

Somalia/AMISOM/USA, The Armed Conflicts in Somalia

INTRODUCTORY TEXT: *This case deals with the armed conflicts in Somalia including foreign intervention by the African Union Mission to Somalia (AMISOM) and the United States of America. Amongst other issues, the case discusses conflicts involving foreign forces, and the US standards of targeting in the airstrikes in Somalia.*

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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. Security Council, Resolution 2472 (2019)

[**Source:** UN Security Council Resolution 2472 (2019), Adopted by the Security Council at its 8537th meeting, on 31 May 2019, UN Doc. S/RES/2472(2019), available at: [https://undocs.org/S/RES/2472\(2019\)](https://undocs.org/S/RES/2472(2019))]

[1] *The Security Council*

[...]

[4] *Condemning violations and abuses of international human rights law and violations of international humanitarian law in Somalia, calling on all parties to act in full compliance with international human rights law and international humanitarian law, [...]*

[5] *Condemning* Al Shabaab attacks in Somalia and beyond, *expressing deep concern* at the loss of civilian life from Al Shabaab attacks, and *further expressing concern* over reports of an increased presence in Somalia of pro-Islamic State in Iraq and the Levant actors,

[6] *Paying tribute* to the bravery and sacrifices made by the African Union Mission in Somalia (AMISOM) and Somali security forces personnel in the fight against Al Shabaab, and *commending* the contribution of AMISOM to lasting peace and stability in Somalia,

[...]

[13] *Acting* under Chapter VII of the Charter of the United Nations

[...]

7. *Decides* to authorise the Member States of the AU to maintain the deployment of AMISOM until 31 May 2020 [...]

8. *Further decides* that AMISOM shall be authorised to take all necessary measures, in full compliance with participating States' obligations under international law, including international humanitarian law and international human rights law, and in full respect for the sovereignty, territorial integrity, political independence and unity of Somalia, to carry out its mandate;

9. *Decides* to authorise AMISOM to pursue the following strategic objectives within the context of the transition to Somalia taking responsibility for security, as set out in the Transition Plan:

[...]

(b) Reduce the threat posed by Al Shabaab and other armed opposition groups with a view to enabling a stable, federal, sovereign and united Somalia;

[...]

10. *Decides* to authorise AMISOM to carry out the following priority tasks to achieve these objectives:

[...]

(e) Conduct targeted offensive operations that support the Transition Plan, including jointly with the Somali security forces, to disrupt and degrade Al Shabaab and other armed opposition groups, and take actions to mitigate the threat posed by improvised explosive devices;

[...]

15. *Underlines* the continued importance of AMISOM forces carrying out their mandate in full compliance with participating states' obligations under international law, including with regard to the protection of civilians, especially women and children, [...]

B. Security Council, The Final Report of the Panel of Experts on Somalia

[**Source:** UN Security Council, Letter dated 1 November 2019 from the Chair of the Security Council Committee pursuant to resolution 751 (1992) concerning Somalia addressed to the President of the Security Council, UN Doc. S/2019/858, available at: <https://undocs.org/S/2019/858>]

I. Introduction

A. Mandate

1. The Panel of Experts on Somalia is the successor to the Monitoring Group on Somalia and Eritrea, the mandate of which was terminated by the Security Council on 16 December 2018 pursuant to paragraph 10 of its resolution 2444 (2018). [...] [T]he Council established the Panel of Experts and decided that the Panel's mandate shall include the tasks as set out in paragraph 13 of resolution 2060 (2012) [...]

[...]

II. Acts that threaten the peace, security, and Stability of Somalia

A. Harakat Al-Shabab Al-Mujaahidiin

9. The extremist group Harakat Al-Shabaab Al-Mujaahidiin (Al-Shabaab) remains the most immediate threat to peace and security in Somalia. A significant escalation of United States airstrikes targeting Al-Shabaab militants and leaders during the reporting period [i.e. from July 2018 to July 2019] has contributed to keeping the group off-balance and preventing the massing of large numbers of fighters but has had little effect on its ability to launch regular asymmetric attacks throughout Somalia. Al-Shabaab also remains capable of carrying out occasional conventional attacks against both Federal Government of Somalia and African Union Mission in Somalia (AMISOM) forces [...].

10. During the reporting period, Al-Shabaab carried out an unprecedented number of improvised explosive

device attacks. [...] Al-Shabaab's modus operandi remains the deployment of a vehicle-borne improvised explosive device to breach the perimeter of a target, followed by an assault by up to half a dozen gunmen. Al-Shabaab's stated policy is to target hotels and restaurants frequented by Federal Government officials, though the majority of the group's victims comprise other civilians.

[...]

13. The assault by Al-Shabaab on 15 January 2019 on a commercial business complex in Nairobi containing the DusitD2 Hotel illustrates the danger the group continues to pose to regional peace and security. Al-Shabaab also carried out an unprecedented number of improvised explosive device and other attacks across the Kenya-Somalia border in June and July 2019, possibly in an effort to exploit strained relations between the two countries.

Extent of Al-Shabaab control within Somalia

14. Since the cessation of major AMISOM offensive operations in July 2015, the scope of Al-Shabaab's territorial control in Somalia has remained largely unchanged. While AMISOM and the Somali National Army hold the majority of urban centres, Al-Shabaab maintains direct control or influence over vast swathes of the hinterland and is able to cut off main supply routes and effectively isolate AMISOM- and government-controlled pockets.

[...]

Sahafi Hotel attack

28. On 9 November 2018, Al-Shabaab detonated three vehicle-borne improvised explosive devices outside the Sahafi Hotel in Mogadishu. Five gunmen then assaulted the compound, dressed in what appeared to be newly issued Somali security forces uniforms and matching berets. At least 50 people were killed and 100 injured in the attack, making it the deadliest since attack on 14 October 2017, which killed almost 600.

[...]

Al-Shabaab's justice system

33. In addition to its ability to raise taxes, Al-Shabaab also provides some basic services typically associated with government, even in areas it does not physically control. In an environment where State institutions are limited or in some cases absent entirely, Al-Shabaab's provision of rudimentary courts and access to judicial recourse – and the group's ability to enforce its judgments through the threat of violence – may account for its appeal among certain segments of the population.

[...]

Regional operations

DusitD2 attack in Nairobi

36. On 15 January 2019, Al-Shabaab militants attacked a commercial business complex in Nairobi containing the DusitD2 Hotel. The attack began at approximately 15:25 UTC+3, commencing with a detonation of a suicide bomber. Four gunmen then proceeded to storm the compound using AK-pattern rifles and grenades, targeting people within the DusitD2 Hotel and surrounding businesses.

37. The attack resulted in 21 victims, as well as the 4 gunmen. The date of the attack was significant, coinciding with the third anniversary of Al-Shabaab's deadliest attack on AMISOM forces, when on 15 January 2016 militants overran a Kenyan Defence Forces AMISOM base at El Adde, Somalia, resulting in the deaths of approximately 150 Kenyan Defence Forces soldiers.

[...]

Cross-border attacks into Kenya

52. During the reporting period Al-Shabaab stepped up hit-and-run and improvised explosive device attacks along the Somalia-Kenya border, particularly during the months of June and July 2019, which saw a total of 30 incidents. [...]

53. The most serious cross-border incident occurred on 15 June 2019 in Konton, Wajir County, Kenya, when eight Kenyan police officers were killed and several others injured by an improvised explosive device. The attack occurred just one day after three Kenyan police reservists were kidnapped, also in the Konton area.

[...]

B. Islamic State in Iraq and the Levant faction

56. In 2018, the Monitoring Group on Somalia and Eritrea reported that the ISIL faction based in the Bari region of Puntland, headed by Abdulqader Mu'min, had entered a period of retrenchment and reorganization, and also detailed the emergence of an ISIL assassination network based in Mogadishu and Afgoye. [...] During the reporting period the Panel of Experts noted a violent upheaval in the faction's leadership. [...] An internal assessment by the United States-trained Puntland Security Force, obtained by the Panel in late November 2018, estimated that the group may comprise as many as 340 militants. [...]

[...]

Conflict with Al-Shabaab in Bari region

59. In December 2018, fighting broke out between the ISIL faction and Al-Shabaab in Bari region for the first time since early 2016, centred on crucial water sources in the mountainous areas of Bari region. Intense conflict between the ISIL faction and Al-Shabaab had been ongoing since November 2018, when both groups appear to have begun competing to extort businesses in Mogadishu and Puntland. [...]

[...]

V. Violations of international humanitarian Law involving the targeting of civilians

A. Al-Shabaab

[...]

141. Al-Shabaab routinely executed civilians accused of espionage and of providing information leading to airstrikes by the United States. On 31 March 2019, for instance, Al-Shabaab publicly executed four men accused of espionage in Kamsuuma village, Lower Juba. On 18 December 2018, the group also publicly executed a civilian accused of cooperating with AMISOM in Gamboole village, west of Jowhar town, Middle Shabelle region. On 3 and 4 July 2019, in Hagar and in Salagle, Middle Juba region, Al-Shabaab publicly executed, by firing squad, 10 civilians accused of spying for foreign and Somali security forces. On 7 July 2019, the group executed four civilians in Jamame, Lower Juba region, accused of spying for the Governments of Kenya and Somalia.

[...]

B. Federal and federal member state actors

147. During the reporting period, military actors of the Federal Government and the federal member states committed serious violations throughout Somalia, including extrajudicial killings by Somali National Army commanders [...]

Somali National Army extrajudicial killings

148. On 31 December 2018, the Somali National Army summarily executed by firing squad six men suspected of being affiliated with Al-Shabaab in the town of Bardera, Gedo region, on the alleged orders of the Somali National Army senior leadership. The accused had been in prison for five months before their execution, having been accused of being part of an Al-Shabaab assassination unit responsible for killing a Federal Government soldier. The suspects were not charged or offered the right to a fair trial or due process

of law, in violation of international humanitarian law and human rights law. [...]

[...]

C. African Union Mission in Somalia and other international actors

Killings of civilians by African Union Mission in Somalia forces

157. During the reporting period, AMISOM forces were reportedly responsible for the deaths of five civilians. On 6 November 2018, four civilians were killed when the Burundian contingent of AMISOM allegedly opened indiscriminate fire in Huriwa district, near the Balad exit checkpoint in Mogadishu, following the explosion of an improvised explosive device near the road where the AMISOM convoy was passing. [...]

158. On 17 February 2019, the Panel received reports that the Ethiopian contingent of AMISOM had allegedly arrested, tortured and killed a mentally impaired 17-year-old boy at Baidoa airport. In an email to the Panel on 14 April 2019, the AMISOM Head of Police claimed that the individual had been shot dead by unknown gunmen a few metres away from the outer perimeter of the airport, which is manned by Ethiopian troops, and that South-West State Police were conducting investigations.

Targeting of Hormuud and Safaricom infrastructure and employees

159. The Panel of Experts has received reports of attacks by the Kenya Defence Forces on 12 communications masts operated by Hormuud Telecom Somalia since 2017, almost all of them in Gedo region. The Panel has been able to independently corroborate five of those attacks, including three that took place during the current reporting period, which resulted in the deaths of two civilians. [...]

160. On 24 July 2018, a Hormuud watchman and his relative were killed when Kenya Defence Forces allegedly shelled a Hormuud communications mast in the Hiis Ugur area of El Wak district. On 15 January 2019, Kenya Defence Forces allegedly destroyed a Hormuud communication mast in Alibuley village, Afmadow district, Lower Juba region, and physically assaulted a Hormuud watchman. On 27 March 2019, a Hormuud communications mast in Jaldeyse village, Afmadow district, was allegedly destroyed by Kenya Defence Forces aircraft. On 22 August 2019, Kenya Defence Forces allegedly destroyed a telecommunications mast in Caws-Quran, El Wak district.

161. The Kenya Defence Forces denied involvement in any attacks on Hormuud infrastructure. In a meeting with the Panel, the Chief of the Kenya Defence Forces stated that, since 2015, 29 Safaricom PLC installations had been attacked within Kenya, largely by Al-Shabaab, resulting in numerous civilian and police reservist casualties.

162. The destruction of telecommunications infrastructure by both parties may be aimed at curtailing the transmission of intelligence on troop movements or militant operations. On the part of the Kenya Defence Forces, it may also prevent Al-Shabaab from triggering improvised explosive devices using mobile telephone signals. However, there are humanitarian implications to the long-term loss of telecommunications coverage within Somalia, including impeding the coordination of relief efforts, the transfer of food vouchers and the receipt of remittances from outside the country.

United States of America airstrikes

163. From 1 January to 17 September 2019, the United States conducted 50 publicly acknowledged airstrikes in Somalia, compared with 47 in all of 2018 and 35 in 2017. In February 2019 alone, the United States conducted 15 publicly acknowledged airstrikes – reportedly killing 97 Al-Shabaab fighters – representing the highest number in a single month in Somalia since data have been available. United States Africa Command [AFRICOM] has consistently reported that no civilians have been injured or killed in those airstrikes.

164. On 20 March 2019, Amnesty International published a report alleging that 14 civilians had been killed and 8 more had been injured in five airstrikes conducted by the United States in the previous two years in Lower Shabelle region; United States Africa Command subsequently denied the allegations. However, on 5 April 2019, the United States acknowledged that two civilians had been killed in one of its airstrikes, not referenced in the Amnesty International report, on 1 April 2018 near the town of El Bur, Galgadud region.

[...]

C. Amnesty International, The Hidden US War in Somalia: Civilian Casualties from Airstrikes in Lower Shebelle

[Source: Amnesty International, “The Hidden US War in Somalia: Civilian Casualties from Airstrikes in Lower Shabelle”, 20 March 2019, available at: <https://www.amnesty.org/en/documents/afr52/9952/2019/en/>]

[...]

1. The US Military in Somalia

[1] In December 1992, the US military intervened in Somalia for the first time as part of “Operation Restore Hope” [...] In October 1993, after the Battle of Mogadishu and infamous “Black Hawk Down” incident, which resulted in the deaths of 18 US servicemen, the US military withdrew from the country.

[2] In 2002 or 2003, President George W. Bush, acting under the Authorization for Use of Military Force (AUMF) – the legal authority granted to him by Congress in the aftermath of the 11 September 2001 attacks in the USA allowing him to use force against the perpetrators of the attacks – sent US government forces back to Somalia. [...] In January 2007, the Bush Administration carried out its first air strike against suspected Al-Qa'ida fighters in Somalia. [...]

[3] [...] [T]he US carried out nine air strikes in Somalia between 2001 and 2010. The first acknowledged drone attack was conducted in 2011. [...] In October 2013, President Barack Obama also dispatched the first official deployment of US forces in the country since 1993 [...] The US military reportedly conducted six air strikes between 2012 and 2014; 11 in 2015; and 14 in 2016.

[4] The increase in US military involvement in the fight against Al-Shabaab corresponded with new operational and legal guidance for US operations in Somalia. On 22 May 2013, President Obama issued the 'Presidential Policy Guidance' (PPG), which established the operating procedures for action "against terrorist targets outside the United States and areas of active hostilities, including Somalia". The PPG remained classified until litigation by the American Civil Liberties Union forced its disclosure in 2016. Notably, the guidance asserts that individuals can be targeted only if "the individual's activities pose a continuing, imminent threat to U.S. persons", and sets out minimum necessary conditions for any lethal action, including:

"(a) near certainty that an identified HVT [high valued target] or other lawful terrorist target other than an identified HVT is present; (b) near certainty that non-combatants will not be injured or killed; (c) [REDACTED] and (d) if lethal force is being employed; (i) an assessment that capture is not feasible at the time of the operation; (ii) an assessment that the relevant governmental authorities in the country where action is contemplated cannot or will not effectively address the threat to U.S. persons; and (iii) an assessment that no other reasonable alternatives to lethal action exist to effectively address the threat to U.S. persons."

[5] The PPG governed all strikes in Somalia until after the end of President Obama's second term. However, in October 2016, the New York Times reported that the administration had "quietly broadened the president's authority for the use of force in Somalia by allowing air strikes to protect American and African troops" fighting Al-Shabaab. Strikes no longer required that Americans be under direct threat. [...]

2.1. Military Activity and Policy Changes under the Trump Administration

[6] Shortly after President Trump came to power in January 2017, the US modified the policy and legal framework governing US military operations in Somalia. [...]

[7] On 30 March 2017, [...] the then newly inaugurated President Trump had issued a directive relaxing the rules for authorizing air strikes in Somalia. [...] The directive reportedly declared all of southern Somalia an "area of active hostilities" (AAH) and stated that war targeting rules now apply. Its implementation meant that

the Obama-era PPG, which was applicable to areas *outside* of recognised conflict zones, no longer applied to the areas of southern Somalia where US forces were carrying out air strikes, thereby removing the requirement for a target to pose a threat to Americans and meaning a strike could be ordered without the need for prior high-level vetting.

[8] The designation of an “area of active hostilities” reportedly meant that there was no longer a requirement of “near certainty” that the target of a lethal action was identified as a “terrorist” and that the attack would not kill or injure ‘non-combatants’. Instead, the US interpretation of who may be directly targeted as a combatant, now apply. [...]

[9] In an interview with The Daily Beast, Brigadier General Donald Bolduc, who was commander of US Special Operations Forces in Africa until June 2017, said that the former “near certainty” standard required greater substantiation before a strike could be taken: “It required more platforms, different types of intelligence, HUMINT [human informants], SIGINT [surveillance intercepts], FMV [full-motion video], a lot more detail and pattern-of-life” information. After the directive was signed, however, “The burden of proof on the target was changed to a lesser burden of proof, and so that automatically opens up the aperture [for taking more strikes],” he explained, and said AFRICOM conducted strikes it would not have previously carried out, due to the increased probability of causing civilian casualties.

[10] Moreover, according to the understanding of General Bolduc – who directly confirmed the following to Amnesty International – since being designated as an “area of active hostilities”, individuals in these areas of Somalia are now considered to be lawfully targetable based solely on four criteria: age, gender, location (i.e. being inside specific areas – areas in which the US military has deemed the population to be supporting or sympathetic to Al-Shabaab), and geographical proximity to Al-Shabaab. “The reason President Trump changed the rules is because now these guys can be hit,” General Bolduc said to Amnesty International. “They are in close proximity, they are part of the Al-Shabaab network. They’re *there*. When you are looking at a training camp and all you can see are military-aged males, you say, hey, that’s a target.”

[11] “They are part of the network,” General Bolduc continued. “They are assisting. Drivers and security. Guys that resupply them, get them food. You used to call them the auxiliary and underground. Al-Shabaab needs food and a place to stay. [The directive declaring portions of Somalia an “area of active hostilities”] opens the aperture to these guys. If there are guys that offer assistance, you can strike them under “reasonable certainty.” Some of these guys are smart and conceal weapons and some are not smart. The area is assessed, different villages are categorized, some are passive or resisting Al-Shabaab, and some are actively assisting.”

[12] In reply to a request for an official response on General’s Bolduc’s assertion, AFRICOM stated that: “BG Buldoc’s [sic] purported articulation of targeting standards does not accurately reflect the targeting standards of AFRICOM or DoD. Unfortunately, providing additional detail on this topic would not be possible due to operational security reasons.” However, if General Bolduc is accurate in how the policy is practically applied,

then the US military appears to be acting in violation of the standard interpretation of IHL as well as its own laws and policies regarding who is lawfully targetable during conflicts.

[13] In AFRICOM's press releases, men who are killed, and who the USA considered 'combatants', are referred to as part of the Al-Shabaab "network". In response to a request from Amnesty International, the DoD [Department of Defence] stated that "the "network" refers to any person or group of people who support the terrorist organization through various means including financial, intelligence, harboring, bearing arms, etc." The DoD refused to detail how it determines affiliation to Al-Shabaaab however, stating that this would "jeopardize the intelligence process which we gather that information". Amnesty International research has gathered credible evidence showing that people have been killed in US attacks who did not directly participate in hostilities or even provide material support to Al-Shabaab.

[14] Former US officials also told Amnesty International that in recent years, Al-Shabaab has used civilian public transportation and slept in civilian homes for protection. When the US military has encountered other armed groups in recent years that have used this tactic, they have increasingly been willing to conduct the strike anyway, in the interest of denying the group a safe haven. [...] Former Defense Secretary Mattis used this logic to justify air attacks and civilian casualties during fighting against the Islamic State in Raqqa, Syria. In recent press statements, AFRICOM has started to use similar language to report air strikes in Somalia, explaining that the purpose of certain attacks was to deny Al-Shabaab a safe haven. [...]

[...]

4. Air Strikes in Somalia under International Law

[...]

[15] Amnesty International considers the USA to be a party to the NIAC in Somalia. US officials have characterized their operations as in the furtherance of national self-defense and collective self-defense, at the request, and with the consent, of the Somali government. When asked by Amnesty International, AFRICOM and the DoD both refused to confirm or deny whether the US is at war in Somalia.

[...]

[16] [...] US doctrine on who can be directly targeted is explained in the US Department of Defense (DoD) Law of War Manual. Particularly relevant to this report is the DoD Manual's discussion of armed groups. It states, "belonging to an armed group makes a person liable to being made the object of attack regardless of whether he or she is taking a direct part in hostilities."

[17] Individuals who are formally or functionally part of a non-State armed group that is engaged in hostilities

may be made the object of attack because they likewise share in their group's hostile intent. The Manual gives examples of formal or direct information about an individual's membership including whether individuals use a rank, title, or style of communication; take an oath of loyalty to the group or the group's leader; wear a uniform or other clothing, adornments, or body markings that identify members of the group; or possess documents issued or belonging to the group that identify the person as a member, such as membership lists, identity cards, or membership applications.

[18] According to the DoD Manual, in the absence of formal, direct information about an individual's membership, the following types of information might indicate that an individual belongs to an armed group: acting at the direction of the group or within its command structure; performing a function for the group that is analogous to a function normally performed by a member of a State's armed forces; taking a direct part in hostilities, including consideration of the frequency, intensity, and duration of such participation; accessing facilities, such as safehouses, training camps, or bases used by the group that outsiders would not be permitted to access; traveling along specific clandestine routes used by those groups; or traveling with members of the group in remote locations or while the group conducts operations.

[19] The Manual notes that some armed groups might not be organized in a formal command structure and "lack a formal distinction between those members and non-members who nonetheless participate in the hostile activities of the group." In such cases, a person's functional membership may be indicated by: following directions issued by the group or its leaders; taking a direct part in hostilities on behalf of the group on a sufficiently frequent or intensive basis; performing tasks on behalf of the group similar to those provided in a combat, combat support, or combat service support role in the armed forces of a State.

Discussion

I. Classification of the Conflicts and Applicable Law

1. (*Document A, paras [5], 10 and 15; Document B, paras 9, 10, 13-15, 28 and 33; and Document C, paras [1], [2] and [15]*)

a. How would you classify the conflict(s) in Somalia? Who or which entities are parties to the conflict(s)? Is there a single armed conflict or several armed conflicts involving different parties? Is there an international armed conflict (IAC) or non-international armed conflict(s) (NIAC)? b. How would you classify the United States' airstrikes in Somalia? Is the US military engagement in Somalia since 1992 a single continuous armed conflict or a chain of succeeding separate conflicts? Is the United States involved in an IAC or NIAC in Somalia? What is the relevance, if any, of the consent of the Somali government to this involvement? (GC I - IV, Arts 2 and 3; ICRC, Commentary of 2016: Common Article 2, paras 257-264) c. Is AMISOM a party to the conflict in Somalia? Can an international organization become a party to the conflict in its own capacity or

is it rather the troop-contributing countries (*Document A, paras 8 and 15*)? Assuming that an international organization may become a party to the conflict, is it bound to respect IHL and how are its obligations determined (especially if the troop contributing states have not all ratified the same IHL treaties)? (GC I – IV, Art. 2; P I, Art.1; P II, Art. 1; UN Secretary General, Observance by United Nations forces of international humanitarian law) d. Would you qualify the attacks carried out by Al-Shabaab in Nairobi, Kenya or within Kenyan territories as a separate conflict or part of the conflict(s) in Somalia? Is this conflict an IAC or a NIAC? (GC I - IV, Arts 2 and 3) e. Would the lessened capability of Al-Shabaab to carry out conventional attacks or its official policy to target Federal Government officials affect the characterization of the situation? Does IHL apply to all of the acts of violence committed by Al-Shabaab as documented by the Panel of Experts? (GC I - IV, Art. 3; P II, Art. 1) f. (*Document B, para. 59*) Does IHL apply to the conflict between Al-Shabaab and ISIL faction in Bari region? Has the threshold of a NIAC been met? (GC I-IV, Art. 3; P II, Art. 1) g. What are the legal regimes that apply to the situation in Somalia? Are all parties to the conflict bound by the same IHL rules? (GC I - IV, Arts 1, 2 and 3; P II, Art. 1; CIHL, Rule 139)

II. Extra-judicial killings

2. (*Document B, paras 10, 141 and 148*)

a. Do the alleged acts of extra-judicial killings by Al-Shabaab or the Somali National Army violate IHL? Does IHL regulate extra-judicial killings? (GC I-IV, Art. 3; P II, Art. 4 (2) (a)) b. Is the targeting of Federal Government officials prohibited under IHL? c. Do the alleged acts of the civilians subjected to execution, e.g. espionage, spying, cooperation with the enemy, and affiliation with armed groups, justify their killing? In the conduct of hostilities? Once in the power of a party? (GC I - IV, Art. 3; P II, Arts 1, 4 and 5; P I, Art. 46; ICRC, Interpretative Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law) d. What does IHL have to say about espionage? Do spies have a specific status in IHL, or would they be considered civilians or combatants/fighters? Does it matter if espionage is committed in the context of an IAC or a NIAC? May individuals be executed for having engaged in espionage? (HR, Arts 24 and 29; GC IV, Art. 5; P I, Arts 45 and 46; CIHL, Rule 107)

III. Conduct of Hostilities

3. (*Document A, paras 8 and 10; and Document B, paras 57- 62*) – *alleged attacks by the AMISOM forces*

a. Do the situations leading to the killings of civilians by AMISOM forces come within the scope of the conduct of hostilities paradigm? Could it rather be governed by the law enforcement paradigm, under IHRL? b. Would you characterize the acts of AMISOM before and after the UN Security Council's authorization differently? (*Document A, paras 8 and 15*)? (GC I - IV, Art. 3; P II, Arts. 1 and 13; CIHL, Rules 1) c. Are the telecommunications infrastructures allegedly attacked by Kenyan Defence Forces lawful targets under IHL? Do the alleged attacks violate IHL? (CIHL, Rules 8, 11, 14 and 15)

4. *(Document B, paras 163 and 164, and Document C, para. [4]) - USA targeting standards*

- a. What is the relevance of the Obama “Presidential Policy Guidance” (PPG)? Should it be considered under the law enforcement or conduct of hostilities paradigm? Do the “minimum necessary conditions for lethal action” under the PPG reflect IHL standards? Does IHL permit or even require a State to adopt its own standards, procedures, or guidance on the conduct during hostilities? If they further restrict conduct? If they implement and clarify IHL rules? If they permit attacks beyond what is admissible under IHL? b. Could an attack that meets the requirements of the PPG nevertheless be unlawful under IHL? (P I, Art.51 and 52; CIHL, Rule 1, 6 and 11-14) c. *(Document C, paras [8] and [9])* Is/are there any major difference(s) between the Obama PPG and the Trump’s Directive? In your opinion, which one is closer to IHL standards?
- d. Does the designation of a territory as “area of active hostilities” under the Trump Directive expand the scope of legitimate targets under IHL? Does it matter for the applicability of IHL that certain conduct takes place in an area of active hostilities? Do the indicators of Trump’s Directive allow for targeting decisions in line with IHL standards? (ICRC, Interpretative Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law) e. *(Document C, paras [11], [13] and [14])* Are those persons referred to as ‘the auxiliary and underground [members]’, of Al-Shabab (e.g. assistants, drivers, and security) lawful targets under IHL? Do their acts constitute direct participation in hostilities? What about those considered as “under the Al-Shabaab network”, e.g. financing, intelligence, harboring, bearing arms, etc? (ICRC, Interpretative Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law) f. *(Document C, paras [16] - [19])* How do you assess the US Department of Defence Law of War Manual’s standards of targeting? Under IHL, would the indicators mentioned in the Manual be sufficient to target a person? (ICRC, Interpretative Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law)