

## The Challenges in the Application of International Humanitarian Law in the Armed Conflict in Somalia

*Salah Adam Khalifa Idris<sup>1</sup>, Aminuddeen Bin Mustafa<sup>2</sup>,  
Md. Mahbubul Haque<sup>3</sup>*

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### Abstract

The Eastern African region has a long history of being one of the most volatile geopolitical hotspots for internal unrest and international armed conflict. The root causes of the Somalian protracted armed conflict are economic hardship, abject poverty, and clannism. According to the Appeal Chamber of the ICTY in the Tadic case, armed conflict arises when there is prolonged use of armed force between legitimate government institutions and organized rebel factions located within the same group. This research paper aims to contrast the IHL norms and scope applicable in the Somali armed conflict and its implementation in restoring

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<sup>1</sup> Ph.D. Cadidate, Faculty of Law and International Relations, Universiti Sultan Zainal Abidin (UniSZA), Terengganu, Malaysia, Dean and Lecturer of Law, Faculty of Administrative and Human Sciences University of Science and Technology Mogadishu, Somalia, Email: khalifa076@gmail.com (Corresponding Author)

<sup>2</sup> Senior Lecturer, Faculty of Law and International Relations, Universiti Sultan Zainal Abidin (UniSZA), Terengganu, Malaysia, Email: aminuddinm@unisza.edu.my

<sup>3</sup> Senior Lecturer, Faculty of Law and International Relations, Universiti Sultan Zainal Abidin (UniSZA), Terengganu, Malaysia, Email: mahbubh@unisza.edu.my

peace. The study adopted a qualitative method and employed a doctrinal legal approach to critically analyze norms, and doctrines of law in existent legal documents, such as legislations, conventions, law reports, periodicals, and journal articles among others to ensure in-depth comprehension of the related issues about the implementation of IHL in the armed conflict settings. The findings revealed that the negligence of the Somali government hampered the efforts of the international community in providing aid and safety to the hors de combat and vulnerable Somalis affected by the protracted armed conflicts. Some recommendations were offered to the United Nations Security Council and other global actors, to ensure nations uphold IHL norms, in an armed conflict setting, employable to the Somali and other similar armed conflict nations context in ensuring peace and security prevail in Somalia and beyond.

**Keywords:** Somalia, Armed Conflict, International Humanitarian Law, Conflict Resolution, Non-International Armed Conflict

## Introduction

The Eastern African region (Horn of Africa) has a long history of being one of the most volatile geopolitical hotspots for internal unrest and international violence (Assefa, 1999). The establishment of Eritrea and Somalia's protracted absence of a recognized government are the main causes of concern for the regional community of states in Africa. Conflict-affected states frequently aim to strengthen their security while weakening other nations they perceive are eroding their sovereignty. The militarization of the territory is shaped by the perceptions, behavior, and activities of the parties to the numerous wars. Nations will not acknowledge that they have serious internal issues. Victims of discrimination are left with no choice but to fight for their lives. Where a dispute escalates into a military confrontation, the source is usually a neighboring state or other external force. The Somalian territory has seen inter-state conflicts between various socio-ethnic and cultural aggregates within the national territory in a fundamental break from the Cold War era. State breakdown has occurred in nations like Somalia as a result of such disputes, which are marked by genocide, ethnic cleansing, and an immense humanitarian tragedy in the form of internally displaced people (Best, 2009).

Subsequently, following World War II, the international community met in Geneva to create a set of guidelines intended to stop the horrors committed during the conflict from happening again. Such a concept was inspired by the immortal words of General Dwight D. Eisenhower (1953-1961), military leader of the Allied Forces in Europe and prospective president of the United States, following the liberation of the Nazi extermination camps:

"The world must know what happened, and never forget ("The Geneva Conventions," 1949). As such, the Geneva Conventions were created, codifying the established law of war into four separate treaties (Focarelli, 2019). These conventions also included significant advancements, such as providing civilians with the same protection as other victims of war and introducing a minimum set of humanitarian laws to be applied during internal conflicts for the first time in history.

Consequently, according to ICRC, IHL is a set of principles created to mitigate the effects of armed conflict for humanitarian reasons. It protects people who choose not to engage in hostilities while restricting the weapons and tactics of warfare. Once war broke out, the law was subjected uniformly to all parties, regardless of who started the conflict (ICRC, 2004). Therefore, IHL is a subsection of public international law that covers international disputes (including interstate and national liberation struggles), as well as international and non-international armed hostilities. It restricts the power of the disputing parties to use the method or means of warfare of their choosing while protecting persons and property that are involved or may be impacted by the dispute. It also seeks to protect lives and alleviate "soldiers" suffering (UC III).

The country of Somalia, which is situated in Eastern Africa and connects the Red Sea, the Indian Ocean, and the Gulf of Aden, is one of the most strategically located nations on earth. The British and Italian Somaliland, French-controlled Djibouti, and portions of Ethiopia and Kenya were the five states that made up colonial-era Somalia. Post-independence in 1960, such rifts fueled pan-Somali nationalism, resulting in secessionist wars with Ethiopia and tense

ties with Kenya. Although Somalis share a common language and religion, they are split into clans, which are the main means of social organization and identification in Somalia. After the year 1960; Somalia went through more than three decades of military control. The dictatorial administration of Siad Barre was overthrown in 1991 by civil war, and the nation swiftly descended into a protracted state of anarchy. Clan strife that ensued ultimately resulted in the demise of the state (Menkhaus, 2006). Since then, Somalia has suffered from political unrest, violent crime, and a severe famine that had a devastating impact on the nation's economy and human population (Belay, 2019).

Furthermore, a Transnational National Government (TNG) was established in 2000 as a result of numerous peace and reconciliation-related initiatives by regional and international entities. The Transitional Federal Government (TFG), which was established in 2004 as an interim administration and then changed its name to the Somali Federal Government (SFG) in 2012, eventually took the place of the TNG. Although, the federal government and its institutions have made some progress, peace, and stability in Somalia are still unattainable. The SFG still has several obstacles to overcome, including defeating al-Shabaab, ending the vicious cycle of clan-based politics, and creating strong institutions that can effectively provide security and services, with such development, the government is in a precarious position while its economy and security rely on outside assistance (Belay, 2019). The conflict perpetrated and become prevalent concerning its severity, the types of actors participating, as well as its proportions and dynamics. Initially, clan politics and opposition among various

warlords fueled and perpetuated the conflict, which escalated and assumed the form of a conflict among individuals who purport to propagate a diverse version of Islam in more recent times.

The conflict stretched from inland regions to the sea off the coast of Somalia. The maritime security and trade are seriously threatened by the fact that Somalia's coastal waters are currently the most pirate-infested sea. Several attempts have been made to end this extremely protracted conflict. There have been 15 peace procedures under international control thus far. A fresh peace process has been started by the UN in early 2008. The AU also continues to support AMISOM, a modest peacekeeping mission. The signature of an agreement between the TFG and ARS-Djibouti resulted in the selection of a new president and the extension of the TFG Parliament in late January 2009. The Somalia conflict kept stretching the creativity and goodwill of those trying to resolve it as the instability persisted. The socioeconomic and political structure of Somalia has been shaped due to the interaction of various historical, social, and political forces (Dersso, 2009). The study aimed to contrast the IHL norms and scope applicable in the Somali armed conflict and its implementation in restoring peace.

### **Problem Statement**

The war in Somalia has been going on for a long time, as an enduring catastrophe that has affected the country and its citizens severely over several decades. The region's humanitarian problems have gotten worse as a result of this protracted conflict, which has created an atmosphere of pervasive violence and caused great human suffering. Firstly, the armed confrontation has led to a

massive loss of innocent civilians and impeded access to services and economic growth by limiting the flow of people and products. In this development, based on the accounts from the International Committee of the Red Cross (ICRC), a vast number of civilians were murdered in an Al-Shabaab raid on the renowned Sahafi Hotel in Mogadishu, including the journalists covering the tragedy as well as several civilians and government workers.

Relatively, on December 5<sup>th</sup>, 2014, a double attack in Baidoa claimed the lives of over 19 individuals, including three journalists in which Al-Shabaab claimed responsibility for the attacks (Lewis, 1994). The group persisted in carrying out executions, beheadings, and targeted killings, particularly of individuals who were believed to be spies. There were 1,154 civilian deaths reported by the United Nations Assistance Mission in Somalia (UNISOM). According to the most recent report by Action on Armed Violence (AOAV, 2016), a total of 1, 224 fatalities were reported in Somalia as a result of the armed conflict. A massive number of civilians have lost their lives as a result of the ongoing attacks brought on by the armed conflict; 11,791 from 2011 to 2020, 1,584 in 2017, and 3,077 from 2011 to 2015 (AOAV, 2016).

Secondly, Somalia is currently experiencing a serious humanitarian catastrophe as a result of the military conflict, which led to a large-scale influx of displaced individuals, many of whom fled their homes and became internally displaced or seeking refuge in neighboring nations. It resulted in overcrowding in refugee camps, a lack of access to basic services like food, clean water, healthcare, and education, and a high rate of illness and hunger. Based on a report by ICRC, on displaced people and access to humanitarian

assistance, the 1.1 million internally displaced people in Somalia, of which many were women and children, remained in urgent need of assistance (ICRC, 2004). Additionally, around 35,000 people including women children, and people with disabilities, fled to Mogadishu during the 2011 food crisis. In Mogadishu, during the first few months of 2015, around 40,000 individuals were forcibly removed from their homes. Nearly, 21,000 people were forcibly evicted by government agents while tutoring and destroying their homes.

Similarly, the United Nations Office for the Coordination of Humanitarian Affairs (OCHA), via Humanitarian action, revealed that individuals required Humanitarian aid in 2018 was 5.4 million, 4.2 million in 2019, 3 million in 2020, 5.9 million in 2021, 7.8 million in 2022, and 8.3 million in 2023 respectively. Additionally, an estimated 2.6 million internally displaced people (IDPs), most of them live in poverty and are exposed to abuse. The persistent violation of IHL and the incompetence of the Somali government in implementing IHL effectively hampered all efforts to alleviate the effects of the armed conflict on vulnerable populations (OCHA, 2023).

Thirdly, the Somali economy has suffered significant losses because of the violence. Economic development and progress have been impeded by the devastation of trade routes, the destruction of infrastructure, and the persistent conflict. Foreign investment has been discouraged and the revival of important industries like tourism, fishing, and agriculture has been hampered by the lack of security. As a result of such development, unemployment rates have skyrocketed, and poverty levels have stayed high. Based on the report by the African Development Bank Group (ADBG), the current microeconomic and financial developments discovered that



the actual GDP growth dropped to 1.7 percent in 2022 from 2.9 percent in 2021 due to enormous drought, persistent disputes, and extreme poverty (AfDB, n.d.).

Given these contexts, it is crucial to recognize that the armed conflict in Somalia has resulted in a numerous casualty due the catastrophes, including a humanitarian crisis, severe economic loss, poor governance, disputes, state vulnerability and failure, viciousness, chaotic clannism, and other security threats. To solve such issues, comprehensive research on this armed conflict is needed to address such issues. The goal of this study is to close the crucial gap that existed between IHL and its successful implementation in the Somalian armed conflict. The purpose of this study is to determine if IHL can be effectively applied to end the armed conflict and guarantee that peace and harmony rule in Somalia and its neighboring countries.

## **Methodology**

The doctrinal legal method refers to the systematic and critical analysis of legal principles, rules, and doctrines of law as they are in the existing legal documents, including legislations, conventions, law reports, periodicals, and textbooks (Vibhute & Aynalem, 2009). The study adopted a doctrinal legal due to its in-depth comprehension of the related issues and matters about the implementation of IHL to the armed conflict.

## Findings on the Causes, Consequences, and Parties of the Somali Armed Conflict

### 1. Historical roots

Most conflicts in Africa can be linked to the colonial past of the continent's nations, even though colonialism cannot account for them entirely. This also applies to the instability in Somalia. As Osman notes, the seed of the ongoing suffering, particularly in the Southern region of the nation, was sown at the end of the 19<sup>th</sup> century (Osman & Souare, 2007). The Somalian state was founded as a result of the European invasion and colonization of Africa in the late 19<sup>th</sup> century, much like the majority of other African states. The nation of Somalia as we know now emerged after the advent of European colonial control, although the people of Somalia have lived in the area that is currently a part of the nation of Somalia since the beginning of time (Bayne, 2001). The citizens of Somalia were arbitrarily separated into five separate colonial entities when the European colonial authority was formed in the area. These five units were:

- currently, French Somaliland is part of the Red Sea bordering Djibouti.

- British Somaliland, a region formerly under British colonial administration that merged with Italian Somaliland to become the State of Somalia in June 1960.

- Italian Somaliland, a region colonized by Italy, gained independence in July 1960, joining British Somaliland to form the Republic of Somalia.

- The Northern Cape region, which made up the portion of Kenya's crown colony.

■ The Ogaden territory, which Ethiopian conqueror Manilik annexed between 1887 and 1895 and later incorporated entirely into Ethiopian territory

At the end of June 1960, British Somaliland, presently the self-declared sovereign state of Somaliland and primarily populated by the Issaq clan, attained independence. The two regions came together to establish the Republic of Somalia when Italian Somaliland, which today occupies central and southern Somalia, gained independence in early July 1960. There are certain effects that Somalia suffered as a result of this colonial history. There are at least four such repercussions that are significant in explaining how Somalia's instability developed. In the beginning, the Somalian population was divided into several sovereign territories as a result of the colonial authority that was established in this area. It has prevailed to have an impact on Somalia's ties with its neighbors, especially Ethiopia. The desire to create a greater Somalia by utilizing Somalis from all the different regions, such as Djibouti, Kenya, and Ethiopia was manifested in the nationalism of post-independence Somali leaders. As a result of the colonial era, a nationalist administration with a substantial military build-up emerged domestically.

Subsequently, the institutionalization of the state as the primary or only basis of political and economic power created the conditions for conflict and hostility as various groups fought for control of the state apparatus or political dominance because the state exercised absolute control over the political system and economic resources throughout the entire region. The clan and sub-clan system, which comprise the basic social structures in Somalia, served as political weapons in this conflict. In this sense, Somalia's

colonial system altered the function of clans as well as the type of inter-and intra-clan dispute. This signifies the position that "clannism" as it refers to holds in the ongoing dispute in Somalia. As such, the nation is no longer seen by the public as a common framework for the socio-economic and political development of the entire Somalis regardless of their clan affiliation, but rather as an instrument of clan competition and a weapon for political and socio-economic aggrandizement. This demonstrates unequivocally the importance of including institutional safeguards against marginalization and exclusion for all Somali communities when creating a framework for ending the protracted dispute in the nation. Thirdly, Somalia has inherited the opposing colonial cultures of the British and the Italians (Dersso, 2009).

The disparity in colonial government and consequently political traditions became a source of conflict for elites from the two regions, even though this duality was masked in the enthusiasm and rhetoric of Somali unity at the beginning of the founding of the republic. The recruitment and promotion of native clan members, mainly from the Mudgu and Majertinai districts to colonial government was part of the extremely interventionist and stern Italian rule. The advancement of clan members from the "selected " regions reinforced the colonial and post-colonial nation's parasitic and exploitative policies (Osman & Souare, 2007). The ruling class of post-colonial Somalia has primarily arisen from such clans as a result of their exposure to the operations of the colonial states and political mobilization through the creation of the Somali Youth League. In addition, to being marginalized, the state frequently used violence and repression against the citizens in the north. It highlights

the secessionist tendencies in and ultimately, Somaliland's 1991 proclamation of independence. While the fact that Somaliland already has a de facto separate functional state structure should be considered in efforts to achieve lasting peace in Somalia, such historical distinctions should also influence any viable discussion for resolving the Somali conflict. Although the federal form of the transitional charter is riddled with issues, the concept of federalism as a framework for reconstituting Somalia should not be completely abandoned (Dersso, 2009).

The colonial government was run in a manner that gave people of specific "selected" groups or regions privileged access to positions in the colonial administration, education, and other modern commodities. As was alluded to before, this resulted in the dominance of the country throughout the post-colonial era by members of the groups who had access to the resources necessary to wield authority over the state after the colonial ruler's departure. The prejudice left over by colonialism has become more entrenched in post-colonial Somalia. Evidently, the ensuing inter-clan distrust and hatred are not only the cause of the conflict but also among the factors fuelling the engine of Somalia's dispute in the country. clearly, this has severe ramifications for efforts to maintain and promote peace (Osman & Souare, 2007). It makes peacemakers wonder what kind of government setup would be most effective in dealing with this issue. It presents a dilemma for peacekeepers in terms of how they may effectively carry out peacekeeping and peacebuilding seen as supporting the other party by the delegates of the rival factions in terms of different clans, territories, or religious secs (Dersso, 2009).

## 2. Vicious Extremist Groups

### **Al-Shabaab and Islamic State in Somalia (ISS)**

An offshoot of the Islamic Courts Union (ICU), Al-Shabaab is an Islamist militant organization that was founded in 2006. Although the group initially consisted of a tiny unit within the ICU, after the Ethiopian involvement in 2006, it evolved into a "national resistance movement," allowing it to gather support across the clans (Schaefer & Black, 2011). In terms of managing the territories under its control, enduring leadership conflicts, and fighting a fruitful conventional and asymmetrical war against its adversaries (Chopra, 2014). Its objective is to create an Islamic State and drive out foreign powers (*Conflict With Al-Shabaab in Somalia*, 2024). The militant group declared its allegiance to Al-Qaeda in February 2010. According to UN estimates, the organization brings in up to \$100 million annually and has fighting strength between 5,000 and 9,000 people, primarily young men and women from various clans (Marchal, 2009). It receives funding through taxation, entrance fee, exploitation, Somali diaspora and other extremist organizations. Nevertheless, the organization weakens due to the joint operations of NSA and AMISOM (Seth et al., 2016)

In a similar development, an Islamic State in Somalia (ISS) on the other hand is a branch of the Islamic State of Iraq, the defectors of Al-Qaida and the Levant-affiliated sect that arose at the end of 2014 as an Al-Shabaab fragment.

Some estimate that the faction has roughly 300 elite fighters, most of them are al-Shabaab dissenters, while the exact strength of its army is unknown (The Defence Post). The faction initially started its atrocities in Somalia's Puntland territory, which has some

autonomy, but as time went on, ISS increased its operations in Mogadishu and other parts of central and southern Somalia, setting up operational cells and extorting money from many companies that operate there (*The Islamic State of in East Africa*, 2018). Relatively, clan intricacies also play a major role in ISS's capacity to endure and grow, much like they do with al-Shabaab. The organization largely relies on Somali clans that are at enmity with al-Shabaab or have split from them (*The Islamic State of in East Africa*, 2018).

## Findings

### 1. The Characterization of the Somalia Armed Dispute

The two major types of armed conflict are IAC and NIAC. They frequently take place in the same nation and are based on the same series of circumstances. A NIAC may occasionally result in the emergence of an IAC, and vice versa. The guiding rules that govern how these phenomena interact have been established by international criminal law, although they may be traced back to common Articles 2 and 3 of the Geneva Conventions and its Additional Protocols. This section looks at how IHL applies to the two different types of armed conflicts, focusing on the limitations of how the two main sections apply to the armed conflict in Somalia.

### 2. Extending the Common Article 2 of the Geneva Conventions Scope of Application

States deliberated and came to Common Articles 2 and 3 of the Geneva Conventions during discussions about what should constitute NIACs and IACs ("The Geneva Conventions," 1949). However, the two sections did not explicitly list the components of

each armed conflict because the drafters were concerned that doing so may lead to a limited or inflexible description of non-international armed conflict (Castrén, 1966). Article 2 of the Geneva Conventions applies to armed conflict among States whether the dispute is proclaimed or not and regardless of whether one or both State Parties recognize the state of war and declare the state of the war. The section also applies to circumstances of full or partial occupation, regardless of whether resistance is present or not. In recent history, there haven't been many instances of Somali State troops fighting against the forces of another country in armed warfare. However, during the brutal rule of Siad Barre, Somalia, and Ethiopia fought a war after Somalia and Ethiopia's Ogaden region in 1977 intending to annex it. This was consistent with Siad Barre's expansionist vision of liberating Somali-populated areas of neighboring nations to create a greater Somalia nation-state. According to the ICRC, a comparison of Common Articles 2 and 3 will show that IHL sets a lower bar than NIAC for establishing the existence of an IAC. For instance, the length of armed conflict and its intensity are irrelevant when deciding whether an IAC exists.

Furthermore, there was the involvement of other nations that supported neither Somalia nor Ethiopia. Before the emergence of the dispute, the USSR supported Somalia, while the USA and other Cold War adversaries in the West supported Ethiopia financially and militarily. At the peak of the conflict, the USSR and Cuba both also turned their support to Ethiopia. The war ended in March 1978, with the retake of Ethiopian massive territory back from Somalia. The dispute is a clear example of an IAC under Common Article 2 of the Geneva Conventions.



### 3. Extending the Common Article 3 of the Geneva Conventions Scope of Application

Common Article 3 of the Geneva Conventions deals with NIACs that might take place on the soil of High Contracting Parties and forbids NIAC Parties from violating IHL against protected individuals. The Geneva Conventions Common Article 3 prohibits acts of homicide, brutal treatment, and hostage kidnapping, as well as executions without judicial privileges. As it mentioned earlier, since Common Article 3 is recognized as a customary international law, it applies to circumstances that arise in any State. It has also been highlighted that the Geneva Conventions drafters refrained from being too explicit out of concern that doing so might lead to an unwieldy or rigid description of NIAC (Castrén, 1966). In addition to having to be distinguished from IAC, an NIAC must also be set apart from armed disputes at lower intensity levels. Such as riots and other similar instability which do not meet the criteria for NIACs. They must be dealt with by the State's police and other law enforcement organizations and processes since they fall entirely under the criminal jurisdiction of the State ("The Geneva Conventions," 1949).

Moreover, there is another criterion connected to the non-state armed groups' NSAG's nature. This institution test mandates that an NSAG must have a specific level of organization, which consists institutional hierarchy with clearly defined functions for the various facets and/ or departments. The Geneva Conventions Additional Protocol II, which deals with NIACs, stipulates that NSAGs must be under responsible direction and have control over a portion of the country's territory when conducting operations ("The Geneva

Conventions," 1949). Due to this additional need, P2 has a higher bar than Common Article 3, even though the ICRC and other IHL authorities do not distinguish between the two grounds that in practice, States have not been eager to do so (ICRC, 2019).

As noted earlier, without AP2, Common Article 3 does not specify what should comprise an NSAG in a NIAC. The state's constant reluctance to recognize NSAGs to deny their autonomy further complicates matters. However, it has been established by state practice and international criminal law that an entity as defined by Common Article 3 must initially have a command hierarchy as well as internal standards for discipline and operations (Mundis & Gaynor, 2006). For instance, the ICTY has ruled that for an armed organization to be classified as an NSAG, it needs to have a large number of members with whom it can coordinate its actions and distribute its weaponry (McDermott, 2012). As a result, Al-Shaabab possesses the traits of an NSAG under IHL.

## Conclusion

Although there is a great deal of obscurity and speculation regarding the IHL's scope of applicability to internal armed conflicts, doctrine and jurisprudence have been working for almost six decades since its enactment to close such perilous gaps. However, this has not been successful in closing the gaps and loopholes that allow governments and illegal organizations to avoid applying rules and norms to their behavior during protracted disputes and hostilities. In this regard, The Appeal Chamber of the ICTY in the Tadic case asserts that armed conflict arises when warring parties employ an armed confrontation belonging to their respective

countries or when there is prolonged use of armed force between legitimate government institutions and organized rebel factions located within the same group. The emergence of organized rebel factions posed a greater threat to the Somali government and contributed immensely to the belligerence of the statehood and governing system in the country, hampered economic growth, soured relations between Somali and its neighbors, as well as tarnishing its image and reputation in the international community, making it harder for the respected institutions to implement and uphold IHL norms and prevent its violation on the innocent civilians.

Therefore, it is imperative that the United Nations Security Council, which is the global body tasked with overseeing the maintenance of global peace and security and which under Article 25 of the UN Charter, has the authority to issue legally binding resolutions for all UN members, be granted the authority to determine whether an internal armed conflict existed. Depending on the intensity of the hostilities, falling under the common Article 3 or Additional Protocol II's area of action, making it clear to the concerned State that it will be held responsible globally for upholding and respecting humanitarian law. This will undoubtedly serve as a deterrent for violating the law of war since governments will be fully aware they are being observed by the world community and that appropriate behavior is expected of them.

Furthermore, the Security Council would be permitted to establish a special commission to look into the specifics of internal hostilities, to help and support its decisions on armed conflicts. The Security Council would establish the existence of armed conflicts through legally binding resolutions, eliminate arguments about

when the disputes purport conflict status and the impermanent applicability of the Conventions, and warn both governments and illegal factions that the Law of War for internal conflicts is currently effectual in their territories. This would further give the Security Council a clear indication to deploy its peacekeeping or enforcement troops and impose individual restrictions on both illegal factions and governments since the sanctions would be based on the specific violation of earlier legally binding resolutions. Only when the abovementioned is effective will mankind genuinely adhere to General Eisenhower's promise to never forget and to ensure that it never happens again.

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