

INTERNATIONAL HUMANITARIAN LAW AND ITS CONTRIBUTIONS TO THE PURSUIT OF PEACE: THE CASE OF ETHIOPIA

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Abstract

International humanitarian law (IHL) is often referred to as the 'law of war' and, as such, many identify it more with war than with peace. Certainly, IHL regulates acts of belligerence, and its material and temporal scope of application is intertwined with the existence of armed conflict. It generally operates in situations of armed conflict and often ceases to apply the moment peace and normalcy return. However, IHL also plays a significant role not just in governing acts of war but also in facilitating and building peace. In non-international armed conflicts in particular, respect for IHL, including ensuring accountability for war crimes, creates conditions conducive to peace and makes peace more attainable. IHL conventions also contain provisions allowing, and even encouraging, warring parties to take steps that may generate reciprocal goodwill and mutual trust and, ultimately, reconciliation and lasting peace. Accordingly, this article asserts that the success of ongoing peace initiatives to permanently end the civil war in Ethiopia depends, at least partly, on the extent to which the parties strictly comply with the rules of armed conflict and their willingness to exploit the legal avenues offered by existing IHL conventions to promote reciprocal peace gestures. This is also reflected in the recently signed peace agreement between the Ethiopian Government and the

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Tigray People's Liberation Front, which explicitly refers to the relevant rules of IHL pertaining to, among others, the protection of civilians and civilian objects, unfettered humanitarian access, and accountability for serious violations affecting victims of the armed conflict.

Key-terms: *IHL, peacebuilding, detention, transitional justice, conduct of hostilities, Pretoria peace agreement*

Introduction

International humanitarian law, at first glance, seems to have no meaningful relation with peace and its role appears to be limited just to the regulation of war/armed conflicts. This (mis)perception stems from the fact that IHL as a body of law has historically developed in the context of war and its domain of application is still mainly dependent on the existence of such context. However, a thorough examination of its rules reveals that IHL plays a significant role in facilitating reconciliation in conflict-affected societies and building a lasting peace. Most notably, by limiting the destructive effects of war, promoting accountability for serious human rights violations, and establishing obligations on parties to a conflict requiring them to endeavor to grant amnesties, IHL facilitates peace initiatives. It also requires parties to take some steps such as keeping record of the dead and the missing to enable victims of armed conflict to search and find the truth—an important element of post-conflict peace processes. As a result, it is not uncommon to see reference being made to rules of IHL in peace accords intended to end war and bring about peace.¹

¹ See Arts 4.12, and 5.1.4, the Final Agreement to End the Armed Conflict in Colombia and Build a Stable and Lasting Peace (signed on 24 November 2016), Preambular paras

Unsurprisingly, like many other peace deals, the recent peace agreements signed between the Ethiopian government and the Tigray People's Liberation Front (TPLF), to permanently stop a two-year civil war, affirmed the importance of IHL to build a lasting peace. In the agreements, the parties committed themselves to “upholding applicable international humanitarian law instruments to which Ethiopia is a party”.² The agreements further incorporated several rules of IHL in the areas of protection of civilians and civilian objects from attacks, reunification of family, and humanitarian access to victims of war. This article argues that, contrary to conventional wisdom, IHL plays a significant role in promoting peace during active hostilities and at the end of armed conflicts.

Using the conflict in the Tigray region as a case study, the article attempts to demonstrate how IHL is useful in creating conditions for peace, by regulating the means, methods and effects of war. The article first offers some background on the conflict, including the actors, recent ongoing peace initiatives, and the applicability of IHL. Having positively affirmed the application of IHL to the armed conflict between TPLF and the Ethiopian government and allied forces, the paper proceeds to discuss the major obligations of the parties involved in the conflict under IHL and highlights areas where IHL may be valuable in

4 and 8, Arts 17, 36, 42 and 44; Libyan Political Agreement, 17 December 2015, Arts 2.1.10.8, 5.3.3.1, 5.3.5.3; South Sudan Peace Agreement Revitalised Agreement on the Resolution of the Conflict in the Republic of South Sudan (R-ARCSS) (12 September 2018).

² Agreement for Lasting Peace through a Permanent Cessation of Hostilities between the Government of the Federal Democratic Republic of Ethiopia and the Tigray People's Liberation Front (TPLF), done at Pretoria, the Republic of South Africa (2 November 2022), art 4 ('The Pretoria Peace Agreement' or 'PPA').

building trust, facilitate peace negotiations and bring about sustainable peace.

1. Background on the Conflict and Peace Initiatives

An armed conflict has been raging in Ethiopia for over two years between the government and different armed groups, notably, the Tigrayan People's Liberation Front (TPLF) and the Oromo Liberation Army (OLA). In addition to these armed conflagrations, low-scale skirmishes and ethnic-based violence have also been prevalent in many parts of the country. The war in Tigray broke out on 4th November 2020 when the government officially announced a military operation against the TPLF in response to the latter's attack on the Northern Command of the Ethiopian National Defence Forces (ENDF) on the previous day.³

There are several reasons why the armed conflict in Tigray dominated national and international discussion on Ethiopia while the other conflicts in the country received little or no media attention. First, the war in Tigray is between the government and TPLF—a relatively strong and well-organized armed group with an established command structure and fighting capability. Most of the latter's political and military leaders were also dominant figures in the country for almost thirty years until 2018, when they were dislodged from power following sustained public protests.⁴ Second, the war involved multiple actors, including foreign

³ Giulia Paravicini and Dawit Endeshaw 'Ethiopia sends army into Tigray region, heavy fighting reported', *Reuters* (4 November 2022), < <https://www.reuters.com/article/us-ethiopia-conflict-idUSKBN27K0ZS>> accessed 20 August 2022.

⁴ Alexandra M. Dias and Yared Debebe Yetena, 'Anatomies of Protest and the Trajectories of the Actors at Play, Ethiopia 2015-2018', in Edalina Rodrigues Sanches (ed.), *Popular Protest, Political Opportunities, and Change in Africa* (1st edn, Routledge, 2022) 181; Declan Walsh and Abdi Latif Dahir, 'Why Is Ethiopia at War With Itself?', *The New*

forces. In the course of the war, the ENDF were assisted by regional special and paramilitary forces. It is also reported that Eritrean Defence Forces (EDF) have fought along with the government. Thirdly, as the conflict dragged on, allegations of serious human rights violations, including war crimes and crimes against humanity and reports of severe humanitarian crisis have emerged.⁵ Fourthly, the conflict in Tigray later expanded into neighboring Amhara and Afar regions and caused enormous casualties and destruction. At some point, the TPLF forces even threatened to unseat the central government after their quick advance on towns located less than two hundred kilometers from the capital city, Addis Ababa.⁶ Finally, TPLF's existing international networks, which it had established during its twenty-seven years of outsized share in the country's politics, economy and security apparatus, have helped its international diplomacy in the course of the conflict. The Tigrayan diaspora elites have also played a great role in sensitizing the international community on the conflict through coordinated international campaigns.⁷

York Times (16 March 2022) < <https://www.nytimes.com/article/ethiopia-tigray-conflict-explained.html> > accessed on 15 September 2022.

⁵ 'Grave human rights situation in Ethiopia' *Office of the High Commissioner for Human Rights* (17 December 2021); <<https://www.ohchr.org/en/2021/12/grave-human-rights-situation-ethiopia>> accessed on 2 September 2022; Sinisa Marolt, '9.4 million people are 'living their worst nightmare' in northern Ethiopia due to ongoing conflict', *World Food Programme* (24 November 2021) <<https://news.un.org/en/story/2021/11/1106522> > accessed on 24 August 2022.

⁶ Max Bearak, 'Rebel advance to within 200 miles of Ethiopia's capital puts the city and wider region on edge', *The Washington Post* (Nairobi, 6 November 2021) <<https://www.washingtonpost.com/world/2021/11/06/ethiopia-addis-ababa-tplf/> > accessed on 18 July 2022.

⁷ Sara Fissehaye and John Tanza, 'Hundreds March in Washington to Denounce Ethiopian Government on 1st Anniversary of Tigray Conflict', *VOA news* (Washington, 5 November 2021) <<https://www.voanews.com/a/hundreds-march-in-washington-to-denounce-ethiopian-government-on-1st-anniversary-of-tigray-conflict/6301063.html>> accessed on 11 October 2022.

The widespread media coverage eventually led to an international outcry and a persistent call for an end to the war and accountability for gross human rights violations. The United Nations Security Council alone convened several meetings both privately and in open sessions to discuss the situation. On almost all occasions, it urged parties to cease hostilities, engage in political dialogue with a view to resolving the root causes of the war and ensuring accountability for gross human rights violations.⁸ In response, the Ethiopian Human Rights Commission (EHRC) and the UN Office of the High Commissioner for Human Rights (OHCHR) undertook a joint investigation into alleged human rights abuses and violations of international humanitarian law committed in the context of the conflict in Tigray. The final report of the joint investigation came out on 3rd of November 2021 and revealed that the conflict has resulted in serious violations of international human rights law, humanitarian, and refugee law, committed by all actors to the conflict.⁹

Subsequently, on 17 December 2021, the United Nations Human Rights Council established the UN International Commission of Human Rights Experts on Ethiopia.¹⁰ The Commission is mandated, *inter*

⁸ 'Security Council Press Statement on Ethiopia', SC/14501 22 April 2021 <<https://press.un.org/en/2021/sc14501.doc.htm>>; 'Security Council Press Statement on Ethiopia' SC/14691 (5 November 2021) <<https://press.un.org/en/2021/sc14691.doc.htm>> accessed on 3 October 2022.

⁹ 'Report of the Ethiopian Human Rights Commission (EHRC)/Office of the United Nations High Commissioner for Human Rights (OHCHR) Joint Investigation into Alleged Violations of International Human Rights, Humanitarian and Refugee Law Committed by all Parties to the Conflict in the Tigray Region of the Federal Democratic Republic of Ethiopia' (3 November 2021) the report is available here:- <<https://www.ohchr.org/sites/default/files/2021-11/OHCHR-EHRC-Tigray-Report.pdf>> accessed on 4 September 2022.

¹⁰ Note that in comparison to the EHRC and OHCHR's joint investigation, the investigation of the Commission of Experts has broad temporal and territorial scope. The former covered human rights violations committed mainly in Tigray and limited other places

alia, “to conduct a thorough and impartial investigation into allegations of violations and abuses of international human rights law and violations of international humanitarian law and international refugee law”, and “provide guidance on transitional justice, including accountability, reconciliation and healing”.¹¹ The Commission officially launched its work in March 2022 with the appointment of three Commissioners¹² and it undertook its first visit to Ethiopia from 25 to 30 July 2022. The Commission released its Preliminary Report on 19 September 2022 in which it concluded that “there are reasonable grounds to believe that ...violations of human rights amounting to war crimes and crimes against humanity were committed”.¹³

Following the government’s unilateral declaration of humanitarian truce on 24 March 2022 in order to allow access to aid in Tigray, active hostilities diminished in the north, until the last week of August 2022, when the conflict reignited again.¹⁴ With the resurgence of active hostilities in the north, many were again dismayed by the escalation of the

in Amhara regions from 3 November 2020 to 28 June 2021, the day the federal government of Ethiopia declared a unilateral ceasefire and withdrew from Tigray region. In contrast, the Commission of Experts’ temporal and geographical scope of its mandate begin from 3 November 2020 open-endedly and to the whole of the ‘territory of the Federal Democratic Republic of Ethiopia, with a focus on areas affected by the recent conflict’. This, theoretically, could cover those human rights violations committed outside Tigray, Afar and Amhara regions and could also encompass those reported to have occurred in Oromia, Benishangul-Gumuz and other regions.

¹¹ A/HRC/RES/S-33/1 of the United Nations Human Rights Council (on 21 December 2021).

¹² ‘President of Human Rights Council appoints members of investigative body in Ethiopia’, (Geneva, 2 March 2022) <<https://www.ohchr.org/en/press-releases/2022/03/president-human-rights-council-appoints-members-investigative-body-ethiopia>> accessed on 4 October 2022.

¹³ Report of the International Commission of Human Rights Experts on Ethiopia (A/HRC/51/46), 19 September 2022.

¹⁴ ‘Fighting Erupts Again in Ethiopia’s Northern Tigray Region’, *VOA news* 5 September 2022 <<https://www.voanews.com/a/fighting-erupts-again-in-ethiopia-s-northern-tigray-region-/6732343.html>> accessed on 10 September 2022.

conflict and the increased suffering of civilians. Gravely concerned by the situation, in September and October 2022, the African Union, the United States, and the European Union engaged in a coordinated shuttle diplomacy to put pressure on TPLF and the Ethiopian government to sit for negotiations and resolve their differences peacefully. The efforts finally bore fruits and after a week-long face-to-face ‘intense’ negotiations, the government and TPLF, on 2 November 2022, signed a peace agreement in Pretoria, South Africa (the ‘Pretoria Peace Agreement’).¹⁵ Ten days later, the military commanders from both sides signed a Declaration on the Modalities for the Implementation of the Pretoria Peace Agreement on 12 November 2022, in Nairobi, Kenya (‘the Nairobi Declaration’).¹⁶

The peace deals covered various areas, including permanent cessation of hostilities, access to humanitarian assistance, protection of civilians and disarmament, demobilization and reintegration (DDR) and embedded fundamental rules of IHL. In the Pretoria Peace Agreement, the Parties particularly expressed their consent to “commit to upholding”

¹⁵ The Pretoria Peace Agreement.

¹⁶ Although the Nairobi Declaration claims to be ‘based on’ and ‘consistent with’ the Pretoria Peace Agreement, it has introduced some points which were not explicitly agreed upon in the latter. For example, Art 2 (2.1) (d) of the Nairobi Declaration appears to make the disarmament of heavy weapons of Tigrayan combatants conditional upon the withdrawal of foreign and non-ENDF forces from Tigray. If one is to take the literal meaning of the provision, s/he inevitably enters into the controversial terrain of contested lands between Amhara and Tigray regions and Eritrea’s participation in the conflict. Indeed, many people reacted to the inclusion of such provision saying that it is qualifying what was agreed in the Pretoria Peace Agreement, which only prescribed that the issue of contested lands will be settled in accordance with the constitution of the country, without requiring disarmament to be done ‘concurrently’ with the withdrawal of foreign (Eritrea) and non-ENDF (Amhara and from other regions) forces from Tigray.

the laws and customs of war enshrined in IHL treaties ratified by Ethiopia and to protect civilians.¹⁷ Albeit not so unusual,¹⁸ it is striking to see the reference to IHL in a peace agreement of this kind, which seeks to permanently end hostilities. As will be seen below, IHL generally operates in armed conflict situations and has little to do with the protection of civilians in peacetime. Yet, peace agreement's reference to IHL appears to be dictated by pragmatic considerations relating to the uphill task of 'silencing the guns'.¹⁹ It is also an affirmation of the important role of IHL in creating conducive environment for peace to sprout and flourish.

2. The Scope of Application of International Humanitarian Law

This section will provide an overview of the scope of application of IHL. It is necessary to grasp the scope of IHL's application in order to address the main claim of the article that IHL, beyond its conventionally understood role, also plays a pivotal role in peacebuilding.

In terms of its material scope of application, IHL governs armed conflicts occurring between States, also known as 'international armed conflicts' (IACs), and those armed conflicts between a State or a group

¹⁷ The Pretoria Peace Agreement (n 2).

¹⁸ See (n 1).

¹⁹ In the fourth preambular paragraph, the Peace Agreement reiterates 'the Parties' commitment to the African Union's Agenda of Silencing the Guns by 2030, consistent with the spirit of 'African solutions to African problems'. As could be seen from Art 11 (8) and (9) of the Agreement, the Parties were alive to the fact that there may be a possible breach of the cessation of hostilities, in which case IHL will continue to apply.

of States and non-State armed groups or among those groups, also referred to as 'non-international armed conflicts' (NIACs).²⁰ Other situations of political or diplomatic disputes between States or internal disturbances, isolated and sporadic acts of violence, tensions and acts of a similar nature are outside the remit of IHL, since they are not considered as armed conflicts.²¹ From the perspective of victims of armed conflict, the distinction between IACs and NIACs is irrelevant.²² A growing body of rules of customary international law of armed conflict is also increasingly narrowing the gap in the protection accorded to victims of IACs and NIACs.²³ However, IHL still primarily operates based on such distinction and accordingly, the classification of a particular conflict is generally taken as the *sine qua non* for invoking the relevant rules of IHL applicable to the conflict. It is imperative therefore that we first determine whether the situation in Ethiopia constitutes an armed conflict and then qualify it as either IAC or NIAC. At the outset,

²⁰ See J. Kleffner 'Scope of Application of International Humanitarian Law' in D. Fleck (ed.) *The Handbook of International Humanitarian Law* (3rd ed. Oxford University Press, 2013) 43; Terry D. Gill, 'Rethinking the Scope of Application of International Humanitarian Law and its Place in the International Legal System' (2022) 60, *Military Law and Law of War Review* 1-14.

²¹ See Art 1 (2), Additional Protocol II.

²² Accordingly, many have criticized the distinction as 'unjustified', 'arbitrary', 'undesirable' and something which 'frustrates the humanitarian purpose of the law of war in most of the instances in which war now occurs'. G. Aldrich, 'The laws of war on laud', (2000) 94 *American Journal of International Law* 62; Ingrid Detter de Frankopan, *The Law of War* (Cambridge University Press, London, 2002) 49; C. Warbrick and P. Rowe, 'The International Criminal Tribunal for Yugoslavia: The decision of the Appeals Chamber on the interlocutory appeal on jurisdiction in the Tadic case', (1996) 45 *International & Comparative Law Quarterly* 698.

²³ On this point, the Appeal Chamber of the International Criminal Tribunal for Former Yugoslavia (ICTY) observed that 'Since the 1930s, ... distinction (between 'belligerency and insurgency', i.e., between international and internal conflicts) became more and more blurred and international legal rules have increasingly emerged or have been agreed upon to regulate internal armed conflict. ... If international law, while of course duly safeguarding the legitimate interests of States, must gradually turn to the protection of human beings, it is only natural that the aforementioned dichotomy should gradually lose its weight'. *Prosecutor v. Tadic*, Appeal Chamber, 2 October 1995, para. 97.

though, it should be noted that Ethiopia is a State Party to the Four Geneva Conventions (1949)²⁴ and the two Additional Protocols²⁵, and major regional and international human rights treaties²⁶, which continue to apply during armed conflict situations.²⁷ Furthermore, Ethiopia has ratified the Cultural Charter for Africa pursuant to which it is obliged to ensure the protection of cultural property both in times of peace and war.²⁸

The Threshold Requirement

According to Common Article 2 to the Four Geneva Conventions international armed conflict constitutes all cases of declared war or of any armed conflict that may arise between two or more States regardless of the fact that either or both parties recognize or deny the existence of the war.²⁹ Accordingly, an international armed conflict is said to exist when one or more State(s) use(s) its armed force against (an)other

²⁴ It ratified the Conventions on 2 October 1949.

²⁵ It ratified the Additional Protocols on 8 April 1994.

²⁶ Ethiopia is a State Party to the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). At regional level, Ethiopia is also a Party to the African Charter on Human and Peoples' Rights.

²⁷ *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, ICJ Reports 1986, paras. 24–25; ICJ, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, ICJ Reports 2004, para. 106; *Coard et al. v. United States*, Inter-American Commission on Human Rights (IACo-mHR), Case No. 10.951, Report No. 109/99, 29 September 1999, para. 42.

²⁸ Article 27, Organization of African Unity (OAU), Cultural Charter for Africa (adopted in July 1974). Ethiopia deposited its instrument of ratification on 16 June 1977.

²⁹ Common Art 2 to GC I, GC II, GC III and GC IV (1949).

State(s) irrespective of the reasons advanced or the intensity of the conflict.³⁰ IACs do not depend on the existence of an armed resistance or military response from the other State. Furthermore, pursuant to Common Article 2 to the Four Geneva Conventions, rules of IHL regulating IACs also apply to all cases of partial or total occupation of the territory of a State by another, even if “the occupation meets with no armed resistance”. In other words, insofar as a State uses its armed group to invade, occupy or attack another State, an IAC is said to exist regardless of the fact that the latter State failed to resist or defend itself. What is rather important is that the former has engaged in such conduct violating the territorial integrity of the latter, contrary to the will and consent of the latter. It is also important to note that apart from the regular inter-state conflicts, Article 1(4) of AP I expands the definition of IACs to cover armed conflicts in which peoples are fighting against colonial domination, alien occupation or racist regimes in the exercise of their right to self-determination.

On the other hand, NIACs occur when States fight against armed groups or armed groups fight against each other.³¹ In this regard, common Article 3 to the Four Geneva Conventions provides a residual definition to NIACs as one “not of an international character”. Similarly, Article 1 of AP II provides that the Protocol applies to:

all armed conflicts which are not covered by Article 1 of [AP I] and which take place in the territory of a High Contracting Party between

³⁰ Common Art 2 to the Four Geneva Conventions requires that the confrontation must be between ‘two or more of the *High Contracting Parties*’, clearly affirming that IACs happen between two or more States. As regards the intensity threshold, Pictet points out that the ‘first shot’ is adequate to trigger NIAC. See also Jean Pictet, *ICRC Commentary* GC I (1952) 6-7.

³¹ In comparison to Common Art 2, Common Art 3 to the Geneva Conventions talks about ‘*each party* to the conflict’, not High Contracting Parties, suggesting that NIACs do not necessarily involve States.

its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol.

As can be discerned from this provision, NIACs require some threshold of intensity (as regards the confrontation) and organization (of the armed group(s)). The armed group(s) should also exercise some control over a specific territory enabling them to engage in “a protracted armed violence”³² and implement or enforce rules of IHL. This requirement of a minimum degree of *organization* differentiates NIACs from ‘banditry, unorganized and short-lived insurrections, or terrorist activities, which are not subject to international humanitarian law’.³³ In this connection, international criminal tribunals developed a non-exhaustive (indicative) list of factors to determine the element of organization or being organized, such as the existence of a command structure; the military (operational) capacity of the armed group; its logistical capacity; the existence of an internal disciplinary system and the ability to implement IHL; and its ability to speak with one voice.³⁴ It is not enough that a ‘handful of [isolated] individuals’ rebel against the State ‘without coordination’ but there must be “an organized military force, an authority responsible for its acts, acting within a determinate territory and having the means of respecting and ensuring respect for

³² *Prosecutor v. Dusko Tadić a/k/a ‘Dule’*, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction (1995) IT-94-1-T, T.Ch. II (ICTY) 70.

³³ *Ibid*, §562, see also *Prosecutor v. Akayesu* (1998) ICTR-96-4-T (International Criminal Tribunal for Rwanda) [620]; *Prosecutor v Lubanga*, Decision on the Confirmation of Charges (2007) ICC-01/04-01/06-803-tEN (International Criminal Court) 233.

³⁴ *Prosecutor v Boškoski and Tarculovski* (2008) IT-04-82-T (ICTY) 197–203, see also *Prosecutor v Fatmir Limaj, Haradin Bala & Isak Musliu* (2005) IT-03-66-T (ICTY) [90]; *Prosecutor v Ramush Haradinaj et al.* (2008) IT-04-84-T (ICTY) 60.

the Geneva Conventions”.³⁵ Accordingly, the laws of NIACs do “not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflicts”.³⁶

On the other hand, in *Prosecutor v. Ramush Haradinaj et al.*, the International Criminal Tribunal for Former Yugoslavia (ICTY) summarized the relevant factors to determine the *protracted* nature of the conflict which, according to the Trial Chamber, relates to the intensity of the conflict as follows:

Trial Chambers have relied on indicative factors relevant for assessing the "intensity" criterion, none of which are, in themselves, essential to establish that the criterion is satisfied. These indicative factors include the number, duration and intensity of individual confrontations; the type of weapons and other military equipment used; the number and caliber of munitions fired; the number of persons and type of forces partaking in the fighting; the number of casualties; the extent of material destruction; and the number of civilians fleeing combat zones. The involvement of the UN Security Council may also be a reflection of the intensity of a conflict.³⁷

³⁵ Jean Pictet (ed.), *Commentary: IV Geneva Conventions of 12 August 1949* (International Committee of the Red Cross 1958) 35; see also Yves Sandoz, Christophe Swinarski and Bruno Zimmermann (eds), *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949* (International Committee of the Red Cross & Martinus Nijhoff 1987) 1351.

³⁶ Art 2 (2) AP II.

³⁷ *Prosecutor v. Ramush Haradinaj, Idriz Balaj and Lahi Brahimaj*, Judgment, April 3, 2008, Case No. IT-04-84-T, para 49.

3. The Application of International Humanitarian Law to the Conflict in Ethiopia

Among the various questions the Tigray conflict evokes is the question of whether we have an armed conflict of international or non-international character. In other words, do we have one or more IAC(s) or NIAC(s) or both IAC(s) in parallel? How should we characterize the relatively protracted and more intense armed conflict between the TPLF, and the Ethiopian Government, Eritrea and its local allies?

It is now beyond contention that the war between TPLF, on the one hand, and the ENDF, EDF and Amhara and Afar regional forces, on the other hand, constitutes a typical case of NIAC. The war has been protracted for two years, the intensity of the actual military confrontations has been of high magnitude, involving various armed forces, and the weapons that have been used for the conduct of hostilities are of high caliber and combat weapons, generally used by armed forces. The human and material cost of the war has also been enormous. It is reported that more than two million people have been displaced in Amhara, Tigray and Afar regions and hundreds of thousands are estimated to have died.³⁸ Ironically, the war involved former and current members of the ENDF and regional paramilitary forces with the participation of over a million active combatants from both sides. Additionally, the African Union and the United Nations through their high officials and respective Security Councils have been seized of the matter. The

³⁸ See Bobby Ghosh, 'The World's Deadliest War Isn't in Ukraine, But in Ethiopia', *Bloomberg* (22 March 2022) < <https://www.bloomberg.com/opinion/articles/2022-03-22/ethiopia-s-war-toll-grows-as-the-world-looks-away> > accessed on 1 November 2022.

UN Security Council has had fifteen formal and informal meetings on the situation in Tigray showing the severity of the conflict.³⁹

Furthermore, the non-State armed group, that is, TPLF, has also had territorial control over Tigray region, at least, since June 2021.⁴⁰ It enacted legislation, for example, criminalizing armed robbery and ‘collaborating with the enemy’⁴¹, demonstrating that it had not only an effective control of the region but also was capable of promulgating and enforcing laws and was in a position to implement IHL norms. In the Pretoria Peace Agreement, TPLF also committed itself to respect IHL treaties ratified by Ethiopia,⁴² further showing its willingness and capacity to ensure full adherence to the laws of war among its combatants. Consequently, it can be submitted that a situation of NIAC has existed between the government and TPLF forces.⁴³ At this point, it should be

³⁹ See the list of meetings here <<https://www.securitycouncilreport.org/ethiopia/>> accessed on 14 October 2022.

⁴⁰ Pursuant to the Pretoria Agreement, TPLF agreed that its administration will be disbanded and the federal government will take control of the region and establish a transitional administration pending elections. This might end up usurping TPLF’s territorial control of Tigray if it is not going to retain its dominance in the transitional administration.

⁴¹ See ‘CPJ urges Tigrayan rebels to release five detained journalists’, *Agence France-Presse* (Addis Ababa, 22 July 2022); See also ‘Robbery and Theft are disturbing Tigray’s Towns’ *BBC Amharic* (4 June 2022) <<https://www.bbc.com/amharic/articles/c2j8x5y0yylo>> accessed on 28 June 2022.

⁴² See *supra* (n 2), 19.

⁴³ On the basis of Article 1 of AP I and relying on what TPLF has consistently claimed, that is, it is fighting for self-determination of the Tigrayan people, one may contend that the war is an IAC. Nonetheless, even if one were to accept TPLF’s claims, the import of Article 1 of AP I does not seem to cover cases of internal self-determination of the kind existing in Ethiopia. Although TPLF occasionally mentioned that it would consider to have a referendum for Tigray’s independence, it has not pushed for that in any of its official communications. Furthermore, AP I refers to a situation where ‘peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination’ and none of these (colonial domination, alien occupation or a racist regime) exists in Ethiopia to make the war an IAC. On the

appreciated that the involvement of EDF forces on the side of the government does not change the categorization of the conflict but rather makes it “an internationalized” NIAC.⁴⁴ This would be different if EDF or any other foreign State was fighting along TPLF forces in which case, the nature of the conflict would be an IAC and the applicable IHL rules would be those governing IAC as well.

4. The Role of IHL in Building Peace

Generally speaking, IHL is wartime law. But it also occasionally applies in peacetime as a precaution or preparatory measure to reduce the potential effect of war in the event it occurs in the future⁴⁵ or when it occurs, it may continue to apply even after cessation of hostilities where victims of armed conflicts continue to seek its protection.⁴⁶ There is therefore not much dispute on the occasional extended application of

historical genesis of Article 1 of AP I, see Yves Sandoz, *Christophe Swinarski and Bruno Zimmerman (eds), Commentary on the Additional Protocols* (ICRC, Geneva, 1987).

⁴⁴ See on this, Hans-Peter Gasser, ‘Internationalized Non-International Armed Conflicts: Case Studies of Afghanistan, Kampuchea and Lebanon’, (1982) 33(1) *American University Law Review* 145–159.

⁴⁵ IHL requires States to take certain measures such as dissemination of knowledge of IHL in peacetime to ensure the respect of IHL in the event that an armed conflict occurs. Those rules requiring the use of distinctive emblems to specific persons, objects and circumstances also apply in peacetime. See Art 47 GC I, Article 48 GC II, Article 127 GC III, Art 144 GC IV, Art 83 of AP II. For a comprehensive overview, see also Marco Sassòli, *International Humanitarian Law: Rules, Solutions to Problems Arising in Warfare and Controversies* (Edward Elgar Publishing, 2019) 117–125.

⁴⁶ For example, Art 118 of the Third Geneva Convention ordains that ‘Prisoners of war shall be released and repatriated without delay *after* the cessation of active hostilities’ (emphasis added). There is therefore a possibility that the rules of IHL concerning the protection of Prisoners of War continue to apply after the formal conclusion of a peace agreement ending active hostilities. In NIAC, IHL also requires States to offer amnesty, at the end of the war, to persons who are detained for having participated in active hostilities (see Art 2 of AP II).

IHL to places or situations where there might no longer be an active conflict.

However, the potential contribution of IHL to creating or building peace at the end of hostilities is not much explored in the literature.⁴⁷ The proper application and full compliance with IHL, the argument is, will likely generate not only conditions for smooth cessation of hostilities but also promote the prospect of peace.⁴⁸ The High Contracting Parties of the AP I seem to have taken cognizance of this when they recalled that “every State has the duty to refrain from the threat or use of force against the sovereignty, territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations”⁴⁹ and proclaimed “their earnest wish to see peace prevail among peoples”.⁵⁰

⁴⁷ The only scholarly work that the writer found are the articles authored by César Rojas-Orozco and Elizabeth Salmón in the international review of the Red Cross, which discuss the contribution of IHL to peace processes in Southern America. See César Rsojas-Orozco, ‘The role of international humanitarian law in the search for peace: Lessons from Colombia’, (2021) *International Review of the Red Cross*, No. 914, Elizabeth Salmón, ‘Reflections on International Humanitarian Law and Transitional Justice: Lessons to Be Learnt from the Latin American Experience’, (2006) 88 *International Review of the Red Cross*, No. 862.

⁴⁸ Salmón rightly pointed out that ‘There is unquestionably a close link between the way the parties act during an armed conflict and the chances of achieving peace and reconciliation while restoring the rule of law once the hostilities have ended. Compliance with or violations of IHL will undoubtedly influence the conduct of the judiciary, the situation of the victims and the correlation of forces in the post-conflict society’; *Ibid* 327-328.

⁴⁹ One of the principal purposes of the United Nations is ‘[t]o maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace’; Art 1 (1) (2) of the United Nations Charter, 1945.

⁵⁰ *Preambular* para 1, AP I.

Currently, there is a growing acceptance among humanitarian actors and States that IHL plays a vital role in creating peace or the conditions required for peace.⁵¹ As a result, national and international efforts aimed at ending war and facilitating peace processes often refer to the importance of strict adherence to the norms of IHL. For instance, in almost all of its resolutions in relation to countries where there are active hostilities, the UN Security Council consistently called on parties to conflicts to fully comply with their obligations under IHL and at the same time, engage in broad-based peace efforts.⁵² This is yet another recognition of the important nexus between respect for IHL norms and peace-building. In both IACs and NIACs, whenever parties to a conflict fail to comply with IHL, there is risk of prolonging the conflict and engendering long-term disastrous effects that will eventually impede progress towards peace. Humanizing war by complying with the laws of war creates an environment where peace can easily return and flourish.⁵³ As the experiences of some countries have shown, some rules of IHL also play an instrumental role in facilitating the resolution of conflicts and promotion of peace.⁵⁴

In the next sub-section, the article identifies and discusses three areas where IHL will help in either facilitating or building a lasting peace by focusing on the conflict in Tigray. In this connection, it should be observed that most of the customary rules of IHL equally apply to both

⁵¹ Peter Maurer, 'The Contribution of Humanitarian Action to Peace', *SIPRI Forum on Peace and Development*, Stockholm, 4 May 2019, available at: <www.icrc.org/en/document/where-humanitarian-action-meets-peace-building> accessed on 22 October 2022.

⁵² See, e.g., UN Security Council Resolution on Yemen, Resolution 2624 (2022) 28 February 2022; Resolution on Syria, Res. 2268 (2016) 26 February 2016; Resolution on Libya S/RES/25702570 (2021) 16 April 2021.

⁵³ César Rojas-Orozco, *The role of international humanitarian law in the search for peace* (2021) (n 47).

⁵⁴ *Ibid.*

NIAC and IAC and contribute to peace efforts regardless of the nature of the conflict.⁵⁵ Consequently, reference will be made to such rules to the extent that they are applicable to the conflict in Ethiopia.

5.1. Detention and Treatment of Detainees

a) Arbitrary detentions by all parties to the conflict

Since the first day it erupted, i.e., 4th of November 2020, the conflict in Tigray has been marked by mass detention of both civilians and security and military officers. Immediately after attacking the Northern Command of the ENDF, the first thing that TPLF did was seizing the heavy military equipment and detaining thousands of ENDF soldiers. The reason for the mass detention of members of ENDF was purportedly to make them defect and join the side of TPLF or prevent them from fighting on the side of the Federal government.

In the first weeks into the conflict, according to the findings of the Joint Investigation Team (JIT) of the EHRC and OHCHR, TPLF also engaged in mass detention of ethnic Amharas in the disputed areas of Humera, Samre and Maicadra for their perceived support for the Federal government and forcefully transferred them to Tigrayan towns such as Shire, Axum, and Mekelle.⁵⁶ TPLF also claimed to have captured thousands of captives during its counter-offensives against ENDF in June 2021. Similarly, the ENDF, EDF, Amhara forces and other security forces arrested and detained, in different parts of the country, thousands of Tigrayan civilians who were perceived to have

⁵⁵ Jean-Marie Henckaerts, Louise Doswald-Beck, *Customary International Humanitarian Law* (Cambridge University Press, 2009) 344 ('ICRC Customary Law Study (2009)').

⁵⁶ EHRC and OHCHR Joint Investigation Report, paras. 145-146.

affiliation with TPLF.⁵⁷ They also captured members of Tigrayan armed militia in various detention facilities in Tigray, after most of Tigray became under the control of ENDF and its allied forces in the first months of the war and after the second resumption of hostilities.⁵⁸

b) Legality of detentions in armed conflicts

There is no explicit prohibition of arbitrary detentions in any of the provisions of the Four Geneva Conventions or the Additional Protocols. However, there is a wide consensus that customary rules of IHL forbid arbitrary detention of individuals in armed conflict situations.⁵⁹ International human rights law also continues to apply during armed conflict and as such, the prohibition of arbitrary detention has an alternative legal basis in treaty law.⁶⁰ Arbitrary detention is also deemed to be incongruent with the requirement of humane treatment stipulated in the various rules of international and non-international armed conflict.⁶¹

⁵⁷ Leni Kinzil, 'Ethiopia: Mass arbitrary arrests target Tigrayans, says UN rights office', *UN Press Release* (16 November 2021).

⁵⁸ EHRC and OHCHR Joint Investigation Report, paras. 148-150

⁵⁹ See, Rule 99, ICRC Customary Law Study (2009).

⁶⁰ See, *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, I. C. J Reports (1986), paras. 24-25; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, I. C. J. Reports (2004), para.106; UN Human Rights Committee, *General Comment 31* (2004), para. 11; Concluding observations of the Human Rights Committee, Israel CCPR/CO/78/ISR 5 August 2003, para. 11; *Coard et al. v. United States*, Inter-America Human Rights Commission, Case 10.951, Report N° 109/99, September 29, 1999), para. 42; *Hassen v. The United Kingdom*, European Court of Human Rights, judgment 16 September 2014, para. 77 (all affirmed the applicability of IHRL in times of armed conflicts).

⁶¹ Common article 3 to the Four Geneva Conventions, Art 13 GC III, Art 27; Fourth Geneva Convention (GC IV), Art 75(1) Additional Protocol to the Four Geneva Conventions (1977) (AP I), Art 4(1) Additional Protocol to the Four Geneva Conventions (1977) (AP II). See, *ICRC Customary Law Study* (2009) 344.

In IACs, regardless of the legality of the war or reasons for fighting, parties (i.e., States) have the unquestionable right to detain enemy combatants to prevent them from re-joining the battlefield and/or those civilians posing a threat to their national or military security.⁶² In comparison, in NIACs, both Common Article 3 of the Geneva Conventions and AP II regulate detention as a fact without expressly prohibiting or allowing it. The reason is that States do not want to cede their sovereign power to use force to non-State armed groups, certainly not by expressly authorizing detention to be carried out by such groups.⁶³ By virtue of their sovereignty and the concomitant power of monopoly over the means of violence, States retain the exclusive legitimate right to detain individuals who threaten their security or existence. This automatically renders the very existence of non-state armed groups inherently illegal and more so, their right to use force or detain enemy (government) forces who they capture in the midst of war.⁶⁴

⁶² See, Arts 21 and 118, GC III and Art 11 of Hague Convention (V) Respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land (1907). This may itself be considered as a national security measure in its wider sense. As rightly pointed out by ICRC, POWs ‘may use force, i. e., target and kill or injure other persons taking a direct part in hostilities and attack military objectives. Because such activity is obviously *prejudicial to the security of the adverse party*, the Third Geneva Convention provides that a detaining State ‘may subject prisoners of war to internment’ (emphasis added). (See, ‘Internment in Armed Conflict: Basic Rules and Challenges International Committee of the Red Cross (ICRC)’ *Opinion Paper*, (November 2014) 4. Unlike in the case of civilian internees, the State is not required to show the existence of necessity to detain POWs. Necessity is presumed and no judicial review is required. Note however that POWs may also be detained if they are lawfully prosecuted or have been lawfully convicted of crimes. Arts 85, 99, 119, 129 GC III.

⁶³ For an exhaustive analysis of the issue, see Zelalem Mogessie Teferra, ‘National Security and the Right to Liberty in Armed Conflict: The Legality and Limits of Security Detention in International Humanitarian Law (2016) *International Review of the Red Cross*, vol. 98 966-971.

⁶⁴ Professor Sassòli, the leading expert in the field, stated that ‘[f]or a long time, States took the position that such conflicts are internal affairs exclusively governed by domestic law.

Nonetheless, it is a common reality that non-state actors also engage in detention of enemy forces of the State or that of other non-State groups as well as civilians who they suspect of supporting the adversary. As mentioned above, in the war in Tigray, too, TPLF, a non-State armed group, has detained thousands of ENDF soldiers, and civilians whom it suspected of having affiliation with the federal government. This is despite the fact that TPLF did not have the right to do so and its very existence was viewed by the Federal government as illegal.⁶⁵ It is in recognition of this reality that both Common Article 3 of the Four Geneva Conventions and AP II focus more on the humane treatment of detainees than the permissibility of detention by non-State armed groups. In this regard, all parties to NIAC are required to treat all detainees humanely without discrimination on the basis of their race, color, religion, faith, sex, birth, health or any other similar ground.⁶⁶ Accordingly, violence to life and person, such as murder of all kinds, mutilation, cruel treatment and torture; taking of hostages; outrages upon personal dignity, in particular humiliating and degrading treatment; collective punishment, rape, terrorism, slavery, the passing of

As for combatant and POW status, no State accepts that its citizens can wage war against their own government. No government would renounce in advance the right to punish its own citizen for participating in a rebellion which would be necessary to apply all of IHL of IACs to the situation'. Sassòli (n 61), 209-210.

⁶⁵ In May 2021, the Ethiopian parliament designated TPLF as a terrorist group terminating its legal personality as a legitimate group. See 'Ethiopia Declares Tigray, Oromia Groups Terrorist Organizations', *Bloomberg News*, 6 May 2021, < <https://www.bloomberg.com/news/articles/2021-05-06/ethiopia-declares-tigray-romia-groups-terrorist-organizations?leadSource=uverify%20wall> > accessed on 4 October 2022. However, in the Peace Agreement, the Federal government agreed to 'Facilitate the lifting of the terrorist designation of the TPLF by the House of Peoples' Representatives'; see Art 7 (2) (c) of the Pretoria Peace Agreement.

⁶⁶ Common Art 3, Four Geneva Conventions (1949); Art 2 (1) AP II.

sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court are prohibited.⁶⁷ Any conduct that flouts this prohibition potentially entails State responsibility as well as individual criminal responsibility.⁶⁸ Consequently, arbitrary detentions and mistreatment of detainees reported to have been carried out by all parties to the conflict in Ethiopia violate not only established rules of IHL but also possibly constitute a war crime in both international law and domestic law.⁶⁹

c) Rules of IHL governing detention and peace efforts

The rules of IHL regulating detention and treatment of detainees, as other rules of war, seek to preserve humanity during war. The respect for these rules minimizes the potential social, economic and psychological impacts of war and increases the chance for reconciliation between warring parties and making of peace. On the contrary, when parties engage in arbitrary detentions or mistreatment of detainees by disregarding IHL norms, the road to peaceful resolution of the conflict will be hampered by resentment and the desire to avenge members of the enemy. Most modern NIACs are often fought by States and groups

⁶⁷ *Ibid*, Arts 4 (1)-7 of AP II, Rules 87-105, ICRC Customary Law Study (2009). See, also Art 75 of AP I, which is also considered to offer basic human rights guarantees that form part of customary international law, hence, applicable to both NIAC and IAC; see Inter-American Commission of Human Rights, 'Report on Terrorism and Human Rights' (2002) OAS Doc No OEA/Ser.L/V/II.116. Doc.5/1, para 64.

⁶⁸ *Prosecutor v. Joseph Mpambara*, The Hague District Court, 09/750009-06 and 09/750007-07, 23 March 2009, para 12; see, also *Prosecutor v. Tadic* case, ICTY, Trial Chamber, para 610.

⁶⁹ See, Arts 7 and 8 of Rome Statute of the International Criminal Code (1998) (Note that Ethiopia is not a State party to the Rome Statute but the definitions of international crimes stipulated therein largely reflect the ones recognized in international customary law (see Rule 156 ICRC Customary Law Study). See, also Arts 269-273, 276, 279 of the Ethiopian Criminal Code (2004).

which identify themselves with a particular ethnic or religious affiliation, as is currently the case in Ethiopia. This makes the conflicts partly a function of identity-based emotions. The more members, real or perceived affiliates, of one party to a conflict are arbitrarily detained or subjected to inhuman and degrading treatments in detention, the higher the collective hostility and aversion to any path for peaceful co-existence.

In NIACs, at the end of hostilities, IHL encourages authorities “to grant the broadest possible amnesty to persons who have participated in the armed conflict, or those deprived of their liberty for reasons related to the armed conflict, whether they are interned or detained”.⁷⁰ This is to promote “gestures of reconciliation which can contribute to re-establishing normal relations in the life of a nation which has been divided”.⁷¹ The objective is to create conditions for compromise and peace. Indeed, in one of its resolutions on Syria, the UN Security Council has recognized that the early release of arbitrarily detained persons is a critical trust-building measure to advance a peace process.⁷²

Unfortunately, the Pretoria Peace Agreement does not talk about release of persons detained by both the government and TPLF. Yet, one of the objectives of the Agreement is to “ensure a lasting settlement of the conflict”⁷³, and this allows the parties to consider various measures including the release of detainees as part of their confidence-building

⁷⁰ See, Article 6 (5) AP II.

⁷¹ Yves *et.al* (n 43), para 4618.

⁷² It called on all states to use their influence with the government of Syria and the Syrian opposition to advance the peace process, confidence building measures, including the early release of any arbitrarily detained persons, particularly women and children, and implementation of the cessation of hostilities; see UN Security Council Resolution, S/RES/2268 (2016), Adopted by the Security Council at its 7634th meeting, on 26 February 2016.

⁷³ See, Art 1 (5) of Pretoria Peace Agreement.

measures.⁷⁴ In fact, two weeks before the conclusion of the peace agreement, TPLF had announced that it released “thousands of Ethiopian and Eritrean troops” that it had captured during the war.⁷⁵ As far as civilian detainees and protection of detainees against mistreatment are concerned, in view of the parties’ agreement to “uphold applicable international humanitarian law instruments to which Ethiopia is a party” and that Ethiopia is a party to all the Four Geneva Conventions and the Additional Protocols, both the TPLF and the government will remain bound by, specifically, Common Article 3 and the provisions of AP II. In other words, both parties remain under obligation to protect detainees under their control from outrages against their human dignity. As part of the peace process, the government may also invoke Article 6 (5) of AP II and grant the broadest possible amnesty to the detainees and

⁷⁴ Art 7 of the Agreement lists an apparently exhaustive list of confidence-building measures that should be taken by both the TPLF and the government. This notwithstanding, there is still nothing preventing them from releasing individuals that they have detained, civilians or combatants.

⁷⁵ ‘TPLF claims to free ‘thousands’ of captured Ethiopian, Eritrean troops’, *The East African*, 22 October 2022 <<https://www.theeastafrican.co.ke/tea/rest-of-africa/tplf-claims-it-freed-thousands-of-captured-troops-3994078> > accessed on 3 November 2022. In May 2022, TPLF had similarly said that it released 4,208 ‘prisoners of war’ in amnesty. See, ‘Ethiopia’s Tigray forces announce release of thousands of POWs’, *Al Jazeera*, 20 May 2022. <<https://www.aljazeera.com/news/2022/5/20/ethiopia-tigray-forces-announce-release-of-4000-prisoners>> accessed on 3 November 2022. Note that referring the detainees as Prisoners of War (PoWs) is technically and legally wrong. To be entitled to a prisoner-of-war status in IHL, captured persons must be lawful combatants entitled to combatant’s privilege—which offers them the right to fight and the immunity from punishment for crimes constituting lawful acts of war such as killing enemy combatants. Such status is only given to combatants in IACs. Art 4 of the GC III provides a definitive list of those who are entitled to have a POW status. Art 43 (2) of AP I clearly states that combatants which acquire a POW status ‘have the right to participate directly in hostilities. There is no corresponding provision in Common Art 3 to the Four Geneva Conventions or AP II. In other words, combatants in NIAC do not have a POW status, thus, do not enjoy the right to participate in hostilities or immunity from criminal charge for participating in hostilities.

release them. This will have an effect of promoting trust, accelerating reconciliation and ultimately building a durable peace.

5.2. Conduct of Hostilities

The second area where IHL or respect of it would play an instrumental role in facilitating the end of war and promoting peace is conduct of hostilities. Again, the reason partly lies in the direct correlation between emotions and conflicts and peace. Recent studies in the field of social psychology have confirmed that emotions and conflicts are correlated, one causing, aggravating or sustaining the other.⁷⁶ In multi-ethnic/racial and multi-religious societies, as in Ethiopia, emotions play a role both at the start and in the course of conflicts particularly in shaping attitudes and behaviors that will ultimately determine or, at least, influence subsequent peace efforts.

When war is conducted within the strictures of humanity and in accordance with humanized rules of engagement, its effects on civilians and civilian objects as well as incapacitated combatants will be limited. Quite the contrary, if wars are carried out through means and methods that are against the basic principles of humanity enshrined in the laws and customs of war, not only will they have a lasting effect on those who directly participate in the war but also on the vulnerable sections of the society such as women, children, the elderly and other members of the civilian population. In such instances, emotions run deep and the

⁷⁶ See, Cohen and Insko 'War and peace: Possible approaches to reducing intergroup conflict', (2008) 3 *Perspectives on Psychological Science* 87-93, Eran Halperin, Keren Sharvit, and James J. Gross, 'Emotion and Emotion Regulation in Intergroup Conflict: An Appraisal-Based Framework' *Psychology Press* (2010); D. Bar-Tal, E. Halperin, & J. de-Rivera, 'Collective emotions in conflict situations: Societal implications', (2007) 63 *Journal of Social Issues* 441-460; V. Cheung-Blunden, & B. Blunden, 'The emotional construal of war: Anger, fear and other negative emotions', (2008) 4 *Peace and Conflict – Journal of Peace Psychology* 123-150.

social fabrics that serve as a glue for the society would be torn apart, thereby, eventually creating a conducive environment for continued cycle of retaliation and violence.

Wars fought without consideration of the fundamental principles of humanity would also tend to engender inter-communal hostility, rendering almost every member of the society an actor in the conflict. Consequently, where wars involve indiscriminate attacks on civilians and civilian objects, destruction of cultural property, denial of humanitarian access to the civilian population and/or use of mass starvation as a means of warfare, etc., peace becomes an elusive and a complicated project. On the other hand, wars conducted with due compliance with basic moral rules of engagement limit disagreements and animosities to political elites and the overall impact of the war on the society becomes minimal. In other words, the ordinary people will be *relatively* insulated from the full brunt of emotional and physical vices of war. This allows the society to preserve its social fabrics and stand together for peace. In recognition of this, the rules of IHL regulating conduct of hostilities are meant to humanize warfare by maintaining a balance between military necessity and humanity. It is generally accepted that the primary objective of parties during war is “to weaken the military forces of the enemy”.⁷⁷ The rules of conduct of hostilities accordingly seek to ensure that parties do not engage in any action that is not necessary to achieve this objective. Most of these rules have achieved the status of

⁷⁷ “The only legitimate object which States should endeavor to accomplish during war is to weaken the military forces of the enemy”; see, Saint Petersburg Declaration on Renouncing the Use, in Time of War, of Explosive Projectiles Under 400 Grammes Weight, 29 November / 11 December 1868.

customary international law, and nearly all of them are deemed to be applicable to both IACs and NIACs.⁷⁸

The rules of conduct of hostilities have four major pillars: the principle of distinction, the precautionary principle, the principle of proportionality and the prohibition against the use of specific methods and means of warfare. Although none of these rules expressly mentions peace as their specific objective, the full compliance with the same sets the ground for peace.

i) *The Principle of Distinction*

The principle of distinction requires parties to a conflict to distinguish⁷⁹ between civilians⁸⁰ and combatants,⁸¹ between legitimate military objectives and civilian objects⁸² and to desist from engaging in indiscriminate

⁷⁸ Rules 1-86, ICRC Customary Law Study. See, also *Prosecutor v. Blaskic*, ICTY, Appeal Chamber, 29 July 2004, para 110; *Prosecutor v. Gali*, ICTY Trial Chamber, 5 December 2003, para 45 (relating to the principle of distinction).

⁷⁹ Arts 48, 51(2) and 52(2) of AP I; Art 13(2) AP II and Rule 1 of ICRC Customary Law Study.

⁸⁰ Rule 5 of the ICRC Customary Law Study defines civilians as 'persons who are not members of the armed forces and the civilian population comprises all persons who are civilians'.

⁸¹ Combatants are those who are members of the regular armed forces of a State in IAC (see, Arts 43 (1) and 50 (1) AP I) or in NIAC, those who directly participate in hostilities (see, Common Art 3, which refers to 'Persons taking no active part in the hostilities').

⁸² Military objectives are those 'objects which by their nature, location, purpose or use make an effective contribution to military action and whose partial or total destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage'. On the other hand, 'Civilian objects are all objects that are not military objectives' and enjoy protection against attack, 'unless and for such time as they are military objectives'. Rules 7-10, ICRC Customary Law Study. See, also F Kalshoven and L. Zegveld, *Constraints on the Waging of War* (ICRC, 2001) 99; Nils Melzer, *ICRC's Interpretative Guidance on the Notion of Direct Participation in Hostilities Under International Humanitarian Law* (ICRC, 2009), See, also Yoram Dinstein, *The Conduct of Hostilities Under the Law of International Armed Conflict* (Cambridge University Press, 2004) 152.

attacks.⁸³ Indiscriminate attacks include those directed at non-military objectives, or that employ a method or means of combat which cannot be directed at or whose effects cannot be limited to a specific military objective.⁸⁴ In this vein, IHL offers a specific protection to a particular group of individuals, objects and places. Medical, religious, and humanitarian relief personnel as well as civilian journalists are among those persons who enjoy special protection against attacks.⁸⁵ Importantly, in both IACs and NIACs, IHL also forbids attacks against personnel involved in a peace-keeping mission, hence, directly contributing to efforts intended to bring about or maintain a sustainable peace in conflict areas.⁸⁶ Among those objects and places which are given special protection involve objects used for humanitarian relief operations, cultural property, the natural environment, works and installations containing dangerous forces, protected and militarized zones and non-defended localities.⁸⁷

ii) *The precautionary principle*

The precautionary principle complements the principle of distinction and demands that parties to a conflict take all feasible preventive measures to protect the civilian population and civilian objects under their control against the effects of attacks.⁸⁸ It requires that the military targets, the time and method of attacks are carefully chosen and must

⁸³ The International Court of Justice referred to distinction as one of the 'cardinal... intransgressible principles of international customary law' *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, ICJ Rep 226, ICGJ 205 (ICJ 1996), 8th July 1996, para 434.

⁸⁴ Rules 11-12, *ibid*. The ICTY confirmed that the principle of distinction reflects customary international law. See, also Anicée Van Engeland, 'The Distinction between Civilians and Combatants' in *Civilian or Combatant? A Challenge for the 21st Century*, Terrorism and Global Justice Series (Oxford Academic, 2015)

⁸⁵ Rules 25-31, and Rule 34, ICRC Customary Law Study (2009).

⁸⁶ Rule 33, *ibid*.

⁸⁷ Rules 32, 35-42, *ibid*.

⁸⁸ Rules 15, 22, ICRC Customary Law Study (2009).

be designed to minimize risks of collateral damage to civilians and civilian objects. The precautionary principle entails that the commanders in charge of military operations (both attackers and defenders) must take “constant care” to spare civilians or civilian objects from attacks.⁸⁹ Accordingly, each time they decide to carry out a military attack, commanders have to verify that the targets are military objectives.⁹⁰ They must also carefully choose weapons and methods of warfare that inflict the least damage to the civilian population and civilian objects. Where circumstances allow, effective warnings must be given before each operation with a view to offering civilians the opportunity to protect themselves.⁹¹ The precautionary principle further prohibits using civilians as human shields.⁹²

iii) Principle of proportionality

The other cardinal principle governing conduct of hostilities is the test of proportionality. The principle of proportionality is encapsulated in Article 51(5) (b) AP I, which States that a military target cannot be attacked if the expected risk of damage to civilians or civilian property exceeds the military advantage to be obtained from the attack. As such, it requires those in charge of military operations to make a projected assessment of the collateral damage on civilians and civilian objects and compare such damage with the expected military advantage that a particular attack will bring about. Where the expected damage is excessive in relation to the anticipated military advantage, the military commanders should rescind the plan to launch the attack. Obviously, there

⁸⁹ See Article 57 (1) AP I. The reference to ‘constant care’ affirms that there must be a regular and continuous, not just a one-off or intermittent, assessment of the impact of intended military operations on civilians and civilian objects.

⁹⁰ *ibid.*

⁹¹ *ibid.*

⁹² Art 51(8), *ibid.*

is always a risk of miscalculation in such an exercise but parties to a conflict should always act in good faith and endeavor to minimize such risk.⁹³

It should be appreciated that the principles of precaution and distinction basically attempt to draw a line between military objectives and non-military objectives and require parties to a conflict to distinguish the two and spare non-military objectives from attacks. In comparison, the principle of proportionality goes beyond protecting unlawful targets (non-military objectives). It particularly tries to limit the effects of conduct of hostilities when they are directed against lawful targets. Accordingly, if the target attacked is not a lawful target, e.g., if it is a civilian or a civilian object, proportionality does not have to be assessed and, as indicated earlier, any intentional direct attack against a non-military objective, is a violation of IHL and likely to be a war crime.

iv) The prohibition of specific methods and means of warfare

A major part of the law of the conduct of hostilities is the regulation of the choice of means and methods of warfare. IHL outlaws some methods or means of warfare both in IACs and NIACs and thus, the discretion of parties to employ a particular means or method is not unbridled. Notably, it prohibits ordering or threatening that no quarter will be given,⁹⁴ the use of starvation of the civilian population as a method of warfare⁹⁵, uses of war against protected persons and objects⁹⁶, improper

⁹³ William J. Fenrick, 'Targeting and proportionality during the NATO bombing campaign against Yugoslavia' (2001) 12 *European Journal of International Law* 501.

⁹⁴ Rule 46, ICRC Customary Law Study, Art 40 AP I, Art 4 AP II.

⁹⁵ Rule 53, ICRC Customary Law Study, Art 54(1) of AP I, Art 14 AP II; also see Rule 54 of the Study and Article 4 (2) AP II.

⁹⁶ Rule 57, ICRC Customary Law Study (2009).

use of the white flag of truce or distinctive emblems of the Geneva Conventions or flags, military emblems, insignia and uniforms of the adversary and recourse to perfidy.⁹⁷ Furthermore, IHL prohibits the use of weapons that are of a nature to cause superfluous injury, unnecessary suffering or those which are by nature indiscriminate.⁹⁸

Two more related issues pertinent to the Ethiopian conflict are also prohibition of pillage and access to humanitarian aid both of which have been prominent and controversial. When it comes to pillage and humanitarian access, IHL has in fact relatively clearer provisions. It is generally accepted in international customary law that pillage is prohibited both in NIACs and IACs⁹⁹ and parties to a 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”.¹⁰⁰ The Fourth Geneva Convention specifically requires that States must “allow the free passage of all consignments of medical and hospital stores” intended only for civilians and “the free passage of all consignments of essential foodstuffs, clothing and tonics intended for children under fifteen, expectant mothers and maternity cases”.¹⁰¹ Similarly, Additional Protocol I expands this obligation to cover “rapid and unimpeded passage of all relief consignments, equipment and personnel”.¹⁰² Parties shall also not “divert relief consignments from the purpose for which they are intended or delay their forwarding, except in cases of

⁹⁷ Rules 58-65, *ibid*.

⁹⁸ Rules 70-71, *ibid*. See, the details of weapons the use of which is banned by IHL in Rules 72-86, *ibid*.

⁹⁹ Rule 52, ICRC Customary Law Study (2009), Article 4(2)(g) AP II.

¹⁰⁰ Rules 55-56, ICRC Customary Law Study.

¹⁰¹ Fourth Geneva Convention, Art 23

¹⁰² Art 70(2), AP I.

urgent necessity, in the interest of the civilian population concerned”.¹⁰³

As far as the contribution of all this to peace is concerned, the importance of the rules of IHL governing conduct of hostilities cannot be overemphasized. Indeed, one can see this in the Pretoria Peace Agreement and the Nairobi Declaration signed by the TPLF and the Ethiopian government. Both agreements prescribe that parties shall ensure the protection of civilian institutions, the civilian population, civilians, including vulnerable groups, from attacks, in accordance with the applicable rules of IHL and international human rights law.¹⁰⁴ The Pretoria Peace Agreement specifically requires Parties to condemn any act of sexual and gender-based violence, violence against children, girls, women and the elderly, including recruitment and conscription of child soldiers.¹⁰⁵ Additionally, the two agreements provide for unhindered humanitarian access to all persons in need of assistance and strictly limit the use of humanitarian aid exclusively for humanitarian purposes.¹⁰⁶ Parties are particularly directed to cooperate and facilitate the delivery of humanitarian reliefs, including by ensuring the unimpeded movement of humanitarian aid workers and organizations.¹⁰⁷ It is therefore evident from the declared commitment of both parties that

¹⁰³ Rule 55 ICRC Customary Law Study (2009), Art 23 (a) GC IV and Art 70 of the 1977 AP I.

¹⁰⁴ Art 2 (d), Pretoria Peace Agreement and Art 3 (3.1) (a), the Nairobi Declaration.

¹⁰⁵ Art 4 (2), Pretoria Peace Agreement. Note that IHL protects these vulnerable groups based on their specific needs. See, Rules 134-138, ICRC Customary Law Study (2009); see, also Art 78 of AP I, Art 77(2) and Art 4(3)(c) of AP II.

¹⁰⁶ Art 5(4) of the Pretoria Peace Agreement and Art 4 (a) of the Nairobi Declaration.

¹⁰⁷ Art 5 (1), *ibid*, Art 4 (f), *ibid*.

in the absence of unhindered humanitarian access and adequate protection of civilians and civilian objects from attacks, the journey towards peace will not go far.

5.3. Transitional Justice

The other area where IHL contributes to fostering peace in (post) conflict situations is in relation to transitional justice. It is generally accepted that IHL has a role in the achievement of the four pillars of transitional justice, namely, truth, justice, reparations, and institutional reform and ultimately, to bring about reconciliation.

Several rules of IHL have pertinence to facilitating the process of transitional justice by directing parties to take some measures that support the search for the truth. For instance, IHL requires parties to search for, collect, evacuate and make identification and keep records of captured, missing and dead persons.¹⁰⁸ It also contains rules protecting the dead against despoliation and mutilations, requiring proper disposal of the dead and whenever possible, the return of remains and personal effects of the dead.¹⁰⁹ These measures are very important to families in their search for the truth and their effort to close the chapter of grief that would naturally come from not knowing the fate of their beloved ones.

IHL also contributes to achieving justice, particularly, in connection with the prosecution of war crimes, most of which are identified as grave breaches in the Geneva Conventions and their Additional Protocols.¹¹⁰ Those acts recognized in IHL as grave breaches involve willful killing, torture or inhuman treatment, willfully causing great suffering

¹⁰⁸ Arts 15, 16, 17 GC I; Art 18, GC II; Art 122 GC III; Art 16 and 26 GC IV; Art 33 AP I; Art 8, AP II; Rules 112, ICRC Customary Law Study (2009).

¹⁰⁹ See, Rules 113-117, *ibid*.

¹¹⁰ Art 50 GC I; Art 51 GC II; Art 130 GC III; Art 147, GC IV.

or serious injury to body or health, compelling protected persons to serve in the forces of the hostile power, or willfully depriving protected persons of the rights of fair and regular trial, taking of hostages, making civilians and civilian objects the object of attack, perfidious use of the distinctive emblem of the red cross and red crescent, etc.¹¹¹ These acts also constitute war crimes in international criminal law the prosecution of which serves the interests of justice for victims and their families. It is partly for this reason that IHL obliges States to enact legislation to repress such acts by prosecuting and punishing the perpetrators or extraditing the latter to other States (*aut dedere aut judicare*).¹¹²

It is important to underscore that in a transitional justice setting, prosecution and sanctioning every crime and perpetrator may not be practically feasible or even desirable under the circumstances. Apart from the potential practical challenges such as lack of evidence and resources limitations to investigate, prosecute and punish all those who were involved in the commission of crimes, a narrow focus on accountability may also be an obstacle for peace and security. The fear of conviction and punishment among those who took part in active hostilities may likely have the undesired effect of producing entrenchment and obstinacy in peace negotiations. As a result, transitional justice often contains other mechanisms such as amnesty to address some questions of accountability. Importantly, as indicated earlier, in NIACs, AP II acknowledges this possibility by requiring States to endeavor to offer “the broadest possible amnesty to the detainees” arrested in relation to the conflict and this is considered to reflect a rule of customary international law.¹¹³ Amnesties are particularly useful to build confidence between warring factions, encouraging combatants to surrender arms,

¹¹¹ *Ibid.* See, also Art 83 AP I.

¹¹² See, Art 49 GC I; Art 50 GC II; Art 129 GC III; Art 146 GC IV; Article 86 (1) AP I.

¹¹³ Art 6(5) of AP II; Rule 159, ICRC Customary Law Study.

and providing incentives for offenders to participate in truth and reconciliation efforts.¹¹⁴ It is worthwhile to note however that the rule allowing States to grant amnesties is interpreted as excluding “persons suspected of, accused of or sentenced for war crimes”.¹¹⁵ Consequently, despite the fact that in reality some peace accords sought to offer a blanket amnesty to individuals involved in hostilities and commission of crimes¹¹⁶, this has often been objected to as incompatible with States’ obligation to prosecute international crimes.¹¹⁷

As regards the third pillar: reparation, it is generally accepted as a customary rule of international law that a State responsible for violations of IHL is required to make full reparation for the loss or injury caused.¹¹⁸ Unfortunately, none of the provisions of the Geneva Conventions and their Additional Protocols *explicitly* require parties to award reparations for victims of armed conflicts. However, the duty to make reparation for violations of international humanitarian law is expressly referred to in the Second Protocol to the Hague Convention for the Protection of Cultural Property.¹¹⁹ Furthermore, the Geneva Conventions declare that “No High Contracting Party shall be allowed to

¹¹⁴ See, Guideline 4, The Belfast Guidelines on Amnesty and Accountability (2013).

¹¹⁵ ICRC Customary Law Study (2009) 612-613.

¹¹⁶ See for example, Art IX of The Lomé Peace Agreement between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone (18 May 1999).

¹¹⁷ The UN for instance wrote a disclaimer to the Lomé Peace Agreement stating that ‘The United Nations holds the understanding that the amnesty and pardon in Article IX of the agreement shall not apply to international crimes of genocide, crimes against humanity, war crimes and other serious violations of international humanitarian law’; *ibid.*

¹¹⁸ See, Rule 150 ICRC Customary Law Study (2009).

¹¹⁹ Art 38 of the Protocol declares that ‘No provision in this Protocol relating to individual criminal responsibility shall affect the responsibility of States under international law, including the duty to provide reparation’. Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict, The Hague, 26 March 1999. (Note that Ethiopia is not a State Party to this Protocol).

absolve itself or any other High Contracting Party of any liability incurred by itself or by another High Contracting Party in respect of breaches".¹²⁰ It is held that the duty to make reparations is implicit in this rule.¹²¹ Consequently, victims of war should be given reparations in the form of restitution, compensation, or/and just satisfaction.¹²²

The last pillar of transitional justice, that is, institutional reform, basically addresses the transformation of public institutions that failed to prevent violations of human rights and perpetuated impunity. In the absence of institutional reform, peace agreements have little chance of success. In this regard, IHL plays its own part in institutional reform efforts in at least two ways. First, it requires States to disseminate knowledge of IHL both in peacetime and armed conflict situations to civilians as well as combatants.¹²³ States are under obligation to domesticate and translate rules of IHL into local languages and ensure through teaching and training that their military, judicial and executive organs possess adequate knowledge of IHL. Parties to a conflict shall also provide instruction in IHL to their armed forces.¹²⁴ Additional Protocol I specifically imposes an obligation on civilian authorities who, in time of armed conflict, assume responsibilities to oversee the implementation of IHL to have full acquaintance thereof.¹²⁵ In addition, commanders have the duty to ensure that members of the armed forces under their command know and understand their obligations

¹²⁰ Art 51 GC I; Art 52 GC II; Art 131 GC III; Art 148, GC IV.

¹²¹ See, ICRC Customary Law Study (2009) 534.

¹²² *Ibid*, 538-541

¹²³ See, Art 47 GC I; Art 48 GC II; Art 127 GC III; Art 144 GC IV.

¹²⁴ Rule 142 ICRC Customary Law Study (2009).

¹²⁵ Art 83 of AP I.

under IHL.¹²⁶ These rules aim at strengthening the institutional infrastructure of States to prevent violations of IHL norms and when they occur, rectify them using domestic capacity.

Secondly, IHL's contribution to institutional reform relates to the investigation, prosecution and punishment of war crimes. As noted above, IHL requires States to prosecute or extradite individuals who have committed grave breaches and this promotes the cause of justice. The prosecution and punishment of perpetrators, notably, top leaders, of war crimes and crimes against humanity serves as a deterrent and contribute to the prevention of future crimes. More crucially, it conveys the clear message that no one is above the law. In other words, it promotes the rule of law—the critical software for functioning institutions. Meaningful peace cannot be achieved even in the most well-organized community without the rule of law—let alone in a conflict-ridden society. Rule of law prevails only where transgressors of the law are held accountable. As such, peace and justice are not mutually exclusive but reciprocally reinforcing. When justice is ignored, the risk of resurgence of violence remains high and when justice is properly served, the likelihood of recurrence of conflict diminishes.

In line with the aforementioned rules of IHL, the drafters of the Ethiopian peace agreements were mindful of the need to incorporate the important building blocks of transitional justice. The Pretoria Peace Agreement stipulates “[a]ccountability and justice in accordance with the Constitution of [Federal Democratic Republic of Ethiopia] (FDRE)¹²⁷ and the AU Transitional Justice Policy Framework” as one of the principles underpinning the permanent cessation of hostilities.

¹²⁶ Art 87 (2) AP I.

¹²⁷ The Constitution of the Federal Democratic Republic of Ethiopia (1995).

Article 10 (3) of the Pretoria Peace Agreement further elucidates this by stating that the Ethiopian government “shall implement a comprehensive national transitional justice policy aimed at accountability, ascertaining the truth, redress for victims, reconciliation, and healing...”. The Agreement instructs that “the transitional justice policy shall be developed with inputs from all stakeholders, and civil society groups through public consultations and formal national policy-making processes”.¹²⁸

It is noteworthy that the FDRE Constitution guarantees access to justice to everyone at all times.¹²⁹ Also, the AU Transitional Justice Policy Framework frequently refers to international humanitarian law¹³⁰ and covers comprehensively all the major pillars of transitional justice. It further enshrines “African traditional justice mechanisms” which include acknowledgement of responsibility and the suffering of victims; showing remorse; asking for forgiveness; paying compensation or making reparation; and reconciliation.¹³¹ The Framework further gives particular attention to the most vulnerable who are affected by conflicts; women and girls, the elderly, children, persons with disabilities, internally displaced persons and refugees.¹³² In addition, it prescribes that amnesties should “create institutional, political and security conditions

¹²⁸ Art 10 (3), Pretoria Agreement.

¹²⁹ Art 37, the FDRE Constitution (1995).

¹³⁰ See, Principles 10 (iii) (objectives), 21 (definition of victims), 22 (definition of rule of law), 89 (amnesties), 112 (statelessness and displacement), AU Transitional Justice Policy (2019).

¹³¹ Principle 18, *ibid.*

¹³² Principle 21-24, *ibid.*

to ensure observance of the rule of law and human rights and humanitarian law”.¹³³ The Framework also proscribes blanket amnesties preventing investigation into serious crimes.¹³⁴ Besides, it requires that every amnesty initiative should be formulated with full participation and consent of victims, with adequate regard to “right of victims to remedy, particularly in the form of getting the truth and reparations”.¹³⁵

Finally, in both the Pretoria Agreement and the Nairobi Declaration, the parties also commendably undertook to “cooperate among themselves and with the relevant humanitarian agencies to assist in reuniting families”.¹³⁶ It should be recalled that in both NIACs and IACs, IHL imposes on the parties to a conflict the obligation to facilitate the reunion of families dispersed as a result of the conflict.¹³⁷

Conclusions

As a law of war, at first thought, there appears to exist no direct link or relationship between IHL and peace. However, the respect for and compliance with rules of IHL have a positive correlation with peace. The more parties to a conflict abide by and strictly adhere to the laws and customs of war, the higher the chance that peace initiatives will succeed. The reason is self-evident. IHL humanizes and minimizes the grim effects of war by prescribing rules that set a limit to conduct of hostilities and by providing normative protection to the most vulnerable; those who are *hors de combat*, women, children, the elderly and those civilians in the hands of the adversary as well as civilian objects.

¹³³ Principle 89, *ibid.*

¹³⁴ Principle 91, *ibid.*

¹³⁵ Principle 90, *ibid.*

¹³⁶ Art 5 (2) of the Pretoria Peace Agreement; Art 4 (2) AP II.

¹³⁷ See Art 26, GC IV; Art 74 AP I, and Art 4 (3) (b) AP II.

It also prohibits some means or methods of war that have the potential to inflict indiscriminate and disproportionate suffering on civilians and/or damage to civilian objectives. This, in turn, preserves the conditions for negotiations, reconciliations and peace.

Wars fought within the limits of humanity help preserve the economic and social conditions that make peace achievable. As has been discussed in this article, the peace Agreement between the Ethiopian government and TPLF, like most other similar peace accords, has also demonstrated the relevance of IHL in efforts to forge a lasting peace in conflict-affected societies, especially in situations of NIACs. In the Agreement, the parties have committed themselves to uphold the rules of IHL and ensure, *inter alia*, the protection of civilians from attacks, unhindered humanitarian access to those in need and cooperate to ensure accountability for serious violations of IHL and human rights. They have affirmed the importance of adhering to the laws and customs of war to keep the prospect of military engagement within the limits of humanity. More importantly, it will increase the success of the current agreement as well as make things easy to negotiate and implement any succeeding or, should the current not hold, new peace initiatives. On the contrary, a willful disregard of rules of IHL would have the opposite effect, making the prospect of negotiations and compromise more difficult and, thus, peace harder to achieve.
