

Somalia, Disputes involving Somaliland and Puntland

***INTRODUCTORY TEXT:** This case, based on the disputes in Somalia involving the armed forces of Somalia, Somaliland, and the Puntland militia, deals with the issue of classification of the situations under IHL. The situation involves an ambush by the militia of Puntland, an autonomous region of Somalia, against the convoy of a governor appointed to the town of Badhan, in the disputed Sanaag region, by the 'Republic of Somaliland', a self-proclaimed state lacking recognition by any other member of the international community and considered by Somalia as its own territory.*

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N.B. As per the disclaimer, neither the ICRC nor the authors can be identified with the opinions expressed in the Cases and Documents. Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. **Similarly, in some of the texts used in the case studies, the facts may not always be proven;** nevertheless, they have been selected because they highlight interesting IHL issues and are thus published for didactic purposes.

A. Somaliland Government Condemns attack on Badhan Regional Governor by Puntland Militia

[**Source:** Somaliland.com, 'Somaliland Government Condemns attack of Badhan Regional Governor by Puntland Militia', August 21, 2019, available at: <https://www.somaliland.com/news/somaliland/somaliand-government-condemns-attack-of-badhan-regional-governor-by-puntland-militia/>]

[1] The convoy of a delegation led by the Badhan regional governor was ambushed by a Puntland militia yesterday [i.e., 20 August 2019]. The governor was on a visit to Hadaftimo, a district which lies in the east of Sanaag province when the incident occurred.

[...]

[2] Fights between Somaliland forces and the Puntland militia broke out at noon on Tuesday. Reports coming from the region indicate that both sides have incurred casualties, albeit the numbers of casualties on both sides are yet to be ascertained.

[3] Unconfirmed reports indicate that the vehicle of the Badhan Regional Governor has been confiscated by militia fighters loyal to Puntland.

[4] Following the attack, the Somaliland Ministry of Foreign Affairs and International Cooperation has issued a strongly worded press statement expressing regret over the unfortunate incident. The ministry warned that flagrant actions are bound to frustrate and denigrate previously improving relations between the two countries.

[5] The Ministry of Foreign Affairs and International Cooperation in the statement also called on the government of Somalia, alongside its regional administration of Puntland, to respect the four-point agreement brokered by the United Nations and IGAD which Somaliland has complied with till date.

[...]

[6] Somaliland and Puntland are engaged in territorial disputes pertaining to Sanaag, Sool, and Ayn regions. The confrontation between the two forces in the region has left many people displaced, and a few others were taken as prisoners during the skirmish.

B. Press Statement

[**Source:** "Republic of Somaliland" Ministry of Foreign Affairs and International Cooperation, Press Statement, 21 August 2019, available at: <https://somalilandmfa.com/main/press-statement/>]

[1] The Government of Republic of Somaliland expresses its deep alarm and regret over the flagrant and vicious attack by Puntland Militia on a convoy of Somaliland officials, including the Governor of Badhan, as it passed through the Hadaftimo District of the Sanaag Region yesterday around 12:45pm. Such actions represent a dangerous and regressive step in previously improving relations between Somaliland and Somalia's regional administration of Puntland, following several goodwill gestures, including the recent transfer of war prisoners.

[2] The Somaliland Government calls on its neighbour, Somalia, along with its regional administration of Puntland, to respect the four-point agreement brokered by the United Nations and IGAD, which Somaliland continues to comply with to this day. This includes "(1) refraining acts of provocation; (2) immediate cessation of hostilities and the implementation of ceasefire arrangements; (3) the establishment of communication

channels between the military commanders on the ground; and (4) the allowance of full access to deliver humanitarian assistance to the affected civilian population and releasing of prisoners as a confidence building measure.” With today's actions, Somaliland's counterpart in the agreement – the various authorities of Somalia have shown a disregard for efforts to achieve lasting peace and stability in the region.

[3] Yesterday’s act further demonstrates the lack of respect by Somalia and its regional administrations over the sanctity of colonial borders, which forms the basis for the principles of territorial integrity and sovereignty enshrined in the OAU (now AU) Resolution of 1964. In the context of international law, Sool and Sanaag are integral parts of Somaliland, falling within the international boundaries set in 1894 through colonial treaty. Somaliland Government officials reserve the right to travel and perform their duties within such territories without being subject to interference or aggression by any foreign actor, including the Somalia Government. [...]

C. Somalia-Somaliland: The Perils of Delaying New Talks

[Source: International Crisis Group, “Somalia-Somaliland: The Perils of Delaying New Talks”, 12 July 2019, available at: <https://www.crisisgroup.org/africa/horn-africa/somalia/280-somalia-somaliland-perils-delaying-new-talks>]

[...]

I. Introduction

[1] Tensions between Somalia and Somaliland centre on a dispute over Somalilanders’ claim to political independence, which they declared in 1991. Neither Somalia nor any other country has ever accepted the claim. But the frictions are rooted in events several decades earlier.

[...]

[2] The situation boiled over in the 1980s, when the Somali National Movement (SNM), led by members of Somaliland’s dominant Isaq clan, launched an insurgency against military dictator Siad Barre, who in turn ramped up repression of Isaq civilians in the north. [...] Barre’s regime came to an end in 1991, when rebel movements in the south ousted it from Mogadishu and the SNM routed it from the north. As warlords continued to fight for dominance in the south, Somaliland’s leaders decided to break away. On 18 May 1991, they proclaimed the independent Republic of Somaliland.

[3] Since then, Somaliland has developed many trappings of a state. It has its own civilian administration, armed forces and currency. It administers its own elections, which international observers have broadly

described as free and fair. [...] Somaliland and donors also struck a “special arrangement” under which donors channel their support directly to Hargeisa. Nevertheless, no country recognises its statehood.

[4] The question of Somaliland’s sovereignty is, of course, at the centre of tensions between Mogadishu and Hargeisa. [...]

[...]

II. Mogadishu and Hargeisa: To the Brink and Back

[5] In 2018, Somalia-Somaliland relations frayed to such an extent that renewing talks became, at the time, untenable.

[6] The downward spiral began with military clashes between Somaliland and its neighbour, Puntland, a semi-autonomous region that remains part of Somalia. In January 2018, Somalia’s minister of planning, investment and economic development, Gamal Mohamed Hassan, angered the Somaliland government by making an unannounced visit to Badhan town in his home region of Sanaag, one of two regions claimed by both Somaliland and Puntland. [...] Hargeisa perceived the visit – and the fact that Mogadishu did not consult with Somaliland before Gamal appeared in Badhan – to be a form of meddling in the contested areas and a signal that Somalia did not respect Somaliland’s claims there. Hargeisa warned the move could “jeopardise the relationship” between Somaliland and Somalia and might “lead to clashes”.

[7] It did. Days later, on 8 January [2018], Hargeisa ordered Somaliland forces into Tukaraq, a strategic town then held by Puntland forces on the trade corridor that links the two disputed regions, Sool and Sanaag, with eastern Ethiopia. The fighting left dozens of soldiers dead and sparked an escalation that led to more bouts of fighting between Somaliland and Puntland forces in May, June and November 2018.

[8] Although Mogadishu sought to defuse the situation that it had helped spark by calling for restraint on both sides, it is ill suited to the role of peacemaker. Hargeisa continues to see it as an adversary and obstacle to its territorial claims. Moreover, throughout the Farmajo presidency, Mogadishu has been in a tug of war with Puntland, along with all of Somalia’s federal member states, over both power and resources. [...] The situation on the ground remains volatile and the two parties continue to clash periodically.

[...]

Discussion

I. Classification of the Situations and Applicable Law

1. (*Document A, paras [1] and [2]; Document B, para. [2]; and Document C, paras [6] and [7]*) How would you classify the conflicts involving Somaliland forces and Puntland militia? Was there an armed conflict between Somaliland forces and Puntland militia? If so, does this also mean that there was a conflict between Somaliland and Somalia? (GC I - IV, Arts. 2 and 3)
2. (*Document C, para. [3]*) What is the legal nature of the conflict(s) in Somalia? If there is a conflict between Somaliland and Puntland/Somalia, is the conflict an international (IAC) or a non-international armed conflict (NIAC)? Is the status (i.e. statehood) of Somaliland relevant for determining which body of IHL applies? Is the status of Puntland under Somali law relevant? Does it matter whether Somalia recognizes the statehood of Somaliland? What if other states recognized it? (See ICRC Commentary of 2016: Common Article 2, paras 220-235)
3. What are the implications of the fact that Somaliland and Somalia have differing views of Somaliland's statehood for the classification of the situation? Can a conflict be an IAC for one party but a NIAC for another? Is IHL equipped to deal with such 'relativism'?
4. (*Document A, paras [1], [2] and [4]*) Does IHL apply to the ambush by the Puntland militia on the regional governor of Somaliland? Considering the press statement by Somaliland (which refers to the 'two countries'), would the incident, i.e., the attack on a convoy of Somaliland officials, have triggered the IHL of IACs? (GC I - IV, Arts. 2 and 3)

II. Status of Prisoners

5. (*Document A, para. [6] and Document B, paras [1] and [2]*) What is the status of prisoners captured in the context of a conflict between Somaliland and Puntland/Somalia? Are they protected under IHL? Are they prisoners of war? May members of Somaliland forces be considered as "members of regular armed forces who profess allegiance to a government or an authority not recognized by the Detaining Power" referred to in Article 4 (A) (3) of GC III? Assuming that IHL of IACs applies, what would you need to know to determine whether members of the Puntland forces are prisoners of war? May they be prosecuted by Somaliland for having directly participated in hostilities? For having attacked the Badhan regional governor? (GC III, Arts 2, 3 and 4; CIHL Rules 18-28)