

Somalia/Kenya, Al-Shabab Attacks

INTRODUCTORY TEXT: *This case deals with al-Shabab attacks aimed at undermining its rival, the “Islamic State in Somalia” (ISS). While al-Shabab declared a military offensive against ISS in Somalia, it carried out a terrorist attack in Kenya, which was understood to be a move by al-Shabab to put itself on spotlight and overshadow ISS.*

Case prepared by Mr. Fikire Tinsae Birhane, LL.M. student at the Geneva Academy of International Humanitarian Law and Human Rights, under the supervision of Professor Marco Sassòli and Mr. George Dvaladze, research and teaching assistant, both at the University of Geneva.

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. Somalia’s Al-Shabab Declares War on Pro-Islamic State Group

[Source: “Somalia’s Al-Shabab Declares War on Pro-Islamic State Group”, VOANEWS, 21 December 2018, available at <https://www.voanews.com/>]

[1] Somalia’s al-Shabab militants have announced a military offensive against Islamic State-affiliated forces in Somalia.

[2] A statement [...] by al-Shabab spokesman Sheikh Ali Mohamud Rage [...] said the offensive, code named Disease Eradication, is aimed at getting rid of IS-related militants in Somalia.

[...]

[3] “Our senior command has ordered our fighters to attack and eliminate the ‘disease’ of IS and uproot the

tree that would be used to undermine the fruits of the Jihad,” Rage said.

[4] The conflict between the two rival terrorist groups has been simmering since the emergence of an IS-affiliated group in Somalia in October 2015. The group found a foothold in the northeastern Puntland state of Somalia, where it began recruiting former al-Shabab fighters before carrying out attacks and assassinations elsewhere in the country.

[5] On Dec. 16, Islamic State reported its first offensive on al-Shabab in Somalia.

[6] IS released a video showing its fighters firing their guns and several dead bodies they identified as al-Shabab members [...]. IS claimed to have killed 14 al-Shabab fighters and wounding others.

[7] The IS-affiliated group is estimated to have about 200 active members and is far smaller than the al-Qaida-linked al-Shabab group, which has thousands of fighters in largely rural areas in Somalia.

[8] Hussein Moallim Mohamud, a former Somali counterterrorism officer and national security adviser, said despite having a similar agenda of terrorizing people to achieve jihadist goals inside Somalia, they also have differences.

[9] “Al-Shabab remains predominantly focused on Somali issues and is keen to preserve its allegiance to al-Qaida, while IS is more focused on linking its presence in Somali with international terrorism. Because of this difference each group sees the other to be a threat to its existence,” Mohamud said.

[...]

B. Al-Shabab Wants You to Know It’s Alive and Well

[Source: “Al-Shabab Wants You To Know It’s Alive and Well”, Foreign Policy, 19 January 2019, available at <https://foreignpolicy.com/>]

[1] [...] On Tuesday, just after 3 p.m., Africa’s longest-standing and most effective terrorist group, the al-Qaeda affiliate al-Shabab, killed at least 21 people in Nairobi, Kenya’s capital, bombing and shooting up a posh hotel, office, and shopping complex located in an upscale neighborhood near the city center.

[2] A few hours later, the group claimed responsibility for the attack through one of its news agencies. The next evening, al-Shabab released a statement in Arabic and English saying more than 50 “disbelievers” had been killed in the attack [...].

[3] [...] The attack is largely understood as an effort to put the group in the spotlight as the rival Islamic State

in Somalia (ISS) encroaches on its turf and as the United States declares its ramped-up airstrike campaign against the group a success.

[4] ISS entered Somalia via Yemen into the mountains of the semi-autonomous Puntland state in 2015, but it was largely treated as a non-entity. It is only in the past year and a half that ISS has made real headway, establishing itself in Mogadishu, Somalia's capital, the site of the deadliest and most consistent al-Shabab assaults. The real sign that ISS made genuine inroads came just last month, when al-Shabab declared war on the gang. [...]

[5] Even though the attack took place in Kenya, the proclamation made no mention of Kenya's military presence in Somalia, as it has in the past. [...]

[...]

[6] The Jan. 15 attack put to rest any notion that al-Shabab has been weakened, and since then the group has attacked foreign forces fighting them at home. The group's statement redoubled the organization's commitment to al Qaeda: The operation itself was carried out by a battalion named after an al Qaeda veteran and was conducted "in accordance with the guidelines of Sheikh Ayman al-Zawahiri," who replaced Osama bin Laden as the group's leader.

C. Al-Shabab extremists claim deadly attack on Nairobi hotel

[Source: "Al-Shabab extremists claim deadly attack on Nairobi hotel", Associated Press, 16 January 2019, available at <https://www.apnews.com/>]

[...]

[5] Al-Shabab has vowed retribution against Kenya for sending troops to Somalia to fight it since 2011. [...].

[...]

Discussion

1. (*Document A, paras. 1, 4, 5, 9; Document B, paras. 4, 6*) According to the facts of the case, how would you classify the situation in Somalia? Would it qualify as an armed conflict? Under Article 3 common to the Geneva Convention? Under Protocol II, if Somalia was party to it? What additional information would you need to make such a determination? If it was an armed conflict, who are parties to the conflict? (GC I-IV, Art.

3; P II, Art. 1)

2. (*Document A, paras. 1, 5*) Is a “declaration of war” by armed groups against each other sufficient to trigger application of IHL? (ICTY, *The Prosecutor v. Tadić*)
3. (*Document A, paras. 3, 6, 7*) Overall, was the intensity of violence and organization of the groups (al-Shabab and ISS) sufficient to make IHL applicable in this case?
4. (*Document A, para. 3, 5*) If the situation in Somalia between the ISS and al-Shabab was qualified as NIAC, could the Somali government try members of the two fighting groups for engaging in violence against each other?
5. (*Document B, paras. 1, 3, 5; Document C, paras. 1, 3, 4*) Does IHL apply to the Nairobi attack by al-Shabaab? Why? If there was no link between the attack and the NIAC in Somalia, can such an attack trigger a NIAC in Kenya? What if such a link existed? Is in that case IHL of NIACs also applicable in other countries? Only in neighbouring countries? Was the intensity of violence in the Nairobi attack sufficient to apply IHL? May the intensity in Kenya added to that in Somalia? If it was qualified as an armed conflict, would Kenya be party to the conflict in such situation? Even if al-Shabaab's motivation was to undermine ISS?
6. (*Document B; Document C*) Would the involvement of the Kenya Defence Force in neutralizing the attack affect the classification of the situation? (GC I-IV, Art. 3)