

Somalia, The Death of Bilal Al-Sudani

This case deals with the killing by the US special forces of a leader of the so-called Islamic State, Bilal al-Sudani, and ten of his operatives in northern Somalia. Al-Sudani was killed after US forces raided a remote mountainous cave complex hoping to capture him. In this press call, two US Senior Administration Officials discuss the outcome of the military operation.

Acknowledgments

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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.

BACKGROUND PRESS CALL BY SENIOR ADMINISTRATION OFFICIALS ON A SUCCESSFUL COUNTERTERRORISM OPERATION IN SOMALIA

[Background Press Call by Senior Administration Officials on a Successful Counterterrorism Operation in Somalia, 26 January 2023, available at <https://www.whitehouse.gov/briefing-room/press-briefings/2023/01/26/background-press-call-by-senior-administration-officials-on-a-successful-counterterrorism-operation-in-somalia/>]

Via Teleconference 3:12 P.M. EST

MODERATOR: Good afternoon, everyone. Thank you for your patience. As a reminder, this call will be for attribution to “senior administration officials.” [...].

[Senior administration official] and [senior administration official] will both give some initial remarks, and then we will open it up to Q&A.

So, with that, [senior administration official], I'll hand it over to you.

SENIOR ADMINISTRATION OFFICIAL

[...]

Let me begin by telling you what has transpired in the last 24 hours. Last night, on orders from the President, the U.S. military conducted an assault operation in northern Somalia that resulted in the death of Bilal al-Sudani, a key operative and facilitator for ISIS's global network, as well as a number of other ISIS operatives.

This precision operation took place in a mountainous cave complex in northern Somalia. Thankfully, and based on extensive planning and exquisite execution of the plan, there were no casualties among American servicemembers or civilians.

In addition to Sudani, the operation killed approximately 10 of Sudani's ISIS associates. We had prepared for the possibility of capturing Sudani, but the hostile forces' response to the operation resulted in his death.

We have notified key counterterrorism partners, including the Somali government, with whom we work closely on a daily basis to protect their citizens and ours.

As I said, this operation was the result of extraordinary coordination and careful planning across all elements of the U.S. government for many months. I and other senior members of the President's national security team were first briefed on the intelligence a number of months ago, and we were regularly updated on the operations planning as it progressed.

Once planning reached a critical stage last week, the Department of Defense briefed the operation to the President. [...].

He authorized it earlier this week after further consultation, including ensuring that key questions that he had about the risk to our forces and the impact of the operation on potential civilians in the area had been answered to his satisfaction.

[...]

This deliberation included a careful evaluation of whether alternative options existed to address the threat from Sudani with even lower risk to U.S. forces. An intended capture operation was ultimately determined to

be the best option to maximize the intelligence value of the operation and increase its precision in challenging terrain.

At the same time, and based on extensive past experience, we recognize that even an intended capture operation might well result in Sudani's death, as ultimately it did.

The success of yesterday's operation reflects the extraordinary and patient work of the Defense Department and its interagency partners across our government. That included locating Sudani and determining the nature of his associates. It also included extensive rehearsals of the operation itself by our military forces, including at sites specifically built to recreate the terrain where the operation ultimately needed to take place. And, of course, it included the actual execution that was careful, precise, and effective.

[...]

SENIOR ADMINISTRATION OFFICIAL

[...]

This operation is a significant counterterrorism achievement in itself. It also needs to be understood in context. The operation reflects key ways in which the Biden administration's approach to addressing international terrorist threats, such as the threats posed by ISIS and al Qaeda, has evolved over the past two years.

Our approach starts from the fundamental recognition that the terrorism threat today is more diffuse, ideologically diverse, and geographically dispersed than it was 20 or so years ago. That means, as you've heard us say before, that we could not afford to allocate our troops globally in a way that reflected the threat landscape of September 2001, rather than the threat landscape we actually face today.

Instead, we needed to have the combination of light footprints, operational agility, and intelligence insight to determine where threats to Americans arise from now, including, as we have been saying for the past two years, from Somalia, where al Shabaab as well as ISIS take advantage of ungoverned spaces to operate with too much freedom and impunity.

Thus, from over the horizon, we, as a government, have identified terrorist threats, then used very precise, very carefully calibrated applications of force where that's appropriate to address such threats when they reach the level of requiring us to act, ourselves, to address it.

That's the approach that eliminated, early last year, the global leader of ISIS in an operation in Syria. That's the approach that took off the battlefield, last summer, the world's most wanted terrorist: Ayman al-Zawahiri,

the global leader of al Qaeda at the time. It is also the approach that has allowed us to capture or kill, at a steady pace, key ISIS figures in Syria who seek to reconstitute the threat to the world that ISIS once posed before the United States led a global coalition to degrade it.

And, of course, we have, at the same time, invested heavily in working by, with, and through our partners to pursue counterterrorism wherever possible. We have also prioritized our own non-kinetic efforts, such as community-level violence prevention.

Through this operation and others, President Biden has made it very clear that we are committed to finding and eliminating terrorist threats to the United States and to the American people wherever they are hiding, no matter how remote. That's the context for understanding yesterday's operation.

From a mountainous cave complex in northern Somalia, Bilal al-Sudani is assessed to have supported ISIS's expansion and activities across Africa and beyond the continent, in particular by providing funding to sustain the operational capabilities of ISIS elements around the world. That includes the ISIS Khorasan branch in Afghanistan, one of ISIS's most lethal branches.

Sudani has a long history as a terrorist in Somalia. Before he joined ISIS, he was designated by the U.S. Treasury Department in 2012 for his role in Shabaab: helping foreign fighters to travel to an al Shabaab training camp and facilitating financing for foreign violent extremists in Somalia.

Sudani had a key operational and financial role with specialized skills, which made him an important target for U.S. counterterrorism action.

This history and threat profile speak to the diffuse and network nature of the terrorism threat we face today from ISIS and other foreign terrorist organizations like al Qaeda. Our military, intelligence, and policy communities supported the development and deliberation for this operation in a coordinated and consultative manner in the spirit of this administration's policies for evaluating, approving, and conducting U.S. direct-action counterterrorism operations. That's also key context for understanding this.

Our intelligence community expects to glean valuable information from this operation as well, demonstrating our continued emphasis on maximizing intelligence collection. Using these insights and others, we will continue to build on President Biden's established track record of counterterrorism success, while ensuring that these efforts are narrowly scoped and conducted in a manner consistent with U.S. values and broader national security interests.

The United States and our allies and partners are safer today, as a result of this operation yesterday, and the President will continue to take all necessary steps to protect the United States and its interests around the world from terrorist threats where they exist.

[...].

MODERATOR: Great, thank you. So, with that, we'll open it up to Q&A. [...].

[...]

MODERATOR: Thank you. [...]

Q [...] I want to just go beyond this targeted operation and ask how the U.S. is going to move forward with the Somali government to make sure that malign groups don't take advantage of — I think what you described as “ungoverned spaces.” Maybe you could tell us a little bit more about this community-led violence prevention effort.

And then, can you also just sketch a little bit more about this individual? You know, how big was his network? How much money were we talking about? Was he Sudanese, as his name indicates? Just — just some details like that, if you don't mind.

SENIOR ADMINISTRATION OFFICIAL

[...] So, as we mentioned, the Somali government is, of course, a key counterterrorism partner. We have notified them about this operation, and we work closely with them, truly, day to day on addressing the threat that al-Shabaab poses and addressing threats like this that ISIS can pose from Somalia, as well.

That collaboration, that cooperation can take a number of forms, from training to provision of intelligence to other steps. And, you know, we do applaud the current Somali leadership as they make clear their commitment to counterterrorism as a real priority for the sake of the safety of their own citizens and the safety of the global public.

There are, of course, moments that we believe necessitate a kinetic operation like the one that was successfully executed yesterday. And, at the same time, this administration has been very clear, including by earlier public remarks by the Homeland Security Advisor, on how we think about addressing international terrorism threats — that often the best approach can be to invest in violence prevention at earlier stages of radicalization or recruitment of violence and in ways that don't require the use of the, sort of, kinetic means this operation required.

That's the context for my earlier mention of community-led violence prevention, which we try to do in appropriate ways at home and in which we work hard, especially to the State Department, to train, support, and inform our partners as they do in their own — in communities abroad.

I think I'll leave details on the individual beyond those that were already mentioned to a time down the road in

the future. But I'm sure the Defense Department, in due course, will have more to say on that.

MODERATOR: Thank you. [...]

Q [...] I know that it's a sensitive subject and you don't really want to get into the details of collection. But, [senior administration official], you had talked about, you know, over-the-horizon operations in Syria and elsewhere, and obviously, this brings Afghanistan to mind.

And so, I'm wondering if you could talk a little bit about, you know, what you've learned from these over-horizon operations where maybe collections are a little bit better, like in places like Somalia and Syria versus Afghanistan, and whether or not they may somehow help you to navigate the restrictions in conducting over-the-horizon operations in Afghanistan, given the fact that collections are likely still very limited, if that makes any sense. Thank you.

SENIOR ADMINISTRATION OFFICIAL:

[...]

And then, on the intelligence collection question, I do think that the theory of the case that you've seen for, I guess, just over two years now as an administration is that: Whether it's with no U.S. forces on the ground, as we have in a place like Afghanistan, or whether it's with a very limited number or (inaudible) number of troops on the ground, as we have in a place like Somalia, we can use the exquisite capacity available across the U.S. government to get the sort of insight we need into threats that rise to the level of concern that we feel we need to act on.

Now, what we do to act on them is, of course, the next step. And where we can act through partners, that is generally our preference. But where there is an opportunity as well as concern, both at the magnitude of what led to yesterday's operation, the intelligence is there to act on it and to know what our forces are going to encounter in an operation like this. So it's the sort of insight that we had in Afghanistan that led to the extraordinarily precise operation to remove from the battlefield Ayman al-Zawahiri.

It's a sort of insight that we were able to have in this extremely remote area of Somalia to allow our forces to pull off what they were able to pull off yesterday.

MODERATOR: Thank you. [...]

Q Hi. I just want to follow up on what you had initially said about hoping to capture for collection. Can you tell — give us any description or the circumstances of what led to his death and whether there was resistance and — anything about the operation itself?

SENIOR ADMINISTRATION OFFICIAL:

[...] I just want to start out by saying I think it's an important principle for us — and you'll have heard it as we've talked about the way we approach the use of lethal force — our preference is to pursue capture. That's — that is in our guidance internally.

What we do is look at capture operations as the — based on our values and preferred course.

In this case, it wasn't feasible. And the details of that are not available at this time. But it's important to note that that's the kind of decision the President makes when he's presented with options, because he believes that's consistent with our values.

MODERATOR: Thank you, everyone. That was our final question.

[...]

3:31 P.M. EST

Discussion

I. Classification of the Situation and Applicable Law

1.
 1. Was the operation that led to the death of Bilal al-Sudani part of a preexisting armed conflict? If it was, how would you classify that conflict? If not, is IHL nevertheless applicable to this operation? Does the US consider IHL to be applicable to that operation? (GC I-IV, Art. 2, GC I-IV, Art. 3)
 2. Does it matter to label such an operation as a “counterterrorism operation”? May “terrorism” be as such an armed conflict? Does IHL apply to all acts of terrorism? When are terrorist acts covered by IHL applicable to international armed conflict (IAC)? By IHL applicable to of non-international armed conflict (NIAC)? What criteria need to be fulfilled in the latter case? (GC IV, Art. 33, P I, Art. 51(2), P II, Art. 13(2) and CIHL, Rule 2)
2. Bearing in mind that the operation took place in Somali territory, is the fact that the Somali government has consented to the operation relevant for the application of IHL? What if Somalia had not consented to it?
3. Assuming that the attack took place in the context of a preexisting armed conflict, what is the geographical scope of application of IHL in NIAC? Does IHL apply on the whole territory of Somalia or only in the area where the hostilities occur? Does IHL apply on the territory of the US?
4. Does the declaration that “we are committed to finding and eliminating terrorist threats to the United States

and to the American people wherever they are hiding, no matter how remote” imply challenges for the applicable law?

5.

1. Were the counterterrorism operations carried out against the Islamic State (ISIS) in Syria and the drone strike that killed Ayman al-Zawahiri in Afghanistan, mentioned by the second Senior Administration Official, covered by IHL? According to the US? According to you?
2. Were these situations covered by other branches of international law? Is the US required to comply with IHRL in Somalia? Does IHRL apply to targeted killings? In this respect, when do you think that IHRL shall prevail over IHL rules?

II. Conduct of hostilities

6.

1. Which main rules of IHL have to be respected when conducting an attack in a NIAC? Why did the US President carefully examine the impact of the operation on potential civilians present in the area before authorizing it? May the risk to US forces be taken into account when planning an attack? If so, under which rule? (CIHL, Rules 1, 14 and 15)
2. If the operation was part of an armed conflict, was al-Sudani necessarily a lawful target of attack? On what conditions? Was it necessary for al-Sudani to be participating directly in the hostilities at the time of the attack? In that respect, do you think that his operational and financial role in supporting ISIS and Al-Shabaab make him a lawful target? (P I, Art. 51(3), P I Art. 41, P II, Art. 13(3), CIHL, Rule 47, See ICRC, Interpretative Guidance on the Notion of Direct Participation in Hostilities [Recommendations I, II, IV, V])
3. If al-Sudani was not a lawful target, what status did he have under IHL, to the extent that IHL was applicable? In that case, was killing him prohibited? In your opinion, is it IHL on conduct of hostilities or IHRL on law enforcement that governs the US operation that led to the death of al-Sudani?
4. If we assume that ten ISIS associates were not directly participating in the hostilities when killed by the US forces, can we consider them as lawful targets for the purposes of IHL? Was it lawful to kill them even if they were unlawful targets? What information do we need to determine whether they were lawful targets? (P I, Art. 51(3), P II, Art. 13(3), see ICRC, Interpretative Guidance on the Notion of Direct Participation in Hostilities [Recommendations I, II, IV, V])
5. Under IHL, is it always lawful to kill a person who is a lawful target? What if al-Sudani had surrendered? May a person who surrenders ever be killed? Should less harmful measures be taken? If so, when and under what circumstances? Under IHL, is there any obligation to use non-lethal means when possible? Does a military operation conducted against a lawful target always have to be planned with a view to arresting rather than killing that target? Who, in the present case, bears the responsibility to decide whether someone who is or is not a lawful target should be captured or killed? The US President? Those who conduct the operation? Both?
6. What is the ICRC approach to the ‘capture rather than kill’ debate? Does it mean that one must capture lawful targets unless they pose an imminent threat to human life as it happens in law enforcement operations under IHRL? What is the US’s point of view? In your opinion, why was the initial plan to

capture al-Sudani rather than killing him? What circumstances may justify the decision to ultimately kill al-Sudani? (See Interpretative Guidance on the Notion of Direct Participation in Hostilities, 77, US Law of War Manual, para 2.2.3.1)

7. Is maximizing intelligence collection also a key tool to be able to comply with IHL obligations?

III. US counterterrorism operations

7.
 1. How has the US approach towards counterterrorism issues changed over time? Did the “war on terror” or the conflict between the US and al Qaeda constitute an armed conflict? What was the nature of that conflict? Was it covered by IHL? Can we still use the term “war on terror” to describe the US counterterrorism operations directed against ISIS or al Shabaab? (See United States of America, The Death of Osama bin Laden and United States, the Obama Administration’s Internment Standards)
 2. Imagine that Sudani had been taken alive by the US forces, which court could have tried him? For what? Could he have been detained without trying him? (See United States of America, The Death of Osama bin Laden and United States, the Obama Administration’s Internment Standards)