

Somalia/US, Airstrikes in Somalia

INTRODUCTORY TEXT: *This case deals with increased US airstrikes conducted in Somalia to attack an Islamist militant group, al-Shabaab, with a resulting increase in civilian casualties and damage to civilian objects. The US airstrikes have intensified after the relaxation of guidelines intended to prevent civilian casualties by the US administration. In addition to the US, Kenyan air force and AMISOM are also reported to have conducted attacks against al-Shabaab. The US military command for Africa noted that US operations have been carried out in observance of restrictions of the law of armed conflict.*

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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. Somali citizens count cost of surge in US airstrikes under Trump

[Source: “Somali citizens count cost of surge in US airstrikes under Trump”, The Guardian, 23 January 2018, available at <https://www.theguardian.com/>]

[...]

[1] Dozens of civilians have been killed and wounded in Somalia as US-led airstrikes against Islamist militants increase to unprecedented levels [...].

[2] The escalation in strikes is part of the Trump administration’s broader foreign policy strategy in Africa and the Middle East. There have been 34 US airstrikes in Somalia in the last six months – at least twice the total

for the whole of 2016.

[3] Regional allies active in the campaign against Islamic extremists in the east African country have conducted many missions too. [...]

[4] Almost all the strikes target al-Shabaab, the al-Qaida affiliated extremist movement fighting to establish an Islamic state in Somalia for more than a decade.

[...]

[5] In five attacks since July, more than 50 civilians appear to have been killed or injured. At least two involved US aircraft.

[...]

[6] Five civilians were killed and two wounded in an airstrike on a village on 6 December, witnesses and hospital staff said.

[7] In another incident, in October, residents and medics reported up to eight civilians being injured in an airstrike during fierce fighting in Lower Shabelle province.

[8] The previous month, four herders were injured when a water hole near the border with Kenya was bombed.

[9] In August, seven members of a family including small children died in a strike in southern Jubaland, relatives said. Officials said all those killed were extremists.

[10] A month earlier, four people, including three children, were killed and eight wounded in an airstrike on a village near the southern port city of Kismayo, relatives and witnesses said.

[11] The strikes have also killed large numbers of livestock and caused extensive damage done to agricultural infrastructure.

[12] Though the intensity of the recent strikes is unprecedented, the use of air power in Somalia has been steadily increasing since before Donald Trump became US president.

[13] A recent UN analysis described 74 airstrikes between January 2016 and October 2017, resulting in 57 civilian casualties. Only 14 of these strikes were "US supported", and the report blamed Kenyan forces in Somalia for 42 of those casualties.

[14] Kenya contributes troops and three attack helicopters to Amisom [African Union Mission in Somalia], the 22,000-strong African Union military and policing mission in Somalia. Kenyan forces are also believed to have conducted their own strikes in border areas, though Nairobi denies this.

[...]

[15] Some of the dead or injured may be fighters with armed tribal militias who are technically civilians, though sometimes align with the militants.

[...]

[16] The sudden increase in the use of air power in Somalia by the US come after the relaxation of guidelines intended to prevent civilian casualties and a decision by the Tump administration to give local military commanders greater authority in ordering attacks.

[...]

[17] Michael Keating, the UN special representative in Somalia, said: "All those who are using military means in one way or another [in Somalia] claim that they have standards when it comes to the protection of civilians but are not translating their principles into practice. All actors could do more to protect civilians."

[...]

[18] The strikes in October in Lower Shabelle took place during fierce fighting between government forces and al-Shabaab. A number of militants were killed, but eight civilians in the village of Awdhegle were also injured, locals said.

[...]

[19] A third incident took place at the village of Talaka near the border with Kenya after Kenyan troops withdrew. Al-Shabaab fighters moved in shortly afterwards and were bombed, witnesses said. A watering hole some distance away was also attacked. Twenty camels were killed and four herders injured.

[20] Kenyan forces have been blamed for the strike, but deny responsibility.

[21] Between 16 and 17 August, the US conducted three "precision airstrikes against al-Shabaab militants, killing seven fighters" in the Middle Juba region, where there has been heavy fighting between government forces and militants, officials said.

[...]

[22] In a phone interview from Kismayo, Halima Sheikh Yare said her cousin Sheikh Mohamed, a “renowned cleric”, was killed along with his wife and five male relatives.

[23] “Al-Shabaab members are armed, but these were family members who stayed in their house and were not armed,” she said.

[24] Hassan Muhumed, 31, a resident of Jilib who visited Ahmed Yare to check on relatives shortly after the drone strike, said al-Shabaab fighters had visited to address locals a day before the attack but had left shortly afterwards.

[25] “All those killed were civilians,” Muhumed said.

[...]

[26] The final incident investigated by the Guardian occurred during the evening of 18 July, in the village of Qabri Sharif, west of Kismayo.

[27] Residents describe “a huge bomb [that] hit several houses”, killing three children and a man. Eight injured adults were transferred to Kismayo hospital, they said.

[28] Muhumed Kuusow, a local elder, said the children were playing inside their house when hit by shrapnel.

[29] “They all died on the spot. The bomb was huge and the whole place was like a deep cave in the ground,” he said.

[...]

[30] Abdinur Mohamed, the provincial information minister, said officials in Kismayo were aware of civilian casualties in the strike, which he said was carried out by Kenyan planes.

[31] A US official said there were no US air strikes in Somalia on 18 July.

[32] The recent UN report found that al-Shabaab killed 1,223 civilians and injured nearly 1,500 others between January 2016 and October 2017. This accounted for 60% of the 2,078 documented civilian deaths and 2,507 injuries in the period reviewed.

[33] Zeid Ra’ad al-Husseini, the UN high commissioner for human rights, said civilian casualties caused by regional or international forces, though only a small proportion of civilian deaths, were of utmost concern because they undermined the Somali population’s trust in the government and the international community, and that this helped extremists.

[...]

[34] A US military spokesperson said its forces complied “with the law of armed conflict” and took “all feasible precautions ... to minimise civilian casualties and other collateral damage”.

B. US attacks on Somalia's al-Shabab increase under Trump

[Source: “US attacks on Somalia's al-Shabab increase under Trump”, BBC, 7 January 2019, available at <https://www.bbc.com/>]

[...]

[1] In a speech in December outlining the US’ Africa policy, President Trump’s National Security Adviser John Bolton said “terrorists operating in Africa have... repeatedly targeted US citizens and interests”.

[2] He gave the impression that there would be no let up in the struggle against militant Islamist groups, such as the Somalia-based al-Shabab, which is affiliated to al-Qaeda.

[3] In March 2017, the Pentagon received White House approval to expand its fight against the militants in the Horn of Africa nation.

[4] Commanders now no longer require high-level vetting to approve strikes on al-Shabab in “areas of active hostilities” in Somalia.

[5] “It allows [us] to prosecute targets in a more rapid fashion,” said General Thomas Walhauser of US Africa Command (Africom).

[6] The move has seen increased attacks by aircraft [...].

[...]

[7] But apart from one senior al-Shabab commander, Ali Mohamed Hussein, killed in a joint US-Somalia military raid in the southern Lower Shabelle region in August 2017, few have been significant enough to be named by the US since Mr Trump approved the expansion of military operations in Somalia.

[8] Al-Shabab militants, like other jihadist groups, are well aware of the threat from the skies.

[9] According to a senior regional security official, the fighters now avoid congregating in large groups. They move in units of three or four and only converge to carry out attacks, including on bases of African Union troops and Somali government forces.

[...]

[10] The group has not lost control of territory in central and southern parts of Somalia, where it is trying to set up its own administration, including raising taxes from the local population.

[...]

US 'adheres' to laws of conflict

[...]

[11] The group sometimes responds to Ethiopian, Kenyan and US airstrikes by claiming that the casualties were innocent civilians [...].

[...]

[12] In a statement to the BBC, Africom spokeswoman Becky Farmer noted that the US military command for Africa "has not discovered or assessed any civilian casualties resulting from our operations over the last two years".

[13] She added: "In fact, [we go] to extraordinary lengths to reduce the likelihood of civilian casualties, exercising restraint as a matter of policy that regularly exceeds the restrictions of the law of armed conflict."

[...]

[14] [...] The Pentagon would consider the option of airstrikes today to be far less risky to US troops and possibly more effective in taking out targets.

[...]

[15] So far, the increased airstrikes have not given the US, the Somali government and AU troops the upper hand. Al-Shabab will be content to retain its vast geographical control.

[...]

Discussion

I. Classification of the Situation and Applicable Law

1. (*Document A, paras. 1-4, 14, 21; Document B, paras. 9, 11*) According to the facts of the case, how would you classify the situation in Somalia? Is there an armed conflict? Several armed conflicts? Is it an IAC or NIAC? Who are the Parties to the conflict involving Al-Shabab? Somalia? AMISOM? Kenya? Would your answer be different for Kenya if Kenyan forces have not conducted their own strikes but only Kenyan troops forming part of AMISOM were engaged in the conflict? What additional information would you need to make such a determination? (GC I-IV, Art. 3)
2. What is the legal regime applicable to the situation? Could you determine the geographical scope for the application of the law? Does IHL apply to the entire territory of Somalia?
3. Would IHL be applicable to AMISOM if it is considered to be party to the conflict? Treaty rules? Customary rules? Both?

II. Conduct of Hostilities

4. (*Document A, para. 5 ff.*) In general, do all attacks that result in civilian casualties necessarily violate IHL? Who may be targeted under IHL? Can civilians be directly targeted? In which circumstances? How could one determine if a person has become a legitimate target? (*Document A, paras. 21-25*) Is merely being armed decisive to determine who is targetable member of an armed group? How about the location of the person during the targeting (staying at home or in areas of active hostilities)? Are such factors anyway important in assessing targeting decisions? (AP I, Arts 43, 48, 51; AP II, Art. 13; CIHL Rules 1, 5, 6; ICRC, DPH Guidance)
5. (*Document A, para. 15*) Do you agree with the statement that “some of the dead or injured may be fighters with armed tribal militias who are technically civilians, though sometimes align with the militants”? Are fighters, who are members of armed groups, considered as civilians under IHL? What is the difference between civilians directly participating in hostilities and fighters having continuous fighting function? (ICRC, DPH Guidance)
6. (*Document A, para. 8, 11; Document B, para. 19*) How do you assess the strikes damaging water holes, livestock and agricultural infrastructure? Could such objects be classified as “indispensable to the survival of the civilian population” under IHL? Is there an absolute prohibition of attacking objects indispensable to the survival of the civilian population? (API, Arts 52, 54; APII, Art. 14; CIHL Rule 54)
7. (*Document A, paras. 9, 10, 27, 28*) In general, under IHL is special protection of children applicable in the conduct of hostilities? (AP I, Arts. 77, 78; AP II, Art. 4(3))

8. (*Document A, para. 16; Document B, paras. 4–7, 13, 14*) Does the relaxation of guidelines intended to prevent civilian casualties by the Trump administration have an impact on the applicability of IHL to the US?
9. What factors must be taken into account when evaluating the proportionality of an attack under IHL? (CIHL Rule 14)
10. (*Document A, para. 18, 19*) Is there a duty, under IHL, to give effective advance warnings for potential civilian victims on ongoing hostilities like the Lower Shabelle one? How about in the case of the bombing in the Village of Talaka? (CIHL Rules 15, 20)
11. (*Document A, paras. 26-29*) How do you assess the use of the bomb in the village of Qabri Sharif? Did it comply with IHL? (CIHL, Rules 70, 71)
12. (*Document A, para. 34*) A US military spokesperson said its forces complied “with the law of armed conflict” and took “all feasible precautions [...] to minimise civilian casualties and other collateral damage”. Based on the facts of the case, do you agree with this statement?