFG it and controlled much of the southern and central part of Somalia by the time Ethiopia intervened. ICU was not a mere rebel group in Somalia, it was highly supported by foreign forces including Eritrean, Arab fighters and other Ethiopian rebel groups (the Ogaden Liberation Front). Even though unilateral interventions are usually controversial, the fact that Ethiopia intervened in Somalia by the express consent of Somalia to defend her sovereignty from imminent attack cannot be considered as an aggression in international law (Yihdego, 2007).

4. The Humanitarian Consequences

Ethiopian, Somali transitional government, and insurgent forces have all violated the laws of war with impunity, forcing ordinary Somalis to bear the brunt of their armed struggle (Human Rights Watch, 2008). The warring parties in Somalia have been responsible for numerous serious human rights abuses. The violations of humanitarian law by all parties to the conflict will be briefly discussed in the following section.

4.1 Violations of Humanitarian Laws by Ethiopian National Defense Force (ENDF)

Humanitarian law requires the humane treatment of civilians and captured combatants. It prohibits violence to life and person, particularly murder, mutilation, cruel treatment, and torture. It is also unlawful to commit rape and other sexual violence; targeted killings of civilians, including government officials and police, who are not participating in the armed conflict; and engage in pillage and looting. Despite the requirements of international humanitarian law, the Ethiopian National Defense Force (ENDF) has violated the rules of

The Legality and Humanitarian Consequences of Ethiopian Armed Intervention in Somalia

international law of armed conflicts in many instances. Firstly, the ENDF has caused civilian harm by using artillery and rocket bombardments that do not or cannot discriminate between combatants and civilians or in which the expected civilian harm is excessive compared to the use of concrete and direct military gain anticipated. Although the Monitoring Group considered the Ethiopian military presence in Somalia from 2006 to 2009 to be a violation of the arms embargo, the UN Security Council never formally protested against it. Ethiopia's intervention in Somalia included the deployment of armed forces with such equipment as artillery, tanks and combat aircraft (Wezeman, 2010). The additional Protocol (I) to the Geneva Conventions of 1949 outlaws indiscriminate attacks on civilian populations and destruction of food, water and other materials needed for survival¹¹. Humanitarian law prohibits indiscriminate attacks. Indiscriminate attacks are of a nature to strike military objectives and civilians or civilian objects without distinction. Examples of indiscriminate attacks are those that are not directed at a specific military objective or that use weapons that cannot be directed at a specific military objective. Prohibited indiscriminate attacks include area bombardment, which are attacks by artillery or other means that treat as a single military objective a number of clearly separated and distinct military objectives located in an area containing a concentration of civilians and civilian objects. Also prohibited are attacks that violate the principle of proportionality. Disproportionate attacks are those that are expected to cause incidental loss of civilian life or damage to civilian objects that would be excessive in relation to the concrete and direct military advantage anticipated from the attack. With respect to individual responsibility, serious violations of international humanitarian law, including deliberate, indiscriminate, and disproportionate attacks harming civilians, when committed with criminal intent, are considered war crimes. Amnesty International has accused Ethiopian troops in Somalia of killing civilians and committing atrocities, including slitting people's throats, gouging out eyes and gang-raping women. However, the Ethiopian government contended that the accusation was unbalanced and wrong (NYT, 2008). At the

¹¹ Refer to Art 51 & 54 of the Additional Protocol (I) to the Geneva Conventions of 1949

outset, civilians in Mogadishu were hostile to the presence of both Ethiopian troops and AMISOM peacekeepers. In addition, the disproportionate use of force by the warring parties placed civilians in the middle of hostilities inflicting major casualties on non-combatants. This state of affairs at the time created resentment both of Ethiopia and of the TFG, as it revived the worst memories of the intense fighting between faction leaders in the early 1990s (Dias, 2013). Thus, there have been repeated and credible reports that the Ethiopian forces have used their weapons in disproportionate and indiscriminate attacks resulting in civilian casualties (Wezeman, 2010). The indiscriminate shooting by Ethiopian soldiers in response to insurgent attacks reflects poor discipline rather than criminal intent. There have been no reported instances where ENDF soldiers have been investigated or held accountable for possible war crimes. This absence of accountability of Ethiopian soldiers has doubtlessly contributed to violations of international humanitarian law by Ethiopian forces. Secondly, the ENDF has violated IHL by placing civilians at unnecessary risk by basing Ethiopian troops near heavily populated areas. ENDF forces in Mogadishu have routinely and indiscriminately bombarded populated residential areas of Mogadishu since March 2007 (Cher, 2012). Fighting regularly breaks out between insurgents and Ethiopian or TFG forces and all too often civilians are caught in the crossfire. They have made regular use of "Katyusha" rockets in Mogadishu, often fired from BM-21 "Grad" multiple-rocket-launcher. Their use in populated urban environments is inherently indiscriminate, in violation of international humanitarian law. Ethiopian forces carried out similar indiscriminate bombardments in fighting in the strategically important town of Beletweyne. There have been increased reports in 2008 of Ethiopian forces responding to insurgent ambushes and other attacks by firing indiscriminately into populated areas. Incidents of indiscriminate ENDF fire that claimed civilian lives appear to have occurred with increasing frequency, particularly in Mogadishu, Baidoa, and along the Mogadishu-Afgooye road (Gillard, 2015). Thirdly, the ENDF has failed to prevent abuses by TFG forces during joint military operations such as house-to-house searches. In particular, it has failed to cease the use

The Legality and Humanitarian Consequences of Ethiopian Armed Intervention in Somalia

of area bombardments of populated areas¹² of Mogadishu. TFG forces, often commanded or accompanied by Ethiopian troops, commit assaults, rapes, killings, and pillage of civilians during house-to-house search operations. And incidents of killing, rape, and looting involving ENDF personnel have greatly increased. In April 2008, for instance, one of the year's most widely publicized atrocities occurred during an ENDF raid on a mosque in northern Mogadishu. ENDF soldiers, operating jointly with TFG forces, reportedly killed 21 people during that raid, seven of whom were found with their throats cut. Amnesty International reported that the dead included Islamic scholars who were inside the mosque at the time of the raid. The soldiers also detained several dozen children who were present at the mosque at the time of the raid. The Ethiopian government denied that these or any other serious abuses involving ENDF soldiers took place. Following the April 2008 mosque killings the only Ethiopian government response was to issue a statement denying the allegations and declaring that their operation in the area had been "successful beyond expectation." Fourthly, it has widely been criticized that the ENDF commanders and troops did not receive appropriate training in international humanitarian law. Ethiopia had to provide adequate training to her Military on IHL before sending them to war. The discipline of Ethiopian soldiers in Somalia has broken down to the point where they increasingly are responsible for violent criminality. The gross violations of humanitarian laws by the Ethiopian forces was considered to be an obvious manifestation of the inadequate training of the Military in IHL. In reports by Amnesty International and the US Department of State during 2008, the Ethiopian National Defense Force (ENDF) was singled out as having inflicted large-scale atrocities on the civilian population, including the killing of street children, indiscriminate sniper fire and killings by the slitting of throats. Amnesty International

¹² This is a clear violation of IHL. Article 51(5)(a) of the 1977 Additional Protocol I provides: Among others, the following types of attacks are to be considered as indiscriminate: a) an attack by bombardment by any methods or means which treats 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 and civilian objects.

concluded, after interviewing more than 75 witnesses, that Ethiopian troops routinely used torture, rape, extra-judicial killings and indiscriminate violence against Somali civilians (Grubeck, 2011). Besides, ENDF forces have also been implicated in acts of looting in Mogadishu, though these incidents do not appear to be nearly as common as those involving TFG forces (HRW, 2008).

4.2 Humanitarian Violations by the TFG

The TFG has acted in contradiction to the rules of IHL in several instances. Firstly, the TFG has committed a number of extrajudicial killings, rapes, mistreatment of civilians, and pillaging and looting of civilian property. The Somali Transitional Federal Government's security forces and affiliated militia forces have a reputation for violent criminality among many Somalis. Human Rights Watch's own research has uncovered a pattern of violent abuses by TFG forces including widespread acts of murder, rape, looting, assault, arbitrary arrest and detention, and torture. Those responsible include police, military, and intelligence personnel as well as the personal militias of high-ranking TFG officials. TFG police and NSA personnel have frequently arrested residents of Mogadishu on suspicion of links to the insurgency. Persons who are arrested as suspected insurgents often face abusive interrogation at the hands of SPF or NSA officers. Though there is no sufficient evidence that they had been tortured, but all the detainees bore the signs of severe beatings and other forms of torture (Human Rights Watch, 2008). In 2007 alone, almost daily suicide bombings and roadside attacks have left more than 6,500 civilians dead, and more than one million displaced (Project Ploughshares, 2009). Secondly, the TFG forces denied the access of civilians to humanitarian assistance by prohibiting full freedom of movement to humanitarian agencies and harassment and other interference with their relief work. According to IHL, the parties to the conflict must allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need, which is impartial in character and conducted without any adverse distinction, subject to their right of control (ICRC, 2019). Besides, in accordance with Geneva Convention¹³, the authorities – either the state or the occupier – have the clear responsibility to ensure the survival and

¹³ Geneva Convention IV 1949:Art.55

The Legality and Humanitarian Consequences of Ethiopian Armed Intervention in Somalia

wellbeing of the civilian population. The primary responsibility is the *de-facto* authority, but if they cannot meet this responsibility, they are obliged to allow humanitarian and impartial relief to reach persons in need¹⁴. However, all the parties in the conflict were criticized for breaching their international obligation. A major challenge identified is that agencies are too closely associated with military forces, or that the military encroaches upon their humanitarian space by delivering aid themselves (Abild, 2009). Reports claimed that the TFG forces were behind the most numerous and serious human rights violations, including the blockage of aid (HRW 2007). Thirdly, the TFG has committed mistreatment of detainees and they have denied access to family members and adequate medical care while in detention. This acts of the TFG forces contravenes the third Geneva Convention which protects prisoners of war (ICRC, 2019). It defines their rights and sets out detailed rules for their treatment and release. Besides, international humanitarian law also protects other people deprived of their liberty in connection with armed conflict. But during the war in Somalia, victims had no way to file a complaint-the TFG police force has itself been implicated in many of the worst abuses, including the arbitrary arrests of ordinary civilians to extort ransom from their families (Human Rights Watch, 2008).

4.3 Humanitarian Violations by the Insurgents (ICU/Al-Shabab)

The Insurgent groups (ICU or later on Al-Shabab) have violated International Humanitarian Law (IHL) in many ways. As some sources have stated, insurgents fighting against TFG and ENDF forces in Somalia have committed rampant violations of the laws of war as well as serious human rights abuses against Somali civilians. Firstly, they have used civilians as "human shields" or placed them at unnecessary risk by launching attacks and firing mortars from heavily populated areas (urban centers). This is against the principle of the law of armed conflict. The parties in war shall make distinction between civilians and combatants when they attack. The distinction between civilians and

¹⁴ Refer Protocol I 1977:Art.70(1)

combatants, a central principle of IHL, might not always be possible in urban settings. Rule 15 of the 2005 ICRC Compilation of Customary International Humanitarian Law (IHL) states that “constant care must be taken to spare the civilian population, civilians and civilian objects” as well as that “all feasible precautions must be taken to avoid, and in any event to minimize, incidental loss of civilian life, injury to civilians and damage to civilian objects” (Oxford Research Group, 2019). Thus, the parties in war should protect incidental death of civilians. Secondly, they have employed mortar and other attacks that do not or cannot discriminate between combatants and civilians. The use of mortars and other weapons that cannot discriminate between combatants and civilians directly contradicts with the principles of IHL. The use of weapons that are inherently indiscriminate constitutes a war crime¹⁵. Thirdly, the insurgents have hindered the departure of civilians to safer areas during military operations. In line with IHL, the primary responsibility for meeting the needs of civilians lies with the party to the conflict with control over them. However, in many instances, the insurgents in Somalia had impeded civilians from reaching assistance from relief and denied civilians access to a safer place for settlement (Gillard, 2015). Fourthly, the insurgents committed death threats and targeted killings of civilians, including journalists, aid workers, and civilian TFG officials (Daniel Maxwell, 2014). These have included death threats¹⁶, targeted killings¹⁷, coerced recruitment¹⁸, and use of

¹⁵ Pursuant to Article 8(2) (b)(xx) of the 1998 ICC Statute, the following constitutes a war crime in international armed conflicts: Employing weapons, projectiles and material and methods of warfare ... which are inherently indiscriminate in violation of the international law of armed conflict, provided that such weapons, projectiles and material and methods of warfare are the subject of a comprehensive prohibition and are included in an annex to this Statute.

¹⁶ According to Human Rights Watch, Al-Shabaab and other insurgent groups are responsible for a large majority of the targeted killings and death threats that have taken place in Somalia in 2008.

¹⁷ A report by Amnesty International showed how 40 Somali activists, humanitarian workers, and other people connected to civil society were killed in the first 10 months of 2008. These killings are not simply a byproduct of the broader chaos that has engulfed Somalia. Rather, the majority of these deaths were targeted killings.

¹⁸ International humanitarian law prohibits the forcible recruitment of adults and any recruitment of children into armed groups.

The Legality and Humanitarian Consequences of Ethiopian Armed Intervention in Somalia

child soldiers¹⁹. Members of Al-Shabaab and other insurgent groups have also attacked and threatened humanitarian workers and obstructed the delivery of humanitarian assistance. Violence, particularly targeted attacks on aid workers, is preventing the flow of needed aid. In 2007, a wave of death threats and targeted killings against civil society activists and humanitarian workers happened in Somalia. Besides, in 2008, violence has taken on a new dimension with the targeted murders of aid workers and civil society activists. At least 29 humanitarian workers have been killed in 2008 and the threat of more attacks has driven many of the very people Somalia most needs in this time of crisis to flee the country (Human Rights Watch, 2008). As a result, since January 2007 at least 870,000 civilians have fled the chaos in Mogadishu alone—two-thirds of the city's population. Across south-central Somalia, 1.1 million Somalis are displaced from their homes. Hundreds of thousands of displaced people are living in squalid camps along the Mogadishu-Afgooye road that have themselves become theaters of brutal fighting (Human Rights Watch, 2008). The National Security Agency (NSA)²⁰ has arrested several journalists and aid workers. Besides, On October 7, 2008, a traditional elder named Da'ar Hersi Hoshow was shot and killed in Beletweyne one day after he publicly denounced Al-Shaabaab threats to aid workers. Humanitarian workers were targeted simply because some of the insurgents perceived them to be engaged in espionage on behalf of the United States. Fifthly, the insurgents have denied the access of civilians to humanitarian assistance and blocked the movement of humanitarian agencies and has interfered with their relief work. Humanitarian access to populations in need, already restricted by the hazards posed by fighting, has been severely curtailed by a wave of attacks and death threats against aid workers and members of Somali civil society. Al-Shabaab led the main insurgency against Ethiopian forces and the TFG, attacking civilian and humanitarian representatives connected to the TFG to undermine their authority (Amnesty 2008). When their leader, Ayro, was killed in an American missile strike, deemed a “success” (NYT 2008), al-Shabaab

¹⁹ As noted by HRW Report 2008, the insurgent groups recruited child soldiers to fight against the Ethiopian and TFG forces.

²⁰ The National Security Agency (NSA) is the TFG's intelligence service, under the command of Mohammed Warsame Darwish. The NSA maintains its own detention facility at the Baarista Hisbiga in Mogadishu.

splintered even further, with some parties starting a brutal retribution campaign of killing aid workers who they saw as representatives of the West, forcing humanitarian agencies to limit their operations even further (Amnesty 2008, Menkhaus 2008). Insurgent fighters subject perceived critics or TFG collaborators-including people who took unskilled jobs in TFG offices or sold water to Ethiopian soldiers-to death threats and targeted killings (Daniel Maxwell, 2014).

Conclusion

The motives that inspired the Ethiopian government to decide to intervene in Somalia seem baffling. However, the circumstantial evidences show that Ethiopian decision to intervene in 2006 was driven by several factors. It was significantly motivated by the Jihadist activities of the ICU against Ethiopia; the close links of Somalia with Eritrea; the Somalia's provision of logistical support and bases to armed insurgent groups (the Ogaden Liberation Front & the Oromo Liberation Front) opposing the Ethiopian Government; and a revival of the "greater Somalia" project - the secession of the Ogaden region from Ethiopia over which Ethiopia and Somalia fought between 1977 and 1978 (Menkhaus, 2007). Although many Somali elites argue that Ethiopia desires only a weak and divided Somalia that will not pose a security threat to it at any point in the future, through the 2006-2009 intervention, the Ethiopian government genuinely tried to create a viable and responsible government (the TFG) that could achieve some level of stability in Somalia. It initiated a variety of projects to strengthen the capacity of the relevant administrative institutions, law enforcement institutions and police forces of the different Somali administrations. Ethiopia even trained thousands of police officers and civilian security officers in Somalia to enable them to undertake counterterrorism, criminal investigation and counterinsurgency operations (Eriksson, 2013).

There have been records of violations of international humanitarian law by the Ethiopian forces during the war in Somalia. But the violations are not only imputable to the Ethiopian Military. There are credible reports that all sides to the armed conflict in Somalia have committed serious violations of international humanitarian law (Human Rights Watch, 2008). Though those responsible, whatever their rank, should be held accountable for war crimes before

The Legality and Humanitarian Consequences of Ethiopian Armed Intervention in Somalia

international or local courts, a single case on war crimes has not been filed as yet. Even though Ethiopia has legitimate security interests in Somalia and that the intervention was legally justifiable, evidences suggest that she has not lived up to her responsibility to prevent and respond to war crimes and serious human rights abuses by its forces in Somalia. Ethiopia's government has failed to even acknowledge, let alone investigate and ensure accountability for the crimes of its force²¹. This only serves to entrench the impunity that encourages more abuses (Human Rights Watch, 2008). Although it is not possible to precisely describe the effects of the Ethiopian intervention in Somalia, the consequences of the intervention was manifest in the dire humanitarian situation that happened during and after the Ethiopian interference. The first result of the Ethiopian intervention in Somalia was massive internal displacement of people (IDPs) and civilian deaths. To determine the immediate effects of Ethiopia's military intervention, Braden Civins (2010) examines statistical data regarding the rates of internal displacement, emigration and civilian deaths from December 2006-January 2009. A substantial proportion of displacements in 2007 were a direct result of the conflict between the Ethiopian National Defense Force (ENDF)-TFG and the insurgency. The UN's claim is supported by the fact that during the height of the conflict between the ENDF-TFG alliance and the ICU, between 65,000-70,000 people were displaced within two months. A subsequent report indicates that 40,000 were displaced in February as a direct result of the unrest. Furthermore, violence in November 2007 alone triggered the internal displacement of more than 240,000 people out of the city of Mogadishu. More to the point, during ENDF operations in Somalia from 2006-2009, at least "15,000 civilians were killed, an estimated 1.1 million people displaced, and 476,000 Somalis fled to neighboring countries. For several years after Ethiopia's withdrawal, Somalia society remains fractious and the humanitarian situation continues to deteriorate. Ethiopia continues to bear the load of hosting Somali refugees. Secondly, the intervention by Ethiopia endorsed by the US created an

²¹ It is a long-standing rule of customary international law, set forth in Article 3 of the 1907 Hague Convention (IV) and repeated in Article 91 of Additional Protocol I, that a State is responsible for "all acts committed by persons forming part of its armed forces". Thus, Ethiopia can be held responsible for the wrongful acts of her military in Somalia war.

empowerment of Al-Shabaab after Ethiopia's withdrawal in 2009. After Ethiopian forces withdrew in 2009, Al-Shabaab seized control of large swathes of south-central Somalia, including much of Mogadishu, inhabited by an estimated three million people (Crisis Group, 2012). Ethiopia's intervention generated considerable local anger and a groundswell of support for the militant group. Now, Al-Shabab has an estimated 6,000 to 8,000 followers and controls large parts of Southern Somalia. The opportunity to create peace and stability has been missed and the situation is now worse than before (Bruton, 2010). Thirdly, Ethiopia's intervention in Somalia in the aftermath of the invitation of the TFG marked a significant rupture in Somalia's domestic dynamics and especially in the relations between state and society (Dias, 2013). Indeed, while it remained in Somalian territory (2006 to 2009), the Ethiopia National Defence Force (ENDF) contributed to an unprecedented level of resistance and triggered a radicalization of Somalia's society that had been absent before that period (Menkhaus, 2007). Thus, the Ethiopian intervention can be considered as an absolute policy failure where most of the results were opposite to the purported objectives (Menkhaus, 2008). Instead of ousting a radical authority and creating stability, the invasion gave rise to several more radical authorities, causing extreme insecurity and fueling anti-western, anti-UN sentiments. Fourthly, since the Ethiopian intervention in Somalia in late 2006, the ability of humanitarian agencies to respond had declined even as humanitarian needs increased. To make the matter even worse, the absence of key humanitarian actors and tremendously constrained access of those actors who remained aggravated the food price shocks in Somalia in 2011-2012 (Daniel Maxwell, 2014). Emergency or development assistance has long been captured by both economic and political interests in Somalia. The politicization of aid, the conjunction of aid and counter-terrorism policy, and an increasingly hardline policy towards humanitarian engagement by outsiders on the part of Al-Shabaab, all led to increasingly difficult humanitarian access over the period between the rise of the Islamic Courts in 2005-06 and the famine of 2011-12 (Daniel Maxwell, 2014).

The Legality and Humanitarian Consequences of Ethiopian Armed Intervention in Somalia

References

Abild, E. (2009, December). Creating humanitarian space: a case study of Somalia. *New Issues in Refugee Research: Research Paper No. 184*. Geneva, Switzerland: Policy Development and Evaluation Service United Nations High Commissioner for Refugees.

- Afyare Abdi Elmi, A. B. (2010). The Somali Conflict: Root causes, obstacles, and peace-building strategies. *African Security Review*, 15(1), 3-5.
- Aimé, E. G. (2013). The security issues behind the Ethiopian intervention in Somalia (2006-2009). *Centro de Estudos Internacionais*, 32-47. Retrieved October 28, 2019, from <https://books.openedition.org/cei/254#bodyftn24>
- Allo, A. K. (2010, January 12). Ethiopia's Armed Intervention in Somalia: The Legality of Self-Defense in Response to the Threat of Terrorism. *DENV. J. INT'L L. & POL'Y*, 39(1).
- Bamfo, N. A. (2010). Ethiopia's invasion of Somalia in 2006: Motives and lessons learned. *African Journal of Political Science and International Relations*, 4(2), pp. 055-065. Retrieved from <http://www.academicjournals.org/ajpsir>
- Besteman, C. (2019, September 5). The Costs of War in Somalia. *Costs of War*.
- Blokhina, K. (2019, June 10). Geneva Conventions and their Additional Protocols.
- Bruton, B. (2010, July 21). Somalia: A New Approach. *Meeting Summary*. Chatham House.
- Cher, D. I. (2012, October 31). Assessing the legality of the use of force by Ethiopia and Kenya in Somalia. Pretoria, South Africa: University of Pretoria.
- Crisis Group. (2012, February 15). *The Kenyan Military Intervention in Somalia*. Retrieved from <https://www.crisisgroup.org/africa/horn-africa/somalia/b145-women-and-al-shabaabs-insurgency>
- Daniel Maxwell, N. M. (2014). Lessons Learned from the Somalia Famine and the Greater Horn of Africa Crisis 2011–2012.

The Legality and Humanitarian Consequences of Ethiopian Armed Intervention in Somalia

Desk Review of Literature. Medford, USA: Feinstein International Center, Tufts University.

- Dias, A. M. (2013). International Intervention and Engagement in Somalia (2006-2013): Yet Another External State Reconstruction Project? *State and Societal Challenges in the Horn of Africa: Conflict and processes of state formation, reconfiguration and disintegration* (pp. 1-18). Lisbon: Center of African Studies (CEA)/ISCTE-IUL, University Institute of Lisbon.
- Eriksson, M. (2013). *External Intervention in Somalia's Civil War: Security promotion and national interests?*
- FGD. (2019, May 12). The Rational of Ethiopia in Somalia. (M. Habtu, Interviewer)
- Frenkil, E. (2015). The Lion Comes to Mogadishu: Why Ethiopia Invaded Somalia in 2006. Retrieved October 28, 2019, from https://www.researchgate.net/publication/282006037_The_Lion_Comes_to_Mogadishu_Why_Ethiopia_Invaded_Somalia_in_2006/citation/download
- Gillard, E. S.-C. (2015, October). Protection of civilians in armed conflict: Bridging the gap between law and reality. *Policy Brief 64*. Humanitarian Policy Group.
- Grubeck, N. (2011). *Civilian Harm in Somalia: Creating an Appropriate Response*. Washington DC: Campaign for Innocent Victims in Conflict (CIVIC).
- Human Rights Watch. (2008, December 8). *"So Much to Fear": War Crimes and the Devastation of Somalia*. Retrieved October 31, 2019, from <https://www.hrw.org/report/2008/12/08/so-much-fear/war-crimes-and-devastation-somalia>
- Hussein, A. L. (2017). Relationship Between Foreign Intervention and Terrorism: A Case Study of Ethiopia's Military Intervention in Somalia. *Unpublished*. Nairobi, Kenya.

- ICRC. (2019, December 17). *Customary IHL*. Retrieved from Rule 55. Access for Humanitarian Relief to Civilians in Need: https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule55
- ICRC. (2019, December 17). *Prisoners of war and detainees*. Retrieved from <https://www.icrc.org/en/war-and-law/protected-persons/prisoners-war-detainees>
- Jakkie Cilliers, H. B. (2010, August). Somalia: the intervention dilemma. *Policy Brief*.
- Milkias, P. (2007). Anarchy in Somalia: Warlords, Islamic Courts and the Ethiopian Factor. *Canadian Political Science Association at the Congress of the Learned Societies of Canada* (pp. 1-2). Saskatoon: University of Saskatchewan.
- NYT. (2008, May 6). *New York Times*. Retrieved from Ethiopian Soldiers accused of war crimes in Somalia: <https://www.nytimes.com/2008/05/06/world/africa/06iht-somalia.1.12610349.html>
- Oxford Research Group. (2019, December 17). *Breaking the Cycle of Violence*. Retrieved from <https://www.oxfordresearchgroup.org.uk/blog/urban-warfare-and-international-humanitarian-law>
- Prince, R. (2010, December 8). *WikiLeaks Reveals U.S. Twisted Ethiopia's Arm to Invade Somalia: In what appears to be another U.S. proxy war*. Retrieved from Foreign Policy in Focus: https://fpif.org/wikileaks_reveals_us_twisted_ethiopias_arm_to_invade_somalia/
- Project Ploughshares. (2009). *Armed Conflicts Report: Somalia (1988 - first combat deaths)*. Ontario, Canada: Project Ploughshares.
- Reisman, M. (2015). Humanitarian Intervention. *Yearbook of Institute of International Law*, 5-7.

The Legality and Humanitarian Consequences of Ethiopian Armed Intervention in Somalia

Samatar, S. S. (2007). The Islamic Courts and Ethiopia's Intervention in Somali: Redemption or Adventurism? (pp. 9-10). London: Chatham House.

Sousa, R. R. (2014). External Interventions and Civil War Intensity in South-Central Somalia (1991-2010). *Cadernos de Estudos Africanos*, 57-86. Retrieved from <http://journals.openedition.org/cea/1678>

Tareke, G. (2000). The Ethiopia-Somalia War of 1977 Revisited. *he International Journal of African Historical Studies*, 33(3), 635-667. Retrieved November 11, 2019, from https://warwick.ac.uk/fac/arts/history/students/modules/hi277/programme/t2w13/hi277_tareke.pdf

The History Guy. (2012, February 4). *The Ethiopia-Somalia War (2006-2009)*. Retrieved from https://www.historyguy.com/ethiopia-somalia_war_2006.html#.XbhBds5rHIV

Welsh, S. C. (2003, December 05). *Preemptive War and International Law*. Retrieved from Pogo Staff: <https://www.pogo.org/investigation/2003/12/preemptive-war-and-international-law/>

Wezeman, P. D. (2010, October). Arms Flows and the Conflict in Somalia. *SIPRI Background Paper*.

Yihdego, Z. W. (2007). Ethiopia's Military Action against the Union of Islamic Courts and Others in Somalia: Some Legal Implications. *The International and Comparative Law Quarterly*, 56(3), 666-676.