

Implementing International Humanitarian Law and the Responsibility to Protect in Non-International Armed Conflicts (NIACs) – A Delicate Balance: The Case of the Tigray Crisis in Ethiopia

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Abstract

This research examines the link between International Humanitarian Law (IHL) and the principle of the Responsibility to Protect. It looks at the interplay between the two in which it examines the ability of the Ethiopian government to respect and implement IHL and execute its responsibility to protect its citizens in the Tigray region where since November 2020 the government and a militarily powerful regional force namely the Tigray People's Liberation Front (TPLF) have been engaging in a non-international armed conflict. The research further analyses the intervention of the international community in Tigray in the wake of massive IHL violations especially by the Ethiopian government forces and their allies as well as by the TPLF rebel groups. The research is a desk research which applies the qualitative research method and uses the crisis in Tigray as a case study. The research findings indicate a strong link between IHL and the responsibility to protect whereby violation of one during armed conflict amounts to the violation of the other while respect of one enhances the respect of the other and consequently the protection of civilians and dignity of human beings. A critical analysis highlights that the Ethiopian government has violated IHL and absconded its responsibility to protect its citizens in Tigray. The TPLF also violated IHL and posed a great threat and challenge to the Ethiopian government's ability and willingness to protect

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its citizens, although the media focuses more on the Ethiopian government violations than on the rebels'. The research concludes that the situation in Tigray characterizes contemporary internal armed conflicts whereby the State has ceased to possess monopoly on the legitimate use of violence within its borders and is thus challenged by armed rebel groups that possess equal if not better military capability, coupled with an international community that is many a times reluctant to intervene timely and decisively.

Introduction

International Humanitarian Law (IHL) is a branch of international law that seeks to limit the brutality of armed conflicts on people and objects (Sassòli, Bouvier, & Quintin, (2011:4). States are the key actors involved in the creation of IHL. The duty to implement IHL also lies first and foremost with States. States also have a responsibility to protect populations in their jurisdiction from genocide, war crimes, ethnic cleansing and crimes against humanity and also to provide both State and human security within their jurisdiction. As such, they are the principle implementers of the principle of “Responsibility to Protect” (RtoP/ R2P). In order to guard their sovereignty, States are increasingly called upon to protect their population. Francis Deng viewed sovereignty as responsibility (Deng, 1995). Therefore, the R2P principle depicts a shift of conception of sovereignty from sovereignty as control to sovereignty as responsibility in both internal functions and external responsibilities of States (Peltonen, 2011:60).

However, contemporary conflicts involving armed rebel groups fighting against their governments challenge State’s capability and willingness to execute their duties. Today, belligerents are more and more willing to use humanitarian assistance, life-saving assistance and even civilians themselves as weapons in their political struggles (Deng, 2010; Deng, 1995). This threatens State sovereignty and poses a major challenge to States’ implementation of IHL and their ability and willingness to fulfill their responsibility to protect their populations since the governments begin to perceive their own citizens as enemies undeserving of protection. This has characterized many States in Africa in the post-Cold War era. Ben Arrous and Feldman (2014:60) observe that the end of the Cold-War marked an end

of the support that African States used to get from great powers from the East and West. This consequently left States vulnerable to rebel groups within their territories whose military capability challenges State's monopoly of violence and power. This in turn poses a great challenge to the survival of the States. Faced with these threats, States carry out military and counter insurgency operations which further complicate the dynamics of the conflicts and cause massive atrocities on civilians.

This is the case in the Tigray crisis in Ethiopia, a non-international armed conflict (NIAC) between the Government of Ethiopia and the Tigray Peoples Liberation Front (TPLF) which began in November 2020 when Abiy Ahmed the Prime Minister of Ethiopia ordered a military operation against the TPLF in Tigray in response to attacks on Ethiopian military bases and federal forces by the TPLF (HRW, 2020).

The objectives of this study are: to establish the link between IHL and the responsibility to protect in contemporary NIACs; to find out the violations of IHL by the Ethiopian government and the Tigray People's Liberation Front (TPLF) in the Tigray crisis; to establish the extent to which the TPLF challenges and threatens the Ethiopian government's ability and willingness to implement IHL and to protect its citizens especially in Tigray; to find out the response of the international community to the conflict in Tigray crisis with regard to IHL and RtoP.

The study is based on the just war theory particularly *jus in bello* which is directly related to IHL. It is further guided by the Common Article 3 of the Geneva Conventions as well as the Protocol II Additional to the Geneva Conventions of 12 August 1949 which are the key instruments that regulate the conduct of non-International Armed Conflicts (Protocol II). The paper first presents the just war theory and then discusses IHL as the core of the *jus in bello* component of the just war theory. It also discusses the IHL of non-international armed conflict and further presents the Responsibility to Protect (RtoP) principle linking it to IHL. This is then followed by a discussion of the Tigray crisis as a good case that demonstrates the delicate balance that confronts States in their implementation of IHL and fulfillment

of the R2P when confronted by formidable armed groups within their territories.

The Just war Theory

The just war theory, also known as the just war tradition is as old as the existence of humanity. Although the term “just war” is used frequently in the modern period, its application can be traced thousands of years ago (Neste, 2006:1). Even before the advent of the Christian era (CE), political philosophers such as Cicero wrote about just war. Cicero argued that there are two ways of contesting a decision: one by discussion and the other by force (Harrer, 1918:26). He attributed discussion to man and force to beasts and thus argued that man should recourse to force only when it is impossible to use discussion. He further gave two main reasons for waging war: punishment of wrong and self-defense and argued that the war has to be declared by responsible authorities (Harrer, 1918: 26). He also stated that war should be fought by the relevant forces and the amount of force applied ought to be proportional to the reason for which the war is fought. For instance, a small wrong doing should not be punished with excessive force. Cicero thus in his writing focused on the two main categories of the just war theory: *jus ad bellum* which seeks to offer conditions under which war is justified and *jus in bello*, referring to how war ought to be conducted.

During the Christian era, just war was used to justify religious wars and famous religious scholars such as St. Augustine of Hippo, St. Thomas Aquinas and Ibn Khaldun also wrote about the just war theory and sought to establish the reasons why war should be waged. Although Cicero argued that resort to conflict was the way for beasts and not humans, there has been a tendency of human beings to resort to war to solve most of their disputes. As such, war has been commonplace throughout history (Moir, 2002). Due to the realization of the fact that war is inevitable in human interactions, efforts have been made to regulate the conduct of war (*jus in bello*) in order to minimize its brutality as much as possible. This is the main preoccupation of International Humanitarian Law.

The IHL Principles

The principles of IHL are the key instruments that enhance its implementation and effectiveness. These principles must be observed during international armed conflicts as well as non-international armed conflict. According to the International Criminal Justice, (ICJ), the IHL principles constitute customary international law since they are fundamental to the respect of the human person and elementary considerations of humanity (ICJ Reports, 2004; ICJ Reports 1996). These principles are discussed below.

The principle of distinction between civilians and combatants.

This principle stipulates that civilians ought to be separated from combatants (Sassòli, Bouvier, & Quintin, 2011: 74). The principle aims at distinguishing civilians from combatants so that civilians can be protected. It can be argued to be the backbone of IHL since without distinction limitation in time of war would be a challenge. This principle of distinction is clearly spelled out in Article 48 of Additional protocol I “*In order to ensure respect for and protection of the civilian population and civilian objects, the parties to the conflict shall at all times distinguish between the civilian population and the combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives*”. On the same note, the principle prohibits the use of any weapon which is incapable of distinguishing civilians and civilian objects and military and military objectives.

The prohibition to attack those hors de combat,

The prohibition to attack any person *hors de combat* (for example those who are sick, wounded and prisoners of war) is a fundamental rule under IHL. For example, while a soldier could be targeted lawfully under normal circumstances, if he/she surrenders or is wounded and no longer poses a threat, then it is prohibited to attack him/her (Sassòli, Bouvier, & Quintin, 2011). Additionally, soldiers may be entitled to extensive protections if they meet the criteria of being Prisoners of War (POWs).

Prohibition of infliction of unnecessary suffering

While IHL does permit violence, it prohibits the infliction of unnecessary suffering and superfluous injury (Additional Protocol I Article 35). While the meaning of such terms is unclear and the protection may as such be limited, even fighters who may be lawfully attacked, are provided protection by this prohibition. One rule that has been established based on this principle is the prohibition on the use of blinding laser weapons.

The Principle of Military Necessity

Military necessity permits armed forces to engage in conduct that will result in destruction and harm being inflicted. The principle of military necessity refers to the concept of legally using only that kind and degree of force which is required to overpower the enemy (Vincze, 2017:19). The concept of military necessity acknowledges that under the laws of war, winning the war or battle is a legitimate consideration. However, the concept of military necessity does not give the armed forces the freedom to ignore humanitarian considerations altogether and do what they want (Forest, 2007). It must be interpreted in the context of specific prohibitions and in accordance with the other principles of IHL. The principle is anchored within the rules of IHL. For instance, Article 52 of Addition Protocol I lists those objects that can be subject to lawful attacks. The notion cannot be applied to override specific protections, or create exceptions to rules where the text itself does not provide for one.

The Principle of Proportionality

The principle of proportionality limits and protects potential harm to civilians by demanding that the least amount of harm is caused to civilians, and when harm to civilians must occur it needs be proportional to the military advantage (Forest, 2007). The article where proportionality is most prevalent is in Article 51(5) (b) of API concerning the conduct of hostilities which prohibits attacks when the civilian harm would be excessive in relation to the military advantage sought. Closely linked to the principle of proportionality is the rule of precaution. This calls for those engaged in conduct of hostilities to desist from causing harm or to seek to minimize arms on civilians. All the principles of IHL are interrelated and they apply together to enhance IHL's protection of human dignity in times of war.

International Humanitarian Law of Non-international Armed Conflict

The initial development of IHL was influenced by the need to regulate international armed conflict which was commonly known as war and thus regulation of internal armed conflicts which were commonly known as civil wars was left to domestic jurisdiction (Sassòli, Bouvier, & Quintin, 2011: 231). In the post-colonial era, legal regulation of internal armed conflict has continued to grow in importance. This is due to the realization that since 1945, majority of armed conflicts have increasingly been internal rather than international (Moir, 2002:1). Indeed, former Secretary General to the United Nations, the late Kofi Annan observed that wars between sovereign States appeared to be a phenomenon in distinct decline, while those within states were on the rise, especially in Africa (Moir, 2002:1). There are two key legal instruments that regulate the conduct of non-international armed conflicts (NIACs): Common Article 3 of the Geneva Conventions and Additional Protocol II.

Common Article Three to the 1949 Geneva Conventions

This was the first legal regulation of internal armed conflict to be included in an international instrument. It is common to all the four Geneva Conventions. Common Article 3 provides that in the case of armed conflict not of an international character, occurring in the territory of one of the High Contracting Parties, each Party to the Conflict shall be bound to apply as a minimum the following provisions:

1. Persons not taking active part in hostilities including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention or any other cause shall in all circumstances be treated humanely without any adverse distinctions founded on race, color, religion, faith or sex, birth or wealth, or any other similar criteria (Common Article 3). The article thus prohibits: a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment or torture; b) taking of hostages; c) outrages upon personal dignity, in particular humiliating and degrading treatment; d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly

constituted court affording all the juridical guarantees which are recognized as indispensable by civilized peoples.

2. The wounded and the sick shall be collected and cared for. The article provides that an impartial humanitarian body such as the International Committee of the Red Cross to offer its services to the parties to the conflict.

Additional Protocol II to the 1949 Geneva Conventions

During the period between 1949 when the Geneva Conventions were adopted and adoption of Protocol II to the Geneva Conventions, internal conflicts increased both in intensity and lethality (Haye, 2008:43). Most of these were wars of decolonization and self-determination. This called for a series of diplomatic conferences in Geneva. From the conferences, two Protocols were adopted in addition to the Geneva Conventions: Additional Protocol I regulation International Armed Conflict and Additional Protocol II to regulate non-international armed conflicts. Additional Protocol II was to apply in: “*armed conflict which takes place in the territory of High Contracting Parties between its armed forces and dissident armed forces or other organized 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 the Protocol*” (Haye, 2008:44).

This Protocol was an improvement on the Common Article 3. For instance a) it details the fundamental guarantees of protection afforded to the person whose liberty has been restricted, b) it develops further the protection and care of the wounded sick and the shipwrecked spelling out the duty of protection of medical, religious personnel as well as medical units and transports and c) it includes specific provisions dealing with the protection of the civilian population from attacks, the protection of objects indispensable for the survival of the civilian population and cultural objects.

The Principle of Responsibility to Protect (R2P)

The Responsibility to Protect (R2P) is a principle aimed at the protection of the world’s most vulnerable populations from the most atrocious

international crimes: genocide, war crimes, ethnic cleansing and crimes against humanity (Australian Red Cross, 2009). It is important to mention that this is not an IHL principle although the two are closely linked. The principle originated from a report prepared by the International Commission on Intervention and State Sovereignty in 2001. The report aimed at addressing challenging issues regarding gross violations of human rights on the one hand and the principles of non-interference and Sovereignty on the other. It was also motivated by the realization that in some cases, civilians suffer in the hands of the States that are supposed to protect them. The principle continued evolving and in 2005, the United Nations General Assembly (UNGA) widely accepted and adopted it.

The central argument of R2P is that State sovereignty entails responsibility and therefore each State has a responsibility to protect its citizens from mass killings, and other gross violations of their rights (Stahn, 2007:99). Thus each individual State bears the responsibility of protecting its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. However, if a State manifests inability or unwillingness to protect its population then automatically abrogates its sovereignty and the responsibility to protect is assumed by international actors (Stahn, 2007:288). The international community, through the United Nations, has the responsibility to take “timely and decisive” action through the various provisions set out in the UN Charter such as use appropriate diplomatic, humanitarian and other peaceful means, to help to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity (Belamy, 2015:102).

The State is obliged to prevent commission of the crimes covered in the R2P principle: genocide, war crimes, ethnic cleansing and crimes against humanity. Since these crimes are also prohibited under international law, when an international criminal tribunal or court has been given jurisdiction to prosecute individuals for committing genocide, State obligations would also include a duty to cooperate with the tribunal with regard to arrest or transfer of indictees to the court (Amnéus, 2013:19).

The Link between IHL and the Responsibility to Protect (RtoP)

The principle of R2P and IHL are closely linked. To start with, both aim at protecting and according human dignity to human beings. The primary responsibility of both IHL and R2P rests on the State. If a State honors its R2P, it automatically respects IHL. Similarly, a State that upholds IHL fulfills its responsibility to protect its citizens during armed conflict. The main difference between the two is that IHL is much broader in scope compared to R2P. It entails many rules and guidelines for the conduct of armed conflict while R2P is narrower in scope and it can apply both during armed conflict as well as in peacetime.

Secondly, one of the four crimes contained in the R2P principle is war crimes. War crimes are a violation of IHL. In this respect, it can be argued that the R2P principle inherently enhances State's respect of IHL. Thus IHL and R2P are not mutually exclusive but complementary. The obligation to respect IHL is binding for States as well as non-state parties under customary law including NIACs where Common Article 3 must be observed and respected in all circumstances (Amnéus, 2013:19). The R2P obliges States to respect and ensure respect of IHL so as to prevent commission of war crimes and seek out and prosecute those who commit them. States thus have a duty to ensure that civilians, military authorities, members of armed forces and the whole population in general respect all the principles of IHL (Amnéus, 2013:21).

The Tigray Crisis in Ethiopia

Ethiopia has an old and rich history. Its Aksum Empire was one of the oldest known African civilizations and the ruins of the city of Aksum in the Tigray region are a United Nations World Heritage Site (BBC, 2020). It is the only country in Africa that managed to successfully militarily resist and therefore evade the grip of colonialism. Ethiopia is comprised of several ethnic groups but the most politically relevant ethnic groups are the Oromo and Amhara and the Tigray. The Oromo and Amhara form the majority, a combination of both amounting to 50-60% of the population of Ethiopia while the Tigray are a minority, consisting only of 6% of the country's population but have dominated Ethiopia politically and economically since 1991 (Woldemariam,

2018). The Somali ethnic group which forms about 6% has also been agitating for the self determination of the Somali region through the Ogaden National Liberation Front (Tsega, 2018:10).

The Tigray region is Ethiopia's northernmost region bordering Eritrea in the north and Sudan in the West. The region is one of the administrative regions in Ethiopia. The TPLF is the one in charge of administering and governing the Tigray region. In addition, the TPLF ostensibly presides over a large regional paramilitary police force as well as local militia (Human Rights Watch, 2020). This is in line with the Ethiopian constitution which authorizes regional states to oversee police and security in their respective regions. From 1991 until 2018, the TPLF leaders who dominated Ethiopian government's leadership concentrated a lot of development in the Tigray region (Assefa, 2021:33). Thus the region has for the last almost 30 years been economically, politically, and militarily very powerful while other parts of Ethiopia suffered marginalization.

Ylönen (2021:3) points out that since the fall of the communist Derg in 1991, Ethiopia has been dominated by ethnonationalist politics leading to a tension between centralization and devolution of power and the related question of self determination. In addition, Ethiopia's constitutional provision of the right to self determination entrenched ethnic nations at the expense of national unity. The Ethiopian People's Revolutionary Democratic Front (EPRDF), a coalition of parties (formerly rebel groups) based on Ethiopia's largest ethnic communities (the Oromo, Amhara, Tigray and Somali) had been the ruling coalition in Ethiopia since the oust of Mengistu Haile Mariam's military government in 1991 until 2018 when the new Prime Minister Abiy Ahmed dissolved it and formed the Prosperity Party. The EPRDF coalition was however politically, economically and militarily led and dominated by the Tigrean People's Liberation Front (TPLF) (Assefa, 2021:33).

Managing ethnicity was at the centre of Ethiopian politics under the Tigray leadership. Tsega (2018:5) points out that under the TPLF leadership, the EPRDF governed through divide and rule tactics that involved setting the

Oromo and the Amhara against each other. This was because the minority Tigray viewed the Oromo-Amhara solidarity as posing a great threat to the EPRDF, an ethnic coalition whose power resided in the hands of the TPLF. The TPLF consistently securitized the Oromo and Amhara identities presenting them as posing an existential threat to the Tigray identity as the referent object. This securitization process served as a strategic move for the Tigray to achieve ethnic dominance and regime security. The goal of securitization is to authorize authorities to extraordinary measures to deal with the existential threat. In the case of Ethiopia, the securitization of the Oromo and Amhara identities led to the Tigray dominated government resulting to repression of any political dissent and opposition and also to the marginalization of other communities especially the Oromo and Amhara (Tsega 2018:7-8). This in turn created deep resentment of the Tigreans by the Oromo and Amhara who perceive them (the Tigreans) as privileged citizens (Woldemariam, 2018).

During its almost three decades of dominance the TPLF had amassed a heavy cache of heavy artillery and control of nearly 80% of Ethiopia's top ranking military brass and security apparatus (Gabriel's comment on Walsh, 2021). This made the TPLF a formidable force to reckon with.

In 2018, after a series of tensions, incessant protests and political unrest Prime Minister Hailemariam Desalegn a Tigrean resigned and he was replaced by Abiy Ahmed who has a mixed Oromo-Amhara parentage (Burke, 2020). This ended an almost 30 years of Tigrean and TPLF Premiership and dominance in Ethiopian politics. It marked the beginning of a new era that entailed the systematic process of retracting the TPLF senior member's monopolization of political, military and economic power at the centre of the political system.

Within a short period into his Premiership, Abiy Ahmed carried out sweeping reforms. TPLF's top leaders were sacked from key security positions and generals were arrested and charged with graft which reduced Tigrayan dominance of the armed forces, prisoners were freed and those in exile were welcomed back home, while state owned enterprises were

privatized and restrictions on the media were relieved (Burke, 2020). In a move supposedly aimed at enhancing national unity and weakening the entrenched ethnic regionalism, Abiy Ahmed dismantled the ruling coalition EPRDF which had been dominated by the TPLF for almost three decades and replaced it with his own political party known as the *Prosperity Party* which the TPLF refused to join (Khorrami, 2021). Another significant change that Abiy Ahmed enacted was the reconciliation of Ethiopia with Eritrea, which earned him a Nobel Prize but further isolated the TPLF (Burke, 2020).

(Khorrami, 2021) points out that Abiy Ahmed's reforms were meant to weaken the TPLF nationally and in Tigray. He further argues that this is hard to achieve owing to the strong decades long emotional and cultural bonds that exist between the locals in Tigray and the TPLF and the absence of the Prosperity Party in Tigray. After being sidelined by Abiy's reforms, the TPLF leaders retreated to their home region in Tigray. The reforms created tensions between Abiy Ahmed and the TPLF and the tensions kept increasing over time.

Owing to the COVID 19 pandemic and related health risks, the Ethiopian government postponed highly anticipated national elections arguing that it would be impossible for the government electoral body to prepare adequately (Human Rights Watch, 2020). The TPLF defied this extension terming it as an unconstitutional extension of Abiy Ahmed's term and proceeded to conduct their regional elections in September in which the TPLF won 98% of the Vote (Wight 2020). The Tigray elections were annulled by the federal parliament and the governments stopped its budgetary support to the Tigrayan government and Abiy Ahmed began sending troops north (ibid). A process of mutual delegitimation ensued whereby the TPLF considered Abiy's government illegitimate while Abiy in turn considered the Tigray regional government illegitimate.

TPLF's overt defiance angered Abiy Ahmed who labeled the group as a rebel and terrorist group accusing it of instigating violence in the Ethiopia since he took office in 2018 (Wight, 2020). Before the conflict commenced, the

TPLF had engaged in unprecedented armament, in which it armed about 250,000 soldiers and also carried out a series of provocative military parades in Mekelle, the capital city of the Tigray region (ibid.). In addition to the parading of military might, the TPLF also kept interfering with the operations of federal army's Northern Command.

On 3 - 4 November 2020, as tensions between the TPLF and Abiy Ahmed's government escalated, the TPLF attacked and seized an army command centre near Mekelle, the capital of Tigray prompting the Ethiopian government to respond immediately with air strikes and ground attacks (Wight, 2020). The TPLF had also been accused of arresting top military commanders in the Tigray region. The Ethiopian government launched a military operation on 4 November 2020 in Tigray which it termed as a "law enforcement operation" (International Crisis Group, 2021; The Guardian, 2021). The Ethiopian military carried out ground operations and airstrikes that were reportedly aimed at targeting the military assets of the Tigray regional forces in various locations in Tigray (Human Rights Watch, 2020). On the other hand, the TPLF launched missile attacks and ground forces targeting the Ethiopian military as well as Amhara regional forces and militias (ibid).

The conflict pits the Ethiopian government against the TPLF leadership that was deemed illegal by the Abiy Ahmed's government. The Tigrayan leadership rallies under the banner of the Tigray Defence Forces (TDF), an armed resistance group whose leadership is drawn from the Tigrayan leaders who were ousted from the government and commanded by former high ranking Ethiopian National Defence Force Officers (International Crisis Group, 2021). This means that the TPLF presents a formidable force that the Ethiopian government ought to reckon with. The Ethiopian government has also been accused of using foreign military personnel from Eritrea as well as regional forces and militias from Amhara to fight on its side in the conflict. At the end of November 2020, about four weeks into the operation, after the Federal Army's capture of Mekele the capital of the Tigray region and the removal of the Tigray Defence Forces (TDF), Abiy Ahmed the Ethiopian Prime minister declared victory and declared that the operation was complete

(Reuters, 2020). He appointed an interim regional government in Tigray. Nevertheless, fighting continued outside Mekele between the TDF and government forces and its allies and while TPLF leaders escaped. It was feared that the Tigray leadership had withdrawn from Mekele before government's entry into the city and were perhaps planning to engage the Ethiopian government in a protracted guerrilla war (Reuters, 2020). The TPLF has a mastery of guerrilla warfare coupled with advantage provided by the Tigray region's highland topography and foreign borders (Reuters, 2020).

Taking advantage of their mastery of guerrilla warfare seven months later, on 29th June, the TDF rebels launched a rapid offensive and recaptured the Mekelle, declared victory and announced that Mekele was now under complete control of the TDF, the TPLF's armed wing (BBC, 2021). The TPLF spokesperson Gatachew Reda declared that the rebels were ready to render the enemy, whether from the Eritrean side, the Amhara side or Addis Ababa incapable of threatening the security of the Tigrean people any more (ibid). He further vowed that the rebels would destroy the enemy by entering Eritrea and Amhara region whose forces have been supporting the Ethiopian government. True to his word the TPLF rebels have actually been accused of entering neighboring regions of Afar and Amhara where they have attacked civilians, destroyed villages and looted aid supplies among other atrocities (AFP, 2021). With this trend, the Tigray conflict, if not checked could be snowballing into a protracted civil war that is not only restricted to Tigray but also spreads to the rest of Ethiopia and regionally to the Horn of Africa region.

There was jubilation as the Tigreans welcomed back their forces. Following the recapture of Mekele by the rebel forces, Prime Minister Abiy Ahmed unilaterally declared a military ceasefire saying that it was on humanitarian grounds to allow for aid workers to access the people in need and for farmers to make use of the planting season to work in their farms (Quinn, 2021). The rebels dismissed the ceasefire and vowed to continue fighting. The interim government and government forces retreated from Mekele and the TPLF reinstated the regional government that had been elected in

September 2020. The TPLF has however been accused of recruiting child soldiers.

The Tigray conflict has entailed the use of brutal force on civilians and *hors de combat*. Narrating an ordeal about a fiery exchange between civilians and Ethiopian soldiers, in Shire, a town in northern Tigray, elders said that residents had been slaughtered like chicken and their corpses abandoned to be eaten by hyenas (The Guardian, 2020). They also narrated of rampant vandalism and looting that had left all government assets destroyed and looted. Although the Ethiopian government claimed that no civilians were killed by government forces, reports on the ground confirmed otherwise. There has been random killings of civilians, massacres and alleged ethnic cleansing of the Tigray people in the hands of Ethiopian government forces, its allied militia from Amhara as well as Eritrean soldiers (Walsh, 2021). The government also launched airstrikes in some towns which instead of killing rebels would kill civilians. One of the airstrikes on a market in the city of Togoga which the government alleged targeted rebels killed 64 civilians and injured 180 others (Akinwotu, 2021). The TPLF has also launched missiles and rockets on Asmara the capital city of Eritrea and also on Amhara.

The operation has resulted in massive humanitarian consequences (Ylönen, 2021:3). Thousands of people have been killed, over two million internally displaced and tens of thousands of refugees fled to the neighboring Sudan (Global Centre for the Responsibility to Protect, 2021). Besides, people's livelihoods and facilities have been destroyed triggering a devastating famine which is hugely considered a manmade famine caused by Eritrean soldiers who were accused of pervasive looting while the Ethiopian army burned crops demolished health facilities and prevented farmers from ploughing their land (De Waal 2021). Due to the instability and threats from soldiers, the people of Tigray are unable to cultivate in their farms which renders them totally dependent on aid. Beside the huge deaths directly from killings, starvation has been causing massive deaths and residents narrate of remote villages where people are just found dead having perished overnight. Women and children are the most adversely affected. In addition, psychological impacts are also enormous. For instance, "women who were

kidnapped by soldiers and held as sexual slaves, receiving care in hospitals and safe houses are psychologically tormented by their children from whom they were separated, who may be starving without their mother's care" (De Waal 2021).

Sexual violence has also been rampant in the conflict. The parties to the conflict especially Ethiopian and Eritrean soldiers were reportedly carrying out systematic rape of women and girls, even to the extent of raping girls as young as 8 years old (Jaiswal, 2021). Indeed, Mark Locknow, the head of the United Nations for the Coordination of Humanitarian Affairs (UNOCHA) stated that rape was being used as a weapon of war, mainly by uniformed forces but also with accusations made against all warring parties in including the TPLF which targets non Tigreans (Nichols, 2021).

Exacerbating the crisis is also the obstruction and denial of humanitarian access to the numerous civilians that have been severely affected by the crisis. The Ethiopian government has on several occasions denied access to humanitarian organizations. The government also blocked access to Tigray including by road and air (HRW, 2020). The Ethiopian government's shut down of communication infrastructure including electricity, phone and internet has also posed numerous challenges in communication and hindered activities such as tending to those wounded and killed in the conflict. Eritrean troops, militias as well as the TPLF have also been reported to bottleneck humanitarian aid and even looting it. In addition, the Ethiopian National Defence Forces (ENDF) were accused of dismantling satellite equipment in the UNICEF office in Mekele, which violates IHL regarding respect for humanitarian relief (Paravicini, Houreld & Endeshaw, 2021; Akinwotu, 2021)

Caught up in the conflict also are Eritrean refugees in Ethiopia who have not been spared. Grave human rights and humanitarian law violations were alleged to have been committed against Eritrean refugees in Ethiopia by the Federal Government of Ethiopia; government allied militia and Eritrean troops as well as by forces affiliated to the TPLF (UN Human Rights Commission, 2021). The Eritrean refugees suffered attacks, killings, sexual

violence, beatings and even looting of their camps and property and even being cut off from humanitarian assistance (ibid.).

International community's response

From the onset of the conflict, the international community condemned the operation and called for a dialogue between the parties to the conflict. The United Nations, The African Union, the Intergovernmental Authority on Development (IGAD), the European Union, the United States, and other international bodies all denounced the violence in Tigray (Global Centre for the Responsibility to Protect, 2021). Following violations of human rights and International Humanitarian Law and the failure of the Ethiopian government to protect its citizens in Tigray, the European Union suspended budgetary aid amounting to 88 million Euros to Ethiopia (ibid.). The African Union appointed three high level envoys to mediate peace in Tigray between the Ethiopian government and Tigrayan leaders. However, the Prime Minister Abiy Ahmed rejected this offer of assistance terming the military operation in Tigray as a law and order operation and thus an internal Ethiopian matter (AFP, 2021).

The UN has been hesitant to enforce Resolution 2417 on armed conflict and hunger in Ethiopia. The resolution authorizes the UN to impose sanctions on individuals as well as entities that impede humanitarian operations and warns that using starvation as a weapon of war could amount to war crime (De Waal, 2021). The UN and humanitarian partners have also made efforts to assist the people who have been in dire need of humanitarian aid (Annys, et al., 2021:29). This is in spite of the impediments to humanitarian aid that the Ethiopian government has imposed. Nevertheless, the United Nations Security Council was faulted for its inability to demonstrate a unified response and the lack of agreement on a common statement on the Tigray crisis, with, the Western countries on the one hand pitted against Russia and China on the other (Nichols, 2021).

IHL and the Responsibility to Protect (R2P) in the Tigray Crisis: a Critical Analysis

The above section has provided a historical background to the conflict in Tigray, Ethiopia. It has offered the diverse and complex dynamics regarding its causes which makes it very hard to deal with. The section has also discussed about the international response to the conflicts and the challenges that have engulfed it as well as the weaknesses inherent in the responses.

International Humanitarian Law however does not focus on the causes nor the dynamics of the conflict but on the conduct of the conflict itself with the sole emphasis that laws of war must be observed at all times by all parties. The interest of this paper is therefore to highlight the violation of IHL by the various parties to the conflict but most predominantly the Ethiopian federal government and the TPLF. The Tigray crisis can be described as an internal armed conflict/non-international armed conflict (NIAC) between the Federal Government of Ethiopia and the TPLF. Ethiopia is a signatory to both the Geneva Conventions of 1949 and also to the Additional Protocol II of 1977. Indeed it is one of the earliest countries in Africa to sign the above legal documents having ratified and acceded to the Geneva Conventions of 1949 in October 1969 and Additional Protocol II to the Geneva Conventions, 1977 in April 1994 (ICRC database). The NIAC between the Ethiopian government and the TPLF is thus regulated by these IHL instruments, particularly Article 3 common to the four Geneva Conventions and Additional protocol II.

Violation of IHL by the Ethiopian Government in Tigray

The principles of IHL are the ones that enhance the protection and reduction of brutalities in conflict. The Ethiopian government violated all these principles in its military operation in Tigray as analysed below.

Use of unlawful combatants and civilianization of the conflict

IHL demands that under all circumstances, civilians should be protected and no attacks should be directed at them and their objects. Article 8 (2) (b) (i) of the Rome Statute further considers intentional direction of an attack against civilians is a war crime (Dinstein, 2005:129). This kind of protection applies to those civilians who are not directly taking part in hostilities. If civilians take part in direct hostilities, they cease to be considered as civilians and are

therefore not entitled to protection. The Ethiopian government has used the Amhara militia to attack civilians who were not directly involved in hostilities in Tigray. The Amhara militias are unlawful combatants and therefore by using them, the government was in contravention of IHL. The use of Amhara militias has exposed the Amhara region and civilians there to retaliatory attacks by the TPLF.

Indiscriminate attacks and disregard of the principle of distinction

In order to punish and weaken the TPLF, the Ethiopian government forces and their allies: Eritrean forces and Amhara regional forces and militias have indiscriminately attacked villages, towns and civilians in Tigray from which the TPLF draws their membership. They have used weapons such as bombs and airstrikes which are prohibited by IHL since they cannot discriminate between combatants and civilians. Consequently the attacks have caused deaths and displacements of civilians and also destroyed infrastructure causing immense suffering in the Tigray region.

Abuse of the principle of proportionality and precaution in the conduct of hostilities

The principle of proportionality stipulates that the military action taken must be proportionate to the aim that parties to conflict seek to accomplish. Furthermore, the military advantage that a particular operation obtains ought to be greater than the damage caused to civilians. The force with which the government forces attacked civilians in Tigray is a total disregard of the principles of military necessity and proportionality. In addition, precaution must be taken so as to minimize civilian harm. The attacks by Ethiopian government forces and their allies from Amhara forces and militias as well as Eritrean soldiers on towns and villages in Tigray caused massive civilian harm. Little precaution has been taken to minimize harm on civilians. In fact, the civilians themselves were the direct targets leading to immense suffering, death displacement and loss of livelihood.

Other Abuses in contravention of Common Article 3 and Additional protocol II

In addition to the violation of the above principles, Ethiopian government and its allies carried out various actions that violated Common Article 3 and Additional Protocol II and consequently caused serious harm to the people of Tigray. Some of them included blocking of access to aid and on several occasions attacking aid and humanitarian workers thus denying the Tigreans, people access to humanitarian assistance and consequently causing unnecessary suffering. Eritrean soldiers fighting on the side of the Ethiopian government were accused of pervasive looting and pillaging while the Ethiopian army burned crops, demolished health facilities and prevented farmers from ploughing their land denied the people of Tigray their means of livelihood and has indeed led to a widespread manmade famine. They have also been involved in looting humanitarian aid. Furthermore, the Ethiopian forces and their allies have been accused of raping several girls and women, using rape as a weapon of war which is a gross violation of IHL.

Abdication of the Responsibility to Protect (RtoP) by the Ethiopian government

As indicated in this research the principle of R2P and International Humanitarian Law complement each other in protecting and according human beings dignity. The only main difference between the two is that while IHL applies during war, R2P applies all the time and also involves other actions and services that the State should render to its citizens. By directly attacking civilians in Tigray, the Ethiopian government abdicated its responsibility to protect its citizens. Furthermore, destroying the livelihood of the citizens as well facilities and infrastructure would have long term dire human security consequences for the citizens.

Earlier in the conflict on November 22, 2020, prior to a planned government artillery attack against TPLF groups in Mekelle, the capital city of Tigray and the most populated city in the region, the Ethiopian government spokesman warned the residents to “save themselves” (Human Rights Watch, 2020). This was a demonstration of the highest form of Ethiopian government’s disregard of its responsibility to protect the people of Tigray. Thus the Ethiopian government has become the source of direct and structural violence for the citizens it is supposed to protect.

Violations of IHL by the TPLF

It is also important to note the role played by rebel groups in challenging the State's ability to function effectively. The TPLF should also be held accountable for atrocities they commit since they too ought to respect IHL. The TPLF forces have launched attacks on federal government facilities such as the government's Northern Command which actually triggered the conflict. In addition, they have used missiles and ground attacks against a number of locations in the neighboring Amhara region and in Eritrea (Human Rights Watch, 2020). They also launched rockets in Asmara Eritrea hitting the city's airport and also attacked Bahir Dar and Gondar airports in the Amhara region of Ethiopia (ibid). The use of these non discriminatory weapons and also attacks on non military objectives are acts in contravention of IHL. The TPLF has also been accused of recruiting child soldiers which also violates IHL and exposes the children to violent attacks.

In June, when the TPLF recaptured Mekelle in a massive attack, they captured government forces and paraded them in Mekelle as prisoners of war. This is in contravention of Common Article 3 which provides for protection, humane treatment and respect for the dignity of all civilians and captured combatants. The comment by the TPLF spokesperson that they will destroy their enemies is an indication of their unwillingness to protect prisoners of war and civilians. Indeed after they recaptured Mekele in June they started attacking civilians and destroying villages in neighbouring regions of Afar and Amhara and even looting humanitarian supplies further exacerbating the suffering of those in need of aid.

The TPLF has played a major role in destabilizing and threatening the Ethiopian federal government's sovereignty and state survival and in turn contributed to the government's apathy towards its citizens in the Tigray region where the TPLF draws its membership. Faced with the formidable military strength of the TPLF, the Ethiopian government's capability to maintain control of the instruments of power and violence remain uncertain and under threa. It remains very challenging for the Ethiopian federal government to perform its responsibility to protect its citizens and to respect

IHL when confronted with the formidable force of the TPLF that threatens State stability and sabotages the legitimacy of the government. Thus this research argues that the TPLF has played a significant role in bottlenecking the Ethiopian federal government's ability and willingness to implement IHL during counter-insurgency operations and also in performing its responsibility to protect its citizens particularly in Tigray.

The International Community, IHL and RtoP in Tigray

The R2P principle obligates the international community to intervene if a State is unwilling or incapable of protecting its citizens. The Tigray conflict attracted the intervention of the international community which has been quick to condemn the conflict and has called for secession of hostilities. The international community, particularly the African Union also offered to mediate the conflict but the government of Ethiopia turned down the offer terming the military operation as an internal Ethiopian affair. Economic sanctions have also been imposed on the Ethiopian government by international organizations such as the European Union. The international community has also intervened to provide the much needed humanitarian assistance amid the accessibility challenges access and also the insecurity posed not only by the Ethiopian government and its allies but also by the TPLF rebels.

Nevertheless, the international community has been faulted for not doing enough to intervene in the conflict. For instance the UN Security Council has not been in a position to issue a unified position on the conflict owing to differences between two sides of the veto wielding powers. The international community's calls for cession of hostilities and permission of unfettered humanitarian access seem to fall on deaf ears for the Ethiopian government and the TPLF rebels. The international community ought to take more decisive action to avert the immense suffering of civilians.

Conclusion

This paper has explored the link between IHL and RtoP using the Tigray crisis in Ethiopia as a case study. It has applied the just war theory, particularly *jus in bello* which is directly related to IHL. The study has established that there is a close link between IHL and R2P. Violation of RtoP for instance amounts also to violation of IHL especially in situations of armed conflict. The government of Ethiopia has violated both the RtoP and IHL by brutally responding to the TPLF rebels' attacks and by targeting civilians and civilian objects in Tigray. Nevertheless, the TPLF also violates IHL, challenges and pose a great threat to the Ethiopian government's capability and willingness to protect her civilians especially those from Tigray where the rebels draw their membership. This is a characteristic of contemporary internal armed conflicts whereby the State has ceased to possess monopoly of violence and faces great challenges from equally if not more strongly armed rebel groups. Although the international community has intervened in Tigray to protect civilians its response has been wanting and indecisive. The international community can still do more. Since the TPLF recaptured Mekele, their capital city in June, they have been fighting relentlessly and spreading the conflict to neighbouring regions such as Afar and Amhara. This poses a great threat not only to Ethiopia but also to the entire Horn of Africa region as the Tigray crisis could be snowballing into a protracted civil war in Ethiopia. The international community should thus intervene and act timely and decisively to bring the Ethiopian government and the TPLF to the negotiation table as soon as possible in order to avert further suffering of civilians in the country.

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