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BACK AGAIN: HOW AIRBORNE STRIKES AGAINST AL-SHABAAB FURTHER U.S. IMPERIALISM

Steffi Colao

TABLE OF CONTENTS

INTRODUCTION	139
METHODOLOGY	144
I. BACKGROUND	146
A. The United States Has Spent Decades Establishing a Global Military Presence.....	146
B. History of U.S. Engagement in Somalia	150
C. History of al-Shabaab	160
II. PART I: U.S. AIRBORNE STRIKE TARGETING POLICY RELIES ON INVALID INTERPRETATIONS OF BOTH DOMESTIC LAW AND INTERNATIONAL LAW, SO THE PROGRAM IN CONCEPT IS UNLAWFUL	162
A. U.S. Law Governing Extraterritorial Use of Force and Targeting	162
B. International Law Governing Combatant Status and Targeting ..	168
1. Jus ad Bellum	169
2. Jus in Bello	170
C. The United States insists its strikes are lawful	175
D. U.S. Airborne Strikes Against Members of al-Shabaab Are Unlawful Under Domestic and International Law	178
1. U.S. Airborne Strikes Against al-Shabaab Likely Violate Domestic Law.....	178
2. U.S. Airborne Strikes Against al-Shabaab Violate International Law	182
III. THE UNITED STATES FAILS TO EITHER TARGET OR KILL MEMBERS OF AL-SHABAAB WHO DIRECTLY PARTICIPATE IN HOSTILITIES, AND SUCH EXTREME INACCURACY RENDERS THE AIRBORNE STRIKE PROGRAM ILLEGAL IN PRACTICE.....	189

- A. Airborne Strike Data..... 190
- B. Analysis of Airborne Strikes Against al-Shabaab 190
 - 1. Targeting Decisions are Likely Based on Targeting Individuals Based on Membership in a Terrorist Organization, Not on Their Direct Participation in Hostilities 190
 - 2. Targets Appear to Be Chosen as a Result of Bad Intelligence 193
 - 3. Targets Appear to Be Chosen Based on Identity- and Location-based Profiling 195
- C. Such Failures Further Undermine the United States’ Claims of the Program’s Legality 196
 - 1. Airborne Strikes Against al-Shabaab Largely Violate Domestic Law..... 196
 - 2. Many Airborne Strikes Violate International Law Individually, and Taken as a Whole, the Program Violates Fundamental Principles of IHL. 197
 - 3. Lastly, U.S. Airborne Strikes Against al-Shabaab Likely Violate Domestic Policy 204
- IV. THE DURATION OF THE PROGRAM DESPITE SUCH LEGAL AND PRACTICAL FLAWS INDICATES THAT THE ULTIMATE GOAL OF THESE STRIKES IS ABOUT CONTINUED MILITARY PRESENCE IN SOMALIA, RATHER THAN DEFEATING AL-SHABAAB. 206
 - A. The U.S. Has Constructed an Image of Somalia that Justifies its Imperialist Intervention 206
 - B. Airborne Strikes in Somalia Help Maintain U.S. Military Empire 210
 - C. Looking Forward..... 213
- CONCLUSION..... 214
- APPENDIX A 215

INTRODUCTION

On February 24, 2022—a day most major news outlets were covering Russia’s sudden missile strikes on Ukraine—the New York Times also reported that the United States had resumed drone strikes in Somalia.¹ The U.S. military’s Africa Command (AFRICOM) verified the February strike,² which was the first since August 2021 and one of over three hundred likely U.S. airborne strikes in Somalia.³ AFRICOM reportedly authorized this attack to defend Somali forces,⁴ killing sixty al-Shabaab “terrorists.”⁵ Often called a hidden or secret war,⁶ the United States has been engaged in conflict in Somalia since 2002,⁷ a longstanding military presence of which the graphic, regardless of its aims, reminded viewers.

Twenty years after 9/11, the United States remains engaged in counterterrorism measures worldwide. Despite declaring near-total defeat of al-Qaeda in the Middle East,⁸ U.S. administrations continue to caution that the United States faces imminent, countless terrorist

1. *Ukraine in Maps: Tracking the War with Russia*, BBC, Feb. 24, 2022, <https://www.bbc.com/news/world-europe-60506682>; Eric Schmitt, *U.S. Carries Out First Airstrike in Somalia Since August*, N.Y. TIMES, Feb. 24, 2022, <https://www.nytimes.com/2022/02/24/us/politics/somalia-shabab-us-airstrike.html>

2. Lt. Cmdr. Timothy Pietrack, *Somali, U.S. forces engage insurgents in support of the Federal Government of Somalia*, U.S. AFR. COMMAND, Apr. 5, 2022, <https://www.africom.mil/pressrelease/34297/somali-us-forces-engage-insurgents-in-support-of-the-federal-government-of-somalia>.

3. See Appendix.

4. Pietrack, *supra* note 2.

5. While I resist using the word “terrorist,” which turns an individual’s actions into a totalizing identity, much like the term “criminal” (not to mention the racist and political factors influencing who is labeled a terrorist, again very much like “criminal”), this Article uses “terrorist” when citing U.S. government statements but does not endorse the use of the term. For further critique of the term “terrorist,” See Richard Jackson, Jeoren Gunning & Marie Breen Smith, *The Case for a Critical Terrorism Studies*, 6 EUR. POL. SCI. 225(2007).

6. See, e.g., AMNESTY INT’L, *THE HIDDEN U.S. WAR IN SOMALIA: CIVILIAN CASUALTIES FROM AIR STRIKES IN LOWER SHABELLE*, 1–72 (2019), <https://www.amnestyusa.org/wp-content/uploads/2019/03/The-Hidden-U.S.-War-in-Somalia.pdf>; Matthew Cole & Nick Turse, *CIA Contractor Dies in Secret U.S. War in Somalia*, INTERCEPT, Nov. 26, 2020, <https://theintercept.com/2020/11/26/somalia-cia-michael-goodboe/>.

7. ANNUAL REPORT ON CIVILIAN CASUALTIES IN CONNECTION WITH UNITED STATES MILITARY OPERATIONS IN 2020, 11 (2020), <https://media.defense.gov/2020/May/06/2002295555/-1/-1/1/SEC-1057-CIVILIAN-CASUALTIES-MAY-1-2020.PDF?source=GovDelivery>.

8. See Barack Obama, *Remarks by the President on the Administration’s Approach to Counterterrorism*, WHITE HOUSE: OFF. OF THE PRESS SEC’Y (Dec. 6, 2016), <https://obamawhitehouse.archives.gov/the-press-office/2016/12/06/remarks-president-administrations-approach-counterterrorism> (considering al-Qaeda “degraded” and no longer posing an “existential threat”).

threats.⁹ Recent administrations have framed counterterrorism not as an urgent defensive project against attacks but as a comprehensive initiative against any threat to the United States, its allies, or its interests.¹⁰ This expanded strategy now includes initiatives in sub-Saharan Africa, the Sahel, China, and Southeast Asia.¹¹ Nonetheless, the United States still locates the primary terrorist threat ideologically in radical Islam and geographically in Africa and Asia.¹² This framing allows U.S. administrations to respond to so-called terrorist threats under the original mandate of the War on Terror, expanding the geographic scope of counterterrorism while still connecting these local or regional terrorist organizations to al-Qaeda.

The United States has defined terrorism by racist, gendered, and Islamophobic criteria. Thousands of individuals have faced detention,¹³ torture,¹⁴ and execution¹⁵ for sharing (or just seeming to share) certain identities with those who planned 9/11.¹⁶ Moreover, the United

9. *Remarks as Prepared for Delivery by Assistant to the President for Homeland Security, Dr. Liz Sherwood-Randall on the Future of the U.S. Counterterrorism Mission: Aligning Strategy, Policy, and Resources*, THE WHITE HOUSE (Sept. 9, 2021), <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/09/09/remarks-by-assistant-to-the-president-for-homeland-security-dr-liz-sherwood-randall-on-the-future-of-the-u-s-counterterrorism-mission-aligning-strategy-policy-and-resources/> (“Make no mistake: Terrorism is a serious threat”).

10. DONALD TRUMP, NATIONAL STRATEGY FOR COUNTERTERRORISM OF THE UNITED STATES OF AMERICA 1–25 (2018), https://www.dni.gov/files/NCTC/documents/news_documents/NSCT.pdf; *Remarks by President Biden on Afghanistan*, THE WHITE HOUSE (Aug. 16, 2021), <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/08/16/remarks-by-president-biden-on-afghanistan/>; Obama, *supra* note 8.

11. *Programs and Initiatives*, U.S. DEP'T OF STATE BUREAU OF COUNTERTERRORISM, <https://www.state.gov/bureau-of-counterterrorism-programs-and-initiatives/>.

12. *Id.*; TRUMP, *supra* note 10. Framing diverse terrorist non-state actors as agents of al-Qaeda helps anchor these new regional conflicts to the original mission of post-9/11 defense.

13. AM. CIV. LIBERTIES UNION, *INSATIABLE APPETITE: THE GOVERNMENT'S DEMAND FOR NEW AND UNNECESSARY POWERS AFTER SEPTEMBER 11* (2002); H. R. WATCH, *14 PRESUMPTION OF GUILT: HUMAN RIGHTS ABUSES OF POST-SEPTEMBER 11 DETAINEES* 10 (2002); CTR. CONST. RTS., *EROSION OF CIVIL LIBERTIES IN THE POST 9/11 ERA* (2005); AMNESTY INT'L, UNITED STATES OF AMERICA, *THE THREAT OF A BAD EXAMPLE: UNDERMINING INTERNATIONAL STANDARDS AS “WAR ON TERROR” DETENTIONS CONTINUE* (2003); OFF. OF THE INSPECTOR GEN., U.S. DEP'T JUSTICE, *THE SEPTEMBER 11 DETAINEES: A REVIEW OF THE TREATMENT OF ALIENS HELD ON IMMIGRATION CHARGES IN CONNECTION WITH THE INVESTIGATION OF THE SEPTEMBER 11 ATTACKS* 21 (2003).

14. H.R. WATCH, *20 Years of U.S. Torture – and Counting Global Costs of Unlawful Detention and Interrogation Post 9/11*, Jan. 9, 2022, <https://www.hrw.org/news/2022/01/09/20-years-us-torture-and-counting>.

15. *See, e.g.,* Shala Cachelin, *The U.S. Drone Programme, Imperial Air Power and Pakistan's Federally Administered Tribal Areas*, CRITICAL STUD. TERRORISM 1, 7 (2022).

16. *See* OFF. OF THE INSPECTOR GEN., *supra* note 13, at 21 (showing that most of the 9/11 detainees were Pakistani); Emmanuel Mauléon, *Black Twice: Policing Black Muslim*

States has used counterterrorism to justify war and pervasive conflicts in primarily non-white and Muslim-majority countries that have now endured decades of U.S. intervention.¹⁷ Counterterrorism has had a profoundly disruptive impact on states and individuals sharing traits the United States associates with “terror.”

Though abandoning the more plainly illegal counterterrorism policies,¹⁸ the United States still views terrorism as an exceptional threat against which it mobilizes a range of concerning tactics,¹⁹ including airborne strikes²⁰ against individuals in foreign states. Between 2001 and 2021, the United States carried out at least 91,340 airborne strikes in Africa and the Middle East.²¹ S trikes often occur outside of active battle zones and are conducted by non-soldiers miles away.²² The U.S. government disclosed some of its procedures for strikes in 2013,²³ yet much about the targeting determinations remains secret,²⁴ and litigation to reveal the “kill list” has been unsuccessful.²⁵ Despite mounting

Identities, 65 UCLA L. REV. 1326 (2018) (describing intensive policing of Black, specifically Somali, Muslims).

17. After 9/11, the U.S. has taken military action in Afghanistan, Djibouti, Iraq, Libya, Pakistan, Somalia, Syria, and Yemen. See Stephanie Sedell, *The 2001 Authorization for Use of Military Force: A Comprehensive Look at Where and How it Has Been Used*, COSTS OF WAR (2021).

18. See Lisa Hajjar, *The Counterterrorism War Paradigm versus International Humanitarian Law: The Legal Contradictions and Global Consequences of the US “War on Terror,”* 44 L. & SOC. INQUIRY 922 (2019) for a discussion of how the U.S. shifted from casting members of terrorist organizations as entirely beyond IHL (such as suspending Geneva protections in Guantánamo and torturing detainees) to trying to interpret IHL to legalize its current strategies, like its targeted killing program.

19. Apart from military intervention, the United States levels economic sanctions, provides ‘antiterrorism training,’ and funds counterterrorism partners, among other strategies. See *Programs and Initiatives*, *supra* note 11.

20. For this paper, I use the term airborne strikes to classify all lethal strikes launched via air (including drone strikes and strikes launched from ships or bases). This classification is narrower than targeted killings, which can include ground operations.

21. Imogen Piper & Joe Dyke, *Tens of Thousands of Civilians Likely Killed by US in ‘Forever Wars,’* AIRWARS, 2021, <https://airwars.org/news-and-investigations/tens-of-thousands-of-civilians-likely-killed-by-us-in-forever-wars>.

22. Jeremy Scahill, *Leaked Military Documents Expose the Inner Workings of Obama’s Drone Wars*, INTERCEPT, 2015, <https://theintercept.com/drone-papers/the-assassination-complex>.

23. PRESIDENTIAL POL’Y GUIDANCE, PROCEDURES FOR APPROVING DIRECT ACTION AGAINST TERRORIST TARGETS LOCATED OUTSIDE THE UNITED STATES AND AREAS OF ACTIVE HOSTILITIES (May 22, 2013).

24. *Id.*

25. See *al-Aulaqi v. Panetta*, 35 F. Supp. 3d 56 (D.D.C. 2014); *Al-Aulaqi v. Obama*, 727 F. Supp. 2d 1 (D.D.C. 2010); *New York Times Co. v. U.S. Dep’t of Justice*, 915 F. Supp. 2d 508 (S.D.N.Y. 2013); *Kareem v. Haspel*, 986 F.3d 859 (D.C. Cir. 2021).

domestic and international criticism,²⁶ the United States insists that it abides by the laws of armed conflict when conducting strikes.²⁷

Al-Shabaab is a Somalia-based organization seeking to establish an Islamic form of governance in the state, comprised of members motivated by jihad, members opposing foreign influences in Somali politics, and others pursuing business or clan interests.²⁸ As the current largest affiliate of al-Qaeda,²⁹ al-Shabaab became a focus of U.S. counterterrorism despite being, according to AFRICOM, “unable to attack the U.S.”³⁰ The United States has been engaged in counterterrorism in Somalia since 2002,³¹ and its actions have included support for Somali and African Union forces, limited ground operations, and the focus of this Article, airborne strikes against al-Shabaab.³² Counterterrorism has thus justified two decades of involvement in a state that hosts no immediate threat to the United States.³³ However, U.S. interest in Somalia preceded 2002 and extends beyond counterterrorism to other economic and political interests.³⁴

This Article contends that the airborne strikes against al-Shabaab are both an unlawful tactic and a tool of U.S. military imperialism. Using legal analysis, an empirical study of open-source data of strike incidents, and historical material, I show how the strikes are unlawful and ineffectual in practice as well as in theory. I argue that the duration

26. See, e.g., HIDDEN U.S. WAR, *supra* note 6; Scahill *supra* note 22; Piper & Dyke *supra* note 21.

27. See, e.g., Harold Koh, *The Obama Administration and International Law*, Speech to the American Society of International Law, STATE DEP'T (Mar. 25, 2010), <https://www.state.gov/documents/organization/179305.pdf>; Rebecca Sanders, *Human Rights Abuses at the Limits of the Law: Legal Instabilities and Vulnerabilities in the “Global War on Terror,”* 44 REV. INT'L STUD. 2, 15 (2017).

28. HUSSEIN SOLOMON, *TERRORISM AND COUNTER-TERRORISM IN AFRICA: NEW SECURITY CHALLENGES* 48 (1st ed. 2015).

29. Eric Schmitt & Abdi Latif Dahir, *Al Qaeda Branch in Somalia Threatens Americans in East Africa*, N.Y. TIMES, Mar. 21, 2020, <https://www.nytimes.com/2020/03/21/world/africa/al-qaeda-somalia-shabab.html>.

30. Harm Venhuizen, *US Airstrikes in Somalia Continue at Rapid Pace Even After Force Relocation*, MILITARY TIMES, Jan. 26, 2021, <https://www.militarytimes.com/news/your-military/2021/01/26/us-airstrikes-in-somalia-continue-at-rapid-pace-even-after-force-relocation/> (quoting Air Force Col. Chris Karns).

31. Peter J. Quaranto, *United States Counter-Terrorism in Somalia*, ISS AFRICA (2008).

32. Stephen Burgess, *Military Intervention in Africa: French and US Approaches Compared*, 1 AIR FORCE J. EUR., M.E., AND AFR. AFF. 69, 70–72 (2019); see also Charlie Savage & Eric Schmitt, *Biden Approves Plan to Redeploy Several Hundred Ground Forces Into Somalia*, N.Y. TIMES, May 16, 2022, <https://www.nytimes.com/2022/05/16/us/politics/biden-military-somalia.html>.

33. See Venhuizen, *supra* note 30.

34. See Quaranto, *supra* note 31; *infra* Background, Part III.

of the program despite such legal and practical flaws suggests that the aim of these strikes is not necessarily “killing terrorists” but maintaining continued military presence in Somalia.

While much of the scholarship on airborne strikes is focused on Yemen, Pakistan, and Afghanistan, Somalia has received less attention despite two decades of U.S. engagement. Building off the work of critical terrorism scholars, geographers, and Third World Approaches to International Law (TWAAIL) scholars, as well as advocacy organizations and data projects, this Article supplements the legal and conceptual critiques of airborne strikes with an empirical analysis of U.S. strikes against al-Shabaab. Following the works of Ruth Blakeley, Priya Satia, Shala Cachelin, and Campbell Munro, who have named targeted killing as a tactic of imperial control, as well as of Lisa Parks and Andrea Miller, who have condemned the racial profiling utilized in target selection, this Article is the first scholarly work to combine historical, legal, and empirical critique of the U.S. campaign against al-Shabaab.

This Article proceeds as follows: First, by comparing U.S. government statements that claim the legality of airborne strikes against the actual governing international humanitarian law (IHL) and domestic law standards, I show that the United States does not view either legal framework as any sort of constraint on its actions in Somalia. Second, by conducting a strike-by-strike analysis of U.S. actions against al-Shabaab, I prove that these strikes are unlawful in practice and do not serve any of the United States’ purported reasons for being in Somalia. Third, I turn to the broader history of U.S. military actions in Somalia and the world. When the United States does not act within the bounds of international or domestic law, or even its own counterterrorism goals, I argue that a historic, anti-imperialist critique of the program, rather than a legal one, is more pertinent, especially as U.S. military strategies continue to evolve.

In Part I, I discuss the domestic legal framework governing the airborne strike program. I then survey applicable international law, identifying the prevailing interpretations of IHL and indicating the ways U.S. legal arguments depart from such understandings. Next, I address claims by U.S. administrations and legal advisers about the purported legality of using airborne strikes for counterterrorism. I ultimately conclude that the U.S. policy of targeting and killing members of al-Shabaab via airborne strikes is illegal under domestic and international law.

In Part II, I analyze open-source data of airborne strikes against al-Shabaab in Somalia to conclude that not only is U.S. policy unlawful in theory, but it is also unlawful in practice. Evaluating 333 airborne strike incidents, I show that U.S. targeting determinations are so fundamentally flawed that they fail to satisfy binding principles of international law and current targeting guidance. Moreover, they fail to achieve the purported aim of killing “terrorists” and stopping al-Shabaab.

In Part III, I argue that because airborne strikes against al-Shabaab are unlawful in theory and in practice, their continued implementation for nearly two decades suggests that the ultimate goal of these strikes is to maintain military presence in Somalia, not to defeat al-Shabaab. Situating the strike program in the context of U.S. military presence in Somalia and worldwide, I contend that U.S. airborne strikes in Somalia cannot just be evaluated as U.S. efforts to claim legal rights to new forms of violence.³⁵ Rather, these strikes must also be understood as a strategy of U.S. imperialism to ensure access to markets, resources, and military bases.³⁶ That is, the way the United States has responded to terrorism is not a new form of warfare but a continuation of its Cold War efforts to control strategic states³⁷ such as Somalia.

I conclude by highlighting the impact of airborne strikes on Somalis, further confirming that continued U.S. lethal violence in the state is unjustifiable.

METHODOLOGY

In this Article, I employ legal, empirical, and historical analysis to evaluate the U.S. airborne strike program against al-Shabaab. I consider the program under both international law and domestic law, remaining conscious of how U.S. government interests inform the legal justifications promoted by its agents and advisers. This Article is guided by Lisa Hajjar’s articulation of state lawfare, or “the practices of officials to reinterpret international humanitarian law (IHL) or human rights laws in ways that deviate from prevailing internationally accepted

35. See, e.g., Hajjar, *supra* note 18; Lisa Hajjar, *Lawfare and Armed Conflicts: A Comparative Analysis of Israeli and U.S. Targeted Killing Policies and Legal Challenges Against Them*, in *LIFE IN THE AGE OF DRONE WARFARE* (2017).

36. Ruth Blakeley, *Drones, State Terrorism and International Law*, 11 *CRITICAL STUD. TERRORISM* 321, 335 (2018); Lisa Parks, *Vertical Mediation and the U.S. Drone War in the Horn of Africa*, *LIFE IN THE AGE OF DRONE WARFARE* 134 (2017).

37. See Blakeley, *supra* note 36; Campbell Munro, *The Entangled Sovereignties of Air Police: Mapping the Boundary of the International and the Imperial*, 15 *GLOBAL JURIST* 117, 125 (2015).

understandings in order to ‘legalize’ state practices that would otherwise constitute violations.’³⁸ In this framework, I understand U.S. legal statements not as neutral or objective interpretations of the law but as efforts to modify popular understandings of the law, or remake law, to justify its programs. I assemble the U.S. legal position from administration statements, legal adviser white papers, speeches, and congressional hearings. With these government statements, I show how the United States has claimed the lawful authority to enact and execute this program, which I then compare critically with other leading interpretations to argue that in fact, the United States lacks any such authority.

For analysis of airborne strikes against al-Shabaab and the targeting determinations for such strikes, I analyzed open-source data on strike incidents from Airwars. Considered the most authoritative compilation of U.S. strike data, Airwars is a nonprofit focused on bringing transparency and accountability to military conflicts and civilian harm.³⁹ For strikes in Somalia, it gathers information from U.S. and Somali news media, U.S. military statements, the Bureau of Investigative Journalism, Amnesty International, Freedom of Information Act (FOIA) responses, Somali Twitter, and other available media.⁴⁰ By aggregating a variety of sources, it is the most comprehensive record of all possible U.S. strikes in Somalia. I collected its incident information for airborne strikes in Somalia against al-Shabaab. By examining each incident description, I attempt to construct the U.S. targeting policy, as the U.S. government discloses minimal information about targeting. I assessed each incident description to determine the possible basis for targeting that individual, group, or area, as the justification for the strike reveals which interpretation of IHL the United States follows. This analysis, combined with the civilian casualties or other information about each strike, informs the conclusions about the legality of the U.S. strike campaign. The methods for this analysis are further described in the Appendix.

Lastly, I supplement the legal and applied analysis of the U.S. airborne strike program with the necessary historical context for its implications, taking a critical perspective informed by Geography, TWAIL, and Critical Terrorism Studies. This Article situates the current strike program in U.S. imperialism and its engagement with Somalia,

38. Hajjar, *supra* note 35, at 69 (applying the author’s definition to interpretations of domestic law).

39. *Who We Are*, AIRWARS, <https://airwars.org/about/team> (last visited Dec 14, 2021).

40. *U.S. Strikes and Civilian Casualties*, AIRWARS, <https://airwars.org/civilian-casualties/ussom341-august-24-2021> (last visited Dec 16, 2021).

expanding the understanding of airborne strikes from a counterterrorism tactic with questionable legal status to a tool of military imperialism.

I. BACKGROUND

A. The United States Has Spent Decades Establishing a Global Military Presence

U.S. actions in Somalia must be understood in the broader context of U.S. military imperialism. The United States' history of colonial and imperial occupation underlies its current global military presence. The United States has occupied a number of territories for economic, political, and military interests.⁴¹ Moreover, the United States has engaged in state-building missions to further its own interests.⁴² Today, many U.S. occupied territories also function as current U.S. military bases.⁴³

By the end of WWII, the United States occupied more than thirty thousand installations at more than two thousand sites worldwide.⁴⁴ In its race to create allies during the Cold War, the United States began

41. The United States began as a settler colonial state, seizing Indigenous lands across the continent. As a product of the War of 1898, the United States occupied Cuba and the Philippines, and it imposed colonial rule on the Philippines for nearly fifty years. It also acquired Puerto Rico and Guam shortly thereafter, and the United States began building military bases on these newly occupied islands. David Vine, *No Bases? Assessing the Impact of Social Movements Challenging US Foreign Military Bases*, 60 *CURRENT ANTHRO.* 158, 161 (2019). Today, the United States maintains territories, which have no voting power but are governed by the United States, which include Puerto Rico, Guam, the U.S. Virgin Islands, American Samoa, and the Northern Mariana Islands. It also holds eleven other islands. While the U.S. is adamant it holds territories, not colonies, these populations remain under U.S. political rule and economic dependency. *See* *Insular Cases*, 1901 (which use the word “territories” to describe the newly seized islands, despite rulings that effectively establish them as colonies). For a deeper discussion of U.S. imperialism, *see* DANIEL IMMERWAHR, *HOW TO HIDE AN EMPIRE* (2019).

42. For example, the United States occupied Haiti for two decades to “restore order” and “maintain political and economic stability in the Caribbean.” Admittedly interested in Haiti for decades prior, fearing European influence on the island, the United States used the mounting political violence as an excuse to invade and install a U.S.-favored president. With the Haitian-American Treaty of 1915, the United States took control of Haitian finances and asserted the right to intervene in Haiti whenever the United States deemed necessary. *U.S. Invasion and Occupation of Haiti, 1915–34*, STATE DEP'T, <https://history.state.gov/milestones/1914-1920/haiti> (last visited Apr. 7, 2022) (“President Wilson sent the U.S. Marines to Haiti to prevent anarchy. In actuality, the act protected U.S. assets in the area and prevented a possible German invasion.”).

43. David Vine, *BASE NATION: HOW U.S. MILITARY BASES ABROAD HARM AMERICA AND THE WORLD* (2015) (including Puerto Rico, Guam, the U.S. Virgin Islands, and the Marshall Islands).

44. Vine, *supra* note 41, at 162. Of course, at the end of WWII, the United States also occupied Japan and West Germany, to establish the new, pro-U.S. governments. *See* James Dobbins et al., *Post-World War II Nation-Building*, *AFTER THE WAR* 11 (2008) (characterizing such nation-building as successful).

a campaign of military base development in allied states, and it intervened in wars in Korea and Vietnam ostensibly to fight communism.⁴⁵ In general, newly independent African states were reluctant to choose sides in the Cold War, and many refused U.S. assistance or requests to host bases.⁴⁶ At the same time, the United States instigated several coups in strategic states to help install favorable governments,⁴⁷ which often failed to achieve their goals and worsened relations.⁴⁸ Still, the United States insisted on a policy to contain communism⁴⁹ and Soviet influence.⁵⁰ Communism, socialism, and other leftist economic reforms were seen as inherently dangerous to U.S. interests and grounds for military action.⁵¹ Beyond government policy, the United States even engaged in efforts to stem leftist African intellectual movements.⁵² These governments or movements did not pose a grave military threat to the United States.⁵³ Rather, the threats were to the U.S. economy and a U.S. global order, and these interventions were part of the U.S. neoliberal effort to ensure corporate access to resource-rich markets.⁵⁴ After the Cold War, the international policy mission remained to support democratic (i.e., pro-U.S.) free-market nations.⁵⁵ As I will show, the current counterterrorism strategy evokes these Cold War policies and priorities.

45. David Wiley, *Militarizing Africa and African Studies and the U.S. Africanist Response*, 55 *AFR. STUD. REV.* 147, 149 (2012); see also US ARMY ENV'T CTR., *Thematic Study and Guidelines: Identification and Evaluation of U.S. Army Cold War Era Military-Industrial Historic Properties*, https://gis.penndot.gov/CRGISAttachments/Survey/Cold_war.pdf.

46. Wiley, *supra* note 45, at 149.

47. The CIA has confirmed its involvement in seven coups. J. Dana Stuster, *Mapped: The 7 Governments the U.S. Has Overthrown*, *FOREIGN POL'Y*, Aug. 20, 2013, <https://foreignpolicy.com/2013/08/20/mapped-the-7-governments-the-u-s-has-overthrown/>. However, the United States has been implicated in between sixty-four and 118 regime changes that occurred during the Cold War. See LINDSEY O'ROURKE, *COVERT REGIME CHANGE: AMERICA'S SECRET COLD WAR*, 97, 225 (2018). For further information on regime change; see MICHAEL GROW, *U.S. PRESIDENTS AND LATIN AMERICAN INTERVENTIONS: PURSUING REGIME CHANGE IN THE COLD WAR* (2008); WILLIAM BLUM, *KILLING HOPE: US MILITARY AND CIA INTERVENTIONS SINCE WORLD WAR* (2004).

48. *Id.* at 225.

49. O'ROURKE, *supra* note 47, at 105.

50. *Id.* at 131.

51. This included Guatemala's land reforms threatening the United Fruit Company. *Id.* Iran's effort to nationalize oil similarly inspired a CIA-backed coup. Malcolm Byrne, *CIA Admits It Was Behind Iran's Coup*, *FOREIGN POL'Y*, Aug. 19, 2013, <https://foreignpolicy.com/2013/08/19/cia-admits-it-was-behind-irans-coup/>.

52. Wiley, *supra* note 45, at 149.

53. O'ROURKE, *supra* note 47, at 111.

54. Stuster, *supra* note 47.

55. O'ROURKE, *supra* note 47, at 230.

Despite a brief movement to close military bases and scale back international military presence,⁵⁶ the War on Terror reignited U.S. military expansion through wars in Afghanistan and Iraq, the establishment of foreign military bases and detention centers, military assistance to foreign states, and other militarized counterterrorism operations in at least seven other countries.⁵⁷ Presently, the United States holds three times as many installations as all other states combined,⁵⁸ or up to 95 percent of the world's bases.⁵⁹ The United States does not disclose a full count of its bases,⁶⁰ but researcher David Vine's 2015 effort to calculate the scope of U.S. military presence identified up to eight hundred bases in at least eighty countries.⁶¹ The United States has undoubtedly built a global military empire, the scope of which is likely understated, rather than overstated, by these metrics.⁶²

The United States has recently focused its military growth into Africa. AFRICOM, the newest of six geographic commands, was established in 2007,⁶³ beginning the Bush Administration's pivot to Africa.⁶⁴ The Obama administration oversaw a tenfold increase in

56. See DAVID E. LOCKWOOD AND GEORGE SIEHL, *MILITARY BASE CLOSURES: A HISTORICAL REVIEW FROM 1988 TO 1995*, CRS REPORT FOR CONGRESS (Oct. 18, 2004).

57. *United States Counterterrorism Operations 2018–2020*, COSTS OF WAR, <https://watson.brown.edu/costsofwar/papers/2021/USCounterterrorismOperations> (last visited Apr. 7, 2022). These numbers do not account for U.S. technical support for allied military intervention.

58. Doug Bandow, *750 Bases in 80 Countries Is Too Many for Any Nation: Time for the US to Bring Its Troops Home*, CATO INSTITUTE (Oct. 4, 2021), <https://www.cato.org/commentary/750-bases-80-countries-too-many-any-nation-time-us-bring-its-troops-home>.

59. Vine, *supra* note 41, at 161.

60. The Pentagon, when compelled to report its military activities, provided incomplete and inaccurate counts of its bases. David Vine et. al, *Drawdown: Improving U.S. and Global Security Through Military Base Closures Abroad*, QUINCY INSTITUTE FOR RESPONSIBLE STATECRAFT (Sept. 20, 2021), <https://quincyinst.org/report/drawdown-improving-u-s-and-global-security-through-military-base-closures-abroad/>. According to the Pentagon, in 2018 (the last time such disclosure was legally compelled), the U.S. operated than 700 bases in 70 countries. VINE, *supra* note 43. However, this count excluded many popularly known bases.

61. Vine et al., *supra* note 60; Vine, *supra* note 45; Bandow, *supra* note 58. The U.S. Army has corroborated Vine's list, using it over the Pentagon's in a recent study. Vine et al., *supra* note 60.

62. The number of sites and facilities, of which there may be many on an individual base, are even higher. BASE STRUCTURE REPORT: FY 2018 BASELINE, DoD (2018) (estimating 585,000 facilities and 4,775 sites in forty-five countries). Moreover, the United States also employs private security contractors to conduct operations while obscuring U.S. involvement, in case the host country is uncomfortable with U.S. involvement, further contributing to the United States's worldwide presence. Adam Moore & James Walker, *Tracing the US Military's Presence in Africa*, 21 *GEOPOLITICS* 686, 694 (2016).

63. Lauren Ploch, *Africa Command: U.S. Strategic Interests and the Role of the U.S. Military in Africa*, CONGRESSIONAL RESEARCH SERVICE 1 (July 22, 2011).

64. See NICK TURSE, *TOMORROW'S BATTLEFIELD: U.S. PROXY WARS AND SECRET OPS IN AFRICA* 21–22 (2015); Moore & Walker, *supra* note 62, at 687.

personnel and a 200 percent increase in missions on the continent.⁶⁵ While the Pentagon insists Camp Lemonnier is the only U.S. base in Africa, there are forty-six installations in Africa as of 2017,⁶⁶ and many AFRICOM operations are also conducted through bases in Germany.⁶⁷ The United States operates at least five bases in Somalia alone.⁶⁸ The United States also funds African armies through the Trans-Sahara Counter-Terrorism Partnership and the Pentagon's Operation Juniper Shield.⁶⁹ It is nearly impossible to illustrate the full scope of U.S. activities on the African continent and to disentangle its actions in Somalia from those. AFRICOM does not release information about most of its operations and greatly restricts the ability of reporters to observe any of its activities, and it does not even disclose a total number of countries in which it operates.⁷⁰ Any discussion of U.S. military action in Somalia likely underestimates reality.

Moreover, the United States provides billions of dollars in military and counterterrorism assistance.⁷¹ Almost every country in Africa and the Middle East receives military aid, totaling seven billion dollars, or over half of all U.S. military assistance, with the majority going to the Horn of Africa.⁷² Part of this assistance includes training forces, which the United States conducts in at least seventy-nine countries.⁷³ Much like the U.S.'s Cold War strategy, this military funding and training functions as a form of "soft power," working to ensure U.S. interests abroad by persuading states to support U.S. policies through the distribution of assistance.⁷⁴ In some ways, its current counterterrorism

65. TURSE, *supra* note 64, at 21–22; Moore & Walker, *supra* note 62, at 687.

66. Bandow, *supra* note 58.

67. TURSE, *supra* note 64, at 11–12.

68. Bandow, *supra* note 58.

69. TURSE, *supra* note 64, at 44.

70. TURSE, *supra* note 64, at 115.

71. The U.S. government spent \$12 billion in military assistance in 2020 to 165 countries, and economic assistance to 212. FOREIGN ASSISTANCE, <https://foreignassistance.gov/> (last visited Apr. 7, 2022). Military assistance is up 89 percent from 2000. Kaia Hubbard, *3 Charts That Illustrate Where U.S. Foreign Aid Goes*, US NEWS & WORLD REP., May 24, 2021, www.usnews.com/news/best-countries/articles/2021-05-24/afghanistan-israel-largest-recipients-of-us-foreign-aid.

72. FOREIGN ASSISTANCE, *supra* note 71.

73. *United States Counterterrorism Operations 2018–2020*, *supra* note 57; George Petras et al., *Exclusive: US Counterterrorism Operations Touched 85 Countries in the Last 3 Years Alone*, USA TODAY (Feb. 25, 2021), <https://www.usatoday.com/in-depth/news/2021/02/25/post-9-11-us-military-efforts-touched-85-nations-last-3-years/6564981002/>.

74. See Carla Martinez Machain, *Exporting Influence: U.S. Military Training as Soft Power*, 65 J. CONFLICT RESOL. 313 (2021). Moreover, organizations funded by the United States, like North Atlantic Treaty Organization (NATO), contribute assistance to fight terrorism and "project stability beyond its borders" "in areas of strategic importance." NATO

measures can be understood as simply an extension of this goal to install favorable governments and establish military power.⁷⁵

Counterterrorism has continued to justify military intervention under the rationale of stability: cutting off threats before they materialize in the United States.⁷⁶ Counterterrorism measures outside the country seem largely disconnected from the primary terrorist threats, or in many ways counterproductive to combating them.⁷⁷ Of course, it is also apparent that this military apparatus largely operates in majority non-white countries, countries that have historically endured colonialism, empire, and occupation.⁷⁸ The U.S. military investment in Africa in large part concerns the general U.S. strategic interest in Africa's natural resources and energy resources, access to which could be impaired by unfavorable regimes arising out of political instability.⁷⁹ As Jim Inofe, Chairman of the U.S. Committee on Armed Services declared: "No country in the world has benefited more from the global stability, peace, and prosperity of the last 75 years than the United States of America."⁸⁰

B. History of U.S. Engagement in Somalia

In this Subpart, I offer a brief context to understand how the United States became so heavily involved in internal Somali politics. This is not a complete or conclusive history of Somalia, as my goal here is to signal the points of U.S. interest and intervention while providing some key context for those developments. I relied primarily on Somali scholars for this history, and I have tried to note moments where there are competing claims.

on the Map, NATO, <https://www.nato.int/nato-on-the-map/#lat=38.10684321970394&lon=-38.21728923559096&zoom=-1&layer=3> (last visited Apr 7, 2022) (making the logic plain: "If NATO's neighbours are more stable, the Allies are more secure.").

75. O'ROURKE, *supra* note 47, at 236; Melissa Willard-Foster, *The Post-9/11 Era: Regime Change and Rogues, Iraq 2003, Libya 2003, and Libya 2011* TOPPLING FOREIGN GOVERNMENTS 176 (2019).

76. TURSE, *supra* note 64, at 31.

77. Adam Taylor, *Map: The U.S. is bound by treaties to defend a quarter of humanity*, WASH. POST, May 30, 2015, <https://www.washingtonpost.com/news/worldviews/wp/2015/05/30/map-the-u-s-is-bound-by-treaties-to-defend-a-quarter-of-humanity/>. For example, in October 2020, the Department of Human Services (DHS) named American white supremacists as the greatest terrorist threat to the United States. U.S. DEP'T OF HOMELAND SEC., *HOMELAND THREAT ASSESSMENT* (Oct. 2020), https://www.dhs.gov/sites/default/files/publications/2020_10_06_homeland-threat-assessment.pdf

78. *United States Counterterrorism Operations 2018–2020*, *supra* note 57.

79. Ploch, *supra* note 63, at 2.

80. *The Role of Allies and Partners in U.S. Military Strategy and Operations*, Before the H. Comm. on the Armed Services, 116th Cong. 92 (2020).

Somalia is a geographically diverse, predominantly Muslim state neighboring Kenya, Ethiopia, and Djibouti, separated from Yemen by the Gulf of Aden. Its capital, Mogadishu, sits on the coast. Somalia possesses an incredibly strategic location on the Red Sea as the “gateway” between the Middle East and Sub-Saharan Africa,⁸¹ and it is the neighbor of longtime U.S. ally, Ethiopia. Somalia has oil, but international oil companies have not been able to operate in the country since the civil war.⁸² While the current government has reopened talks of offshore exploration, the President and Prime Minister of Somalia recently canceled the first U.S. oil exploration contract.⁸³ Furthermore, Somalia controls waters critical to trade.⁸⁴ It is no surprise that the United States wants a favorable Somali government, or at least one that is not hostile to the United States.

Somalia has long faced Western intervention, beginning with British colonization in 1884 and Italian colonization shortly thereafter, which divided the country into the northern British Somaliland and the southern Italian Somalia.⁸⁵ Italy also colonized Ethiopia and tried to unite Somalia and Ethiopia,⁸⁶ and Somalia’s national borders remain disputed with Ethiopia and Kenya today.⁸⁷ Before colonization, Somalia never had a centralized government.⁸⁸ Somali society is

81. Quaranto, *supra* note 31.

82. Claudia Carpenter, *Somalia will announce deadline for maiden licensing round “soon” after encouraging bids*, S&P GLOB., Nov. 10, 2021, <https://www.spglobal.com/commodityinsights/en/market-insights/latest-news/oil/111021-somalia-will-announce-deadline-for-maiden-licensing-round-soon-after-encouraging-bids>.

83. Kieran Burke, *Somalia’s president cans US oil deal hours after it was signed*, DW, Feb. 2, 2022, <https://www.dw.com/en/somalias-president-cans-us-oil-deal-hours-after-it-was-signed/a-60846562>. The United States, of course, also has a longstanding interest in oil in the Middle East, and accordingly, an interest in allies in and around the region. See, e.g., Toby Craig Jones, *America, Oil, and War in the Middle East*, 99 J. AMERICAN HIST. 208 (2012); Shibley Telhami, *The Persian Gulf: Understanding the American Oil Strategy*, BROOKINGS (Mar. 1, 2022), <https://www.brookings.edu/articles/the-persian-gulf-understanding-the-american-oil-strategy/>; U.S. ENERGY SECURITY: WEST AFRICA AND LATIN AMERICA, SENATE HEARING 108–351 (Oct. 21, 2003); *Oil Dependence and U.S. Foreign Policy*, COUNCIL FOREIGN R, <https://www.cfr.org/timeline/oil-dependence-and-us-foreign-policy> (last accessed Apr. 13, 2022).

84. Piracy in the Gulf of Aden, Indian Ocean, and Arabian Sea has threatened international trade. However, Somali piracy actually began as a response to illegal fishing in Somali waters during the absence of a Somali navy, with local fisherman attempting to collect “taxes” from these unlawful vessels. TURSE, *supra* note 64, at 245.

85. PAOLO TRIPODI, *THE COLONIAL LEGACY IN SOMALIA* 92 (1999).

86. MOHAMED HAJI MUKHTAR, *HISTORICAL DICTIONARY OF SOMALIA* 4 (2003).

87. Roland Marchal, *Somalia: A New Front Against Terrorism*, ITEMS: INSIGHTS FROM THE SOCIAL SCIENCES (2007), <https://items.ssrc.org/crisis-in-the-horn-of-africa/somalia-a-new-front-against-terrorism>.

88. AFYARE ABDI ELMI, *UNDERSTANDING THE SOMALI CONFLAGRATION* 17 (2010).

heterogeneous, with varied cultural, linguistic, and social differences.⁸⁹ Moreover, the society is traditionally organized by clans, which serve vital legal, economic, and social roles.⁹⁰ British and Italian settlers destroyed Somalis' decentralized, diverse forms of local governance and divided its pastoral city-states, kingdoms, and nomadic groups into two colonies.⁹¹

After WWII, Somalis sought independence and reunification, though many internal divisions developed over this strategy or the ideal post-independence government.⁹² In 1949, the United Nations (UN) granted Italy a ten-year trusteeship to oversee Somalia's transition to independence, while the British region did not gain independence until 1960.⁹³ The two joined to form the united Somali Republic, and the government was largely composed of officials from the formerly Italian Somalia.⁹⁴ This union was fraught with internal divisions from the start, with many competing political parties and regional disagreements, particularly between the north and south.⁹⁵ This newly independent, fragmented Somalia soon became the target of U.S. Cold War attention.

During the Cold War, the United States unsuccessfully tried to ally with Somalia until Mohammed Siad Barré came to power.⁹⁶ Siad Barré gained control in a 1969 military coup and attempted to unite the country, but he lacked support from the beginning, largely for limiting clan power.⁹⁷ Siad Barré promoted scientific socialism and soon began to model his government after Soviet Communists, seeking to convert

89. Ismail I. Ahmed & Reginald Herbold Green, *The Heritage of War and State Collapse in Somalia and Somaliland: Local-Level Effects, External Interventions and Reconstruction*, 20 THIRD WORLD QUARTERLY 113, 114–116 (1999).

90. ABDULLAH A. MAHMOUD, STATE COLLAPSE AND POST-CONFLICT DEVELOPMENT IN AFRICA 18 (2008).

91. Mohammed Dhaysane, *Italian Push for 'Colonial Language' Comeback in Somalia met with Anger*, ANADOLU AJANSI, Jan. 24, 2022, <https://www.aa.com.tr/en/africa/italian-push-for-colonial-language-comeback-in-somalia-met-with-anger/2473737> (According to a former government official, "After Italy forcefully took over and brutally colonized the country, the first thing it did was to dismantle Somalia's traditional governance system . . . It also destroyed Somalia's thriving economy and Somali kingdoms and city-states among the Geledi Empire, which was based in the Lower Shabelle region.")

92. *Id.*

93. *Id.*; Ioan Lewis, UNDERSTANDING SOMALIA AND SOMALILAND, 32 (1993).

94. MUKHTAR, *supra* note 86, at 5. The United States supported combining Somalia and Somaliland so that the UK could incorporate the new state into the Commonwealth, but Italy opposed it. TRIPODI, *supra* note 85, at 92.

95. Ahmed & Green, *supra* note 89, at 116.

96. HARUN MARUF & DAN JOSEPH, INSIDE AL-SHABAAB: THE SECRET HISTORY OF AL-QAEDA'S MOST POWERFUL ALLY, 9 (2018).

97. MUKHTAR, *supra* note 86, at 7.

the state into a Marxist-Leninist republic with help from the USSR.⁹⁸ Siad Barré's Communist goals threatened U.S. interests, as Siad Barré implemented a widespread nationalization policy and initiated a war against Ethiopia,⁹⁹ a U.S. Cold War ally.¹⁰⁰ However, in 1977, the USSR withdrew support for Somalia and began backing Ethiopia.¹⁰¹ One year later, opponents attempted to overthrow Barré, but the effort failed.¹⁰² Once the USSR broke ties with Somalia, the United States quickly began financially supporting the unpopular Barré government to gain its loyalty.¹⁰³ Such support, as well as military training, assisted Barré's more totalitarian turn until the United States finally withdrew support in 1988.¹⁰⁴ At this time, Somaliland also began fighting for its independence.¹⁰⁵

After the United States pulled its military and economic aid, the regime quickly collapsed.¹⁰⁶ In 1991, a variety of opposition groups, mostly clan-based factions, united to overthrow Barré.¹⁰⁷ Though united in their opposition to Barré, these groups failed to otherwise merge and immediately disaggregated once they removed Barré.¹⁰⁸ The Barré government lost power in 1991, and the United States lost its embassy.¹⁰⁹ One of the strongest factions, the United Somali Congress, took control of Mogadishu and installed an interim president, Ali Mahdi Muhammad, but it still struggled against the remaining groups and internal divisions.¹¹⁰ In 1991 the former British colony separated into Somaliland, though it is currently unrecognized by the international

98. MUKHTAR, *supra* note 86, at 7; LEWIS, *supra* note 93, at 38–39; Shaul Shay, SOMALIA IN TRANSITION SINCE 2006, 10 (2017).

99. See “Buried in the Sands of the Ogaden”: The Horn of Africa and SALT II, 1977–1979, DEP’T OF STATE OFFICE OF THE HISTORIAN,” <https://history.state.gov/milestones/1977–1980/horn-of-africa> (last accessed Apr. 13, 2022).

100. *Id.* (When the USSR began to support Ethiopia prompted the U.S. to begin supporting Somalia); see also Quaranto, *supra* note 31.

101. LEWIS, *supra* note 93, at 44.

102. MUKHTAR, *supra* note 86, at 8.

103. Emira Woods, *Somalia*, INST. FOR POL’Y STUD. (Jan. 1, 1997), <https://ips-dc.org/somalia/>; MUKHTAR, *supra* note 86, at xl (noting that after Somalia agreed to allow U.S. access to a military port and airfield in the country, the United States provided \$53 million in economic aid and \$40 million in military aid).

104. EMMA LEONARD & GILBERT RAMSAY, GLOBALIZING SOMALIA: MULTILATERAL, INTERNATIONAL, AND TRANSNATIONAL REPERCUSSIONS OF CONFLICT 145–46 (2013).

105. Ahmed & Green, *supra* 89, at 113.

106. LEONARD & RAMSAY, *supra* note 104, at 146.

107. *Id.*

108. MUKHTAR, *supra* note 86, at 8.

109. *Somalia*, U.S. DEP’T OF STATE, <https://www.state.gov/countries-areas/somalia/> (last visited Dec 16, 2021).

110. *Id.*; LEWIS, *supra* note 93, at 44; Paul Williams, FIGHTING FOR PEACE IN SOMALIA: A HISTORY AND ANALYSIS OF THE AFRICAN UNION MISSION (AMISOM) 22 (2018).

community.¹¹¹ Other regions have attempted to declare statehood, though none have fully seceded.¹¹² Muhammad's government oversaw the Interim Government of Somalia, while Somaliland installed its own governance.¹¹³

The UN then launched its first peacekeeping mission to Somalia in 1992,¹¹⁴ a multinational coalition led by the United States.¹¹⁵ The Bush Administration sent a humanitarian relief mission to Somalia, Operation Restore Hope, as part of the UN's United Task Force in Somalia.¹¹⁶ The Clinton Administration continued the operation and expanded its scope to include nation-building.¹¹⁷ Claiming to bring democracy to Somalia,¹¹⁸ the United States once again sought to establish a favorable government in a foreign country under a mission of state-building. That is, until the Black Hawk Down incident¹¹⁹ made the political costs of involvement in Somalia untenable, prompting U.S. withdrawal from the mission.¹²⁰ The UN withdrew two years later in 1995.¹²¹

Following the mission, the UN and the Intergovernmental Authority on Development (IGAD) attempted to host a series of peace talks for Somalia, which established the Transitional National Government in 2000, followed by the Transitional Federal Government (TFG) in 2004.¹²² The new government included a formula for clan rep-

111. MUKHTAR, *supra* note 86, at 5; PAOLO TRIPODI, *THE COLONIAL LEGACY IN SOMALIA: ROME AND MOGADISHU: FROM COLONIAL ADMINISTRATION TO OPERATION RESTORE HOPE* 92 (1999).

112. *See* MUKHTAR, *supra* note 86, at 5.

113. MUKHTAR, *supra* note 86, at 6.

114. MAHMOUD, *supra* note 90, at 140; TRIPODI, *supra* note 85, at 140.

115. WILLIAMS, *supra* note 110, at 22; United Nations Operations in Somalia – UNOSOM, UNOSOM I BACKGROUND, <https://peacekeeping.un.org/mission/past/unosom1backgr2.html> (last visited Apr 5, 2022).

116. LEONARD & RAMSAY, *supra* note 104, at 143; RAPHAEL CHIJOKE NJOKU, *THE HISTORY OF SOMALIA (THE GREENWOOD HISTORIES OF THE MODERN NATIONS)* 148 (Frank W. Thackeray & John E. Findling eds., 2013).

117. LEONARD & RAMSAY, *supra* note 104, at 147.

118. *Id.*

119. When Pakistani peacekeepers were killed by one of Muhammad's opponents, Mohamed Farrah Aidid, the United States sought to capture the general, resulting in the "Black Hawk Down" Battle of Mogadishu in October 1993. WILLIAMS, *supra* note 110, at 22; TRIPODI, *supra* note 85, at 155; LEWIS, *supra* note 93, at 79. Several American soldiers were killed, and a Somali crowd, angry with the perceived reprisal attacks for the death of the Pakistani troops, disfigured the body of one soldier. TRIPODI, *supra* note 85, at 155. The incident was broadcast in the United States, prompting public outrage. The reaction, which prompted skepticism about U.S. interventionism, has been dubbed "Somalia Syndrome." *See* Robert G. Patman, *The Roots of Strategic Failure: The Somalia Syndrome and Al Qaeda's Path to 9/11*, 52 INT'L POL. 89, 90 (2015).

120. WILLIAMS, *supra* note 110, at 23; LEWIS, *supra* note 93, at 79.

121. WILLIAMS, *supra* note 110, at 23; LEWIS, *supra* note 93, at 79.

122. WILLIAMS, *supra* note 110, at 23–24.

resentation called the 4.5 plan.¹²³ Most Somalis despised the clan quota as unconstitutional, and as the TFG ended up being led by two clans that were pro-Ethiopian, the new government looked like a proxy regime.¹²⁴ As such, the TFG struggled for control and was largely unworkable.¹²⁵

Around the same time, U.S. interest in Somalia resurged. The United States blamed Somalia for the 1998 bombings of its embassies in Nairobi and Dar es Salaam, as well as an attack on a U.S. boat off the coast of Yemen in 2000.¹²⁶ Some report that the Department of Defense (DoD) had quietly been engaged in a campaign to kill or capture al-Qaeda leaders in Somalia since 2000.¹²⁷ Immediately following 9/11, the Bush administration named Somalia a safe haven for al-Qaeda,¹²⁸ suspecting bin Laden might seek refuge in the state.¹²⁹ The United States also immediately declared Somalia's al-Itihaad al-Islamiya a Foreign Terrorist Organization, froze its bank assets, and placed many Somali businesses and individuals on its Specially Designated Nationals and Blocked Persons list.¹³⁰ Somalia was not linked to 9/11.¹³¹ Instead, it was as if 9/11 provided the opportunity to validate U.S. concerns about Somalia and justify engagement it was already contemplating. As early as November 2001, the United States

123. WILLIAMS, *supra* note 110, at 23; *see also* LEWIS, *supra* note 93, at 81–85.

124. WILLIAMS, *supra* note 110, at 25; MARUF & JOSEPH, *supra* note 96, at 41.

125. SOLOMON, *supra* note 28, at 48, MARUF & JOSEPH, *supra* note 96, at 18; ELMI, *supra* note 88, at 4.

126. Quaranto, *supra* note 31.

127. Donovan C. Chau, *U.S. Counterterrorism in Sub-Saharan Africa: Understanding Costs, Cultures, and Conflicts*, STRATEGIC STUD. INST., U.S. ARMY WAR COLL. 1, 16 (2008).

128. U.S. DEP'T OF STATE, *Country Reports on Terrorism 2019*, <https://www.state.gov/reports/country-reports-on-terrorism-2019/> (last visited Dec 16, 2021); *see also* MARUF & JOSEPH, *supra* note 96, at 28 (“‘Somalia has been a place that has harbored Al-Qaeda and, to my knowledge, still is,’ US Defense Secretary Donald Rumsfeld told a news conference in November. General Richard Myers, chairman of the US military’s Joint Chiefs of Staff, went a step further a couple of weeks later: ‘Somalia is one potential country—there are others as well—a potential country where you might have diplomatic, law enforcement action or potentially military action. All the instruments of national power, not just one.’”).

129. Quaranto, *supra* note 31; *see also* NAT'L COMM'N ON TERRORIST ATTACKS UPON THE U.S., 9/11 COMMISSION REPORT 366 (2004) (“In talking with American and foreign government officials and military officers on the front lines fighting terrorists today, we asked them: If you were a terrorist leader today, where would you locate your base? Some of the same places come up again and again on their list . . . the nearby Horn of Africa”). Such a research method, based on the perception of government officials, to identify Somalia as a site of terrorism, merits far greater interrogation than this Article could provide.

130. ELMI, *supra* note 88, at 75; *Specially Designated Nationals And Blocked Persons List (SDN) Human Readable Lists*, U.S. DEP'T OF TREASURY, <https://home.treasury.gov/policy-issues/financial-sanctions/specially-designated-nationals-and-blocked-persons-list-sdn-human-readable-lists> (last updated May 6, 2022).

131. 9/11 COMMISSION REPORT, *supra* note 129.

debated entering Somalia.¹³² The United States held off until 2002, when it sent over special forces and CIA agents to train Somali troops to combat al-Qaeda.¹³³ Over the next few years, U.S. officials reiterated concerns about al-Qaeda establishing a stronghold in the “ungoverned” space of Somalia.¹³⁴

In the midst of federal instability, nonstate actors began providing basic services to Somalis.¹³⁵ The Islamic Courts emerged as a local response to the insecurity across Somalia, as many regions lacked any federal support.¹³⁶ These courts were diverse in ideology and culture, and largely run by clan elders.¹³⁷ The Islamic Courts began operating as early as 1994, and they helped establish stability for commerce, so they were soon supported by business leaders.¹³⁸ By 2003, the courts had gained such popularity that they united, forming the Union of the Islamic Courts (UIC). The UIC took control of Mogadishu, as well as south and central Somalia.¹³⁹ The UIC’s stricter implementation of sharia broke from Somalia’s historically tolerant observation of Islam.¹⁴⁰ However, because of UIC’s ability to establish peace in the city, which had largely been under the control of warlords, most Somalis welcomed its leadership in Mogadishu.¹⁴¹

The TFG attempted to establish a central government in Mogadishu, fighting UIC for control of the city.¹⁴² However, the TFG’s police and ministers failed to provide the same level of safety for residents of Mogadishu as they had experienced under the UIC, so the new government did not gain popular support.¹⁴³ The CIA also had a consid-

132. Roland Marchal, *Somalia: A New Front Against Terrorism*, ITEMS: INSIGHTS FROM THE SOCIAL SCIENCES (2007), <https://items.ssrc.org/crisis-in-the-horn-of-africa/somalia-a-new-front-against-terrorism>. Others say the United States considered attacking Somalia in 2002. See ELM, *supra* note 88, at 75.

133. Marchal, *supra* note 132.

134. See ELM, *supra* note 88, at 75 (quoting Charles Snyder, Samuel Helland, and Jendayi Frazer).

135. WILLIAMS, *supra* note 110, at 23.

136. Marchal, *supra* note 132.

137. *Id.*

138. WILLIAMS, *supra* note 110, at 29; SOLOMON, *supra* note 28, at 39; STIG JARLE HANSEN, AL-SHABAAB IN SOMALIA 22 (2013).

139. WILLIAMS, *supra* note 110, at 29–30; LEONARD & RAMSAY, *supra* note 104, at 7; SOLOMON, *supra* note 28, at 39.

140. LEWIS, *supra* note 93, at 87.

141. MARUF & JOSEPH, *supra* note 96, at 29, 38; ELM, *supra* note 88, at 2, 82.

142. MARUF & JOSEPH, *supra* note 96, at 46.

143. HANSEN, *supra* note 138, at 50 (describing Transitional Federal Government (TFG) police as “predatory” to city residents); LEWIS, *supra* note 93, at 85–88 (noting how under the Union of the Islamic Courts (UIC), food prices dropped and businesses improved).

erable role in undermining the TFG in its early years. By 2002, the U.S. government began working with Mogadishu warlords to track down suspects for the U.S. embassy bombings and members of al-Qaeda, offering millions in rewards.¹⁴⁴ The United States recruited around a dozen warlords, some of whom were ministers in the TFG, to help capture suspected members of al-Qaeda.¹⁴⁵ In 2006, when the warlords stopped assisting with the War on Terror, the United States encouraged them to unite as the Alliance for Peace and Counterterrorism, which it then funded.¹⁴⁶ By circumventing the TFG, the U.S. further deteriorated its credibility and signaled its inefficacy,¹⁴⁷ and the violence and fear caused by the CIA-backed warlords added to the city's insecurity.¹⁴⁸

Fearing the rise of the UIC and the potential of an Islamic government in Somalia, Ethiopia invaded in December 2006 to bolster the TFG.¹⁴⁹ When the UIC supplanted the Alliance and the TFG in Mogadishu,¹⁵⁰ the United States pivoted to instead counter the power of the Courts.¹⁵¹ Ethiopia claimed UIC was linked to al-Qaeda, a position the United States adopted, publicly accusing the UIC of being completely controlled by al-Qaeda.¹⁵² The United States backed, and by some reports encouraged, Ethiopia's invasion of the city.¹⁵³ Neither of these were popular moves in Somalia, particularly given the stability the UIC offered.¹⁵⁴ Now facing a foreign attack, the UIC invited worldwide

144. ELMI, *supra* note 88, at 2, 25, 61, 81; WILLIAMS, *supra* note 110, at 28; LEWIS, *supra* note 93, at 85; MARUF & JOSEPH, *supra* note 96, at 33–35; SHAY, *supra* note 98, at 187.

145. Marchal, *supra* note 132; BURGESS, *supra* note 32, at 80–81; HANSEN, *supra* note 138, at 8, 34; MARUF & JOSEPH, *supra* note 96, at 39.

146. MARUF & JOSEPH, *supra* note 96, at 35; LEWIS, *supra* note 93, at 85.

147. LEWIS, *supra* note 93, at 85. Moreover, reports claim the United States blocked the Intergovernmental Authority on Development's (IGAD) proposal for a peacekeeping mission to support the TFG. WILLIAMS, *supra* note 110, at 34 ("Critics of U.S. policies also noted that IGASOM [IGAD's mission in Somalia] might well run counter to the ongoing US covert support for various Somali warlords in Mogadishu under the guise of fighting terrorism.").

148. MARUF & JOSEPH, *supra* note 96, at 29, 33; WILLIAMS, *supra* note 110, at 28. These warlords were also very unpopular relative to the UIC. HANSEN, *supra* note 138, at 39. Some consider UIC a local response to this warlord power. See Samar al-Bulushi, *Kenya, the United States, and the Project of Endless War in Somalia*, ROAPE, Mar. 2, 2020, <https://roape.net/2020/03/02/kenya-the-united-states-and-the-project-of-endless-war-in-somalia/>.

149. MARCHAL, *supra* note 132; HIDDEN U.S. WAR, *supra* note 6, at 16; Burgess, *supra* note 32, at 80.

150. ELMI, *supra* note 88, at 75; WILLIAMS, *supra* note 110, at 29; MARUF & JOSEPH, *supra* note 96, at 38.

151. MARUF & JOSEPH, *supra* note 96, at 39.

152. *Id.* at 44.

153. *Id.* at 43.

154. ELMI, *supra* note 88, at 81.

Islamic support against the TFG, Ethiopia, and the United States.¹⁵⁵ The United States then turned to the African Union to encourage greater action in Somalia, and the UN Security Council (UNSC), which includes the United States, approved IGAD and African Union entry into the state.¹⁵⁶ Shortly after, in 2007, the UNSC authorized the African Union peacekeeping mission (AMISOM) to support the TFG,¹⁵⁷ the largest deployment of peacekeepers in the world.¹⁵⁸ Somalis perceived AMISOM as a foreign invasion to support an unpopular government.¹⁵⁹ Together, Ethiopia and the African Union, backed by the United States, overthrew the UIC in Mogadishu, and the UIC disbanded.¹⁶⁰

As al-Shabaab proved to be a persistent opposition, the TFG sought U.S. assistance, and the United States provided training, funding, and airborne strikes.¹⁶¹ The United States considerably funded and developed the TFG during the civil war, helping the transition into the current Federal Government of Somalia,¹⁶² which succeeded the TFG in 2012.¹⁶³ Now, at the Federal Government's request, the United States remains engaged in myriad counterterrorism operations.¹⁶⁴ Over the past two decades, it has also provided Somalia with billions of dollars in economic, development, and humanitarian aid.¹⁶⁵ Such military and financial assistance echoes earlier U.S. efforts to ensure support for its interests. After decades of involvement, the United States reestablished its embassy in the state in 2016.¹⁶⁶

155. LEWIS, *supra* note 93, at 89.

156. WILLIAMS, *supra* note 110, at 34.

157. TURSE, *supra* note 64, at 44; WILLIAMS, *supra* note 110, at 42. The U.S. supported AMISOM through private military contracts to provide training and equipment. WILLIAMS, *supra* note 110, at 44.

158. WILLIAMS, *supra* note 110, at 2.

159. *Id.* at 58–59.

160. MARCHAL, *supra* note 132; Samar al-Bulushi, *Peacekeeping as Occupation*, 22 *TRANSFORMING ANTHRO.* 31, 32 (2014). The United States began training African Union forces in 2007, continuing through the Obama administration. Burgess, *supra* note 32, at 80–81; HANSEN, *supra* note 138, at 58. For a full account of the military operations, see SHAY, *supra* note 98.

161. MARUF & JOSEPH, *supra* note 96, at 117, 226. The United States provided training and funding to AMISOM. WILLIAMS, *supra* note 110, at 105.

162. Burgess, *supra* note 32, at 81. Uganda also lobbied heavily to encourage the United States to intervene, emphasizing Somalia as the proper focus for U.S. counterterrorism, and these efforts seemingly greatly influenced U.S. decisions to intervene. WILLIAMS, *supra* note 110, at 44.

163. Andrews Atta-Asamoah, *Long Walk to Restoration*, INST. SEC. STUD. 1 (2013).

164. *See infra Part II(A)*.

165. MARUF & JOSEPH, *supra* note 96, at 278.

166. Paul D. Williams, *Understanding US Policy in Somalia: Current Challenges and Future Options*, CHATHAM HOUSE (July 2020), <https://www.chathamhouse.org/sites/default/files/publications/research/2020-07-14-us-policy-somalia-williams.pdf>.

However, the Federal Government has only tenuous control over the country, and it faces repeated attacks by opposition groups including al-Shabaab.¹⁶⁷ The United States deployed military advisors to assist the Somali government in 2007, and it has stationed troops in the country since 2014.¹⁶⁸

The United States remains engaged militarily in Somalia against al-Shabaab. Since 2002, the United States has assisted Somali and African Union forces primarily by training and advising troops and by conducting airborne strikes, though it also participates in ground operations against al-Shabaab with Somali forces.¹⁶⁹ The United States also sporadically launches strikes against ISIS and al-Qaeda in Somalia.¹⁷⁰ The United States conducts airborne strikes from bases in surrounding countries, including Djibouti, Kenya, Niger, Uganda, Seychelles, Chad, and Ethiopia, as well as from Naval ships off the coast.¹⁷¹ The United States also uses bases in Germany for conducting drone operations.¹⁷² After a partial U.S. withdrawal in January 2021, troops commuted to Somalia from neighboring countries.¹⁷³ Recently, President Joe Biden redeployed hundreds of Special Operations forces into Somalia.¹⁷⁴ The

167. WILLIAMS, *supra* note 110, at 334–35.

168. Phil Stewart, *U.S. Discloses Secret Somalia Military Presence, Up to 120 Troops*, REUTERS, July 2, 2014, <https://www.reuters.com/article/us-usa-somalia/exclusive-u-s-discloses-secret-somalia-military-presence-up-to-120-troops-idINKBN0F800V20140703>.

169. Daniel R. Mahanty, *Great Expectations: AFRICOM's New Quarterly Report on Civilian Casualties*, JUST SEC., Apr. 21, 2020, <https://www.justsecurity.org/69785/great-expectations-aficom-new-quarterly-report-on-civilian-casualties/>. This includes the Danab, an elite branch of Somali forces.

170. AIRWARS, *Civilian Deaths by US President in Somalia*, <https://airwars.org/conflict-data/civilian-deaths-by-us-president-in-somalia/> (last visited Apr 6, 2022). I do not analyze those strikes in this Article, as the analysis is distinct to al-Shabaab.

171. Nick Turse, *Target Africa: America's expanding drone network*, INTERCEPT, Oct. 15, 2015, <https://theintercept.com/drone-papers/target-africa/>; TURSE, *supra* note 64, at 81.

172. TURSE, *supra* note 64, at 80.

173. See Oriana Pawlyk, *After Most US Troops Pull Out of Somalia, Some Reenter for Training Event*, MILITARY.COM, Feb. 1, 2021, <https://www.military.com/daily-news/2021/02/01/after-most-us-troops-pull-out-of-somalia-some-reenter-training-event.html>. Some remained for training and ground support.

174. See Savage & Schmitt, *supra* note 32 (quoting an official who explained that the move was to fight al-Shabaab leaders posing a threat to “us, and our interests and our allies”); Jonathan Guyer, *Biden Sought to End Endless Wars. So What's the Military Doing in Somalia?*, VOX, July 18, 2022, <https://www.vox.com/23204510/somalia-us-troops-return-shabaab-biden>; Karoun Demirjian, *U.S. Less Effective at Countering Terrorist Threats in Afghanistan and Somalia Since Troop Withdrawal, Generals Warn*, WASH. POST, Mar. 15, 2022, <https://www.washingtonpost.com/national-security/2022/03/15/us-military-somalia-afghanistan/>;

Meghann Myers, *US Troops Now ‘Commuting to Work’ to Help Somalia Fight al-Shabab*, MILITARY TIMES, Apr. 27, 2021, <https://www.militarytimes.com/news/your-military/2021/04/27/us-troops-now-commuting-to-work-to-help-somalia-fight-al-shabab/>;

United States has reframed Somalia's internal political struggle into part of its counterterrorism operations while using the conflict to expand and leverage its military empire.

C. History of al-Shabaab

In this Subpart, I have tried to reconcile the various accounts of the history of al-Shabaab. My aim with this Subpart is to focus on information that is relevant in terms of international law governing targeting, discussed in Part I and applied in Part II. Where there is dispute or confusion, I have noted it.

The United States claims its current presence in Somalia is counterterrorism: to combat al-Shabaab.¹⁷⁵ Al-Shabaab is a Somalia-based organization with varied, and sometimes clashing, motivations of territorial control, economic gain, establishing an Islamic government, and contesting foreign influence.¹⁷⁶ While there are competing accounts of the origin of al-Shabaab, the most widely accepted account holds that al-Shabaab directly emerged from a faction of the UIC.¹⁷⁷ After the UIC was defeated in 2007, al-Shabaab remained active, fighting for control of the state.¹⁷⁸ It is comprised of jihadists, business interests, and clans marginalized by the 4.5 configuration.¹⁷⁹ Though ideologically divided from the start,¹⁸⁰ al-Shabaab united against Ethiopia, AMISOM, and U.S. interference.¹⁸¹ Al-Shabaab originated to serve more of an economic function while engaging in some local armed attacks against these forces.¹⁸²

Al-Shabaab's fight to rid Somalia of Ethiopian forces earned it support in Mogadishu.¹⁸³ By 2007, membership in al-Shabaab had

Oriana Pawlyk, *After Most US Troops Pull Out of Somalia, Some Reenter for Training Event*, MILITARY.COM, Feb. 1, 2021, <https://www.military.com/daily-news/2021/02/01/after-most-us-troops-pull-out-of-somalia-some-reenter-training-event.html>.

175. See, e.g., Charlie Savage et al., *Somalia Asks U.S. to Step Up Drone Strikes Against Qaeda-Linked Fighters*, N.Y. TIMES, Oct. 27, 2022, <https://www.nytimes.com/2022/10/27/us/politics/somalia-shabab-us-strikes.html>.

176. SOLOMON, *supra* note 28, at 48.

177. HANSEN, *supra* note 138, at 9, 15, 19; MARCHAL, *supra* note 132. See SHAY, *supra* note 98, for a detailed account of the individuals and groups contributing to the development of al-Shabaab. However, accounts differ: Somali journalist Abdirahman Aynte Ali locates its origins in a 2003 meeting in Hargeisa, whereas an al-Shabaab webpage Kataaib says al-Shabaab began organizing in the al-Huda camp in 1996. See HANSEN, *supra* note 138, at 19.

178. HANSEN, *supra* note 138, at 47.

179. SOLOMON, *supra* note 28, at 48. This definition is accepted by the UN.

180. *Id.* at 38, 45; SOLOMON, *supra* note 28, at 46 (noting the group's difficulty with clan divisions and the influence of clan political and economic interests).

181. WILLIAMS, *supra* note 110, at 51; MARUF & JOSEPH, *supra* note 96, at 48.

182. SOLOMON, *supra* note 28, at 48.

183. WILLIAMS, *supra* note 110, at 51, 59; ELMI, *supra* note 88, at 81; SOLOMON, *supra*

reached thousands, and Somalis living abroad sent money to the organization to help it defend against Ethiopia.¹⁸⁴ Most Somalis initially disagreed with the United States' classification of al-Shabaab as a Foreign Terrorist Organization, because it was perceived as rightfully resisting Ethiopian occupation.¹⁸⁵

Ethiopia defeated al-Shabaab in Mogadishu in 2007, but the organization regrouped in the south of the country until it was able to launch hit-and-run or suicide attacks on Ethiopian bases.¹⁸⁶ Finally, Ethiopia withdrew from Mogadishu in 2009.¹⁸⁷

At this time, al-Shabaab was offering a variety of social services in the absence of the federal government, including schools, courts, and police, which it funded through taxes and managed through a variety of administrators.¹⁸⁸ Only one maktab, or agency, was a military force: Amniyat.¹⁸⁹ Business activity and employment increased in areas of al-Shabaab control, and the organization also funded infrastructure development.¹⁹⁰

But as it lost territory in Mogadishu, al-Shabaab lost support and began to forcibly recruit members.¹⁹¹ Initially, al-Shabaab did not purport to pursue global jihad.¹⁹² However, in 2012, it claimed affiliation with al-Qaeda, a decision that was very controversial within the group.¹⁹³ Civilian support further plummeted.¹⁹⁴

Still, al-Shabaab is al-Qaeda's largest affiliate with around ten thousand members.¹⁹⁵ Al-Shabaab still primarily clashes with Somali

note 28, at 39; WAR AND PEACE IN SOMALIA: NATIONAL GRIEVANCES, LOCAL CONFLICT AND AL-SHABAAB 311 (Michael Keating & Matt Waldman eds., 2018).

184. MARUF & JOSEPH, *supra* note 96, at 50.

185. ELMI, *supra* note 88, at 81; WILLIAMS, *supra* note 110, at 30.

186. HANSEN, *supra* note 138, at 47–54.

187. *Id.* at 73.

188. *Id.* at 86–91.

189. WILLIAMS, *supra* note 110, at 90, 91.

190. HANSEN, *supra* note 138, at 89–91. Claims that al-Shabaab hindered humanitarian aid are also perhaps misconstrued. Al-Shabaab positively received UNICEF and International Rescue Committee assistance, but it blocked the UN World Food Programme from operating in its territories because it allegedly distributed expired food. *Id.* at 116.

191. HANSEN, *supra* note 138, at 112.

192. However, outside observers, including Osama bin Laden, expressed support for al-Shabaab's fight as part of their understanding of global jihad. MARUF & JOSEPH, *supra* note 96, at 109.

193. MARUF & JOSEPH, *supra* note 96, at 191; HANSEN, *supra* note 138, at 9.

194. SOLOMON, *supra* note 28, at 57; Bryce W. Reeder & John R. Smith, *US Strikes in Somalia and Targeted Civilian Killings by Al-Shabaab: An Empirical Investigation*, 589, 591 FOREIGN POL'Y ANALYSIS (2019).

195. W.J. Hennigan, *America's War in Afghanistan Is Over. But in the Horn of Africa, Its War on Terror Rages On*, TIME, Sept. 30, 2021, <https://time.com/6102688/war-on-terror-after-afghanistan/>.

forces but has launched attacks against civilians in Somalia, Uganda, and Kenya.¹⁹⁶ Having been driven from Mogadishu by AMISOM and the TFG in 2011,¹⁹⁷ Al-Shabaab currently occupies some territory in the southeast of Somalia, around Jilib.¹⁹⁸ Despite these setbacks, al-Shabaab remains an adaptive and enduring force in Somalia, though it remains limited territorially.

Given the localized nature of al-Shabaab, the U.S. response is so outsized that the counterterrorism justification appears to be a pretext. The history of U.S. military expansion and state-building missions indicates that counterterrorism operations in Somalia are not a product of al-Shabaab's particular threat, nor even of "terrorism's" particular threat, but rather part of a broader strategy of military imperialism.

II. PART I: U.S. AIRBORNE STRIKE TARGETING POLICY RELIES ON INVALID INTERPRETATIONS OF BOTH DOMESTIC LAW AND INTERNATIONAL LAW, SO THE PROGRAM IN CONCEPT IS UNLAWFUL.

In Part I, I focus on how the United States tries to reinterpret both IHL and its own domestic law to justify its actions in Somalia. The United States positions itself as beyond or as reinterpreting international commitments. For U.S. actions here to exceed international constraints—which, to be sure, are few—exemplifies how the United States believes itself beyond legal reproach. By comparing U.S. government statements that claim the legality of airborne strikes against the actual governing IHL and domestic law standards, I show that the United States does not view either legal framework as any sort of constraint on its actions in Somalia.

In Subpart A, I describe U.S. law applicable to airborne strikes in Somalia, then in Subpart B, I cover applicable international law. In Subpart C, I compile remarks the U.S. government has made about the program's lawfulness, and in Subpart D, I show why such claims are completely unfounded and why the policy is illegal under both domestic and international law.

A. U.S. Law Governing Extraterritorial Use of Force and Targeting

U.S. law governing use of force and targeting is extremely permissive. Particularly after September 11, the United States has

196. HIDDEN U.S. WAR, *supra* note 6, at 45–47.

197. See SHAY, *supra* note 98, for a full account of the military operations. WILLIAMS, *supra* note 110, at 120 (saying al-Shabaab withdrew in 2012).

198. SOLOMON, *supra* note 28, at 47.

developed a legal regime to justify seemingly boundless counterterrorism actions abroad.

In terms of domestic law, the 2001 Authorization for the Use of Military Force Act (AUMF) is the primary authority for airborne strikes conducted by the DoD in Somalia. Additionally, when the CIA conducts strikes, its actions may be governed by either the AUMF or the Covert Action Statute. The president's authority to approve strikes is also constrained by the U.S. Constitution. Due to the absence of specific legislation governing airborne strikes abroad, and given the broad executive discretion to approve lethal action for counterterrorism, each administration determines the policies and procedures restricting airborne strikes. While not law, these policies become the primary check on the use of such lethal force.

The AUMF was passed by the Bush administration immediately following 9/11 and it remains the prevailing authority for the president to authorize the uses of the Armed Forces in counterterrorism.¹⁹⁹ The AUMF allows the president to use "all necessary and appropriate" force against individuals, organizations, and even nations "he determines" are responsible for the 9/11 attacks.²⁰⁰ However, subsequent administrations have interpreted the AUMF to continue to allow force against "associated forces" of al-Qaeda and the Taliban, years after 9/11, because they supposedly pose an ongoing threat.²⁰¹ In 2014, Obama expanded the interpretation of the AUMF to also authorize attacks against ISIS, which is distinct from al-Qaeda and often in direct conflict with it.²⁰² However, under a strict interpretation of the AUMF, the president and the executive branch should select targets for force based on their interpretation of the perceived link between a group, nation, or individual and the 9/11 attacks.

This expansive interpretation has been heavily criticized as authorizing a limitless War on Terror far beyond the scope of the 9/11 attacks.²⁰³ The Obama administration maintained that the AUMF would

199. Authorization for Use of Military Force (AUMF), Pub. L. No. 107-40, 115 Stat. 224 (2001).

200. *Id.*

201. See *Remarks by President Biden*, *supra* note 10; Obama, *supra* note 8; TRUMP, *supra* note 10; Milena Sterio, *Lethal Use of Drones: When the Executive Is the Judge, Jury, and Executioner*, 23 INDEP. REV. 35, 39 (2018); Michael J. Boyle, *The Legal and Ethical Implications of Drone Warfare*, 19 INT. J. H. R. 105, 109 (2015).

202. Stephen Pomper, *Targeted Killing and the Rule of Law: The Legal and Human Costs of 20 Years of U.S. Drone Strikes*, CRISIS GROUP, Feb. 10, 2022, <https://www.crisisgroup.org/united-states/targeted-killing-and-rule-law-legal-and-human-costs-20-years-us-drone-strikes>.

203. Sterio, *supra* note 201, at 38.

not apply to anyone “the executive labels a ‘terrorist’” or even all terrorist organizations that embrace “al-Qaeda ideology,” but only those that posed a direct threat to the United States and can be linked to the 9/11 attacks.²⁰⁴ Nonetheless, the AUMF has been invoked against loose al-Qaeda affiliates with local aims, such as al-Shabaab.²⁰⁵ Accordingly, the federal government has consistently asserted that the AUMF governs most uses of airborne strikes as counterterrorism.

The legal framework somewhat changes when the CIA is involved. Presently, the DoD and the CIA both conduct airborne strikes abroad, often together.²⁰⁶ There is also some debate as to whether the AUMF authorizes only the armed forces to use lethal force, or whether it includes actions by the CIA.²⁰⁷ Though the title of section 2 of the AUMF refers only to the armed forces, the text does not specifically restrict the AUMF to only DoD action, so it is possible CIA action could fall under the AUMF.²⁰⁸ The President also has authority to approve covert actions, which includes CIA actions, under 50 U.S.C. § 3093 (the Covert Action Statute).²⁰⁹ Under the Covert Action Statute, any covert action cannot violate an existing federal statute and cannot be a “traditional military activity.”²¹⁰ There is debate over whether the CIA conducted airborne strikes are a traditional military activity,²¹¹ discussed

204. Jeh Johnson, *National Security Law, Lawyers and Lawyering in the Obama Administration*, 31 YALE L. & POL'Y REV. 146 (2012).

205. See Pomper, *supra* note 202; Chris Savage et al., *Obama Expands War with al-Qaeda to Include al-Shabaab in Somalia*, N.Y. TIMES, Nov. 27, 2016, <https://www.nytimes.com/2016/11/27/us/politics/obama-expands-war-with-al-qaeda-to-include-shabab-in-somalia.html>; Guyer, *supra* note 174 (explaining Biden invoked the 2001 AUMF for the redeployment of troops into Somalia).

206. Jens Ohlin, *The Combatant's Privilege in Asymmetric and Covert Conflicts*, 40 YALE J. INT'L L. 337, 372–73 (2015); Greg Miller, *CIA Remains Behind Most Drone Strikes, Despite Effort to Shift Campaign to Defense*, WASH. PO., Nov. 25, 2013, https://www.washingtonpost.com/world/national-security/cia-remains-behind-most-drone-strikes-despite-effort-to-shift-campaign-to-defense/2013/11/25/c0c07a86-5386-11e3-a7f0-b790929232e1_story.html. The CIA and U.S. Department of Defense (DoD) sometimes conduct strikes together. See Robert Chesney, *Military-Intelligence Convergence and the Law of the Title 10/Title 50 Debate*, 5 J. NAT. SEC. L. & POL'Y 540, 567 (2012).

207. See, e.g., Kevin Jon Heller, *Why Title 50 Does Not Provide the CIA with a Public Authority Justification*, OPINIO JURIS, June 9, 2014, <http://opiniojuris.org/2014/09/06/title-50-provide-cia-public-authority-justification/>; Robert Chesney, *CIA, Drone Strikes, and Public Authority: Responding to Kevin Heller*, LAWFARE, Sept. 9, 2014, <https://www.lawfaremedia.org/article/cia-drone-strikes-and-public-authority-responding-kevin-heller>; Andru E. Wall, *Demystifying the Title 10-Title 50 Debate: Distinguishing Military Operations, Intelligence Activities & Covert Action*, 3 HARV. NAT. SEC. J. 85 (2011).

208. See Authorization for Use of Military Force, *supra* note 199; Chesney, *supra* note 206.

209. Presidential Approval and Reporting of Covert Actions, 50 U.S.C. § 3093 (2019).

210. *Id.*

211. EXCEPTION(S) TO THE RULE(S), CENT'R FOR CIVILIANS IN CONFLICT 25 (Nov. 2020).

further in Subpart D. The U.S. Congress has defined military activities as those conducted by military personnel under the direction and control of a U.S. military commander,²¹² which would allow CIA-conducted airborne strikes to comply with the Covert Action Statute. Additionally, if DoD personnel conduct the strike under CIA leadership, the strike could be an authorized covert action under that interpretation.²¹³ Thus, strikes conducted by the CIA might be covered by either the AUMF or the Covert Action Statute, and if they can be considered traditional military activity, such strikes may not have any legal authorization.

In terms of policy governing airborne strikes, the U.S. Armed Forces published a Joint Targeting Manual in 2013. The Manual governs the strikes covered by this research. The Manual broadly outlines the targeting principles and processes, and they affirm that all decisions must abide by the Laws of War.²¹⁴ However, the Manual does not include specifics about how it identifies combatant targets, collects intelligence, or even defines combatants.²¹⁵ The Armed Forces also reserves the option to make spontaneous targeting decisions,²¹⁶ suggesting these processes may be overridden. Moreover, if a special ops team invokes self-defense, this process can be entirely circumvented.²¹⁷ It is incredibly difficult to publicly obtain the information necessary to evaluate the legality of these targeting standards.

Each administration also establishes standards governing airborne strikes, which are generally classified. While Bush's policy remained secret, after mounting public criticism, the Obama administration

212. CONFERENCE REPORT ON THE INTELLIGENCE AUTHORIZATION ACT FOR FISCAL YEAR 1991, H.R. REP. NO. 102-166 (July 25, 1991) at 21 [hereinafter "CONFERENCE REPORT"].

213. Ohlin, *supra* note 206, at 374; Joseph B. Berger III, *Covert Action*, 67 JFQ 32 (2012).

214. JOINT TARGETING MANUAL 3-60 (Jan. 31, 2013). There also appears to be a method to guide civilian casualty calculations, but the PDF is not publicly available: No-Strike and the Collateral Damage Estimation Methodology. The United States has also made several reservations to the NATO Joint Targeting Manual, namely that it does not presume civilian status in cases of doubt. NATO STANDARD AJP3.9 ALLIED JOINT DOCTRINE FOR JOINT TARGETING, ed. B, version 1, 10 (Nov. 2021). It also refuses to comply with having a gender adviser review target. *Id.* at 11. While this is limited to NATO operations, these reservations help further illuminate the U.S. position in its own operations. I have also reviewed the Air Force Joint Targeting Manual, 3-60, (Jan. 31, 2012), and it is similarly opaque about the definition of combatant or the types of information considered to make targeting determinations.

215. JOINT TARGETING MANUAL, *supra* note 214.

216. JOINT TARGETING MANUAL, *supra* note 214, at II-3.

217. Ben Waldman & Michel Paradis, *The Biden Administration Faces a Reckoning Decades in the Making Over the United States' Use of Air Power and Civilian Harm*, LAWFARE, FEB. 22, 2022, <https://www.lawfareblog.com/biden-administration-faces-reckoning-decades-making-over-united-states-use-air-power-and-civilian>

released a redacted version of the guidelines informing its policy in 2016: the Presidential Policy Guidelines (PPG).²¹⁸ The PPG included a requirement that a strike can only be authorized if there was “near certainty” “non-combatants” would not be harmed.²¹⁹ The guidelines also set out that, barring extraordinary circumstances, direct action would only be taken against “high-value terrorists” if there were “near certainty” the targeted individual is the lawful target.²²⁰ It did not include the actual policies and procedures of the acting agencies. In his second term, President Barack Obama drastically limited CIA authority to conduct airborne strikes.²²¹ At the same time, the New York Times reported that the Obama administration “quietly” expanded the authority for use of force in Somalia to allow airborne strikes to defend African troops, rather than requiring U.S. forces be under direct threat.²²²

In its “Principles, Standards, and Procedures for U.S. Direct Action Against Terrorist Targets,” the Trump administration rolled back the requirements of the PPG to implement a “reasonable certainty” standard when it came to casualties for civilian adult men.²²³ The new system for authorizing targets was more relaxed and decentralized than the Obama era, and it allowed field operators to target individuals based on suspected membership in terrorist organizations, rather than their individual threat.²²⁴ These policies were not announced by the Trump administration but revealed through Freedom of Information Act litigation by the American Civil Liberties Union (ACLU), and they

218. PROCEDURES FOR APPROVING DIRECT ACTION, *supra* note 23.

219. Testimony of Nathan A. Sales, “*Targeted Killing*” and the Rule of Law: The Legal and Human Costs of 20 Years of US Drone Strikes, SENATE COMM. ON THE JUDICIARY (Feb. 9, 2022).

220. PROCEDURES FOR APPROVING DIRECT ACTION, *supra* note 23.

221. See Gordon Lubold and Shane Harris, *Trump Broadens CIA Powers, Allows Deadly Drone Strikes*, WALL ST. J., Mar. 13, 2017, <https://www.wsj.com/articles/trump-gave-cia-power-to-launch-drone-strikes-1489444374> (last visited May 11, 2022).

222. HIDDEN U.S. WAR, *supra* note 6, at 22.

223. PRINCIPLES, STANDARDS, AND PROCEDURES FOR U.S. DIRECTION ACTION AGAINST TERRORIST TARGETS, <https://int.nyt.com/data/documenttools/trump-ppg-drone-strike-rules-foia/52f4a4baf5fc54c5/full.pdf>; see also Hina Shamsi, *Trump’s Secret Rules for Drone Strikes and Presidents’ Unchecked License to Kill*, AM. CIV. LIBERTIES UNION, <https://www.aclu.org/news/national-security/trumps-secret-rules-for-drone-strikes-and-presidents-unchecked-license-to-kill/> (last visited Apr 6, 2022); *ACLU Comment on Release of Trump Administration Lethal Force Rules*, AM. CIV. LIBERTIES UNION (May 1, 2021), <https://www.aclu.org/press-releases/aclu-comment-release-trump-administration-lethal-force-rules>; Charlie Savage, *Trump’s Secret Rules for Drone Strikes Outside War Zones Are Disclosed*, N.Y. TIMES, May 1, 2021, <https://www.nytimes.com/2021/05/01/us/politics/trump-drone-strike-rules.html>; *Trump Revokes Obama rule on reporting drone strike deaths*, BBC NEWS, Mar. 7, 2019, <https://www.bbc.com/news/world-us-canada-47480207>.

224. See *supra* note 214.

were similarly heavily redacted.²²⁵ Moreover, the Trump administration permitted lower standards for strikes in certain countries, so the general policy did not always apply.²²⁶ The Trump administration also revoked an Obama order that the government disclose estimates of airborne strike fatalities.²²⁷ Finally, President Donald Trump expanded CIA authority to conduct strikes.²²⁸

Immediately upon taking office, President Biden ordered new limits on authorizing drone strikes outside battlefields.²²⁹ These limits allegedly increase targeting restrictions on strikes occurring outside active warzones to require self-defense for U.S. or partner troops²³⁰ or presidential approval in cases without a self-defense claim.²³¹ These

225. Savage, *supra* note 223; PRINCIPLES, STANDARDS, AND PROCEDURES, *supra* note 223.

226. Charlie Savage & Eric Schmitt, *Biden Secretly Limits Counterterrorism Drone Strikes Away From War Zones*, N.Y. TIMES, Mar. 3, 2021, <https://www.nytimes.com/2021/03/03/us/politics/biden-drones.html>.

227. *Id.*; Charlie Savage, *Trump Revokes Obama-Era Rule on Disclosing Civilian Casualties From U.S. Airstrikes Outside War Zones*, N.Y. TIMES, Mar. 6, 2019, <https://www.nytimes.com/2019/03/06/us/politics/trump-civilian-casualties-rule-revoked.html>; *Executive Order 13862 of March 6, 2019, on Revocation of Reporting Requirement*, THE AM. PRESIDENCY PROJECT (Mar. 6, 2019), <https://www.presidency.ucsb.edu/documents/executive-order-13862-revocation-reporting-requirement>.

228. Paul Shinkman, *Report: Trump Gives CIA Authority for Drone Strikes*, US NEWS & WORLD REP., Mar. 14, 2017, <https://www.usnews.com/news/politics/articles/2017-03-14/report-trump-gives-cia-authority-for-drone-strikes> (President Trump even allowed CIA supervisors to approve strikes themselves, which seems to violate § 3093); Gordon Lubold & Shane Harris, *Trump Broadens CIA Powers, Allows Deadly Drone Strikes*, WALL ST. J., Mar. 13, 2017, <https://www.wsj.com/articles/trump-gave-cia-power-to-launch-drone-strikes-1489444374>; Eric Schmitt & Matthew Rosenberg, *C.I.A. Wants Authority to Conduct Drone Strikes in Afghanistan for the First Time*, N.Y. TIMES, Sept. 15, 2017, <https://www.nytimes.com/2017/09/15/us/politics/cia-drone-strike-authority-afghanistan.html> (the CIA previously only operated in Pakistan and Syria, but in fall 2017, began campaigning to act in Afghanistan); *see also* Robert Chesney, *A Revived CIA Drone Strike Program? Comments on the New Policy*, LAWFARE, Mar. 14, 2017, <https://www.lawfareblog.com/revived-cia-drone-strike-program-comments-new-policy>.

229. Paul Shinkman, *Pentagon Confirms Biden's New Restrictions on Drone Strikes, Commando Raids*, U.S. NEWS & WORLD REP., Mar. 8, 2021, <https://www.usnews.com/news/national-news/articles/2021-03-08/pentagon-confirms-bidens-new-restrictions-on-drone-strikes-commando-raids>; Savage, *supra* note 223; Savage & Schmitt, *supra* note 226; Jeremy Scahill, *The Mysterious Case of Joe Biden and the Future of Drone Wars*, INTERCEPT, Dec. 15, 2021, <https://theintercept.com/2021/12/15/drone-strikes-joe-biden-pentagon-kabul/>. It is unclear whether President Biden considers Somalia an active battlefield. In March 2017, the Trump administration declared parts of Somalia “areas of active hostilities,” where warzone targeting rules would apply for at least 180 days. Somalia: Inadequate US Airstrike Investigations, H.R. WATCH, June 16, 2020, <https://www.hrw.org/news/2020/06/16/somalia-inadequate-us-airstrike-investigations>. In its 2019 annual report on civilian casualties, the DoD defined Somalia as “a declared theater of active armed conflict.” President Biden has made no such claims.

230. Schmitt & Dahir, *supra* note 29.

231. USSOM345 – February 22, 2022, <https://airwars.org/civilian-casualties/>

limits were not announced by the administration but disclosed by anonymous sources.²³² The fact that the implementation of these limits was “quiet” or “secret”²³³ underscores the difficulty in assessing whether a strike complies with U.S. policy. These limits are apparently temporary while the administration conducts its review of the Trump policies and determines whether it will implement a new policy or maintain the current standards,²³⁴ so it seems the Trump standards otherwise remain. Nonetheless, beyond the Trump policies, the Biden administration appears to follow additional secret, temporary guidelines governing targeting decisions and airborne strikes. While the actual provisions remain classified, these statements can help illuminate at least some of the intended limits for airborne strikes.

Overall, domestic law offers little guidance on airborne strikes, but the text of the AUMF seems to restrict their use to individuals and groups responsible for 9/11. While the Covert Action Statute may provide greater discretion for CIA-conducted airborne strikes, the text prohibits traditional military activities from being considered covert actions. Despite these limits, presidential policy has further expanded executive authority for airborne strikes.

B. International Law Governing Combatant Status and Targeting

International law governs the decision of a state to use force (*ius ad bellum*) and its subsequent actions in that conflict (*ius in bello*). When the United States conducts an airborne strike in another state, it

ussom345-february-22-2022 (last visited Apr 6, 2022); Eric Schmitt, *U.S. Carries Out First Airstrike in Somalia Since August*, N.Y. TIMES, Feb. 24, 2022, <https://www.nytimes.com/2022/02/24/us/politics/somalia-shabab-us-airstrike.html>.

232. Savage & Schmitt, *supra* note 226; Zachary Cohen et al., *Biden Administration Still Weighing CIA Drone Strike Policy Amid Afghanistan Withdrawal*, CNN, July 5, 2021, <https://www.cnn.com/2021/07/05/politics/cia-drone-strike-afghanistan-suspected-terrorists/index.html>.

233. *Id.*

234. Scahill, *supra* note 22; Savage, *supra* note 223; Savage & Schmitt, *supra* note 226 (adding that the Biden administration sought an extension of the review, which was originally supposed to last two months); Catie Edmondson, *Calling Civilian Casualties a 'Failure,' Democrats Urge Biden to Do Better*, CONGRESSMAN RO KHANNA (Jan. 20, 2022), <https://khanna.house.gov/media/in-the-news/calling-civilian-casualties-failure-democrats-urge-biden-do-better> (explaining the program still seems to be in review); Cohen, *supra* note 232 (explaining the administration is debating whether to change CIA and DoD authority to conduct strikes in Afghanistan: “One option under review is to place new criteria on who the CIA can target—membership in a terrorist group like al Qaeda or ISIS would not necessarily be automatic grounds for a strike under the new policy, sources said.”).

must have lawfully initiated or entered the conflict, and the strike itself must comply with international law.²³⁵

1. Jus ad Bellum

Absent a claim of self-defense, if a state can show it was invited to participate in the conflict, its decision to use force would not violate the UN Charter and other jus ad bellum considerations.

Employing airborne strikes is a decision to use force that is governed by jus ad bellum rules.²³⁶ When a government lethally targets an individual in another state, the foremost question is whether that action violates that state's sovereignty as protected by the UN Charter.²³⁷ If a state government invites another state to participate in an existing conflict, the intervening state's decision to use force complies with international law.²³⁸ When a state government is fighting a nonstate actor, such as al-Shabaab, it is generally accepted that only the state government, not the nonstate actor, can lawfully invite another state party.²³⁹ Because the former and current administrations in Somalia have invited U.S. intervention against al-Shabaab,²⁴⁰ the United States

235. The United States is bound only to international law it ratifies. Within the United States, ratified treaties are either self-executing (that is, the provisions of the treaty instantly go into effect) or non-self-executing treaties, which require an act of Congress to codify into law. *Medellin v. Texas*, 552 U.S. 491, 511–12 (2008) (“In sum, while treaties may comprise international commitments . . . they are not domestic law unless Congress has either enacted implementing statutes or the treaty itself conveys an intention that it be ‘self-executing’ and is ratified on these terms.”). The United States does not consider the Geneva Conventions self-executing, and the United States generally interprets its obligations under international law as unenforceable or already consistent with U.S. law. *See generally* Aya Gruber, *Who’s Afraid of Geneva Law?*, 39 ARIZ. ST. L.J. 1017 (2007); Deborah Pearlstein, *Contra CIA, Non-Self-Executing Treaties Are Still the Supreme Law of the Land*, OPINIO JURIS, Oct. 28, 2015, <http://opiniojuris.org/2015/10/28/contra-cia-non-self-executing-treaties-are-still-the-supreme-law-of-the-land/>. For further discussion of treaties and their effects, *see* Stephen P. Mulligan, *International Law and Agreements*, CONG. RSCH. SERV. (Sept. 19, 2018). The U.S. refusal to consider treaties it ratifies as enforceable further indicates U.S. contempt for international legal obligations.

236. U.N. Charter art. 51; Sanders, *supra* note 27, at 14.

237. U.N. Charter art. 2.4. According to Article 2, all UN members must refrain from uses of force that violate the “territorial integrity or political independence of any state.” The International Court of Justice has held that using force within a state is the same as using it against that state. *Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.)*, 1984 I.C.J. 169 (Interim Protection Order of May 10), *reprinted in* 23 INT’L LEGAL MAT. 468 (1984) <https://www.icj-cij.org/case/70>.

238. *See* *Nicar. v. U.S.*, Judgment, 1986 I.C.J. Rep. 14, ¶ 246; *Armed Activities on the Territory of the Congo (Dem. Rep. Congo v. Uganda)*, para. 128.

239. Laura Visser, *Intervention by Invitation and Collective Self-Defence: Two Sides of the Same Coin?*, 7 J. USE FORCE INT’L L. 292, 298 (2020).

240. *See* Schmitt & Dahir, *supra* note 29; Guyer, *supra* note 174; Charlie Savage et al., *supra* note 174.

does not need a claim of self-defense for its engagement in the conflict to comply with international law. The United States' outsized global military and economic power might raise questions about how voluntary that invitation is,²⁴¹ but this Article focuses specifically on targeting in a *jus in bello* framework rather than the *jus in bellum* considerations for the start of the conflict itself.

2. Jus in Bello

The law governing individual lethal targeting is highly context-dependent, with different restrictions determined by the nature of the conflict and unsettled in certain key respects. The Hague Conventions and the Additional Protocols to the Geneva Conventions govern the conduct of hostilities, which includes targeting,²⁴² and the Geneva Conventions and certain human rights conventions afford protections to those participating in hostilities. In this Subpart, I first describe the differences in targeting restrictions during international armed conflicts and non-international armed conflicts.

IHL governs targeting decisions in international and non-international armed conflicts. IHL consists of binding treaties, including the Geneva Conventions and Hague Conventions, as well as customary international law.²⁴³ IHL applies to the entire territory under control of a party in a conflict, regardless of whether combat occurs.²⁴⁴ Thus, IHL constrains targeting decisions both on and off the battlefield. The status of international human rights law during armed conflict is disputed,²⁴⁵

241. See generally, Zohra Ahmed, *The Price of Consent*, 49 YALE J. INT'L L. (2024), https://scholarship.law.bu.edu/faculty_scholarship/3712.

242. INT'L COMMI. RED CROSS, *International Law on the Conduct of Hostilities: Overview*, (Oct. 29, 2010), <https://www.icrc.org/en/doc/war-and-law/conduct-hostilities/overview-conduct-of-hostilities.htm>.

243. INT'L COMMI. RED CROSS, *Customary Law*, <https://www.icrc.org/en/war-and-law/treaties-customary-law/customary-law>.

244. Prosecutor v. Tadić, Case No. IT-94-1-T, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction ¶ 68 (Int' Crim. Trib. for the Former Yugoslavia Oct. 02, 1995), <https://www.icty.org/x/cases/tadic/acdec/en/51002.htm>. (“Although the Geneva Conventions are silent as to the geographical scope of international “armed conflicts,” the provisions suggest that at least some of the provisions of the Conventions apply to the entire territory of the Parties to the conflict, not just to the vicinity of actual hostilities.”).

245. See, e.g., Andrew Clapham, *Human Rights in Armed Conflict: Metaphors, Maxims, and the Move to Interoperability*, 12 HR&ILD 9, 9 (2018); Yuval Shany, *Co-Application and Harmonization of IHL and IHRL: Are Rumors About the Death of Lex Specialis Premature*, Hebrew Univ. of Jerusalem Legal Stud. Rsch. Paper Series No. 20-22 (July 2020); Francoise Hampson, *The relationship between international humanitarian law and international human rights law*, 90 ROUTLEDGE HANDBOOK OF INT'L HUM. RTS. L. 212 (2013); Sean Aughey & Aurel Sari, *Targeting and Detention in Non-International Armed Conflict: Serdar Mohammed and the Limits of Human Rights Convergence*, 91 INT'L L. STUD. 61, 61 (2015).

but certain human rights, including the right against the arbitrary deprivation of life,²⁴⁶ always apply in armed conflicts.²⁴⁷ It is further disputed whether a targeted killing that complies with IHL satisfies international human rights law or if international human rights law includes additional legal requirements.²⁴⁸ The UN has suggested that, at minimum, if a targeting decision is inconsistent with IHL, it certainly violates international human rights law.²⁴⁹

Additionally, three fundamental principles of IHL serve as customary international law in all conflicts.²⁵⁰ Underlying all targeting regulations is the principle of distinction,²⁵¹ which requires that parties avoid harming civilians and requires combatants to distinguish themselves from the civilian population.²⁵² Civilians must never be the target of an attack.²⁵³ The principle of proportionality holds that civilian

246. The Universal Declaration of Human Rights protects the right to life. G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948). Similarly, the International Covenant on Civil and Political Rights prohibits the arbitrary deprivation of human life. International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171; S. Exec. Doc. E, 95–2 (1978) art. 6.

247. General Comment No. 36 art. 6 (2019), CCPR/C/GC/36; Human Rights Council Res., A/HRC/20/2022.

248. See Shany, *supra* note 245, at 8, 20–21; Clapham, *supra* note 245, at 22; Marco Sassòli & Laura M. Olson, *The Relationship Between International Humanitarian and Human Rights Law Where It Matters: Admissible Killing and Internment of Fighters in Non-International Armed Conflicts*, 90 INT'L REV. RED CROSS, 599, 606 (2008).

249. See Press Release, U.N. Hum. Rts., Human Rights Committee Continues to Discuss Draft General Comment On the Right to Life (July 19, 2017), <https://www.ohchr.org/en/press-releases/2017/07/human-rights-committee-continues-discuss-draft-general-comment-right-life-0> (“Uses of lethal force authorized and regulated by and complying with international humanitarian law are, in principle, not arbitrary. By contrast, practices inconsistent with international humanitarian law, entailing a risk to the lives of civilians . . . violate article 6 of the [International Covenant on Civil and Political Rights]”). Still, there have been some moves within the UN to consider IHL as imposing additional burdens on targeting and use of force decisions in armed conflict. See Clapham, *supra* note 245, at 14. While I would recommend that position, this Article follows the UN guidance.

250. Customary international law has disputed domestic legal status. See generally Mulligan, *supra* note 235; Gary Born, *Customary International Law in United States Courts*, 92 WASH. L. REV. 1641 (2017).

251. *Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I)*, 8 June 1977, 1125 UNTS 3 [hereinafter *Additional Protocol I*]; *Geneva Convention Relative to the Treatment of Prisoners of War*, Aug. 12, 1949, 6 U.S.T. 3316 [hereinafter *Geneva III*]; *Customary IHL - Rule 1*, INT'L HUMANITARIAN L. DATABASE, https://ihl-databases.icrc.org/customary-ihl/eng/docindex/v1_rul_rule1 (last visited Dec 15, 2021); *Hague Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land*, Jan. 26, 2010, U.S.T.S. 539 [hereinafter *Hague Regulations*]; see also, St. Petersburg Declaration, Dec. 11, 1868.

252. INT'L HUMANITARIAN L. DATABASE, *supra* note 251; *Additional Protocol I; Geneva III*.

253. *Hague Regulations; Additional Protocol I; Protocol II Additional to the Geneva*

casualties must not be excessive compared to the definite military advantage gained, which prohibits targeting areas with the potential for excessive civilian harm.²⁵⁴ Finally, the principle of military necessity, that the decision must be necessary for a legitimate military purpose, also constrains targeting decisions.²⁵⁵ These principles of distinction, proportionality, and necessity give rise to other applicable customary international law provisions, including the duty to take precautions to avoid civilian casualties,²⁵⁶ the duty to verify a target is a proper military objective²⁵⁷ and an objective that least endangers civilians,²⁵⁸ and the prohibition against indiscriminate attacks.²⁵⁹

If the situation is an international armed conflict (IAC), combatants may be targeted unless they are hors de combat (incapable of combat due to incapacitation). Under Hague law, their status as combatants (as defined by the Geneva Conventions) renders them always targetable.²⁶⁰ Geneva Convention III, Article 4 identifies clear criteria for someone to be considered a combatant: being commanded by a person responsible for their subordinates, wearing a fixed distinctive sign recognizable at a distance, carrying arms openly, and conducting their operations in accordance with the laws and customs of war.²⁶¹ Additional Protocol I expanded combatant recognition through reduced criteria: where armed forces can include any organized armed group, not just a state armed forces, that is party to the conflict so long as they are under a responsible command²⁶² and allowing combatants to retain

Conventions of 12 August 1949 and Relating to the Protection of Victims of Non-International Armed Conflicts, June 8, 1997, 1125 U.N.T.S. 609.

254. *Proportionality in Attack – Rule 14*, INT'L HUMANITARIAN L. DATABASE, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule14 (last visited May 11, 2022).

255. *Fundamental Principles of IHL*, INT'L COMM. RED CROSS, <https://casebook.icrc.org/glossary/fundamental-principles-ihl> (last visited Apr. 6, 2022).

256. *Rule 15. Principle of Precautions in Attack*, INT'L COMM. RED CROSS <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule15>; *Rule 17. Choice of Means and Methods of Warfare*, INT'L COMM. RED CROSS, <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule17>.

257. *Rule 16. Target Verification*, INT'L COMM. RED CROSS, <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule16>.

258. *Rule 21. Target Selection*, INT'L COMM. RED CROSS, <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule21>. “When a choice is possible between several military objectives for obtaining a similar military advantage, the objective to be selected must be that the attack on which may be expected to cause the least danger to civilian lives.”

259. *Rule 11. Indiscriminate Attacks*, INT'L COMM. RED CROSS, <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule11>.

260. *Hague Regulations, Additional Protocol I*, art. 48.

261. *Geneva III*.

262. *See Additional Protocol I*, art. 43.

their status even if, due to the nature of the conflict, they cannot distinguish themselves.²⁶³

In a non-international armed conflict (NIAC), only Common Article 3 of the Geneva Conventions and Hague law apply. These conventions do not formally define combatant status, and they seem to require targeting decisions be based not on an individual's status but on their activities. Because NIACs were imagined as internal violence against one's own state, efforts to codify law for NIAC avoided granting combatant status to those nonstate actors.²⁶⁴ Combatants are lawfully permitted to directly participate in hostilities,²⁶⁵ and no one has the right to attack one's own state. Thus, everyone in a NIAC is a civilian, but civilians who directly participate in hostilities lose their protections, and a state may lethally target them.²⁶⁶ A civilian is only targetable for the time that they directly participate in hostilities, which may include preparations for an attack, but once they cease participating, they regain the protections of a civilian.²⁶⁷ Thus, in NIACs, IHL does not classify certain individuals as inherently targetable because of their status; the law instead seems to require that an individual take specific hostile action before being subject to lethal force.

However, some have argued that an implicit combatant status exists in a NIAC, suggested in the provisions of Common Article 3, as well as in Additional Protocol II, which governs NIACs where the non-state party exercises territorial control and operates under a responsible command.²⁶⁸ Without recognition of a combatant status, there is a risk

263. So long as they carry arms openly preceding and during military engagement. See *Additional Protocol I*, art. 44.

264. Emanuela-Chiara Gillard, *Protection of Civilians in the Conduct of Hostilities*, ROUTLEDGE HANDBOOK L. ARMED CONFLICT 157, 158–59 (1st Ed. 2016); Sean Aughey and Aurel Sari, *Targeting and Detention in Non-International Armed Conflict*, 91 INT'L L. STUD. 60 (2015).

265. See *Additional Protocol I*, art. 43; see also, Emily Crawford, *Combatants*, ROUTLEDGE HANDBOOK L. ARMED CONFLICT 123, 123 (2016); Kenneth W. Watkin, *Combatants, Unprivileged Belligerents and Conflict in the 21st Century*, 1 INT'L HUMANITARIAN L. RSCH. INITIATIVE 69, 71 (2003).

266. HOW DOES LAW PROTECT IN WAR?, *Direct Participation in Hostilities*, <https://casebook.icrc.org/glossary/direct-participation-hostilities> (last visited Dec 14, 2021). The International Committee of the Red Cross (ICRC) recommends determining direct participation in hostilities as engaging in an action that crosses a threshold of harm to an opposing force or protected group, where the action directly causes the harm, and where the harm directly supports one party to the detriment of the other, or the belligerent nexus. A civilian who directly participates in hostilities in an IAC could be targeted as well.

267. HOW DOES LAW PROTECT IN WAR?, *Interpretive Guidance on the Notion of Direct Participation in Hostilities*, ICRC, <https://casebook.icrc.org/case-study/icrc-interpretive-guidance-notion-direct-participation-hostilities> (last visited Apr. 6, 2022).

268. *Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating*

of a revolving door for civilians, who may participate in hostilities then return to pure civilian status where they are no longer targetable, but do so repeatedly over the course of the conflict.²⁶⁹ Some have argued that a person who directly participates in hostilities as their continuous function in a nonstate armed group should be considered a combatant.²⁷⁰ They would therefore always be targetable, even when they are not directly participating in hostilities, until they unambiguously opt out of the conflict.²⁷¹

The International Committee of the Red Cross (ICRC) endorses a “continuous combat function” approach to classifying certain members of nonstate parties as always targetable,²⁷² though it offers limitations to how and when an individual might be considered to have this function.²⁷³ Membership in the nonstate group is insufficient—the individual’s continuous role must be to directly participate in hostilities—and membership must be determined by the actual function of the individual, not “abstract affiliation, family ties, or other criteria prone

to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977, 1125 UNTS 609 [hereinafter *Additional Protocol II*]. The United States has not ratified Additional Protocol II.

269. See Watkin, *supra* note 265, at 85; Michelle Lesh, *Direction Participation in Hostilities*, ROUTLEDGE HANDBOOK L. ARMED CONFLICT 181, 188 (2016); Richard D. Rosen, *Targeting Enemy Forces in the War on Terror: Preserving Civilian Immunity*, 42 VAND. J. TRANSNAT'L L. 683, 739 (2009).

270. Robert Donaldson, *The Lawfulness of US Drone Strikes in Pakistan: An International Perspective*, AIR UNIV. (June 2012).

271. See Sassöli & Olson, *supra* note 248, at 607; Elizabeth Salmon, *Who Is a Protected Civilian?*, THE 1949 GENEVA CONVENTIONS: A COMMENTARY 1150 (2015); Dapo Akande, *Clearing the Fog of War? The ICRC's Interpretive Guidance on Direction Participation in Hostilities*, 59 INT'L & COMP. L. QUARTERLY 180, 183 (2010); Jann K. Kleffner, *From “Belligerents” to “Fighters” and Civilians Directly Participating in Hostilities: On the Principle of Distinction in Non-International Armed Conflicts One Hundred Years After the Second Hague Peace Conference*, NETH. INT'L L. REV. 315–336 (2007); Michael N. Schmitt, *Targeting and Humanitarian Law: Current Issues*, 80 INT'L L. STUD. 151, 164 (2006).

272. *Interpretive Guidance on the Notion of Direct Participation in Hostilities*, *supra* note 267. The ICRC uses the term “member of an organized armed group” to describe who may be targeted, but it distinguishes between the non-State party to the conflict and its armed forces, requiring that any members targeted must be part of the military wing. It further defines these members as having a continuous combat function. Under the ICRC, the United States could only target members of Amniyat, not al-Shabaab, but to avoid confusion, this Article presents the ICRC approach as requiring a person be a “fighter,” distinguishing from the U.S. approach of targeting all members of al-Shabaab. The fighter-member distinction is used for rhetorical simplicity. See also INT'L COMM. RED CROSS, *Rule 3. Definition of Combatants*, <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule3> (while the ICRC endorses the continuous combat function interpretation, it acknowledges that practice remains unclear as to the combatant status of members of armed opposition groups).

273. *Interpretive Guidance on the Notion of Direct Participation in Hostilities*, *supra* note 267.

to error, arbitrariness, or abuse.”²⁷⁴ Israel has taken a more permissive approach than the ICRC, contending that membership in a terrorist group is sufficient for an individual to lose civilian status,²⁷⁵ as has the United States,²⁷⁶ and the ICRC guidance has not reached customary international law status.²⁷⁷ Whether to classify individuals in a NIAC as quasi-combatants remains a highly contentious issue,²⁷⁸ and the lawfulness of making these determinations is disputed. In a NIAC context, I am highly skeptical of allowing states to use a status-based determination for targeting without explicit legal authority, for reasons discussed in Subpart D below. However, accepting the ICRC guidance as instructive does not change the core arguments of this Article.

C. The United States insists its strikes are lawful

Each administration has repeatedly claimed it abides by all applicable domestic and international laws when choosing to use force as a counterterrorism strategy and specifically when conducting airborne strikes.²⁷⁹ That is, the United States does not construe its actions as above or beyond the law, but rather it manipulates domestic and international legal standards to validate its actions, no matter how baseless the claim.

In terms of domestic law, the United States first maintains that the AUMF authorizes all “necessary and appropriate” uses of force.²⁸⁰ These interpretations are temporally and geographically expansive. John Brennan, former Assistant to the President for Homeland Security and Counterterrorism, asserted that nothing in the AUMF restricted the use of force to al-Qaeda or to “hot battlefields” in Afghanistan.²⁸¹

274. *Id.*

275. See Sterio, *supra* note 201, at 207.

276. See *id.*; PRINCIPLES, STANDARDS, AND PROCEDURES, *supra* note 223.

277. See INT’L COMM. RED CROSS, *supra* note 255.

278. See Amit Anand & Preethi Lolaksha Nagaveni, *Covert Drone Strikes and the Rules on Targeting: Obama’s Troubling Legacy*, KING’S STUDENT L. REV. & STRIFE J. 67, 78 (2018); Larry May, *Targeted Killings and Proportionality in Law*, 11 J. INT’L CRIM. JUST. 47 (2013).

279. Koh, *supra* note 27 (declaring the U.S. is “firmly committed to complying with applicable law”); Remarks of John O. Brennan, Assistant to the President for Homeland Security and Counterterrorism Woodrow Wilson International Center for Scholars, Washington, D.C. April 30, 2012 (explaining that the U.S. “will use everything lawful at our disposal”); Remarks of Brian J. Egan, Legal Adviser, U.S. Department of State Annual Meeting of the American Society of International Law, Washington, D.C. April 1, 2016 (assuring the airborne strike program complies with all international law).

280. Koh, *supra* note 27; PRINCIPLES, STANDARDS, AND PROCEDURES, *supra* note 223.

281. OBAMA WHITE HOUSE ARCHIVES, Remarks of John O. Brennan, “Strengthening our Security by Adhering to our Values and Laws,” Sept. 16, 2011, <https://obamawhitehouse.archives.gov/the-press-office/2011/09/16/>

According to the U.S. Department of Justice (DOJ), any use of force is considered part of the “non-international armed conflict” covered by the AUMF regardless of whether it occurs outside a zone of active hostilities.²⁸² Furthermore, administrations have asserted that the Constitution confers a duty on the President to protect the nation from threats such as terrorism.²⁸³

U.S. legal advisers and government officials have also affirmed that the initial decision to use force complies with international law.²⁸⁴ Insisting the United States is in an armed conflict with al-Qaeda and associated forces,²⁸⁵ administrations have asserted the “inherent” right to self-defense under international law.²⁸⁶ Moreover, they have claimed the right to self-defense against imminent attacks²⁸⁷ and alleged that its interpretation of imminence complies with international law.²⁸⁸ Leon Panetta, former Secretary of Defense, has gone even further to say that the United States can legitimately prevent future attacks as self-defense.²⁸⁹ U.S. legal advisers have also purported to have the right under international law to use force in self-defense when the country involved is “unwilling and unable” to take action against the threat.²⁹⁰

remarks-john-o-brennan-strengthening-our-security-adhering-our-values-an.

282. U.S. DEP'T OF JUST. WHITE PAPER, LAWFULNESS OF A LETHAL OPERATION DIRECTED AGAINST A U.S. CITIZEN WHO IS A SENIOR OPERATIONAL LEADER OF AL-QA'IDA OR AN ASSOCIATED FORCE, DRAFT, NOV. 8, 2011, <http://fas.org/irp/eprint/doj-lethal.pdf> [hereinafter “JUSTICE DEP'T WHITE PAPER”] (citing *Hamdan v. Rumsfeld*, 548 U.S. 557, 628–31 (2006)); Brennan, *supra* note 279.

283. JUSTICE DEP'T WHITE PAPER, *supra* note 282; PRINCIPLES, STANDARDS, AND PROCEDURES, *supra* note 223.

284. PRINCIPLES, STANDARDS, AND PROCEDURES, *supra* note 223.

285. Stephen Preston, “The Legal Framework for the United States’ Use of Military Force Since 9/11,” speech before the Annual Meeting of the American Society of International Law, Washington, D.C., April 10, 2015, <https://www.defense.gov/News/Speeches/Speech/Article/606662/the-legal-framework-for-the-united-states-use-of-military-force-since-911>; Koh, *supra* note 27; JUSTICE DEP'T WHITE PAPER, *supra* note 282 (citing *Hamdan v. Rumsfeld*, 548 U.S. 557, 628–31 (2006)); Brennan, *supra* note 279.

286. JUSTICE DEP'T WHITE PAPER, *supra* note 282; Koh, *supra* note 27; Brennan, *supra* note 279.

287. Attorney General Eric Holder, *Speech at Northwestern University School of Law*, March 5, 2012, <http://www.justice.gov/opa/speech/attorney-general-eric-holder-speaks-northwestern-university-school-law>; JUSTICE DEP'T WHITE PAPER, *supra* note 281.

288. Koh, *supra* note 27; Brennan, *supra* note 279.

289. Matthias Maass, *No End in Sight? US Policy on Targeted Killing by Aerial Drone Strikes: a Legal-Political Assessment*, 15 INT. STUD. L. REV. 61, 67 (2014).

290. Brennan, *supra* note 279; Egan, *supra* note 279; Holder, *supra* note 287; DEP'T DEF. L. WAR MANUAL, 80, 957 (2016), <https://dod.defense.gov/Portals/1/Documents/pubs/DoD%20Law%20of%20War%20Manual%20-%20June%202015%20Updated%20Dec%202016.pdf?ver=2016-12-13-172036-190> [hereinafter LAW OF WAR MANUAL]. A July 2023 version of this manual was published during the late editing stages of this Article, which was written spring 2022. The July 2023 changes do not affect the sections referenced

Because the United States has broadly construed its self-defense mission as against al-Qaeda and associated forces worldwide, it insists it does not need to analyze individual decisions to use force in specific countries under the Article 51 self-defense requirements.²⁹¹ Brian Egan, former legal adviser to the U.S. State Department, interpreted the right to self-defense to include imminent attacks, but that even absent specific evidence of an imminent attack, the United States could still lawfully conclude a threat is imminent and exercise self-defense.²⁹² According to Harold Koh and Panetta, this right to self-defense only ends when al-Qaeda gives up its intention to harm the United States.²⁹³

The United States also maintains that individual targeting decisions *accord* with domestic and international law.²⁹⁴ Officials have interpreted the AUMF to authorize targeting of individuals in associated forces of al-Qaeda and the Taliban, such as al-Shabaab,²⁹⁵ and the AUMF has been named as the authority for specific airborne strikes.²⁹⁶

The Obama administration particularly insisted that individual strikes do not violate the domestic ban on assassination.²⁹⁷ Even when the target is a U.S. citizen, the Obama administration asserted that a lethal strike, without judicial process, would not violate due process protections.²⁹⁸ For example, John Brennan asserted that nothing in

here.

291. Brennan, *supra* note 279 (“Because we are engaged in an armed conflict with al-Qa’ida, the United States takes the legal position that—in accordance with international law—we have the authority to take action against al-Qa’ida and its associated forces without doing a separate self-defense analysis each time.”).

292. Egan, *supra* note 279.

293. Koh, *supra* note 27; Maass, *supra* note 289, at 67.

294. Koh, *supra* note 27 (“U.S. targeting practices, including lethal operations conducted with the use of unmanned aerial vehicles, comply with all applicable law, including the laws of war”); PRINCIPLES, STANDARDS, AND PROCEDURES, *supra* note 223.

295. Preston, *supra* note 285.

296. See, e.g., U.S. AFR. COMMAND, *U.S. Africa Command Conducts Strike Against al-Shabaab*, (Aug. 24, 2021), <https://www.africom.mil/pressrelease/33977/us-africa-command-conducts-strike-against-al-shabaab> (U.S. forces are authorized to conduct strikes in support of combatant commander-designated partner forces under the 2001 Authorization of Use for Military Force).

297. Koh, *supra* note 27; see also OBAMA WHITE HOUSE ARCHIVES, *Remarks by the President at the National Defense University* (May 23, 2013), <https://obamawhitehouse.archives.gov/the-press-office/2013/05/23/remarks-president-national-defense-university> (while not directly mentioning assassination, President Obama insisted that the U.S. government may lawfully kill U.S. citizens abroad via airborne strike if they are “potential terrorist targets”).

298. *Id.* (arguing due process and judicial process not the same); U.S. DEP’T OF JUST. OFF. LEGAL COUNSEL, *Memorandum for the Attorney General Re: Applicability of Federal Criminal Law and the Constitution to Contemplated Lethal Operations Against Shayk Anwar al-Aulaqi* (July 16, 2010), https://www.justice.gov/sites/default/files/olc/pages/attachments/2015/04/02/2010-07-16_-_olc_aaga_barron_-_al-aulaqi.pdf, (“For these

international law bans the use of lethal force against U.S. “enemies” outside hot battlefields.²⁹⁹ Eric Holder also confirmed that it is “entirely lawful” to target specific leaders of terrorist organizations under both U.S. law and IHL.³⁰⁰ According to Holder, all targeting decisions comport with the guiding IHL principles: that combatants and civilians who directly participate in hostilities may be targeted intentionally under the principle of distinction, that anticipated collateral damage must not be excessive relative to the military advantage under proportionality, and that drone strikes should not cause unnecessary suffering.³⁰¹ Even in cases where it appears that civilian casualties were excessive or the targets were not lawful, like the August 29, 2021 strike that killed ten civilians in Afghanistan during the U.S. military withdrawal, the military has concluded that it did not violate the laws of war.³⁰²

D. U.S. Airborne Strikes Against Members of al-Shabaab Are Unlawful Under Domestic and International Law

Even under interpretations generous to the U.S. government, U.S. policy to use airborne strikes against members of al-Shabaab violates both domestic law and international law. I show how even under the U.S. government’s permissive understanding of the law, U.S. actions violate these limits.

1. U.S. Airborne Strikes Against al-Shabaab Likely Violate Domestic Law

The U.S. government cannot claim airborne strikes against al-Shabaab are covered by the AUMF, without which, they become unlawful unless through a dubious exception for strikes conducted by the CIA. The United States exceeds such already expansive executive authority, both through unreasonable interpretations and direct

reasons, and on these understandings, we do not believe the Constitution prohibits the proposed lethal action, does not violate the assassination ban in Executive Order 12333”); OFF. OF THE ATT’Y GENERAL, *Letter From Attorney General Eric Holder to Hon. Patrick J. Leahy* (May 22, 2013), <https://www.justice.gov/slideshow/AG-letter-5-22-13.pdf> (saying the execution al-Awlaki comported with the law).

299. Brennan, *supra* note 279 (“There is nothing in international law that bans the use of remotely piloted aircraft for this purpose or that prohibits us from using lethal force against our enemies outside of an active battlefield.”)

300. Holder, *supra* note 287.

301. Holder, *supra* note 287; Brennan, *supra* note 279 (affirming the efficacy of strikes against al-Qaeda and the Taliban).

302. *Deadly US Drone Strike in Kabul Did Not Break Law, Pentagon says*, BBC NEWS, Nov. 3, 2021, <https://www.bbc.com/news/world-us-canada-59157089> (quoting the U.S. Air Force Inspector Lieutenant General Sami Said declaring there was no violation of a law of war in a strike that killed ten Afghan civilians).

violations, which illustrates the difficulty in using domestic law as any sort of restraint.

Even following a generous interpretation of the AUMF, in light of U.S. administrations' very broad interpretations of their authority, the use of force against al-Shabaab in Somalia constitutes an impermissible extension of the Act. The AUMF requires that the President find that a nation, organization, or person was involved with the 9/11 attacks before the United States can use force against them. Furthermore, the AUMF only allows the President to take action "in order to prevent any future acts of international terrorism against the United States *by such nations, organizations, or persons*."³⁰³ The AUMF does not authorize preventive measures against any possible threat of a terrorist attack; it solely authorizes force to prevent attacks from nations, organizations, or persons involved in 9/11. Al-Shabaab had no known role in "plan[ing], authoriz[ing], commit[ing], or aid[ing]" the 9/11 attacks, nor did it harbor anyone involved.³⁰⁴ Thus, al-Shabaab would not fall under the text of the AUMF,³⁰⁵ and any use of force against al-Shabaab cannot be justified under the AUMF.

The AUMF does allow the President to determine who was involved in 9/11, and administrations have interpreted this provision broadly. Following the Obama administration's interpretation, the AUMF only applies to terrorist organizations that pose a direct threat to the United States,³⁰⁶ and AFRICOM admitted that al-Shabaab poses no threat of attack.³⁰⁷ Yet in 2016, the Obama administration interpreted the AUMF to cover al-Shabaab, but it did not provide a reason why the organization could suddenly be deemed "involved in" the 9/11 attacks.³⁰⁸ The Trump administration considered al-Shabaab as

303. Authorization for Use of Military Force (AUMF), Pub. L. No. 107-40, 115 Stat. 224 (2001) (emphasis added).

304. See 9/11 COMMISSION REPORT, *supra* note 128.

305. Andrew Desiderio & Lara Seligman, 'A Very Dangerous Precedent': Democrats Take Aim at Biden's Somalia Airstrikes, POLITICO, July 27, 2021, <https://www.politico.com/news/2021/07/27/democrats-biden-somalia-airstrike-500916> (a concern shared by Democrat members of Congress); see also Rebecca Ingber, *Co-Belligerency*, 42 YALE J. INT'L L. 67, 83 (2017).

306. See Johnson, *supra* note 204.

307. Venhuizen, *supra* note 30 ("Al-Shabaab is unable to attack the U.S. homeland today.") (quoting Air Force Col. Chris Karns).

308. Savage et al, *supra* note 205. ("The executive branch's stretching of the 2001 war authorization against the original Al Qaeda to cover other Islamist groups in countries far from Afghanistan—even ones, like the Shabab, that did not exist at the time—has prompted recurring objections from some legal and foreign policy experts."). The move marks a shift from classifying only specific al-Shabaab leaders as sufficiently connected to al-Qaeda to be legal targets, instead deeming the entire organization targetable. Some have suggested

an affiliate of al-Qaeda, and the Biden administration has upheld this interpretation.³⁰⁹

However, al-Shabaab still cannot fall under these interpretations. As described in Subpart A, understanding the AUMF as authorizing force against associated forces of al-Qaeda also stemmed from repeated presidential interpretations.³¹⁰ Al-Shabaab did not become an affiliate of al-Qaeda until over a decade after the attacks,³¹¹ and it operates under a leadership structure largely distinct from al-Qaeda.³¹² Al-Shabaab remains a primarily local organization without ever having conducted an attack on the United States and was hardly operating at the time of 9/11.³¹³ While it may be an associated force of al-Qaeda, the AUMF itself only authorizes action against organizations involved in the planning of the 9/11 attacks, and it is a gross mischaracterization of the text to include al-Qaeda's future affiliates. Such presidential determinations are contrary to the reality of al-Shabaab and seem rooted in problematic oversimplifications about the unity of Islamic organizations, so they cannot form the basis of a legitimate interpretation of the AUMF.³¹⁴

Moreover, given the secrecy surrounding targeting decisions, it is impossible to assess whether individual targets had any link to those responsible for the 9/11 attacks.³¹⁵ As there is no connection between al-Shabaab and 9/11, and based on the descriptions of airborne strikes analyzed in Part II, such individual connection is highly unlikely.

If the AUMF cannot authorize airborne strikes the DoD conducts against al-Shabaab, such strikes violate the Constitution and the War Powers Resolution.³¹⁶ Under Article 1 Section 8 of the Constitution, Congress has the sole power to declare war.³¹⁷ However, the War Powers Resolution permits the President to enter hostilities if there is a declaration of war, a specific statutory authorization, or a national

the change was to remove the "self-defense" requirement of U.S. troops being under attack to authorize airborne strikes, increasing the ability of the administration to conduct strikes without exempting Somalia from the 2013 PPG.

309. See U.S. DEP'T OF STATE BUREAU OF COUNTERTERRORISM, *Country Reports on Terrorism*, Dec. 2021.

310. See Savage et. al., *supra* note 205.

311. MARUF & JOSEPH, *supra* note 96, at 191; HANSEN, *supra* note 138, at 9.

312. See SHAY, *supra* note 98 (describing in detail the affiliations of each founding member).

313. See Charlie Savage et al, *supra* note 175.

314. Though the United States has acted like every Islamic organization and Muslim must bear the consequences for 9/11, such Islamophobic generalizations must not be accepted as permissible interpretations of the law.

315. Sterio, *supra* note 201, at 38.

316. War Powers Resolution, 50 U.S.C. § 1544(b).

317. U.S. CONST. art. 1 § 8.

emergency created by an attack upon the United States.³¹⁸ Congress has not authorized the use of force in Somalia, and al-Shabaab has not created any national emergency within the United States, without the AUMF. Because it has so far only been authorized by presidential administrations, the present use of force in Somalia is unlawful without the AUMF.

The Covert Action Statute also cannot be reasonably read to include airborne strikes, given its prohibition on traditional military activities. Legal scholars are divided,³¹⁹ but killing an individual in a NIAC, as in the case of Somalia, looks like a plainly traditional military activity.³²⁰ Congress suggests an activity is only military if it is conducted and led by the DoD, defining “traditional military activity” by the actors involved.³²¹ Under that interpretation, an activity otherwise not permitted as a covert action becomes permissible if the leadership switches from the DoD to the CIA, allowing situations where the CIA leads a fully DoD team.³²² To define an activity as military based on who participates, not the activity itself, seems to defy common sense.³²³ Particularly where the DoD is involved, an airborne strike should be considered a military activity that cannot be covered by the Covert Action Statute.³²⁴ However, even if Congress’s interpretation can be taken as instructive, which would allow the President to approve strikes led by the CIA, such strikes are the minority in Somalia³²⁵ and violate international law.³²⁶

The executive branch has had considerable power in shaping the U.S. government’s interpretation of international and domestic law

318. *Id.*

319. See, e.g., Robert Chesney, *More on CIA Drone Strikes, Covert Action, TMA, and the Fifth Function*, LAWFARE, Sept. 7, 2014, <https://www.lawfareblog.com/more-cia-drone-strikes-covert-action-tma-and-fifth-function>; EXCEPTION(S) TO THE RULE(S), *supra* note 211; Heller, *supra* note 207.

320. See Heller, *supra* note 207; Chesney, *supra* note 206, at 616.

321. CONFERENCE REPORT, *supra* note 212, at 21.

322. See Wall, *supra* note 207, at 132–33 (describing the raid on Osama bin Laden’s residence as one such instance).

323. It seems unnecessary to ban the CIA and other agencies from conducting traditional military activities if it can only be a traditional military activity when fully conducted by the military. Some have read this seemingly illogical provision to mean that the Covert Action Statute just ensures that the military will not be subject to lower reporting thresholds. See Chesney, *supra* note 314. Others, myself included, are not convinced. See Heller, *supra* note 204.

324. See generally Berger, *supra* note 213.

325. See *infra* Part II(B).

326. See *infra* Part I(D) and II(C). CIA General Counsel Caroline Krass asserted the ability to violate international law with such covert strikes. See Maj. Peter C. Combe, *The Covert Action Statute: The CIA’s Blank Check?*, 9 J. NAT’L SEC. L. & POL’Y 29, 31 (2017).

governing the use of force. For example, a DOJ white paper cites legal adviser statements, such as John Brennan's 2012 speech, to explain its position on executive authority.³²⁷ Without pointing to any other authority to support its claims of legality, and despite legitimate interpretations to the contrary, the executive branches of each administration say their actions are lawful because other officials in the executive branch agree.³²⁸ The judicial branch has been largely unable to review these legal interpretations,³²⁹ and executive branch lawyers are, for the most part, not required to present their best understanding of the law, only whether something could be "legally available."³³⁰ By asserting new legal rights through its own interpretations,³³¹ U.S. administrations have authorized the use of force far beyond the text of the AUMF and contrary to international law, as I show below.

2. U.S. Airborne Strikes Against al-Shabaab Violate International Law

Though the United States has not necessarily violated prevailing *jus ad bellum* by its participation in the conflict in Somalia, in terms of *jus in bello*, U.S. policy governing airborne strikes against al-Shabaab employs unlawful targeting practices under IHL for four reasons.

Under international law, the United States' use of force against al-Shabaab in Somalia is legal from a *jus ad bellum* perspective. While the United States' claims about a right to intervene if a state is "unwilling or unable,"³³² its right to self-defense against imminent or future

327. JUSTICE DEP'T WHITE PAPER, *supra* note 282.

328. Jameel Jaffer, *How the US Justifies Drone Strikes: Targeted Killing, Secrecy and the Law*, GUARDIAN, Nov. 15, 2016, <https://www.theguardian.com/us-news/2016/nov/15/targeted-killing-secrecy-drone-memos-excerpt> ("The Obama administration officials insisted that drone strikes were lawful, but the "law" they invoked was their own. It was written by executive branch lawyers behind closed doors, withheld from the public and even from Congress, and shielded from judicial review.").

329. Sterio, *supra* note 201, at 47–48; Pomper, *supra* note 202; Conor Friedersdorf, *America's Shadow Death Row*, ATLANTIC, Jan. 22, 2021, <https://www.theatlantic.com/ideas/archive/2021/01/americas-shadow-death-row/617757/>.

330. Pomper, *supra* note 202. Notably, what the U.S. government once purported was lawful in counterterrorism has been found to violate IHL and the Constitution. *See, e.g., Hamdi v. Rumsfeld*, 542 U.S. 507 (2004) (holding that Guantánamo detainees had the right to habeas corpus, which they had previously been denied); *Hamdan v. Rumsfeld*, 548 U.S. 557 (2006) (holding that the Geneva Conventions applied to Guantánamo detainees, contrary to the Bush administration's claims); *Boumediene v. Bush*, 553 U.S. 723 (2008) (holding that restricting the jurisdiction of habeas cases for Guantánamo detainees was unconstitutional).

331. A practice Lisa Hajjar rightfully calls state lawfare. *See Hajjar, supra* note 35, at 69.

332. *See* DAVID CORTRIGHT ET AL., *DRONES AND THE FUTURE OF ARMED CONFLICT: ETHICAL, LEGAL, AND STRATEGIC IMPLICATIONS* (2015) ("The suggestion is made that

attacks,³³³ and even its right to deter future attacks³³⁴ are contrary to international legal norms, the United States is lawfully engaged in a distinct non-international armed conflict in Somalia. The Somali government is in an armed conflict with al-Shabaab, given the frequency of serious attacks from both sides, and the Somali government has invited U.S. military and financial support.³³⁵ Accordingly, the conflict is a NIAC,³³⁶ as it is two states engaged in an armed conflict against a non-

states have the right to attack a state “unwilling or unable” to respond to the problem of terrorism on its territory. The proposal was originally developed at Chatham House, a UK international affairs think tank. The “unable or unwilling” claim is not based on any treaty, rule of customary international law, or general principle of law”); Human Rights Council, *supra* note 247.

333. The United States frequently claims that its use of airborne strikes against members of terrorist organizations are lawful actions taken in self-defense, including those taken in “anticipatory” self-defense. Pietrack, *supra* note 2; Koh, *supra* note 27; Brennan, *supra* note 279. The move to interpret Article 51 as authorizing self-defense against nonstate groups is disputed. See Noam Lubell, *The ILA’s 2018 Report on Aggression and the Use of Force*, FINAL REP. ON AGGRESSION AND THE USE OF FORCE, INT’L L. ASS’N 14–17 (2018). While the United States does have the legal right to take self-defense actions against imminent threats, Article 51 does not authorize anticipatory self-defense, and it is generally accepted to be unlawful. Maass, *supra* note 289, 69. The United States’ claim that al-Qaeda poses a “continuing” imminent threat fails to meet international legal standards. *Id.* Even if the attack is imminent, anticipatory self-defense would not be lawful unless the threat is specific. FINAL REP. ON AGGRESSION, *supra* note 333, at 7, 11, 13–14 (concluding that the attack must be specific and imminent for anticipatory self-defense to be lawful).

334. See Human Rights Council, *supra* note 247.

335. See Visser *supra* note 239; see Eric Schmitt & Abdi Latif Dahir, *Al Qaeda Branch in Somalia Threatens Americans in East Africa*, N.Y. TIMES, Mar. 21, 2020, <https://www.nytimes.com/2020/03/21/world/africa/al-qaeda-somalia-shabab.html>; Guyer, *supra* note 174; Charlie Savage et al, *supra* note 175.

336. The United States classifies its conflict with al-Qaeda and associated forces more generally as a NIAC. Brennan, *supra* note 279; Preston, *supra* note 285; HIDDEN U.S. WAR, *supra* note 6, at 22. According to the Geneva Convention definition of a NIAC— “not of an international character”— this classification is acceptable. Geneva III, Art. 3. Chris Jenks, *A Matter of Policy: United States Application of the Law of Armed Conflict*, 46 SOUTHWESTERN L. REV. 337, 339 (2017); see also Laurie Blank & Benjamin R. Farley, *Determining When the Armed Conflict With Al-Qaeda Started*, JUST SEC. (2016), <https://www.justsecurity.org/29898/determining-armed-conflict-al-qaeda-started/>. However, NIACs are commonly understood as internal conflicts between a state and a nonstate actor operating within its borders, a reading supported by the original comments to the Geneva Conventions and the judgments of international criminal tribunals. See Jake William Rylatt, *An Evaluation of the U.S. Policy of “Targeted Killing” under International Law*, 44 CAL. WEST. INT’L L. J. 115, 121–24 (2014). Thus, the U.S. classification of its entire conflict against al-Qaeda as an NIAC has been the subject of much debate and criticism. See, e.g., Sasha Radin, *Global Armed Conflict? The Threshold of Extraterritorial Non-International Armed Conflict*, 89 INT’L L. STUD. 696, 702–04 (2013) (arguing that the conflict does not square neatly into any category); Kevin Jon Heller, *No, the UN Has Not Said the U.S. Is Engaged in an “Armed Conflict” with al-Qaeda*, OPINIO JURIS, May 21, 2021, <http://opiniojuris.org/2011/05/21/no-the-un-has-not-affirmed-that-the-us-is-engaged-in-an-armed-conflict-with-al-qaeda/> (arguing such characterization is plainly wrong); Nathalie Weizmann, *The End of Armed Conflict, the End of Participation in Armed Conflict, and the End of Hostilities*, 47 COLUM. H.R. L. REV. 204, 205 (2016)

state group,³³⁷ and IHL applies for the conflict's duration.³³⁸ Therefore, in the conflict with Somalia against al-Shabaab, the United States can lawfully target individuals who directly participate in hostilities, or under the ICRC's interpretation, can target individuals who have a continuous combat function any time.

In terms of *jus in bello*, the United States lethally targets members of terrorist organizations for their status as members and claims to do so lawfully.³³⁹ The current airborne strike policy targets members of "terrorist groups" organizations who are "engaged in ongoing hostilities against the United States or pose a continuing, imminent threat."³⁴⁰ The United States does not classify members of terrorist organizations as combatants, retaining a distinction between "lawful combatants" and "unprivileged belligerents," but both are treated the same way in targeting.³⁴¹ Instead, the United States treats members of nonstate armed groups as continuously directly participating in hostilities, because they "share the group's hostile intent."³⁴² For this reason, the United States considers members of nonstate armed groups always targetable.³⁴³ It is unclear whether the U.S. government classifies all of al-Shabaab or only Amniyat as the nonstate *armed* group, but its statements suggest

(contending it is up for debate). Because the conflict against al-Shabaab in Somalia can be safely considered a NIAC for the above reasons, this Article applies NIAC for those reasons.

337. Some have acknowledged the peculiar fiction of classifying a conflict that includes multiple state governments as a NIAC when states are on the same side. Especially when the conflict spans across states, there's some movement to begin recognizing a transnational armed conflict, particularly because of the imbalance of multiple states against a nonstate group. However, this concept is not at all near recognition. See Human Rights Council, *supra* note 247. Despite the international geographic scope, the conflict remains a NIAC because the United States and Somalia are fighting together against a nonstate actor. The United States also attempted to make this claim in order to deny legal protections to someone suspected of terrorism. See Rebecca Sanders, *Human Rights Abuses at the Limits of Law*, 44 REV. INT'L STUD. 2 (2017).

338. See THE PRACTICAL GUIDE TO HUMANITARIAN LAW, *Non-International Armed Conflict (NIAC)*, MÉDECINS SANS FRONTIÈRES, <https://guide-humanitarian-law.org/content/article/3/non-international-armed-conflict-niac/> (last accessed May 12, 2022).

339. PRINCIPLES, STANDARDS, AND PROCEDURES, *supra* note 223.

340. *Id.*

341. LAW OF WAR MANUAL, *supra* note 290, at 104–05, 210.

342. *Id.* at 222. The DoD explicitly disavows the strict interpretation of NIAC targeting law, instead adopting an implicit combatant recognition for members of an armed group. *Id.* at 228. "Some States may choose to characterize persons who belong to hostile, non-State armed groups that do not qualify for status as lawful combatants as "civilians" who may not be attacked unless they are taking a direct part in hostilities. However, these States may also characterize the act of joining and remaining a member of an armed group that is engaged in hostilities as a form of taking a direct part in hostilities that continuously deprives these individuals of their protection from being made the object of attack."

343. *Id.* at 222, 228.

that it focuses on all members of al-Shabaab, as does the data discussed in Part II. This policy violates IHL for the four reasons set forth below.

First, a targeting policy based on group membership violates the principle of distinction. The ICRC explains that to comply with the principle of distinction, only members who have a continuous combat function, like a fighter, can be targeted when they are not directly participating in hostilities.³⁴⁴ However, U.S. targeting policy claims all members of a terrorist group may be targeted.³⁴⁵ The DoD Law of War Manual contends that merely “being a part of a nonstate armed group that is engaged in hostilities against a State is a form of engaging in hostilities that makes private persons³⁴⁶ liable to treatment in one or more respects as unprivileged belligerents.”³⁴⁷ That is, contrary to the ICRC position and prevailing international legal norms,³⁴⁸ the United States considers every member of a non-state armed group as engaged in hostilities against the United States, even if the specific member does not perform a combat function.³⁴⁹ Because al-Shabaab contains agencies and actors with a variety of functions and has cabined its militant

344. *Interpretive Guidance on the Notion of Direct Participation in Hostilities*, *supra* note 267; see also Ryan J. Vogel, *Drone Warfare and the Law of Armed Conflict*, 39 DENV. J. INT’L L. & POL’Y 101, 120 (2010); Michael Bothe, *Direct Participation in Hostilities in Non-International Armed Conflict*, INT’L COMM. RED CROSS (Oct. 26, 2004), <https://www.icrc.org/en/doc/assets/files/other/2004-05-expert-paper-dph-icrc.pdf> (using the term “fighter” to describe who may be always targeted in a NIAC).

345. See PRINCIPLES, STANDARDS, AND PROCEDURES, *supra* note 223.

346. The refusal to even use the word “civilian” is intentional. See LAW OF WAR MANUAL, *supra* note 290, at 158.

347. *Id.*

348. See Human Rights Council, *supra* note 246; Anand & Nagaveni, *supra* note 278, at 81; Sterio, *supra* note 201, at 207 (“It should be noted that the Obama Administration has argued that individuals who are part of an armed group are ‘belligerents and, therefore, lawful targets under international law.’ The Obama Administration has seemingly rejected the ICRC approach and adopted a more aggressive tactic in determining which individuals can be targeted.”).

349. The ICRC approach to targeting would require that a specific member perform a combat function. See *al-Odah v. United States*, 611 F.3d 8, 16 (D.C. Cir. 2010) (determining it is significant that “Al Odah traveled to Afghanistan on a series of one-way plane tickets purchased with cash in a manner consistent with travel patterns of those going to Afghanistan to join the Taliban and al Qaeda”); *Uthman v. Obama*, 637 F.3d 400, 406 (D.C. Cir. 2011) (“In two prior cases, this Court has stated that staying at an al Qaeda guesthouse is ‘powerful—indeed ‘overwhelming’—evidence’ that an individual is part of al Qaeda”); *Suleiman v. Obama*, 670 F.3d 1311, 1314 (D.C. Cir. 2012) (“There is no dispute that Suleiman’s travel was initiated at the suggestion of and facilitated by a Taliban recruiter, and that he traveled a well-worn path to Afghanistan frequently used by Taliban recruits. We have stated that such travel may indicate that an individual traveled to Afghanistan to join the Taliban.”); LAW OF WAR MANUAL, *supra* note 290, at 222 (explaining that traveling with the group or staying at its facilities render someone a member, criteria that would encompass all members, not just fighters). All of these determinations focus on being a member or part of the group, rather than being a fighter, as required by the ICRC.

activity to only one agency,³⁵⁰ not all of its members are fighters.³⁵¹ Thus, under the ICRC position, these other agency members would not have a continuous combat function and would not be targetable unless they were directly participating in hostilities. However, the U.S. policy would render all al-Shabaab always targetable. As interpreted by the ICRC,³⁵² such a targeting policy violates the principle of distinction.

Second, contrary to the ICRC guidance, the way the United States defines membership in a nonstate armed group is highly discretionary, bias- and error-prone, and overinclusive, which violates the principle of distinction when used to lethally target individuals. The DoD Manual explains that it uses “circumstantial or functional” information to determine membership because it is difficult to tell whether someone has joined a nonstate armed group.³⁵³ Such evidence includes acting at the direction of the group, traveling upon “specific clandestine roads,” and traveling with other members in “remote locations.”³⁵⁴ Such a policy of using circumstantial evidence to determine membership, and counting non-members as members, certainly violates the ICRC prohibition on using abstract affiliation or error-prone criteria to determine membership.³⁵⁵ Lethally targeting an individual because of where they traveled, for example, leaves considerable room for discretion and error, and such

350. WILLIAMS, *supra* note 110, at 90, 91.

351. HANSEN, *supra* note 138, at 86–91. WILLIAMS, *supra* note 110, at 105; Akande, *supra* note 271, at 186 (noting the difficulty of identifying the fighting wing of a broad organization, interpreting ICRC guidance as restricting targeting to members of the fighting wing).

352. *Interpretive Guidance on the Notion of Direct Participation in Hostilities*, *supra* note 267 (“While it is generally recognized that members of State armed forces in non-international armed conflict do not qualify as civilians, treaty law, State practice, and international jurisprudence have not unequivocally settled whether the same applies to members of organized armed groups (i.e. the armed forces of non-State parties to an armed conflict). Because organized armed groups generally cannot qualify as regular armed forces under national law, it might be tempting to conclude that membership in such groups is simply a continuous form of civilian direct participation in hostilities. Accordingly, members of organized armed groups would be regarded as civilians who, owing to their continuous direct participation in hostilities, lose protection against direct attack for the entire duration of their membership. However, this approach would seriously undermine the conceptual integrity of the categories of persons underlying the principle of distinction . . . the decisive criterion for individual membership in an organized armed group is whether a person assumes a continuous function for the group involving his or her direct participation in hostilities (hereafter: “continuous combat function”). Continuous combat function does not imply de jure entitlement to combatant privilege. *Rather, it distinguishes members of the organized fighting forces of a non-State party from civilians who directly participate in hostilities on a merely spontaneous, sporadic, or unorganized basis, or who assume exclusively political, administrative or other non-combat functions.*”) (emphasis added).

353. LAW OF WAR MANUAL, *supra* note 290, at 158–59; 222–23.

354. *Id.* at 223.

355. *Interpretive Guidance on the Notion of Direct Participation in Hostilities*, *supra* note 266.

errors are discussed in Part II. While nonstate armed groups do not always have official uniforms, narrower criteria for discerning membership are possible. For example, rather than the direction of travel or road usage, the DoD could look at the presence of known group compounds, display of weapons, or use of certain insignias. Such factors also have a risk of error, yet the United States has opted to rely on even flimsier circumstantial evidence to make lethal targeting decisions, putting Somali civilians in grave danger.

Worse, the DoD considers individuals part of the armed group even if they are not an official member, so long as their support is important to the function of the organization.³⁵⁶ This policy directly violates ICRC guidance that “individuals who continuously accompany or support an organized armed group, but whose function does not involve direct participation in hostilities, are not members of that group within the meaning of IHL.”³⁵⁷ As such, U.S. policy violates IHL by failing to reasonably distinguish civilians.

Third, the United States uses circumstantial evidence to determine membership that relies on geographic-based or identity-based profiling, a type of “criteria prone to error, arbitrariness or abuse” that the ICRC prohibits. According to Amnesty International, the United States considers all military-aged men observed with known al-Shabaab members within specific regions legitimate military targets.³⁵⁸ Based on their location and identity alone, the United States lethally targets such individuals because of the likelihood they are also members of al-Shabaab.³⁵⁹ Such signature strikes—targeting an individual based on location or appearance, rather than conduct or insignias—violate IHL because they rely on insufficient evidence that the target is indeed a lawful target and not a civilian.³⁶⁰ Thus, the United States refuses to differentiate between possible targets and protected civilians in certain regions as a matter of policy,³⁶¹ in violation of both the ICRC guidance and the principle of distinction.

356. LAW OF WAR MANUAL, *supra* note 290, at 159, 224. This information includes merely following directions by the group’s leader.

357. *Interpretive Guidance on the Notion of Direct Participation in Hostilities*, *supra* note 266.

358. HIDDEN U.S. WAR, *supra* note 6, at 60.

359. HIDDEN U.S. WAR, *supra* note 6, at 61.

360. See Human Rights Council, *supra* note 247.

361. See Cachelin, *supra* note 15, at 7 (“This difficulty or unwillingness to differentiate between innocents and militants is acknowledged by the Pentagon’s Defence Science Board noting that “enemy combatants look like everyone else; enemy vehicles look like civilian vehicles; enemy equipment and materials look like civilian equipment and materials””).

Fourth, the policy violates the text of Common Article 3. Common Article 3 protects “persons taking no active part in the hostilities,”³⁶² again preserving the principle of distinction. As the above arguments show, by lethally targeting members of al-Shabaab who have no fighting function, the United States fails to protect such persons as a matter of policy. While “hostilities” is not defined, the ICRC suggests that hostilities include inflicting injury, death, destruction, or military harm, and that hostilities directly cause harm rather than encompass activities that might facilitate harm, such as political or economic activities.³⁶³ The ICRC guidance³⁶⁴ for targeting individuals in nonstate armed groups attempts to follow the constraints of Common Article 3³⁶⁵ by limiting such lethal targeting to fighters and by including strict standards for evidence that someone is a fighter.³⁶⁶ Because the United States targets members of al-Shabaab, it may target members who are engaging in propaganda, collecting money, or recruiting other members, activities that are not considered hostilities. According to Common Article 3, such individuals cannot be the targets of force.³⁶⁷ The policy to lethally target members of al-Shabaab who may never have engaged in hostilities plainly fails Common Article 3.

The United States is on notice that its airborne strike program does not comply with international law. The UN Human Rights Committee has raised concerns about the U.S.’s limitless definition of “armed conflict,” its broad definition of imminent threats, and its determination

362. *Geneva I, II, III, IV art. 3.*

363. Direct Participation in Hostilities, *supra* note 266 (classifying propaganda, sanctions, road-building, research, and recruitment all as activities that would not qualify as hostilities).

364. ICRC guidance is exactly that, guidance; it does not yet have customary status. *See supra* note 272. The ability to target anyone who is not directly participate in hostilities in a NIAC does not officially exist as IHL, because all of the conventions governing NIACs only deem it lawful to lethally target those taking an active part in hostilities. If the ICRC guidance were found to impermissibly conflict with these conventions (as I believe it does), the U.S. targeting policy would be made that more unlawful, as the United States would have no basis within the text of Common Article 3 to target anyone not engaging in hostile action. That is, the ICRC guidance seems to permit targeting decisions based on status (a fighter in a nonstate armed group) whereas the text of Common Article 3 requires protection until an takes a certain action.

365. Additional Protocol II has a similar provision requiring states to protect civilians until “they take a direct part in hostilities,” but the United States did not ratify the Protocol.

366. While I believe any policy that allows an individual in a NIAC to be targeted for their status as a fighter, rather than their direct hostile action, violates Common Article 3, even adopting the ICRC’s permissive approach to targeting in NIACs does not render the U.S. program lawful.

367. *See Geneva I, II, III, IV art. 3.*

of combatants.³⁶⁸ Similarly, the Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions warned that the U.S. policy of classifying all members of terrorist organizations as always targetable violates IHL.³⁶⁹ The U.S. drone program was even subject to two lawsuits in Germany, alleging that such strikes violate the North Atlantic Treaty Organization (NATO) Status of Forces Agreement, as strikes launched from AFRICOM (headquartered in Stuttgart, Germany) fail to comply with German law, which constitutionally protects the right to life.³⁷⁰ Nonetheless, the United States incorrectly insists its airborne strike policy adheres to international law, conveying an effort to reinterpret the law directly counter to prevailing understandings. The United States repeatedly claims that it abides by international law while operating under an unlawful interpretation of targeting requirements in NIACs. By violating IHL through compounding executive reinterpretations, the United States attempts to recast international law to assert a legal right to previously unauthorized violence.³⁷¹ As I show in Part II, the repeated unlawful implementation of its policy further undermines its legality.

III. THE UNITED STATES FAILS TO EITHER TARGET OR KILL MEMBERS OF AL-SHABAAB WHO DIRECTLY PARTICIPATE IN HOSTILITIES, AND SUCH EXTREME INACCURACY RENDERS THE AIRBORNE STRIKE PROGRAM ILLEGAL IN PRACTICE

By conducting a strike-by-strike analysis of U.S. actions against al-Shabaab, I prove that these strikes are unlawful in practice. As explained above, targeting members of al-Shabaab would not satisfy the ICRC guidance, which would require the United States to target only fighters, not just members. The following analysis reveals how dangerous this membership standard for targeting is to Somalis in areas perceived as being under al-Shabaab control.

368. CONCLUDING OBSERVATIONS ON THE FOURTH PERIODIC REPORT OF THE UNITED STATES OF AMERICA, CCPR/C/USA/CO/4. The Committee also raised concerns about the lack of precaution to avoid civilian casualties.

369. See Human Rights Council, *supra* note 247.

370. Emma DiNapoli, *German Courts Weigh Legal Responsibility for U.S. Drone Strikes*, LAWFARE, Apr. 4, 2019, <https://www.lawfareblog.com/german-courts-weigh-legal-responsibility-us-drone-strikes>.

371. See Hajjar, *supra* note 35, at 69.

A. Airborne Strike Data

To date, the United States has likely conducted 333 airborne strikes in Somalia, beginning in 2007,³⁷² though the first acknowledged strike was in 2011.³⁷³ President Obama oversaw fifty-six airborne strikes,³⁷⁴ and President Trump, with further relaxed rules on targeting, authorized 256.³⁷⁵ Despite attempting to restrict the use of airborne strikes outside active warzones, President Biden has already approved fourteen strikes.³⁷⁶

The Appendix contains a table of airborne strikes conducted by the United States against al-Shabaab in Somalia. For each strike, I included a description of the target as explained by AFRICOM, or, if no explanation was provided, information from other public sources about the target.³⁷⁷ I excluded unsubstantiated incident reports and used the description for each incident most favorable to the U.S. government. I then classified each strike incident by whether the United States has any claim that the target was directly participating in hostilities at the time of the strike. Further explanation of these methods can be found in the Appendix.

B. Analysis of Airborne Strikes Against al-Shabaab

An analysis of strike data shows that the United States' airborne strike policy classifies members of al-Shabaab as always targetable and that in practice, airborne strikes do not reliably kill individuals who directly participate in hostilities or who can be considered fighters.

1. Targeting Decisions are Likely Based on Targeting Individuals Based on Membership in a Terrorist Organization, Not on Their Direct Participation in Hostilities

As shown in the Appendix, the United States claimed that the target was directly participating in hostilities in only thirty-two of the

372. Piper & Dyke *supra* note 21.

373. *Somalia: Reported US Covert Actions 2001–2016*, THE BUREAU OF INVESTIGATIVE JOURNALISM, <https://www.thebureauinvestigates.com/drone-war/data/somalia-reported-us-covert-actions-2001–2017> (last visited Dec. 9, 2021).

374. *See Appendix.*

375. *See Appendix.*

376. *See Appendix.*

377. Airwars uses public sources, preferring firsthand accounts. *See Methodology*, AIRWARS, <https://airwars.org/methodology> (last accessed May 12, 2022). The Appendix only includes strikes Airwars determined could be credibly attributed to the United States. For more information, see *Appendix*.

333 airborne strikes against al-Shabaab.³⁷⁸ For example, on August 24, 2021, AFRICOM reported killing al-Shabaab members “engaged in active combat” against Danab forces,³⁷⁹ and on August 1, 2021, the Somali government announced a U.S. airborne strike destroyed an al-Shabaab firing position engaging its forces.³⁸⁰ Thus, in less than ten percent of airborne strikes did the U.S. claim the target was directly participating in hostilities against U.S. or Somali forces, provided its reports and its intelligence were correct.

In thirty-one other airborne strikes, the United States claimed al-Shabaab posed a threat around, but not during, the time of the strike. In thirteen incidents, AFRICOM announced that al-Shabaab had threatened U.S. or Somali forces immediately prior to the strike.³⁸¹ For example, on February 22, 2022, AFRICOM announced it launched a strike against “al-Shabaab terrorists after they attacked partner forces.”³⁸² For these airborne strikes conducted after al-Shabaab allegedly attacked U.S. or Somali forces, it is unclear whether the attack occurred immediately before the strike. In eighteen others, it is possible that an attack from al-Shabaab was imminent.³⁸³ On January 19, 2019, the United States conducted airborne strikes against al-Shabaab claiming that Somali forces were anticipating an attack,³⁸⁴ and on May 11, 2020, a strike hit a training camp that security sources believed housed militants who were planning an attack.³⁸⁵ On August 20, 2020, the United States killed an allegedly high-ranking member of al-Shabaab who had a history of making explosives and was reportedly working to plant

378. On September 28, 2016, the United States struck a local friendly militia that was helping combat al-Shabaab, though AFRICOM initially claimed to have killed al-Shabaab fighters in action. See AIRWARS CIVILIAN CASUALTIES, USSOM066-C – September 28, 2016, <https://airwars.org/civilian-casualties/ussom066-c-september-28-2016/> (last visited Apr 6, 2022). Claims that the target was directly participating in hostilities should be heavily scrutinized, as such, these numbers reflect a generous view of U.S. targeting decisions.

379. See *Appendix no. 6*.

380. See *Appendix no. 10*; SONNA (@SONNALIVE), TWITTER (Aug. 1, 2021, 2:04 AM), <https://twitter.com/SONNALIVE/status/1421758785442492417>, (“1st August, 2021, The Danab, SNA & their partners have once again struck a blow to the heart of #AS .At 1022 a.m. & 1101 a.m. air strikes occurred b/w Bacadweyne & Camara towns near Wisil town in #Galmudug State in support of a #Danab operation resulting in zero civilian casualties”) <https://t.co/HCeBFQeyle>.

381. See *Appendix no.s 1, 2, 5, 9, 19, 24, 25, 41, 87, 102, 198, 207, 213*.

382. Pietrack, *supra* note 2. Again, this interpretation grants the U.S. the benefit of assuming that the targets were the same people who launched the attack.

383. See *Appendix no.s 4, 27, 40, 113, 130, 165, 176, 177, 178, 179, 233, 235, 271, 280, 288, 289, 290, 298*.

384. See *Appendix no. 165*.

385. See *Appendix no. 40*.

explosives on a public road at the time of the strike.³⁸⁶ ICRC guidelines for direct participation in hostilities suggest that it can include the preparations for an attack.³⁸⁷ Assuming in all twenty-eight of these situations the time between al-Shabaab's act of hostilities and the airborne strike was close enough for the United States to plausibly claim the targets were directly participating in hostilities at the time of the strike, these instances can also be considered to have a valid claim that the target was directly participating in hostilities.

Two other strike incidents were unclear in the description of the target, but there was enough information to afford the United States the benefit of doubt. If Somali forces seemed to attack al-Shabaab first or were on the ground at the time of the strike, I concluded there was possibly a situation of active hostilities occurring rather than a one-sided attack by Somalia or the United States.³⁸⁸ On the contrary, on September 21, 2020, a strike targeted al-Shabaab members attempting to scavenge a damaged vehicle.³⁸⁹ While it is possible these individuals might have been repurposing the vehicle to use in an attack, such an inference is too hypothetical and too temporally distant from any hostile act to be considered preparations under the ICRC definition of direct participation in hostilities. Regardless, these borderline cases do not substantially alter the data, which makes it resoundingly clear that the United States is not relying on such a claim for the majority of the targeting decisions.

To summarize, based on information pulled from AFRICOM's reports, Somali government press releases, and other open-source media, the United States could only plausibly claim that the target was directly participating in hostilities at the time for a maximum of sixty-five of these 333 airborne strikes. Accordingly, approximately 80 to 90 percent of the airborne strikes³⁹⁰ were against targets who were not directly participating in hostilities against United States or partner forces. Some of these targets were alleged to be al-Shabaab fighters. For example, on October 6, 2018, AFRICOM declared it killed an "al-Shabaab militant" near a village.³⁹¹ More often, however, tar-

386. See *Appendix no. 32*.

387. *Interpretive Guidance on the Notion of Direct Participation in Hostilities*, *supra* note 266.

388. See *Appendix no.s 10, 286*.

389. See *Appendix no. 28*.

390. Anywhere from 80.48 to 90.39 percent, based on thirty-two to sixty-five instances of a target directly participating in hostilities. See *Appendix*.

391. See *Appendix no. 195*; *U.S. Conducts Airstrike in Support of the Federal Government of Somalia*, U.S. AFRICA COMMAND, Oct. 9, 2018, <https://www.africom.mil/>

gets were identified simply as including members of al-Shabaab. On October 16, 2017, AFRICOM targeted a vehicle it believed to be carrying al-Shabaab members;³⁹² on April 5, 2020, AFRICOM declared it targeted “al-Shabaab terrorists;”³⁹³ and on January 13, 2021, AFRICOM reported killing “one al-Shabaab personnel.”³⁹⁴ Thus, for most of its airborne strikes, the United States seems to rely on reasoning that al-Shabaab members are always targetable, despite not directly participating in hostilities.

Both AFRICOM and the CIA conduct airborne strikes in Somalia, but AFRICOM has claimed 248 of the 333 strikes in Somalia, or just under 75 percent of the strikes. The remaining eighty-five airborne strikes could be undeclared AFRICOM strikes, CIA strikes, or are not U.S. strikes at all.³⁹⁵ Of the 248 declared strikes, 77 to 88 percent of the strikes were against targets who were not directly participating in hostilities against U.S. or partner forces.³⁹⁶ Of the undeclared strikes, 91 to 99 percent were against individuals not directly participating in hostilities of any nature.³⁹⁷ The implications of undeclared AFRICOM strikes or CIA-led strikes are further discussed in Part II(C), but overall, even excluding all undeclared strikes, the majority of AFRICOM-claimed airborne strikes are still against individuals not directly participating in hostilities. Thus, AFRICOM and the CIA would both appear to target individuals based on al-Shabaab membership.

2. Targets Appear to Be Chosen as a Result of Bad Intelligence

In many cases, it seems that the United States falsely identified civilians as members of al-Shabaab. For example, on March 18, 2019, AFRICOM declared that it had killed three “terrorists,” but Amnesty International later confirmed the three men were civilian

pressrelease/31253/u-s-conducts-airstrike-in-support-of-the-federal-government-of-somalia.

392. See Appendix no. 247; *The US Military Claims These Men It Killed Were “Terrorists” but We Know They Were Civilian Farmers*, AMNESTY INT’L, Sept. 30, 2019, <https://www.amnesty.org/en/latest/press-release/2019/09/us-military-shows-appalling-disregard-for-civilians-killed-in-somalia-air-strike/>.

393. See Appendix no. 45; AIRWARS CIVILIAN CASUALTIES, *USSOM303 – April 5, 2020*, <https://airwars.org/civilian-casualties/ussom303-april-5-2020/> (last visited Apr 6, 2022).

394. See Appendix no. 18.

395. As noted in the Appendix, by already excluding strikes Airwars deemed could not be reliably attributed to the United States, it is less likely that such undeclared strikes were not U.S. actions.

396. Anywhere from 77.0 to 87.5 percent, based on thirty-one to fifty-seven instances of a target directly participating in hostilities.

397. Anywhere from 90.6 to 98.8 percent, based on one to eight instances of a target directly participating in hostilities.

farmers.³⁹⁸ Similarly, on November 12, 2017, the United States killed three civilian farmers sleeping on the side of the road.³⁹⁹ On December 6, 2017, the United States killed five civilians traveling in a truck,⁴⁰⁰ and on March 10, 2020, the United States struck a private minibus.⁴⁰¹ Assuming the United States is not targeting civilians, which would be explicitly unlawful,⁴⁰² the only possible basis for their being targeted is if the United States had mistakenly identified them as members of al-Shabaab.⁴⁰³

In other situations, AFRICOM rejected claims that it had possibly made a mistake, despite evidence that it *did*. On December 12, 2017, AFRICOM announced it struck an al-Shabaab improvised explosive device, removing an “imminent threat to the people of Mogadishu.”⁴⁰⁴ However, others reported on Twitter that the vehicle targeted was in fact carrying bananas, and in 2019, AFRICOM claimed the strike occurred on December 11, 2017, admitting there were no secondary explosions observed, which would be expected if the vehicle contained explosives.⁴⁰⁵ AFRICOM seems to change its description of strike incidents retroactively. In a similar situation, on January 19, 2021, AFRICOM originally claimed it killed three “al-Shabaab operatives” in two airborne strikes, though media sources alleged that the United States had killed a local clan elder, Sultan Mohamed Abbas.⁴⁰⁶ Later that year, in its 2nd Quarter Civilian Casualty Assessment Report, AFRICOM stated the airborne strike targeted an al-Shabaab commander while he was driving his car.⁴⁰⁷ Then, in its 4th Quarter Report, AFRICOM asserted that Mohamed Abbas was a confirmed al-Shabaab commander, based on years of intelligence.⁴⁰⁸ Given the minimal information on both

398. *US Military Claims*, *supra* note 392.

399. *See Appendix no. 243*.

400. *See Appendix no. 236*.

401. *See Appendix no. 56*.

402. Because they were not directly participating in hostilities.

403. As explained in Part I(D), this is also not legal, but the United States is trying to portray such a practice as a permissible legal interpretation.

404. *U.S. Conducts Airstrike in Support of the Federal Government of Somalia*, U.S. AFRICA COMMAND, Dec. 12, 2017, <https://archive.ph/Nb0YI>.

405. AIRWARS CIVILIAN CASUALTIES, *USSOM109 – December 12, 2017*, <https://airwars.org/civilian-casualties/ussom109-december-12-2017/> (last visited Apr 6, 2022).

406. AIRWARS CIVILIAN CASUALTIES, *USSOM331-C – January 19, 2021*, <https://airwars.org/civilian-casualties/ussom331-c-january-19-2021/> (last visited Apr 6, 2022).

407. *Id.*; *U.S. Africa Command Civilian Casualty Assessment Quarterly Report; 2nd Quarter, 2021*, U.S. AFRICA COMMAND, June 4, 2021, <https://www.africom.mil/pressrelease/33802/us-africa-command-civilian-casualty-assessment-quarterly-report-2nd-quarter-2021>.

408. *U.S. Africa Command Civilian Casualty Assessment Quarterly Report; 2nd Quarter, 2021*, U.S. AFRICA COMMAND, Mar. 11, 2022, <https://www.africom.mil/pressrelease/34309/us-africa-command-civilian-casualty-assessment-quarterly-report-4th-quarter-2021>.

sides, it is difficult to determine whether Abbas was indeed a long-time al-Shabaab commander, or whether the vehicle with bananas was the one targeted. Regardless, the United States does not disclose the information it uses to make its targeting determinations and it has not acknowledged that its description of certain events has changed once it has emerged that the original description may not have been accurate.

Overall, the United States seems to target individuals without sufficient evidence that they were either directly participating in hostilities or members of al-Shabaab.

3. Targets Appear to Be Chosen Based on Identity- and Location-based Profiling

Such targeting decisions could also be understood differently. Rather than a failure or mistake of intelligence, it seems U.S. policy may be to reject individualized evidence in favor of selecting targets based on general facts about the people or area, known as signature strikes. In the numerous cases in which AFRICOM targeted a “member” of al-Shabaab, it looks probable that the basis of that determination was the individual’s age and gender, or other innocuous facts, like being out at night in a rural area.⁴⁰⁹ Such a signature strike policy is inherently racist, as the United States refuses to differentiate between individuals, instead categorizing all Somali men in certain areas as al-Shabaab and condemning them to death.⁴¹⁰ This practice renders an entire identity of people killable, due to almost exclusively racial, gendered, and religious assumptions.

By using the description most favorable to the United States, much of the data indicates that the target was an al-Shabaab member, but these claims are thin. On January 27, 2020, AFRICOM declared it killed one al-Shabaab “operative” or “terrorist,” yet the family contends that the individual was in fact a civilian farmer working in his field.⁴¹¹ On March 18, 2019, AFRICOM claimed a strike killed three “terrorists,” yet witnesses reported that in fact civilian farmers were killed.⁴¹² On November 12, 2017, AFRICOM again declared it killed “fighters,”

409. See *Appendix no.s 81, 138, 243*.

410. Cachelin, *supra* note 15, at 7 (arguing that signature strikes employ a system of “race-thinking” that homogenizes everyone with a certain, refusing to acknowledge differences within a racial and religious identity to instead impose an idea of “guilt by association”); Munro, *supra* note 37, at 125; Parks, *supra* note 36, at 145–47; Jamie Allinson, *The Necropolitics of Drones*, 9 INT’L POL. SOC. 113, 119–21 (2015).

411. AIRWARS CIVILIAN CASUALTIES, *USSOM272-C – January 27, 2020*, <https://airwars.org/civilian-casualties/ussom272-c-january-27-2020/> (last visited Apr 6, 2022).

412. AIRWARS CIVILIAN CASUALTIES, *USSOM209-C – March 18, 2019*, <https://airwars.org/civilian-casualties/ussom209-c-march-18-2019/> (last visited Apr 6, 2022).

but locals say the individuals were civilian farmers.⁴¹³ It is possible that all such individuals were secretly members of al-Shabaab or that all of these witnesses were falsely alleging civilian harm. Yet, in these examples, and in many others,⁴¹⁴ it seems far more likely that these individuals were simply targeted because they fit a certain profile, not because AFRICOM had particularized evidence of their involvement in al-Shabaab. Without further information from the U.S. government about the evidence it uses to make its targeting determinations, many of these strikes look as if the United States relied on solely an identity-based or location-based profile because of the lack of public connection between the individuals and al-Shabaab.

Accordingly, it is highly likely that for many of the 269 to 302 strikes in which targets may have included members of al-Shabaab, the individuals killed were not in fact members at all but were classified as such because of bad intelligence or identity-based profiling. Even if some of these individuals were members, it is further unlikely that they were fighters for al-Shabaab, given that Amniyat is only one of many al-Shabaab agencies. As such, this data should cast extreme doubt on any claim that the United States is even killing many “terrorists” at all.

C. Such Failures Further Undermine the United States’ Claims of the Program’s Legality

This analysis shows that the United States’ airborne strike program is, in practice, illegal under domestic and international law. In practice, strikes against al-Shabaab also appear to violate U.S. airborne strike policy.

1. Airborne Strikes Against al-Shabaab Largely Violate Domestic Law

As explained in Part I(D), the 2001 AUMF is not valid authorization for the DoD to conduct airborne strikes against al-Shabaab. Of the 333 airborne strikes attributed to the United States, the DoD has claimed 248 as declared strikes. Such strikes are, without the AUMF, unlawful.

For the remaining eighty-five airborne strikes, it is unclear whether these are CIA strikes, undeclared AFRICOM strikes, or possibly not strikes from the United States at all.⁴¹⁵ AFRICOM generally reports strikes publicly, but it is under no legal obligation to do so.⁴¹⁶

413. AIRWARS CIVILIAN CASUALTIES, *USSOM101-C – November 12, 2017*, <https://airwars.org/civilian-casualties/ussom101-c-november-12-2017/> (last visited Apr 6, 2022).

414. See *Appendix no.s 68, 72, 114, 118, 214, 243, 307, 319*.

415. See *Appendix*.

416. See generally 10 U.S.C. § 130(c) (exempting from disclosure information produced

Under the Covert Action Statute, the CIA does not have to declare that it conducted an action,⁴¹⁷ so it is impossible to conclusively determine responsibility. Moreover, AFRICOM may sometimes claim responsibility for CIA-conducted strikes.⁴¹⁸ Regardless, CIA-conducted strikes are, as explained in Part I(D), of uncertain legal status.

2. Many Airborne Strikes Violate International Law Individually, and Taken as a Whole, the Program Violates Fundamental Principles of IHL.

In practice, the United States seems to treat members of al-Shabaab as always targetable, which as explained in Part I(D) is an illegal policy. With this basis for targeting determinations rejected, most of the airborne strikes become unlawful without further information. Moreover, the program as a whole violates fundamental principles of IHL.

The United States appears to mostly target and kill individuals who are not directly participating in hostilities, relying on a status-based determination rather than an action-based one. Because targeting civilians is outright unlawful and the United States claims its strikes comply with international law, it seems the United States considers al-Shabaab members to be always targetable in NIACs and thinks such a practice is a valid legal interpretation.⁴¹⁹ However, unlike the strict NIAC requirement of targeting those who directly participate in hostilities or the more permissive ICRC guidance to also target fighters with a continuous combat function, the United States' expansive interpretation certainly has not been internationally accepted as lawful,⁴²⁰ nor should it be. Targeting a member of al-Shabaab with a purely administrative, economic, or political function is akin to targeting a civilian.⁴²¹

in cooperation with foreign governments); 10 U.S.C. § 122(a) (exempting from public reports any classified information or “any other type of information that the Secretary of Defense determines should not be made available to the public in the interest of national security.”).

417. 50 U.S.C. § 3093(e).

418. EXCEPTION(S) TO THE RULE(S), *supra* note 211, at 11.

419. *See supra Part I(C)* (assuming, to give the benefit of doubt, that the U.S. government is not deliberating targeting civilians and retroactively calling them al-Shabaab members).

420. There is no universal acceptance that IHL implicitly authorizes a state to kill those not directly participating in hostilities in a NIAC. *See Sterio, supra* note 201, at 207 (explaining that only the U.S. and Israel believe membership in a declared terrorist organization is sufficient grounds for someone to lose civilian status).

421. *See Interpretive Guidance on the Notion of Direct Participation in Hostilities, supra* note 267 (explaining “recruiters, trainers, financiers and propagandists . . . individuals whose function is limited to the purchasing, smuggling, manufacturing and maintaining of weapons and other equipment outside specific military operations” “remain civilians”). *See also Appendix no. 2; AIRWARS CIVILIAN CASUALTIES, USSOM348– July 17, 2022, https://*

Furthermore, given the difficulty in gathering reliable intelligence,⁴²² the biases in U.S. efforts to determine membership,⁴²³ and the complete lack of transparency of process,⁴²⁴ the way the United States identifies members creates an impermissible risk to those living in conflict zones who may be falsely considered members of a terrorist group. Thus, because not all members of al-Shabaab have a continuous combat function, any strike that seemed to target individuals based on membership alone violates the principle of distinction and the Common Article 3 protection of those who do not participate in hostilities.

As shown in practice, the U.S. policy to use membership, not fighter status, to make a targeting determination is clearly highly discretionary, bias- and error-prone, and overinclusive, which risks violating the principle of distinction according to the ICRC. Similarly, these strikes would violate Common Article 3. Based on the frequency of mistakes and civilian casualties, it appears that, in practice, targeting decisions rely on information that cannot “reasonably be regarded as reliable in the prevailing circumstance,” as required by the ICRC.⁴²⁵ The examples in Part II(B)(ii) illustrate the unreliability of U.S. targeting determinations, particularly when it comes to claims that the target was a member of al-Shabaab. Moreover, U.S. strikes have killed between seventy and 143 civilians in Somalia.⁴²⁶ While civilian harm is allowed under IHL as collateral, so long as it is not excessive,⁴²⁷ each strike incident alleged to have exclusively civilian casualties seems to be a failure to distinguish civilians. Such strikes individually violate the fundamental IHL principle of distinction, including the strike on March 18, 2019, where all men killed were claimed to be civilian farmers.⁴²⁸ Additionally, as explained in Part II(B)(iii), even for strikes without claims of civilian casualties, there is good reason to believe that many alleged members of al-Shabaab were not fighters (or even members) but

airwars.org/civilian-casualties/ussom348-july-17-2022/ (last visited Aug. 11, 2022) (noting that according to one report, one of the individuals killed was the “leader of Al-Shabaab in charge of financial affairs in this area,” which might be a purely administrative function).

422. Scahill, *supra* note 22.

423. See Parks, *supra* note 36, at 145–47; Hajjar, *supra* note 18, at 943.

424. Rosa Brooks, *Drones and the International Rule of Law*, 28 J. ETHICS & INT'L AFF. 83, 89 (2014); HIDDEN U.S. WAR, *supra* note 6, at 60–61.

425. *Interpretive Guidance on the Notion of Direct Participation in Hostilities*, *supra* note 267.

426. Civilian Deaths, *supra* note 169. The U.S. has only conceded to five civilian deaths.

427. See HOW DOES LAW PROJECT IN WAR?, *Proportionality*, <https://casebook.icrc.org/glossary/proportionality> (last visited Apr 7, 2022).

428. AIRWAR CIVILIAN CASUALTIES, *USSOM209-C – March 18, 2019*, <https://airwars.org/civilian-casualties/ussom209-c-march-18-2019/> (last visited Apr 6, 2022).

civilians. By resulting in so many mistakes and civilian casualties, the way the U.S. membership standard operates in practice violates international law.

If the U.S. policy of targeting members is unlawful, most of its strikes become unlawful. For the 268 to 301 cases where it was not clear the targeted individuals directly participated in hostilities—where the United States may have instead targeted them for being members of al-Shabaab—the United States would need to show additional evidence that the individual plausibly served a continuous combat function or was certainly directly participating in hostilities. Evidence that the individual was not only a member but a *fighter* of al-Shabaab would comply with the ICRC’s broad interpretation of NIAC law, yet most of these cases lack such proof.

Planning future attacks might indicate that the individual occupied a continuous combat function within al-Shabaab. At least seventeen strikes targeted individuals who were planning attacks or otherwise threatening U.S. and Somali forces.⁴²⁹ Anticipatory self-defense requires a specific imminent attack to be lawful,⁴³⁰ and the United States must gain a definite military advantage when launching an attack.⁴³¹ While the United States may target an individual making preparations for an attack,⁴³² it is unclear whether all of these situations included preparations “of a specifically military nature and so closely linked to the subsequent execution of a *specific hostile act* that they already constitute an integral part of that act”⁴³³ to satisfy ICRC guidance because the descriptions are so general. Without further information, it is unclear whether the United States had such evidence for every strike. If any were conducted to deter a general anticipated threat, that strike would be unlawful,⁴³⁴ such as the strike on March 18, 2019, where AFRICOM declared that it had killed three “terrorists” to “decrease morale ahead

429. See *Appendix no.s 27, 40, 113, 130, 165, 176, 177, 178, 179, 233, 235, 271, 280, 288, 289, 290, 298.*

430. FINAL REP. ON AGGRESSION, *supra* note 333, at 14.

431. INT’L COMM. RED CROSS, *Practice Related to Rule 8: Military Advantage*, https://ihl-databases.icrc.org/customary-ihl/eng/docindex/v2_rul_rule8#:~:text=Definite%20means%20a%20concrete%20and,a%20hypothetical%20and%20speculative%20one.&text=The%20military%20advantage%20anticipated%20from,particular%20parts%20of%20the%20attack (last accessed Apr. 13, 2022) (“*Definite* means a concrete and perceptible military advantage rather than a hypothetical and speculative one.”).

432. *Interpretive Guidance on the Notion of Direct Participation in Hostilities*, *supra* note 267.

433. *Id.* Conversely, the preparation of a general campaign of unspecified operations would not qualify as direct participation in hostilities. Emphasis mine.

434. Maass, *supra* note 289, at 62. See also *Appendix no. 91, 132.*

of Somali Army operations.⁴³⁵ Such anticipatory self-defense is not a lawful ground for use of force,⁴³⁶ and such a claim about “decreasing morale” is impermissibly speculative.⁴³⁷ As explained in Part I(B), the ICRC advises that a person has a continuous combat function only if their “continuous function involves the preparation, execution, or command of acts or operations amounting to direct participation in hostilities.”⁴³⁸ Therefore, if the planning or preparations can be considered direct participation in hostilities, it is also possible to conclude that, if such planning is part of the individual’s continuous function, they are a fighter for al-Shabaab. Again, the United States does not provide such information when describing its strikes, so it is not possible to determine whether these strikes are lawful.

Similarly, in the thirteen cases where it seemed the targeted individual had previously participated in an attack against the United States or Somalia, the United States may have been able to determine they had a continuous combat function within al-Shabaab. However, according to the ICRC, evidence of past attacks is insufficient alone to determine whether an individual has a continuous combat function.⁴³⁹ Relying solely on participation in a past attack risks targeting civilians, who are only targetable during the time they participate in hostilities and regain protection once finished.⁴⁴⁰ It is unlawful to target civilians for involvement in past attacks,⁴⁴¹ because it would amount to a retaliatory killing.⁴⁴² Often, AFRICOM announced it was targeting a person who

435. *US Military Claims*, *supra* note 392.

436. *See supra* note 333. The United States repeatedly invokes a self-defense justification when its forces face attack in Somalia. *See* MARUF & JOSEPH, *supra* note 96, at 275 (“Critics of the growing US presence pointed out there would be no need for self-defense if US troops hadn’t been put on the Somali front lines in the first place.”).

437. *See Practice Related to Rule 8*, *supra* note 431.

438. *Interpretive Guidance on the Notion of Direct Participation in Hostilities*, *supra* note 267.

439. *Id.* (explaining that in contrast to an individual with a continuous combat function in an armed group, “The behaviour of individual civilians depends on a multitude of constantly changing circumstances and, therefore, is very difficult to anticipate. Even the fact that a civilian has repeatedly taken a direct part in hostilities, either voluntarily or under pressure, does not allow a reliable prediction as to future conduct.”).

440. *Id.*

441. *See* Human Rights Council, *supra* note 247. The United States targets individuals for involvement in past attacks also as a matter of policy. JUSTICE DEP’T WHITE PAPER, *supra* note 282. While this is an Obama-era policy, it seems that the Trump administration (and thus the Biden administration) retained the main goals of the policy, despite the specific changes in processes that have been described above.

442. UN Commission of Experts Established pursuant to Security Council Resolution 780 (1992), Final Report, UN Doc. S/1994/674, 27 May 1994, §§ 63–64.

previously engaged in hostilities against U.S. or partner forces.⁴⁴³ If these previous attacks were temporally close to the airborne strike, it is possible the United States targeted a fighter or a civilian still directly participating in hostilities. However, if these previous attacks were far in the past or if there is no evidence that the person is a fighter, then the United States looks like it might be targeting the individual for revenge for past attacks, which is unlawful. For example, on January 7, 2021, the U.S. Air Force announced, “This strike targeted known al-Shabaab leaders who facilitated finance, weapons, fighters, and explosives. One is suspected of being involved in a previous attack against U.S. and Somali forces.”⁴⁴⁴ According to the ICRC, the leaders would not be targetable as fighters for their role in facilitating weapons or explosives,⁴⁴⁵ and targeting the individual suspected in a previous attack for deterrence violates IHL.⁴⁴⁶ Without specific, additional information that someone who participated in a past attack did so in a continuous combat function for al-Shabaab, the United States cannot lawfully target individuals for participation in previous hostilities.

To be generous to the United States, I will assume that the necessary information exists for the thirty-three uncertain strikes.⁴⁴⁷ Without further descriptions from the United States for each of the remaining 268 airborne strikes where the target was directly participating in hostilities, it is not possible to conclude that they were lawful. The United States might have had evidence a member was in fact a fighter, that an attack was imminent, or that the individual immediately concluded the previous attack. Without such proof, these strikes would be unlawful.

Evidently, many individual strikes are clearly unlawful. Cumulatively, these many violations render the program, taken as a whole, unlawful. I next show how the airborne strike program against al-Shabaab violates the binding IHL principles of distinction, proportionality, and necessity.⁴⁴⁸

The U.S. policy of targeting members of al-Shabaab has also led to serious civilian harm, which indicates a failure of targeting determinations to properly distinguish civilians or an outright refusal to do

443. See *Appendix no.s 5, 9, 19, 24, 25, 41, 87, 102, 198, 207, 213*.

444. U.S. Africa Command conducts strike on al-Shabaab leaders, U.S. AFRICA COMMAND, Jan. 7, 2021, <https://www.africom.mil/pressrelease/33401/us-africa-command-conducts-strike-on-al-shabaab-leaders>.

445. *Interpretive Guidance on the Notion of Direct Participation in Hostilities*, *supra* note 267.

446. See Human Rights Council, *supra* note 247; Maass, *supra* note 289, at 62.

447. See *supra* Part II(B) for further discussion of the 30.

448. See *supra* note 250.

so.⁴⁴⁹ Given the risks of misidentification inherent in airborne strikes,⁴⁵⁰ the United States' refusal to engage possible remedies⁴⁵¹ and its removal of processes that safeguarded civilians⁴⁵² violates the principle of distinction, which requires parties to take all feasible precautions to avoid civilian harm when conducting attacks.⁴⁵³ While the United States insists that instances of civilian harm, when it acknowledges them, are simply mistakes, repeated reliance on forms of intelligence that are clearly bad at identifying members of al-Shabaab render the conduct illegal over time.⁴⁵⁴ Such mistakes in targeting, if they can be considered mistakes, in aggregate constitute a failure to distinguish civilians or to minimize civilian harm. Broad signature strike policies, such as the classification of all military-aged men in al-Shabaab-controlled areas as members of al-Shabaab, as could be inferred from the number of civilian male casualties,⁴⁵⁵ also indicate a refusal to properly and reliably identify civilians. The United States also rejects most claims

449. See HIDDEN U.S. WAR, *supra* note 6, at 65. (“In some strikes documented in the report US forces appear to have either targeted civilians or failed to verify that targets were military objectives. In others, evidence indicates that the US failed to take feasible precautions to distinguish between civilians and fighters or to choose appropriate means or methods in conducting strikes in order to minimize the harm caused to civilians and civilian objects, resulting in apparently indiscriminate or disproportionate attacks. Further, the findings in this report, and the responses received from AFRICOM to Amnesty International’s allegations, raise serious concerns about the methodology employed by the US to assess strike outcomes and to determine the civilian or “combatant” status of individuals killed in its attacks.”)

450. *Senate Hearing on “Targeted Killing’ and the Rule of Law,”* H.R. WATCH, Feb. 9, 2022, <https://www.hrw.org/news/2022/02/09/senate-hearing-targeted-killing-and-rule-law> (explaining that surveillance drones zero in on the target, often missing civilians, and that operators are influenced by confirmation bias when assessing intelligence); Larry Lewis, *Hidden Negligence: Aug. 29 Drone Strike is Just the Tip of the Iceberg*, JUST SEC., Nov. 9, 2021, <https://www.justsecurity.org/78937/hidden-negligence-aug-29-drone-strike-is-just-the-tip-of-the-iceberg/>.

451. Lewis, *supra* note 450 (condemning the United States’ refusal to fund or staff civilian casualty investigations, and its refusal to find anyone accountable for harm).

452. PRINCIPLES, STANDARDS, AND PROCEDURES, *supra* note 223.

453. HOW DOES LAW PROJECT IN WAR?, *Precautions in Attack* <https://casebook.icrc.org/glossary/precautions-attack> (last visited Apr 7, 2022) (“IHL requires those planning and deciding on an attack to take precautionary measures, including refraining from attacking when incidental loss of civilian life or destruction of civilian objects outweighs the military advantage of the attack.”).

454. *Senate Hearing*, *supra* note 450 (“Even if every single civilian death caused by US strikes was considered legal under the laws of war, the sheer number of them and the similarities between them would be major cause for concern.”).

455. See *supra* Part II(B); see also Chris Woods, *Understanding the Gulf Between Public and US Government Estimates of Civilian Casualties*, COVERT DRONE STRIKES, IN DRONES AND THE FUTURE OF ARMED CONFLICT: ETHICAL, LEGAL, AND STRATEGIC IMPLICATIONS, ed. David Cortright, et al. 194 (2015) (noting a similar pattern in Pakistan).

of civilian harm,⁴⁵⁶ so either the independent media investigations are grossly wrong, or the United States continues to fail to distinguish civilians even after an attack.

Similarly, such high levels of civilian casualties may also violate proportionality. Proportionality is determined by the incidental civilian harm relative to the military advantage anticipated,⁴⁵⁷ which, as discussed below, is often unclear. Given conflicting reports about civilian casualties and whether individuals were members of al-Shabaab,⁴⁵⁸ it may be difficult to assess whether an individual strike has an excessive number of civilian casualties relative to the military advantage. However, while an individual strike in which civilians were harmed, though deeply troubling, may not violate proportionality in the IHL respect, the sheer number of civilian casualties across airborne strikes in Somalia begins to raise legal issues,⁴⁵⁹ particularly given the program's failure to achieve military objectives. Accordingly, a violation of proportionality would also violate the International Covenant on Civil and Political Rights protection of the right to life because the excessive harm to civilians amounts to an arbitrary deprivation of life.⁴⁶⁰ With the failure of U.S. government reports to accurately identify or disclose civilian casualties,⁴⁶¹ it is also fair to assume the true civilian harm is much greater than what is currently represented.

The inefficacy of the program also violates military necessity.⁴⁶² U.S. airborne strikes against al-Shabaab often fail to meet any cognizable military objective: they fail to kill confirmed al-Shabaab fighters or to defend U.S. or Somali forces during hostilities.⁴⁶³ Strikes that kill civilians, or members of al-Shabaab who do not appear to be engaged in hostilities against U.S. or Somali forces, do not confer a clear military objective. Even if all members of al-Shabaab pose some abstract threat to Somalia for joining a group engaged in conflict against the government, the practice of killing individual members does not appear

456. Woods, *supra* note 455, at 187.

457. *Proportionality*, *supra* note 427.

458. *See, e.g., Appendix nos. 56, 68, 73, 78, 81, 114, 118, 138, 142, 214, 217, 243, 307, 309.*

459. *Senate Hearing*, *supra* note 450.

460. Human Rights Committee, *supra* note 247.

461. Azmat Khan, *Hidden Pentagon Records Reveal Patterns of Failure in Deadly Airstrikes*, N.Y. TIMES, Dec. 18, 2021, <https://www.nytimes.com/interactive/2021/12/18/us/airstrikes-pentagon-records-civilian-deaths.html>.

462. The U.S. does not have a public definition of military necessity. LAW OF WAR MANUAL, *supra* note 290, at 56.

463. *See supra* Part II.B.i, "The U.S. could only plausibly claim that the target was directly participating in hostilities at the time for a maximum of 65 of these 333 airborne strikes."

to have weakened al-Shabaab.⁴⁶⁴ Instead, such lethal actions have arguably cemented the organization's opposition to the government and foreign influence.⁴⁶⁵ Targeting members of al-Shabaab thus does not convey a clear military advantage⁴⁶⁶ in the way that targeting a fighter or someone directly participating in hostilities would.

Accordingly, in practice, airborne strikes against al-Shabaab individually and cumulatively violate international law.

3. Lastly, U.S. Airborne Strikes Against al-Shabaab Likely Violate Domestic Policy

Finally, the airborne strike program in practice seems inconsistent with the limited disclosures of the Obama and Biden administrations' policies. While administrative policy is not law, for the executive branch to have such expansive discretion to set policy and then in practice frequently violate or circumvent such policy, the program becomes exceedingly difficult to evaluate.

The Obama administration policy only explicitly authorized lethal action for "high-value terrorists" and retained an exception to assess action against other "lawful terrorist target[s]."⁴⁶⁷ The United States declared Somalia a place of active hostilities in November 2016, so any strike prior would be subject to these rules. The majority of strikes in that time frame were against unnamed alleged members of al-Shabaab, and while it is possible they were all identified high-value terrorists, as explained in Part II(B), it is more likely that many were targeted based on their profile or perceived membership in al-Shabaab. The target also must have posed a "continuing, imminent threat to U.S. persons."⁴⁶⁸ However, strikes from May 2013 to November 2016 were mostly against individuals not directly participating in hostilities against the United States,⁴⁶⁹ so they did not seem to pose an "imminent" threat to

464. See LEONARD & RAMSAY, *supra* note 104, at 161; MARUF & JOSEPH, *supra* note 96, at 225.

465. See LEONARD & RAMSAY, *supra* note 104, at 161 (explaining that U.S. involvement has led to increased attacks by al-Shabaab against people perceived as working with the United States).

466. See HOW DOES LAW PROTECT IN WAR?, *Military Advantage*, <https://casebook.icrc.org/glossary/military-advantage> (last visited Apr 7, 2022).

467. PROCEDURES FOR APPROVING DIRECT ACTION, *supra* note 23 (requiring "(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.").

468. PROCEDURES FOR APPROVING DIRECT ACTION, *supra* note 23, pg. 11.

469. See *Appendix*.

“U.S. persons.”⁴⁷⁰ Still, the policy reserved the ability to approve variations from the procedure. If these strikes were approved exceptions, not violations, the exceptions seem to have become the rule in practice.

Because the Trump administration policy⁴⁷¹ was so permissive, it does not appear that the airborne strikes overseen by President Trump violated his standards as disclosed. With reduced certainty requirements that civilians would not be harmed and with broad exemptions from the procedures,⁴⁷² the Trump administration’s policy provided almost no knowable limits on strike approval.

Unfortunately, given the limited disclosure of the Trump administration’s targeting policy and the anonymous statements regarding some of President Biden’s interim decisions, it is also challenging to determine whether airborne strikes against al-Shabaab comport with the Biden administration’s current policy. However, it appears that half of the strikes under the Biden administration still fail to adhere to the President’s policy to require self-defense for U.S. or Somali troops,⁴⁷³ unless he has classified Somalia as a warzone, and it does not appear President Biden has.⁴⁷⁴ For example, on August 1, 2021, AFRICOM struck a military base housing al-Shabaab, which does not appear to have been in self-defense.⁴⁷⁵ The policy does allow limited exceptions for an airborne strike to occur absent a self-defense claim, but for half the strikes to lack a self-defense justification, the exception might subsume the rule. The administration appears to set standards it does not follow; however, unlike the Obama administration, the Biden administration has not publicly clarified its guidelines for airborne strikes.

470. Additionally, the administration required “near certainty” that only the target or another lawful target be killed. The policy also favored capture over death, and it required a showing that there was no reasonable alternative to lethal action. While I cannot evaluate the feasibility of capture for each strike incident, given the forty strikes that occurred from the time of the policy to the Obama declaration, it appears that lethal force is exercised so frequently as to violate this stated policy as well. *See Appendix.*

471. PRINCIPLES, STANDARDS, AND PROCEDURES, *supra* note 223. The policy also reserves the right to vary this procedure as necessary.

472. *See* PRINCIPLES, STANDARDS, AND PROCEDURES, *supra* note 223, at Part I(A).

473. *See Appendix nos. 7, 11, 12, 13, 14.* The current U.S. targeting policy also seems to prefer capturing over killing targets when feasible. *See* PROCEDURES FOR APPROVING DIRECT ACTION, *supra* note 23. Like with the Obama administration, the frequency of lethal action may indicate the requirement is not so strict.

474. *See* DESIDERIO & SELIGMAN, *supra* note 305; Oona Hathaway & Luke Hartig, *Still at War: The United States in Somalia*, JUST SEC., Mar. 31, 2022, <https://www.justsecurity.org/80921/still-at-war-the-united-states-in-somalia/>. The Trump designation of Somalia as an area of active hostilities has expired.

475. *See Appendix nos. 3; AIRWARS CIVILIAN CASUALTIES, USSOM342 - August 1, 2021, https://airwars.org/civilian-casualties/ussom342-august-1-2021/* (last visit May 12, 2022).

Analysis of the Biden policy is limited by anonymous disclosure that may not even accurately represent the current policy.

Such inconsistencies between practice and policy (to the extent that it is known) further underscore the difficulties in evaluating U.S. policy for its lawfulness as well. Without knowing what each administration's airborne strike policy contains, beyond a few general limits and standards, the strikes themselves become the best evidence of the policy. Because of the difficulties in disentangling policy from practice, the line between policy analyzed in Part I and practice analyzed in Part II is murky. Moreover, if the deviations are consistent, the practical operation of the policy effectively supersedes the policy as written, because the policy fails to constrain practice or becomes different in practice. That is, the exceptions and alterations become the rule. Such confusion further underscores the absurdity of attempting objective legal analysis on a program that is defined by extreme secrecy, broad executive discretion, and changing standards.

IV. THE DURATION OF THE PROGRAM DESPITE SUCH LEGAL AND PRACTICAL FLAWS INDICATES THAT THE ULTIMATE GOAL OF THESE STRIKES IS ABOUT CONTINUED MILITARY PRESENCE IN SOMALIA, RATHER THAN DEFEATING AL-SHABAAB.

Evidently, the law is not a reliable constraint on the U.S. airborne strike program against al-Shabaab. The above sections detail U.S. administrations' efforts to recast domestic and international legal standards (and in some instances, their complete disavowal of such standards) to continue lethally targeting Somalis. When the U.S. government continues to rewrite domestic law, change its legal interpretations, and ignore international law, evaluating this program in a legal context is insufficient. Given the failures of domestic and international law to combat the airborne strike program, legal analysis or legal criticism is not enough here to end the U.S. military presence in Somalia. When the United States does not act within the bounds of international or domestic law, or even its own counterterrorism goals, a historic, anti-imperialist critique of the program, rather than a legal one, is more pertinent, especially as U.S. military strategies continue to evolve.

A. The U.S. Has Constructed an Image of Somalia that Justifies its Imperialist Intervention

For nearly three decades, the United States has portrayed Somalia as a "failed state" or "ungoverned space" to justify its imperialist interventions into the country as counterterrorism. To evaluate U.S. airborne

strikes, it is necessary to understand how they fit within the longstanding U.S. interest in Somalia, instead of viewing the law as subverted or the strikes as a counterterrorism tool in need of greater legal restrictions. While the use of airborne strikes as a tool may be relatively new, the reasoning underlying this program is certainly not. Locating the airborne strike program in the United States' nearly forty-year history in Somalia reveals that they are simply one element of a much broader imperial project.

The United States has been quick to condemn Somalia as a “failed state.”⁴⁷⁶ The U.S. think tank Fund for Peace has kept Somalia as one of its top three “Failed States” since the project’s inception in 2005.⁴⁷⁷ While the Fund for Peace has rebranded to the more palatable “Fragile States Index,” and the UN has raised its classification of Somalia to “fragile,”⁴⁷⁸ such rhetorical changes do not erase the longstanding imaginations of Somalia as the “archetypal” or “quintessential” failed state.⁴⁷⁹ Much of the Western scholarship on Somalia is equivalently damning: Somalia is “collapsed,”⁴⁸⁰ “shattered,”⁴⁸¹ in “unending turmoil,”⁴⁸² and “the world’s most dangerous place.”⁴⁸³ Failed state discourse is a racist and Western-centric way to condemn states for deviance from neoliberal ideals of statehood.⁴⁸⁴ While there might be objective conditions

476. See ELMI, *supra* note 88, at 7, 74; SOLOMON, *supra* note 28, at 40; *Security and Governance in Somalia: Consolidating Gains, Confronting Challenges, and Charting the Path Forward*, S. HRG. 113–153, 113th Cong. (2013).

477. Nate Haken, *Understanding Resilience: The Case of Somalia*, FRAGILE STATES INDEX, Apr. 6, 2019, <https://fragilestatesindex.org/2019/04/06/understanding-resilience-the-case-of-somalia/>; Felipe Umana, *The Recovery of Somalia: Check Back With Us Again Next Year*, FUND FOR PEACE (June 24, 2013), <https://fundforpeace.org/2013/06/24/the-recovery-of-somalia-check-back-with-us-again-next-year/>.

478. Adam Abdelmoula, *Former ‘Failed State’ Somalia on Fragile Path to Progress: A UN Resident Coordinator Blog*, UN NEWS, Dec. 26, 2021, <https://news.un.org/en/story/2021/12/1108302>.

479. See, e.g., *Somalia: To Move Beyond the Failed State*, INT’L CRISIS GRP. (Dec. 23, 2008), <https://www.crisisgroup.org/africa/horn-africa/somalia/somalia-move-beyond-failed-state>; Umana, *supra* note 477; LEONARD & RAMSAY, *supra* note 104, at 1; WILLIAMS, *supra* note 110, at 1.

480. Ken Menkhaus, *SOMALIA: STATE COLLAPSE AND THE THREAT OF TERRORISM* (2013).

481. MARY HARPER, *GETTING SOMALIA WRONG? FAITH, WAR, AND HOPE IN A SHATTERED STATE* (2012).

482. AL J. VENTER, *SOMALIA, UNENDING TURMOIL SINCE 1975* (2017).

483. JAMES FERGUSSON, *THE WORLD’S MOST DANGEROUS PLACE: INSIDE THE OUTLAW STATE OF SOMALIA* (2013).

484. See, e.g., Beth Thiessen, *Conceptualizing the ‘Failed State’: The Construction of the Failed State Discourse*, 1 UNIV. SASKATCHEWAN UNDERGRAD. RES. J. 129 (2015); Zubairu Wai, *Neo-Patrimonialism and the Discourse of State Failure in Africa*, 38 REV. AFR. POL. ECON. 27 (2012); Samar al-Bulushi, *Race, Space, and Terror*, 52 SEC. DIALOGUE 115, 116 (2021) (describing notions about state failure and where terror exists as “racialized imaginative geographies”). Such geographies are racist, beyond “racialized.”

that indicate a state government has “failed” its population (such as extreme housing insecurity or derelict infrastructure),⁴⁸⁵ the practice of the United States condemning an entire state as “failed” is both informed by and produces racist ideas about such spaces.

The United States has declared that the Somali government “failed,” which it uses to explain past and present interventions described in the Background. Foreign governments, including the United States, have claimed “state failure” in Somalia to justify interventionist state-building, security, or savior missions.⁴⁸⁶ The UN authorized its first international peacekeeping mission in Somalia in 1992,⁴⁸⁷ a use of force it justified because Somalia “lacked sovereign authority.”⁴⁸⁸ The UN approved “any means necessary” to achieve political reconciliation,⁴⁸⁹ converting an internal humanitarian crisis into a security operation led by the United States. Somalis absolutely deserve to live free of famine and war, but any solution must include responsibility for the role that Britain, Italy, Russia, and the United States⁴⁹⁰ had in creating such conditions through colonialism, extractivism, and the Cold War. The United States, Ethiopia, Kenya, and Uganda⁴⁹¹ engage in state-building to establish a government partial to their interests: a secular, neoliberal, centralized, and internationally cooperative Somali government. Somalia is considered a threat to international peace and security until it is run by a certain type of government.

However, Somalia was a historically decentralized society with local governance, and then it was colonized by European countries.⁴⁹² Somalia has not had much time post-independence to negotiate a new form of governance without foreign influence or a dictatorship. Somalia might be able to design a central government with more funding for development programs that previous administrations have lacked.⁴⁹³ It

485. Of course, Somalis, not U.S. think tanks, are the only ones in a position to determine whether and when their government has failed them.

486. *See* al-Bulushi, *supra* note 484, at 119 (“Since then, Euro-American policymakers and military strategists have regularly invoked narratives about state failure to legitimate external intervention”). Kenya, Uganda, and the African Union have also been present in Somalia. *Id.*; *see also supra* Background.

487. MAHMOUD, *supra* note 90, at 140; TRIPODI, *supra* note 85, at 140.

488. *See* Carrie Booth Walling, *Human Rights Norms, State Sovereignty, and Humanitarian Intervention*, 37 HUM. RTS. QUARTERLY 383, 395 (2015).

489. CARRIE BOOTH WALLING, *ALL NECESSARY MEASURES* 78–82 (2013).

490. LEONARD & RAMSAY, *supra* note 104, at 146 (arguing that the U.S. may even bear responsibility for the Somali famine).

491. Assisted by IGAD, the UN, and the African Union *see* LEWIS, *supra* note 93, at 81.

492. MAHMOUD, *supra* note 90, at 18; ELMI, *supra* note 88, at 17.

493. *See* Ahmed & Green, *supra* note 89, at 35, 38 (describing with much skepticism international efforts to fund and develop a central state).

also may never establish a centralized government, which runs counter to its history, geography, and culture. One thing is certain: the international community's repeated efforts to impose governments that have not been adapted for Somalia are not working.⁴⁹⁴

The United States believes that a "failed state" or an "ungoverned space" becomes a terrorist risk to itself because the instability in the state could allow terrorist organizations to take power.⁴⁹⁵ Considering Somalia a potential "safe haven" for al-Qaeda, the United States sought to enter Somalia immediately after 9/11.⁴⁹⁶ In November 2001, Susan Rice, Assistant Secretary of State for African Affairs, called Somalia "the continent's proverbial black hole: an ungoverned, lawless, radicalized, heavily armed country with one of the longest undefended coastlines in the region. It is terrorist heaven."⁴⁹⁷ The imagination of Somalia as hosting an insidious Islamist threat justified U.S. intervention into the entire state, and still informs U.S. operations, though most Somalis reject al-Shabaab.⁴⁹⁸ Moreover, U.S. fears of an Islamic government ignore what the UIC and even to some extent al-Shabaab, have done successfully: implement localized services and establish some economic security.⁴⁹⁹ While not to deny the dangers and challenges facing Somalis, declaring Somalia "failed" limits the imaginations of what a Somali state might look like and fuels U.S. claims that its absence of a central government creates a terrorist threat.

Calling Somalia "ungoverned"⁵⁰⁰ also works to rationalize violent action the United States would not conduct in other states. For example, at a hearing of the Subcommittee on National Security and Foreign Affairs, American University Professor Kenneth Anderson explained, regarding drone strikes, "What is justified in the ungoverned regions of Somalia or Yemen is a different matter applied to places under the rule of law such as our friends and allies. The United States is not going

494. ELM, *supra* note 88, at 4; SOLOMON, *supra* note 28, at 48; Said S. Samatar, *An Open Letter to Uncle Sam: America, Pray Leave Somalia to its Own Devices*, 28 J. OF CONTEMP. AFR. STUD. 313 (2010), RAPHAEL CHUIJOKE NJOKU, *THE HISTORY OF SOMALIA* 162 (2013).

495. See ASSESSING THE CONSEQUENCES OF THE FAILED STATE OF SOMALIA, (2011); Samatar, *supra* note 494, at 313.

496. See al-Bulushi, *supra* note 477, at 119.

497. *Testimony of Dr. Susan E. Rice before the House International Relations Committee Subcommittee on Africa*, YALE L. SCH. LILLIAN GOLDMAN L. LIBR. (NOV. 15, 2001), https://avalon.law.yale.edu/sept11/susan_rice_001.asp.

498. ELM, *supra* note 88, at 7, 9.

499. HANSEN, *supra* note 138, at 86–91; WILLIAMS, *supra* note 110, at 105.

500. Which is also used in a deeply racist way against only certain countries. See AL-BULUSHI, *supra* note 484 at 119.

to undertake a targeted killing in London.”⁵⁰¹ By casting Somalia as “ungoverned” and endemic with terrorism, large regions of the state have become U.S. battlegrounds. Somalis existing in regions perceived as being under al-Shabaab influence become targets of U.S. counterterrorism operations.

B. Airborne Strikes in Somalia Help Maintain U.S. Military Empire

Based on the history of U.S. engagement in Somalia, as well as its overall history of maintaining global power through military intervention in strategic states, the goal of such frequent airborne strikes is not the accurate killing of a “terrorist” but to sustain its longstanding presence in the state, currently under the justification of counterterrorism. The Bush administration first justified its turn to Somalia by suggesting that the country still “could” become a safe haven for al-Qaeda.⁵⁰² Presently, the U.S. military admits that al-Shabaab poses no threat to the United States in terms of an attack, yet it still considers al-Shabaab a “threat to the U.S. and a dangerous enemy”⁵⁰³ to its partners and its “interests.”⁵⁰⁴ The U.S. government fails to articulate a coherent reason for intervening in Somalia as counterterrorism.

U.S. intervention has often operated counter to its purported counterterrorism goals.⁵⁰⁵ While the United States currently claims its efforts support the Somali Federal Government and stabilize the country,⁵⁰⁶ the United States’ involvement with Mogadishu warlords undermined its predecessor, the TFG, and added to the instability that led to the rise of the UIC.⁵⁰⁷ Though it appeared the UIC was resolving much of the instability in Mogadishu, the U.S. then undermined the UIC,⁵⁰⁸ fearing the rise of an Islamic state. Despite fearing a rise of terrorism in

501. Kenneth Anderson, *Drones II: Testimony Submitted to U.S. House Of Representatives Committee on Oversight and Government Reform, Subcommittee on National Security and Foreign Affairs* (2010).

502. BUREAU OF COUNTERTERRORISM: U.S. DEP’T OF STATE, *CNTY. REPORTS ON TERRORISM 2019*, 204 (2019).

503. See VENHUIZEN, *supra* note 30.

504. See ANNUAL REPORT ON CIVILIAN CASUALTIES, *supra* note 7, at 11.

505. BANDOW, *supra* note 58; VINE ET. AL, *supra* note 41 (“These bases are costly in a number of ways: financially, politically, socially, and environmentally. US bases in foreign lands often raise geopolitical tensions, support undemocratic regimes, and serve as a recruiting tool for militant groups opposed to the US presence and the governments its presence bolsters. In other cases, foreign bases are being used and have made it easier for the United States to launch and execute disastrous wars, including those in Afghanistan, Iraq, Yemen, Somalia, and Libya.”)

506. See ANNUAL REPORT ON CIVILIAN CASUALTIES, *supra* note 7, at 11.

507. See *supra* Background.

508. MARCHAL, *supra* note 132; BURGESS, *supra* note 32, at 80–81; HANSEN, *supra* note 138, at 58; MARUF & JOSEPH, *supra* note 96, at 39.

Somalia, the United States' support of Ethiopia in overthrowing the UIC gave a weakening al-Shabaab a new mission against foreign interference and garnered international jihadist support.⁵⁰⁹ The power of U.S. support still has a profoundly disruptive effect on Somali politics, as has the power of a terrorism accusation. Members within the TFG have accused each other of being terrorists, in hopes of U.S. financial support or pushing their rivals out of the government.⁵¹⁰ Furthermore, as shown in Part II, U.S. airborne strikes frequently kill civilians, not "terrorists." When the United States does kill members of al-Shabaab, the organization often launches reprisal attacks on civilians or people perceived as working with the United States.⁵¹¹ U.S. state-building efforts have been uneven and contradictory, and its counterterrorism efforts seem to only perpetuate al-Shabaab's mission.

Instead, U.S. engagement in Somalia appears to align with its Cold War strategy of framing economically and politically motivated military intervention as a war against an ideology.⁵¹² In some ways, current U.S. counterterrorism measures can also be understood as simply an extension of its longstanding policy to secure favorable governments, economies, and military bases in strategic states, as seen from its occupation of Haiti to its occupation of Afghanistan.⁵¹³ Somalia, with its coastal location between the Middle East and the Horn of Africa, occupies an extremely important location for oil and shipping. The United States certainly values having a Somali government that facilitates U.S. military and economic action in the area, and it is not the only one. Somalia has increasingly become the focus of other foreign governments,⁵¹⁴ and as in the past, the United States wants to assert its

509. SOLOMON, *supra* note 28, at 53 (noting that al-Shabaab calls the current government "daba dhilif," meaning a government set up for a foreign purpose).

510. *Id.*

511. LEONARD & RAMSAY, *supra* note 104, at 161. Hypocritically, the United States claims to conduct airborne strikes to prevent al-Shabaab from killing innocent civilians. *See, e.g., U.S. Africa Command Conducts Strike*, *supra* note 291 ("These efforts contrast with the indiscriminate attacks that al-Shabaab regularly conducts against the civilian population. The Federal Government of Somalia and the U.S. remain committed to fighting al-Shabaab to prevent the deaths of innocent civilians.").

512. Even the U.S. government agrees. *See 9/11 COMMISSION REPORT*, *supra* note 129, at 377 ("Just as we did in the Cold War, we need to defend our ideals abroad vigorously.").

513. These are illustrative, not definitive, endpoints.

514. *See* al-Bulushi, *supra* note 148 (explaining Russia, China, Kenya, Uganda, and Ethiopia are also looking to establish power in Somalia: "the rapidly expanding archipelago of foreign military bases suggests that most of these actors have long-term, if not permanent, visions for securing their respective political and economic interests."). The U.S. also tries to collaborate with some of these countries, including Kenya. *See* Jim Garamone, *U.S., Kenyan Officials Assess Military Relationship*, U.S. DEPARTMENT OF DEFENSE, May 4, 2022, <https://www.defense.gov/News/News-Stories/Article/Article/3020271/>

primacy. Framing state-building as a strategy of counterterrorism—and perceived “failed” or “ungoverned” spaces as security threats—is a way the United States continues its strategy of developing allies and establishing a global military presence.

While U.S. presence was invited and thus technically legal, U.S. efforts to secure such invitations through military and financial assistance are another tactic of military imperialism. The United States gives the Somali government roughly \$500 million per year in aid and development.⁵¹⁵ Its funding and friendly military assistance to the Somali Federal Government align with historic U.S. efforts to buy political favor through such exercises of soft power. At the same time, the United States has appeared to facilitate international assistance to Somalia,⁵¹⁶ and it additionally funds the African Union mission AMISOM.⁵¹⁷ The airborne strike program operates because of and alongside these financial strategies to assert control in the country.

Airborne strikes enable the United States to exercise massive military power over Somalia with a minimal troop presence and even minimal U.S. awareness.⁵¹⁸ While currently claiming to assist the Somali government, the United States demonstrates its capacity to enact lethal violence across the country through airborne strikes. The combination of assistance and military power makes a persuasive case for cooperation with the United States.

Thus, the U.S. government has framed Somalia’s internal state instability as a terrorist threat to itself, its interests, and Western interests.⁵¹⁹ Somalia’s critical geopolitical position, rather than any cognizable terrorist threat, explains the United States’ decades of

us-kenyan-officials-assess-military-relationship/.

515. Robbie Gramer & Keith Johnson, *U.S. Could Fumble Somalia Debt Relief, Dealing Blow to Counterterrorism Efforts*, POLITICO, Dec. 11, 2019, <https://foreignpolicy.com/2019/12/11/somalia-debt-relief-ambassador-africa-state-department-congress-development-diplomacy-aid-world-bank-imf/>. Again, the portrayal of Somalia is deeply infused with the ideas of state failure and U.S. benevolence: “The United States spends around half a billion dollars per year in aid and development to help prop up Somalia’s fragile government as it grapples with violence from terrorist groups and chronic instability . . . one of the poorest and least developed states in the world.” *Id.*

516. Zohra Ahmed, *Towards a Law and Political Economy Approach to the Global War on Terror*, LPE, Nov. 24, 2021, <https://lpeproject.org/blog/towards-a-law-and-political-economy-approach-to-the-global-war-on-terror/> (connecting the U.S. influence in facilitating Somalia’s IMF loans with similar practices in Pakistan, suggesting both are a means of exerting economic pressure to obtain consent).

517. See al-Bulushi, *supra* note 148, at 33.

518. See *supra* Introduction.

519. See, e.g., *U.S. Africa Command Conducts Strike*, *supra* note 291 (“Violent extremist organizations like al-Shabaab present long-term threats to the U.S. and regional interests”).

involvement in the country and its investment in developing a Somali government favorable to U.S. interests. Airborne strikes against al-Shabaab are only one part of a decades-long strategy of U.S. military imperialism in Somalia.⁵²⁰

C. Looking Forward

Despite a seeming reduction in operations, the United States continues to pursue intervention in Somalia with counterterrorism as a pretext. After the withdrawal in 2021, the Biden administration redeployed troops to Somalia in May 2022.⁵²¹ The move coincided with the election of Hassan Sheikh Mohamud the same month, suggesting the United States had been planning to increase military support for the new administration.⁵²² Once again, the United States is providing military backing to a government favorable to its interests.⁵²³ Around the same time, a U.S. company had been trying unsuccessfully to negotiate the first offshore drilling agreement with Somalia.⁵²⁴ The government rejected the initial agreement under a law that protects Somali natural resources,⁵²⁵ and the current dispute between the U.S. company and the Somali government is reminiscent of decolonization-era U.S. efforts to gain or maintain access to foreign resources. The United States has also requested additional coastline surveillance from the UN to combat piracy in order to protect its shipping, which the UN partly granted.⁵²⁶

520. Debora Malito, *The Endless US War on Terror in Somalia*, ISPI, May 7, 2021, <https://www.ispionline.it/en/publicazione/endless-us-war-terror-somalia-30359>; Quaranto, *supra* note 31. There are also reports of a secret prison in Somalia. TURSE, *supra* note 64, at 20.

521. Savage & Schmitt, *supra* note 226.

522. Guyer, *supra* note 174.

523. Mohamud has been supportive of U.S. intervention. Harun Maruf & Jeff Seldin, *New Somali President Welcomes Return of US Troops*, VoA, May 17, 2022, <https://www.voanews.com/a/new-somali-president-welcomes-return-of-us-troops/6577228.html>.

524. See Melisa Cavcic, *Somalia's Inaugural Offshore Oil & Gas Deal With U.S. Operator Deemed Illegal*, OFFSHORE ENERGY, Feb. 22, 2022, <https://www.offshore-energy.biz/somalias-inaugural-offshore-oil-gas-deal-with-u-s-operator-deemed-illegal/>; Kieran Burke, *Somalia: Oil Deal Canned Hours After It Was Signed*, DW, Feb. 20, 2022, <https://www.dw.com/en/somalias-president-cans-us-oil-deal-hours-after-it-was-signed/a-60846562>; Harun Maruf, *Somali Government, US Company Dispute Legality of Oil Deal*, VoA, Apr. 19, 2022, <https://www.voanews.com/a/somali-government-us-company-dispute-legality-of-oil-deal/6536605.html>.

525. Cavcic, *supra* note 524. Many Somalis perceive any U.S. engagement as a guise for its interest in Somalia's oil. ELMI, *supra* note 88, at 87.

526. Edith M. Lederer, *UN Renews Anti-Piracy Ships off Somalia for Only 3 Months*, AP, Dec. 4, 2021, <https://apnews.com/article/europe-africa-united-nations-robbery-somalia-8779420cfd77c8d2f06876320557f19c> (noting the African Union, European Union, China, India, Japan, South Korea and Russia also have patrolled the region).

It seems the United States' renewed military interest in Somalia may be related to the contemporaneous economic interests at stake.⁵²⁷

Given the outsize impact of U.S. counterterrorism policy on countries in Africa and Asia, the legal questions presented in this Article do not have a neutral impact. Rather, any effort to assess U.S. engagement in Somalia for its lawfulness must be conscious of the United States' persistent imperialist justifications to intervene in strategic countries to the detriment (and death) of those living there. The United States selects places and people for this violent intervention based on racist, Islamophobic, and gendered reasoning. When the United States imagines certain spaces like Somalia as "failed" or "unstable," it justifies military occupation as counterterrorism and state-building. U.S. legal reasoning is facilitated by its imperialist way of organizing and understanding parts of the world as places for U.S. intervention. Presently, this reasoning is underpinned by justifications for counterterrorism, though as shown in the Background, the justifications for intervention have changed, and U.S. interest in Somalia is persistent. Attacking the legality of airborne strikes without criticizing the overall history of U.S. intervention still leaves room for such imperialism to adapt. The U.S. military empire as a whole, not just one problematic strategy of it, must remain at the forefront of legal conversations.

CONCLUSION

Despite insisting upon the legality of its airborne strikes, the U.S. government has not complied with domestic and international law in its actions against al-Shabaab. Moreover, the inability of these strikes to actually identify, kill, and stop "terrorists" undermines U.S. claims that these strikes are a legal and necessary tool of counterterrorism. Rather, airborne strikes facilitate continued military presence in Somalia, whose strategic importance to the United States is revealed by decades of U.S. involvement. As such, airborne strikes must be understood as a tool of U.S. imperial control, rather than counterterrorism, a practice that should not be tolerated by the domestic or international legal community.

Somalia has experienced almost two decades of U.S. lethal violence—a predominantly internal affair is now the object of the world's most prominent military and security force. With the immense stress

527. See, e.g., Paul Tilsley, *China Looks to Outflank US in Africa as Somalia Faces Terrorism, Drought, Famine*, FOX NEWS, Dec. 24, 2022, <https://www.foxnews.com/world/china-looks-outflank-us-africa-somalia-faces-terrorism-drought-and-famine>.

and trauma of living under air warfare⁵²⁸ and the threat of strikes encouraging mass displacement in Somalia,⁵²⁹ U.S. actions have endangered Somali civilians despite condemning terrorist organizations for the same reasons. The United States is responsible for as many as 143 Somali civilian casualties. As shown above, certain individuals are more likely to be considered al-Shabaab members by U.S. targeting policy and are in danger of execution because of their age, gender, or work. To be a man and to be visible, whether driving or farming, in an area of al-Shabaab control, is to be a “lawful” target. Yet even members of al-Shabaab engaged in terrorist acts within Somalia should not be subject to execution by the United States, a state that is removed from the immediate interests and consequences of the conflict. Continuous U.S. lethal violence in Somalia is unjustifiable.

APPENDIX A

This data has been pulled from Airwars, a nonprofit focused on bringing transparency and accountability to military conflicts and civilian harm.⁵³⁰ For strikes in Somalia, it pulls data from U.S. and Somali news media, U.S. military statements, the Bureau of Investigative Journalism, Amnesty, U.S. government responses to Airwars’ Freedom of Information Act requests, and Somali Twitter.⁵³¹ By aggregating a variety of sources, it is considered the comprehensive record of all possible U.S. strikes in Somalia.

From Airwars, I pulled all claims of U.S. airborne strikes against al-Shabaab or al-Qaeda, excluding claims that Airwars determined to be unsubstantiated. This left 333 likely U.S. airstrikes, 248 of which were claimed by AFRICOM. The remaining 85 strikes could be undeclared AFRICOM strikes, CIA strikes, or not U.S. strikes at all, though the Appendix has already excluded strike reports Airwars deemed unreliable. While there were often competing descriptions of the target, I opted for the description most favorable to the U.S., whether from

528. See, e.g., Cachelin, *supra* note 15; Blakeley, *supra* note 36; James Cavallaro, Stephen Sonnenberg, & Sarah Knuckey, INT’L HUM. RTS. AND CONFLICT RESOLUTION CLINIC AT STANFORD L. SCH. AND GLOB. JUST. CLINIC AT NYU SCHOOL OF L., LIVING UNDER DRONES: DEATH, INJURY AND TRAUMA TO CIVILIANS FROM US DRONE PRACTICES IN PAKISTAN, (2012); Afxentis Afxentiou, *A History of Drones: Moral(E) Bombing and State Terrorism*, 11 CRITICAL STUD. ON TERRORISM 301 (2018).

529. Amanda Sperber, *U.S. Bombardments Are Driving Somalis From Their Homes*, FOREIGN POL’Y, Mar. 7, 2019, <https://foreignpolicy.com/2019/03/07/us-bombardments-are-driving-somalis-from-their-homes-airstrikes-al-shabab/>.

530. *Who We Are*, AIRWARS, <https://airwars.org/about/team/> (last visited Dec 14, 2021).

531. *U.S. Strikes and Civilian Casualties*, AIRWARS, <https://airwars.org/civilian-casualties/ussom341-august-24-2021/> (last visited Dec 16, 2021).

a U.S. government statement or any other indication that the target included an al-Shabaab member. If a strike had high civilian casualties, but there were still grounds to believe an al-Shabaab member was present, the civilians were not considered the target (though could be considered disproportionate collateral in violation of the principle of proportionality). Of course, the claim that a target was a member of al-Shabaab member cannot be evaluated, and the U.S. determination of members is, at best, highly subjective. Thus, the data interpretations represents the most generous interpretation to the U.S.

My conclusions about whether the target was plausibly directly participating in hostilities is based on the ICRC's guidance for interpreting direct participation in hostilities, which requires that the act must meet a certain threshold of harm to a party's military operations or to protected persons, that the act must be designed to cause harm in support of a party to the conflict (belligerent nexus), and that there be a direct causal link between the harm and the act.⁵³² Activities like possessing weapons or traveling lacked direct causation of harm, as did attacking U.S. or partner forces the day prior, because there was no certainty that the members targeted were responsible for the attack. If the U.S. suspected an imminent attack or seemed to respond immediately after an attack, I considered that there was "maybe" a direct participation in hostilities claim, based on the uncertainty of the timing or credibility of a suspected threat. Only if the U.S. launched an airstrike in active conflict against al-Shabaab did I consider there to be a true claim that the target was directly participating in hostilities. This is not an evaluation of the accuracy of the direct participation in hostilities claim but whether there existed any grounds for the U.S. to claim it made a targeting decision based on direct participation in hostilities, rather than al-Shabaab membership alone.

Strikes discussed in the Article are highlighted in yellow for easy reference.

532. *Direct Participation in Hostilities*, HOW DOES LAW PROTECT IN WAR?, <https://casebook.icrc.org/glossary/direct-participation-hostilities> (last visited Dec 14, 2021).

ID	Location	Date	Claimed by AFRICOM?	Description of target	DPH claim?	URL
1	near Beledweyne, Hiiraan, Somalia	August 9, 2022	Yes	al-Shabaab members, previously attacked Somali forces	Maybe	https://airwars.org/civilian-casualties/ussom34-9-august-9-2022/
2	Labi-Kus, Lower Juba, Somalia	July 17, 2022	Yes	al-Shabaab members, previously attacked Somali forces	Maybe	https://airwars.org/civilian-casualties/ussom34-8-july-17-2022/
3	Yaaq-Zaluul, Beer Xaani, Somalia	June 3, 2022	Yes	al-Shabaab members killed "in action"	Yes	https://airwars.org/civilian-casualties/ussom34-7-june-3-2022/
4	Hareri Gubadle, Galgaduud, Somalia	March 13, 2022	No	al-Shabaab members and base, thwarting explosions	Maybe	https://airwars.org/civilian-casualties/ussom34-6-march-13-2022/
5	Fiidow, Hiiraan, Somalia	February 22, 2022	Yes	al-Shabaab members, previously attacked Somali forces	Maybe	https://airwars.org/civilian-casualties/ussom34-5-february-22-2022/
6	Cammaara, Galmudug, Somalia	August 24, 2021	Yes	al-Shabaab members, attacked Danab fighters earlier that morning, AFRICOM reported killing "fighters engaged in active combat"	Yes	https://airwars.org/civilian-casualties/ussom34-1-august-24-2021/
7	Between Qaycad town and Xarardheere, Galmudug, Somalia	August 1, 2021	Yes	al-Shabaab base	No	https://airwars.org/civilian-casualties/ussom34-0-august-1-2021/
8	Between Bacaadweyn and Camara, vicinity of Wisil, Galmudug, Somalia	August 1, 2021	Yes	al-Shabaab firing position, engaging Danab and SNA forces as they approached	Yes	https://airwars.org/civilian-casualties/ussom33-9-august-1-2021/

ID	Location	Date	Claimed by AFRICOM?	Description of target	DPH claim?	URL
9	Between Qaycad town and Xarardheere district, Galmudug, Somalia	July 25, 2021	Yes	al-Shabaab members previously engaged with Somali forces	Maybe	https://airwars.org/civilian-casualties/ussom33-8-july-23-2021/
10	Vicinity of Qeycad, Mudug, Somalia	July 20, 2021	Yes	al-Shabaab stationed, U.S. military assisting Somali special forces on the ground	Maybe	https://airwars.org/civilian-casualties/ussom33-7-july-20-2021/
11	Hantiwadaag, Lower Shabelle, Somalia	February 17, 2021	No	vehicle carrying al-Shabaab members	No	https://airwars.org/civilian-casualties/ussom33-6-february-17-2021/
12	Salagle, Middle Juba, Somalia	February 11, 2021	No	al-Shabaab stronghold towns	No	https://airwars.org/civilian-casualties/ussom33-5-february-11-2021/
13	Sakow, ساكورو Middle Juba, Somalia	February 11, 2021	No	al-Shabaab stronghold town	No	https://airwars.org/civilian-casualties/ussom33-4-february-11-2021/
14	Ma'moodow, Bakool, South West State, Somalia	January 29, 2021	No	al-Shabaab members waiting for vehicles in a stronghold town	No	https://airwars.org/civilian-casualties/ussom33-3-january-29-2021/
15	Deb Scinnele, Lower Shabelle, Somalia	January 19, 2021	Yes	al-Shabaab member	No	https://airwars.org/civilian-casualties/ussom33-2-january-19-2021/
16	Jamaame, Lower Juba, Somalia	January 19, 2021	Yes	al-Shabaab member	No	https://airwars.org/civilian-casualties/ussom33-1-c-january-19-2021/
17	Tiyeeglow, Bakool, Somalia	January 18, 2021	Yes	al-Shabaab compound	No	https://airwars.org/civilian-casualties/ussom33-0-january-18-2021/
18	Buulo Fulaay, Bay, Somalia	January 13, 2021	Yes	town, including an al-Shabaab member and an al-Shabaab compound	No	https://airwars.org/civilian-casualties/ussom32-9-january-13-2021/
19	Saaxa Weyne, Bay, Somalia	January 7, 2021	Yes	al-Shabaab members, one of whom	Maybe	https://airwars.org/civilian-casualties/ussom32-8-january-7-2021/

ID	Location	Date	Claimed by AFRICOM?	Description of target	DPH claim?	URL
				previously attacked US and Somali forces		casualties/ussom32-8-january-7-2021/
20	Kunya Barrow, Middle Juba, Somalia	January 1, 2021	Yes	HQ of al-Shabaab-affiliated radio station, considered an al-Shabaab compound building	No	https://airwars.org/civilian-casualties/ussom32-7-c-january-1-2021/
21	Kunya Barrow, Middle Juba, Somalia حرمك	January 1, 2021	Yes	al-Shabaab compound	No	https://airwars.org/civilian-casualties/ussom32-6-c-january-1-2021/
22	Saakow, Middle Juba, Somalia ساكور	December 24, 2020	Yes	al-Shabaab compound	No	https://airwars.org/civilian-casualties/ussom32-5-december-24-2020/
23	Burr Heybo, Bay, Somalia	December 21, 2020	Yes	al-Shabaab members	No	https://airwars.org/civilian-casualties/ussom32-4a-december-21-2020/
24	Jilib, Middle Juba, Somalia	December 11, 2020	No	al-Shabaab members linked with manufacturing explosives	Maybe	https://airwars.org/civilian-casualties/ussom32-4-december-10-2020/
25	Jilib, Middle Juba, Somalia	December 11, 2020	Yes	al-Shabaab members linked with manufacturing explosives	Maybe	https://airwars.org/civilian-casualties/ussom32-3-december-10-2020/
26	Jilib, Middle Juba, Somalia	October 18, 2020	Yes	al-Shabaab member	No	https://airwars.org/civilian-casualties/ussom32-1-october-18-2020/
27	Weelshit, Gedo, Somalia	October 6, 2020	No	al-Shabaab outpost, allegedly threatening a Somali base	Maybe	https://airwars.org/civilian-casualties/ussom32-0-october-6-2020/
28	Jana Cabdalle, Lower Juba, Somalia	September 21, 2020	Yes	al-Shabaab members attempting to scavenge a damaged vehicle	No	https://airwars.org/civilian-casualties/ussom31-9a-september-21-2020/
29	Amreereey, Middle Juba, Somalia	September 9, 2020	No	al-Shabaab members	No	https://airwars.org/civilian-casualties/ussom31

ID	Location	Date	Claimed by AFRICOM?	Description of target	DPH claim?	URL
						8-september-9-2020/
30	Saakow, Middle Juba, Somalia	August 25, 2020	Yes	al-Shabaab member	No	https://airwars.org/casualties/ussom316-august-25-2020/
31	دار السلام, Darusalaam, Lower Shabelle, Somalia	August 24, 2020	Yes	al-Shabaab members who attacked Danab forces when Danab forces were conducting a counterterrorism operation	Yes	https://airwars.org/casualties/ussom315a-august-24-2020/
32	IVO Kurtun Warey, Lower Shabelle, Somalia	August 20, 2020	Yes	al-Shabaab member making preparations to place an IED on a public road	Yes	https://airwars.org/casualties/ussom315-august-20-2020/
33	Sablale, Lower Shabelle, Somalia	August 8, 2020	No	al-Shabaab member	No	https://airwars.org/casualties/ussom314-august-8-2020/
34	Haway, Lower Shabelle, Somalia	August 8, 2020	No	al-Shabaab member	No	https://airwars.org/casualties/ussom313-august-8-2020/
35	جيبيلب, Jilib, Middle Juba, Somalia	July 29, 2020	Yes	al-Shabaab compound	No	https://airwars.org/casualties/ussom312-c-july-29-2020/
36	Vicinity of Hantiwadaag, Lower Shabelle, Somalia	July 9, 2020	Yes	al-Shabaab checkpoint	No	https://airwars.org/casualties/ussom310-july-9-2020/
37	حرمك, Near Kunya Barrow, Middle Juba, Somalia	May 17, 2020	Yes	al-Shabaab-controlled town, including homes considered to be compounds	No	https://airwars.org/casualties/ussom309-c-may-17-2020/
38	Araboow, Middle Juba, Somalia	May 13, 2020	No	parked minibuses	No	https://airwars.org/casualties/ussom308-c-may-13-2020/
39	Haway, Lower Shabelle, Somalia	May 11, 2020	No	al-Shabaab member	No	https://airwars.org/casualties/ussom307b-may-11-2020/
40	Jamaame, Middle Juba, Somalia	May 11, 2020	No	al-Shabaab members meeting in a training	Maybe	https://airwars.org/casualties/ussom307a-may-11-2020/

ID	Location	Date	Claimed by AFRICOM?	Description of target	DPH claim?	URL
				camp, possibly preparing an attack		casualties/ussom307a-may-11-2020/
41	Kamsuuma, Lower Juba, Somalia	April 10, 2020	Yes	al-Shabaab member, claimed to have displayed dead bodies of Somali forces	Maybe	https://airwars.org/civilian-casualties/ussom307-c-april-10-2020/
42	Kobon, جيليب, Lower Juba, Somalia	April 9, 2020	Yes	al-Shabaab members engaging the Danab	Yes	https://airwars.org/civilian-casualties/ussom306-april-9-2020/
43	Jilib, جيليب, Middle Juba, Somalia	April 6, 2020	Yes	al-Shabaab members	No	https://airwars.org/civilian-casualties/ussom305-c-april-6-2020/
44	Mubarak, مبارڪ, Lower Shabelle, Somalia	April 5, 2020	Yes	al-Shabaab members	No	https://airwars.org/civilian-casualties/ussom304-april-5-2020/
45	Mubarak, مبارڪ, Lower Shabelle, Somalia	April 5, 2020	Yes	al-Shabaab members	No	https://airwars.org/civilian-casualties/ussom303-april-5-2020/
46	Mubarak, مبارڪ, Lower Shabelle, Somalia	April 5, 2020	Yes	al-Shabaab members	No	https://airwars.org/civilian-casualties/ussom302-april-5-2020/
47	Bush Madina, Bay, Somalia	April 3, 2020	Yes	al-Shabaab members and compound	No	https://airwars.org/civilian-casualties/ussom301-april-3-2020/
48	Bush Madina, Bay, Somalia	April 2, 2020	Yes	al-Shabaab members and compound	No	https://airwars.org/civilian-casualties/ussom300-april-2-2020/
49	near Buulo Fuulay, Bay, Somalia	March 27, 2020	Yes	al-Shabaab members on a scooter, leaving an al-Shabaab compound	No	https://airwars.org/civilian-casualties/ussom299-c-march-27-2020/
50	Beerta Xassan Huutaan, Lower Shabelle, Somalia	March 17–18, 2020	Yes	farm	No	https://airwars.org/civilian-casualties/ussom298a-c-march-17-2020/
51	Vicinity of Janaale, Lower Shabelle, Somalia	March 15–17, 2020	Yes	al-Qaeda members in the vicinity of an ongoing Somali operation	No	https://airwars.org/civilian-casualties/ussom298-march-15-2020/

ID	Location	Date	Claimed by AFRICO M?	Description of target	DPH claim?	URL
52	Vicinity of Janaale, Lower Shabelle, Somalia	March 15–17, 2020	Yes	al-Shabaab members engaging Somali and AMISOM forces trying to retake Janaale	Yes	https://airwars.org/civilian-casualties/ussom297-march-15-2020/
53	Vicinity of Janaale, Lower Shabelle, Somalia	March 15–17, 2020	Yes	al-Shabaab members engaging Somali and AMISOM forces trying to retake Janaale	Yes	https://airwars.org/civilian-casualties/ussom296-march-15-2020/
54	Vicinity of Janaale, Lower Shabelle, Somalia	March 15–17, 2020	Yes	al-Shabaab members engaging Somali and AMISOM forces trying to retake Janaale	Yes	https://airwars.org/civilian-casualties/ussom295-march-15-2020/
55	Vicinity of Janaale, Lower Shabelle, Somalia	March 15–17, 2020	Yes	al-Shabaab members engaging Somali and AMISOM forces trying to retake Janaale	Yes	https://airwars.org/civilian-casualties/ussom294-march-15-2020/
56	Near Janaale, Lower Shabelle, Somalia	March 10, 2020	Yes	minibus, likely containing al-Shabaab members and civilians	No	https://airwars.org/civilian-casualties/ussom293-c-march-10-2020/
57	Bu'aale, Middle Juba, Somalia	March 10, 2020	No	al-Shabaab compound	No	https://airwars.org/civilian-casualties/ussom292-march-10-2020/
58	Saakow, ساكورو, Middle Juba, Somalia	March 10, 2020	No	al-Shabaab compound	No	https://airwars.org/civilian-casualties/ussom291-march-10-2020/
59	Jilib, جيليب, Middle Juba, Somalia	March 10, 2020	No	al-Shabaab compound	No	https://airwars.org/civilian-casualties/ussom290-march-10-2020/
60	Salagle, Middle Juba, Somalia	March 10, 2020	No	al-Shabaab member	No	https://airwars.org/civilian-casualties/ussom292a-march-10-2020/
61	Near Janaale, Lower Shabelle, Somalia	March 9, 2020	Yes	al-Shabaab members	No	https://airwars.org/civilian-casualties/ussom289-march-9-2020/
62	Gandarsho, غندرشو, Lower Shabelle, Somalia	March 7, 2020	Yes	al-Shabaab camp	No	https://airwars.org/civilian-casualties/ussom288-march-7-2020/

ID	Location	Date	Claimed by AFRICO M?	Description of target	DPH claim?	URL
63	Near Kunya حرمك, Barrow, Middle Juba, Somalia	March 5, 2020	Yes	al-Shabaab member, possibly a civilian home	No	https://airwars.org/civilian-casualties/ussom287-c-march-5-2020/
64	Vicinity of حرمك, Kunya Barrow, Lower Shabelle, Somalia	March 2, 2020	Yes	al-Shabaab members	No	https://airwars.org/civilian-casualties/ussom286-march-2-2020/
65	Vicinity of حرمك, Kunya Barrow, Lower Shabelle, Somalia	March 2, 2020	Yes	al-Shabaab member	No	https://airwars.org/civilian-casualties/ussom285-march-2-2020/
66	Vicinity of حرمك, Kunya Barrow, Lower Shabelle, Somalia	February 28, 2020	Yes	al-Shabaab members and vehicle	No	https://airwars.org/civilian-casualties/ussom284-february-28-2020/
67	Kunya حرمك, Barrow, Lower Shabelle, Somalia	February 28, 2020	Yes	al-Shabaab members	No	https://airwars.org/civilian-casualties/ussom283-c-february-28-2020/
68	the Masalanja farm near the village of Kumbareere, Middle Juba, Somalia	February 24, 2020	Yes	al-Shabaab member or civilian farmer	No	https://airwars.org/civilian-casualties/ussom282-c-february-24-2020/
69	Dujuuma, دوجووما, Middle Juba, Somalia	February 23, 2020	Yes	al-Shabaab compound	No	https://airwars.org/civilian-casualties/ussom281-february-23-2020/
70	Saakow, ساكوو, Middle Juba, Somalia	February 22, 2020	Yes	al-Shabaab members in town	No	https://airwars.org/civilian-casualties/ussom280-february-22-2020/
71	Saakow, ساكوو, Middle Juba, Somalia	February 21, 2020	Yes	general area	No	https://airwars.org/civilian-casualties/ussom279a-february-21-2020/
72	Wadajir, Qoryooley, Somalia	February 19, 2020	Yes	al-Shabaab members	No	https://airwars.org/civilian-casualties/ussom279-february-19-2020/

ID	Location	Date	Claimed by AFRICOM?	Description of target	DPH claim?	URL
73	Jilib, Middle Juba, Somalia	February 17, 2020	Yes	civilian residence thought to be an al-Shabaab compound	No	https://airwars.org/civilian-casualties/ussom27-8-c-february-17-2020/
74	Jilib, جيليب, Middle Juba, Somalia	February 6, 2020	Yes	al-Shabaab members and compound	No	https://airwars.org/civilian-casualties/ussom27-7-february-6-2020/
75	Jilib, جيليب, Middle Juba, Somalia	February 6, 2020	Yes	al-Shabaab compound	No	https://airwars.org/civilian-casualties/ussom27-6-february-6-2020/
76	Vicinity of Beer Xani, Lower Juba, Somalia	February 4, 2020	Yes	al-Shabaab member after Somali forces were attacked in that area the day prior	No	https://airwars.org/civilian-casualties/ussom27-5-february-4-2020/
77	Jilib, جيليب, Middle Juba, Somalia	February 3, 2020	Yes	general area	No	https://airwars.org/civilian-casualties/ussom27-4-february-3-2020/
78	Jilib, Middle Juba, Somalia	February 2, 2020	Yes	civilian residence, with one claimed al-Shabaab member as well as civilians	No	https://airwars.org/civilian-casualties/ussom27-4-c-february-2-2020/
79	Jilib, جيليب, Middle Juba, Somalia	February 1, 2020	Yes	general area	No	https://airwars.org/civilian-casualties/ussom27-3a-february-1-2020/
80	Jilib, Middle Juba, Somalia	January 29, 2020	Yes	al-Shabaab compounds	No	https://airwars.org/civilian-casualties/ussom27-3-january-29-2020/
81	Homboy, Middle Juba, Somalia	January 27, 2020	Yes	al-Shabaab member or civilian farmer	No	https://airwars.org/civilian-casualties/ussom27-2-c-january-27-2020/
82	Near Jamaame, Lower Juba, Somalia	January 26, 2020	Yes	al-Shabaab compounds	No	https://airwars.org/civilian-casualties/ussom27-1-january-26-2020/
83	Sakow district, Middle Juba, Somalia	January 22, 2020	No	al-Shabaab base with weapons	No	https://airwars.org/civilian-

ID	Location	Date	Claimed by AFRICOM?	Description of target	DPH claim?	URL
						casualties/ussom270-january-22-2020/
84	between Jilib and Bu'aale, Middle Juba, Somalia	January 22, 2020	No	al-Shabaab base with weapons	No	https://airwars.org/casualties/ussom269-january-22-2020/
85	Near Bangeeni, Lower Juba, Somalia	January 19, 2020	Yes	al-Shabaab members attacking Somali forces	Yes	https://airwars.org/casualties/ussom268-january-19-2020/
86	25km north of Kunya Barrow, Lower Shabelle, Somalia	January 16, 2020	Yes	al-Shabaab members	No	https://airwars.org/casualties/ussom266-january-16-2020/
87	Lafta Anole neighborhood, Lower Juba, Somalia	January 7, 2020	No	al-Shabaab members who were attacked by Somali forces	Maybe	https://airwars.org/casualties/ussom265-january-7-2020/
88	Between Bacaw and Bariire, Lower Shabelle, Somalia	January 3, 2020	Yes	al-Shabaab members attacking Danab forces	Yes	https://airwars.org/casualties/ussom264-january-3-2020/
89	Vicinity of Kunyo Barrow, Lower Shabelle, Somalia	December 29, 2019	Yes	al-Shabaab members and vehicles, in retaliation for an al-Shabaab bombing the day before	No	https://airwars.org/casualties/ussom262-december-29-2019/
90	Vicinity of Kunyo Barrow, Somalia	December 29, 2019	Yes	al-Shabaab members and vehicles, in retaliation for an al-Shabaab bombing the day before	No	https://airwars.org/casualties/ussom261-c-december-29-2019/
91	Vicinity of Caliyoow Barrow, Lower Shabelle, Somalia	December 28–29, 2019	Yes	al-Shabaab members, in retaliation for an al-Shabaab bombing the day before	No	https://airwars.org/casualties/ussom263-december-28-2019/
92	Dujuuma, Middle Juba, Somalia	December 16, 2019	Yes	al-Shabaab member	No	https://airwars.org/casualties/ussom260-december-16-2019/
93	Saakow, Middle Juba, Somalia	December 9, 2019	Yes	al-Shabaab member and vehicle	No	https://airwars.org/casualties/ussom259-december-9-2019/

ID	Location	Date	Claimed by AFRICOM?	Description of target	DPH claim?	URL
94	Jilib, جيليب, Middle Juba, Somalia	November 30, 2019	Yes	al-Shabaab communication center	No	https://airwars.org/civilian-casualties/ussom258-november-30-2019/
95	Kunya حرمك, Barrow, Middle Juba, Somalia	November 19, 2019	Yes	al-Shabaab member	No	https://airwars.org/civilian-casualties/ussom257-c-november-19-2019/
96	Jilib, جيليب, Middle Juba, Somalia	November 12, 2019	Yes	al-Shabaab member	No	https://airwars.org/civilian-casualties/ussom256-november-12-2019/
97	Jilib or between Jilib and Xaramka, Middle Juba, Somalia	November 3, 2019	No	al-Shabaab member	No	https://airwars.org/civilian-casualties/ussom255-november-3-2019/
98	Bu'aale, Middle Juba, Somalia	November 3, 2019	No	al-Shabaab member	No	https://airwars.org/civilian-casualties/ussom254-november-3-2019/
99	Bu'aale, Middle Juba, Somalia	October 25, 2019	No	al-Shabaab member	No	https://airwars.org/civilian-casualties/ussom253-october-25-2019/
100	Jamaame, Lower Juba, Somalia	October 25, 2019	No	al-Shabaab members	No	https://airwars.org/civilian-casualties/ussom252-october-25-2019/
101	Kunya حرمك, Barrow, Middle Juba, Somalia	September 30, 2019	Yes	al-Shabaab member	No	https://airwars.org/civilian-casualties/ussom250-september-30-2019/
102	Kunya حرمك, Barrow, Middle Juba, Somalia	September 30, 2019	Yes	al-Shabaab members, in response to an IED that attacked a US base	Maybe	https://airwars.org/civilian-casualties/ussom249-september-30-2019/
103	Near Ugungi, Lower Shabelle, Somalia	September 24, 2019	Yes	vehicle and equipment	No	https://airwars.org/civilian-casualties/ussom248-september-24-2019/

ID	Location	Date	Claimed by AFRICOM?	Description of target	DPH claim?	URL
104	NW of Kismayo, Lower Juba, Somalia	September 17, 2019	Yes	al-Shabaab members	No	https://airwars.org/civilian-casualties/ussom24-7-september-17-2019/
105	Road جليب between Jilib and Kismayo, Middle Juba, Somalia	September 3, 2019	Yes	al-Shabaab member	No	https://airwars.org/civilian-casualties/ussom24-5-september-3-2019/
106	Near Jilib, Middle Juba, Somalia	September 3, 2019	Yes	vehicle and equipment	No	https://airwars.org/civilian-casualties/ussom24-6-september-3-2019/
107	Kunya Barrow, Middle Juba, Somalia	August 20, 2019	Yes	al-Shabaab member	No	https://airwars.org/civilian-casualties/ussom24-4-august-20-2019/
108	Salagle, Middle Juba, Somalia	August 5, 2019	No	al-Shabaab members	No	https://airwars.org/civilian-casualties/ussom24-3-august-5-2019/
109	Bu'aale, Middle Juba, Somalia	July 29, 2019	No	al-Shabaab member	No	https://airwars.org/civilian-casualties/ussom24-2-july-29-2019/
110	Jamaame, Lower Juba, Somalia	July 29–30, 2019	No	al-Shabaab members, graduating training	No	https://airwars.org/civilian-casualties/ussom24-1-july-29-2019/
111	Outside Kunya Barrow, Middle Juba, Somalia	July 18, 2019	No	al-Shabaab members	No	https://airwars.org/civilian-casualties/ussom23-9-july-18-2019/
112	Lower Shabelle, Somalia	July 14, 2019	No	al-Shabaab members and vehicles	No	https://airwars.org/civilian-casualties/ussom23-8-july-14-2019/
113	Jilib جليب, Middle Juba, Somalia	July 11, 2019	No	al-Shabaab members at a camp, allegedly planning an attack	Maybe	https://airwars.org/civilian-casualties/ussom23-7a-c-july-11-2019/
114	Kunya حرمك, Barrow, Middle Juba, Somalia	June 25, 2019	Yes	al-Shabaab member or civilian businessman	No	https://airwars.org/civilian-casualties/ussom23-6-c-june-25-2019/

ID	Location	Date	Claimed by AFRICOM?	Description of target	DPH claim?	URL
115	Jilib, جيليب, Middle Juba, Somalia	June 24, 2019	Yes	al-Shabaab member	No	https://airwars.org/civilian-casualties/ussom235-june-24-2019/
116	Jilib, جيليب, Middle Juba, Somalia	June 16, 2019	Yes	al-Shabaab members	No	https://airwars.org/civilian-casualties/ussom233-june-16-2019/
117	Vicinity of Jilib, Middle Juba, Somalia	June 16, 2019	Yes	al-Shabaab members	No	https://airwars.org/civilian-casualties/ussom234-june-16-2019/
118	Outskirts of Totoroow, Lower Shabelle, Somalia	June 5, 2019	Yes	al-Shabaab member or civilian	No	https://airwars.org/civilian-casualties/ussom232-c-june-5-2019/
119	Jilib, جيليب, Middle Juba, Somalia	May 27, 2019	No	al-Shabaab member	No	https://airwars.org/civilian-casualties/ussom230-may-27-2019/
120	Golis Mountains, Puntland, Somalia	May 26, 2019	Yes	al-Shabaab members	No	https://airwars.org/civilian-casualties/ussom229-may-26-2019/
121	Golis Mountains, Puntland, Somalia	May 24, 2019	Yes	al-Shabaab members	No	https://airwars.org/civilian-casualties/ussom228-may-24-2019/
122	Beled Amin, Lower Shabelle, Somalia	May 22, 2019	Yes	al-Shabaab members	No	https://airwars.org/civilian-casualties/ussom227-may-22-2019/
123	Bu'aale, Middle Juba, Somalia	May 17–18, 2019	No	al-Shabaab members	No	https://airwars.org/civilian-casualties/ussom224-may-17-2019/
124	Jilib, جيليب, Middle Juba, Somalia	May 17–18, 2019	No	al-Shabaab members	No	https://airwars.org/civilian-casualties/ussom225-may-17-2019/
125	Buusaar, Gedo, Somalia	May 13, 2019	No	al-Shabaab bases	No	https://airwars.org/civilian-casualties/ussom223-may-13-2019/
126	Farsooley, Lower Shabelle, Somalia	May 9–10, 2019	No	village	No	https://airwars.org/civilian-casualties/ussom222a-c-may-10-2019/

ID	Location	Date	Claimed by AFRICOM?	Description of target	DPH claim?	URL
127	Jamaame, Lower Juba, Somalia	May 9, 2019	Yes	al-Shabaab members	No	https://airwars.org/civilian-casualties/ussom221-may-9-2019/
128	Jilib, جيليب, Middle Juba, Somalia	May 8, 2019	Yes	al-Shabaab members	No	https://airwars.org/civilian-casualties/ussom220-may-8-2019/
129	Vicinity of Tortorooow, Lower Shabelle, Somalia	May 5, 2019	Yes	al-Shabaab members engaging Somali forces trying to retake the area	No	https://airwars.org/civilian-casualties/ussom217-may-5-2019/
130	Jilib, جيليب, Middle Juba, Somalia	May 5, 2019	No	al-Shabaab base, allegedly making bombs	Maybe	https://airwars.org/civilian-casualties/ussom218-may-5-2019/
131	Timirshe, Bari, Somalia	April 26, 2019	Yes	ISIS hideout and al-Shabaab members at a water well	No	https://airwars.org/civilian-casualties/ussom216-april-26-2019/
132	Vicinity of Jamaame, Lower Juba, Somalia	April 19, 2019	Yes	al-Shabaab member who allegedly killed a soldier the year prior	No	https://airwars.org/civilian-casualties/ussom215-april-19-2019/
133	3 km away from Xiriiri, on the way to Hol Anod, Bari, Somalia	April 14, 2019	Yes	al-Shabaab members and vehicle	No	https://airwars.org/civilian-casualties/ussom214-april-14-2019/
134	Garowle, Lower Shabelle, Somalia	April 11, 2019	Yes	al-Shabaab members and vehicle	No	https://airwars.org/civilian-casualties/ussom213-april-11-2019/
135	Jilib, جيليب, Middle Juba, Somalia	April 9, 2019	Yes	al-Shabaab member	No	https://airwars.org/civilian-casualties/ussom212-april-9-2019/
136	Ugunji, Lower Shabelle, Somalia	April 4, 2019	No	al-Shabaab members, shops, and homes	No	https://airwars.org/civilian-casualties/ussom211-c-april-4-2019/
137	Bu'aale, Middle Juba, Somalia	March 22, 2019	No	al-Shabaab members	No	https://airwars.org/civilian-casualties/ussom210-march-22-2019/
138	Laantabuur or Abdow Dibile, Lower Shabelle, Somalia	March 18, 2019	Yes	al-Shabaab members or civilian farmers in their vehicles	No	https://airwars.org/civilian-casualties/ussom209-c-march-18-2019/

ID	Location	Date	Claimed by AFRICOM?	Description of target	DPH claim?	URL
139	Jilib Marka, Lower Shabelle, Somalia	March 15–16, 2019	No	al-Shabaab members	No	https://airwars.org/civilian-casualties/ussom208-march-16-2019/
140	Malayle, between Bar Sanguni and Jamame, Lower Juba, Somalia	March 13, 2019	Yes	al-Shabaab members attacking Somali forces during a Somali offensive	Yes	https://airwars.org/civilian-casualties/ussom207-march-13-2019/
141	Huley, Lower Shabelle, Somalia	March 12, 2019	Yes	al-Shabaab members	No	https://airwars.org/civilian-casualties/ussom206-march-12-2019/
142	دار السلام, Darusalaam, Lower Shabelle, Somalia	March 11, 2019	Yes	al-Shabaab members and civilian village	No	https://airwars.org/civilian-casualties/ussom205-c-march-11-2019/
143	Gamboole, Middle Shabelle, Somalia	March 7–8, 2019	No	al-Shabaab members attacking Somali forces during a Somali offensive	Yes	https://airwars.org/civilian-casualties/ussom204-c-march-8-2019/
144	Bur Madow area, Bay, Somalia	March 7, 2019	No	al-Shabaab members	No	https://airwars.org/civilian-casualties/ussom203-march-7-2019/
145	Busaar/Waraha Kakuma, Gedo, Somalia	March 6, 2019	No	al-Shabaab base	No	https://airwars.org/civilian-casualties/ussom202-march-6-2019/
146	Gal Hamurre, Hiiraan, Somalia	February 28, 2019	Yes	al-Shabaab members	No	https://airwars.org/civilian-casualties/ussom201-february-28-2019/
147	Shebeleey, near Belet Weyne, Hiiraan, Somalia	February 25, 2019	Yes	al-Shabaab members	No	https://airwars.org/civilian-casualties/ussom200-february-25-2019/
148	23 miles east of Belet Weyne, Hiiraan, Somalia	February 24, 2019	Yes	al-Shabaab members	No	https://airwars.org/civilian-casualties/ussom199-february-24-2019/
149	كرمك, Barrow, Middle Juba, Somalia	February 23, 2019	Yes	al-Shabaab members in civilian village	No	https://airwars.org/civilian-casualties/ussom195-c-february-23-2019/

ID	Location	Date	Claimed by AFRICO M?	Description of target	DPH claim?	URL
150	Awdeegle, Lower Shabelle, Somalia	February 23, 2019	Yes	al-Shabaab checkpoints	No	https://airwars.org/civilian-casualties/ussom19-6-february-23-2019/
151	Dacaraha, Lower Shabelle, Somalia	February 23, 2019	Yes	al-Shabaab checkpoints	No	https://airwars.org/civilian-casualties/ussom19-7-february-23-2019/
152	Qoryoley near Janaale, Lower Shabelle, Somalia	February 23, 2019	No	al-Shabaab members	No	https://airwars.org/civilian-casualties/ussom19-8-c-february-23-2019/
153	Tuwaareey, Lower Shabelle, Somalia	February 11, 2019	No	al-Shabaab members in civilian village	No	https://airwars.org/civilian-casualties/ussom19-4-c-february-11-2019/
154	Janaale, Lower Shabelle, Somalia	February 10–11, 2019	Yes	al-Shabaab members in civilian village	No	https://airwars.org/civilian-casualties/ussom19-3-february-10-2019/
155	Road between Araare and Kobon, Lower Juba, Somalia	February 8, 2019	Yes	al-Shabaab members	No	https://airwars.org/civilian-casualties/ussom19-2-february-8-2019/
156	Bariire, Lower Shabelle, Somalia	February 7, 2019	Yes	al-Shabaab members	No	https://airwars.org/civilian-casualties/ussom19-1-february-7-2019/
157	غندرشى, Gandarsh, Lower Shabelle, Somalia	February 6, 2019	Yes	al-Shabaab members	No	https://airwars.org/civilian-casualties/ussom19-0-february-6-2019/
158	Leego, Bay, لىغو, Somalia	February 5, 2019	Yes	al-Shabaab members	No	https://airwars.org/civilian-casualties/ussom18-9-february-5-2019/
159	غندرشى, Gandarsh, Lower Shabelle, Somalia	February 3, 2019	Yes	al-Shabaab vehicle	No	https://airwars.org/civilian-casualties/ussom18-8-february-3-2019/
160	غندرشى, Gandarsh	February 1, 2019	Yes	al-Shabaab members	No	https://airwars.org/civilian-casualties/ussom18-7-february-1-2019/

ID	Location	Date	Claimed by AFRICOM?	Description of target	DPH claim?	URL
	Lower Shabelle, Somalia					casualties/ussom18-6-february-1-2019/
161	Shebeele, Hiiraan, Somalia	January 30, 2019	Yes	al-Shabaab encampment	No	https://airwars.org/casualties/ussom18-5-january-30-2019/
162	Jilib, جيليب, Middle Juba, Somalia	January 23, 2019	Yes	al-Shabaab members	No	https://airwars.org/casualties/ussom18-3-january-23-2019/
163	Jilib, جيليب, Middle Juba, Somalia	January 23, 2019	Yes	al-Shabaab members	No	https://airwars.org/casualties/ussom18-4-january-23-2019/
164	Radio Andalus, Jilib, Middle Juba, Somalia	January 20, 2019	No	al-Shabaab radio station	No	https://airwars.org/casualties/ussom18-2-c-january-20-2019/
165	Between Araare crossing and Muse Haji, near Baar Sanguni, Lower Juba, Somalia	January 19, 2019	Yes	al-Shabaab members in retaliation of an attack on Somali forces, allegedly planning additional attacks	Maybe	https://airwars.org/casualties/ussom18-1-january-19-2019/
166	Yaaq Braawe, Bay, Somalia	January 8, 2019	Yes	al-Shabaab encampment	No	https://airwars.org/casualties/ussom18-0-january-8-2019/
167	Baqdaad, Lower Juba, Somalia	January 7, 2019	Yes	al-Shabaab members engaging Somali forces	No	https://airwars.org/casualties/ussom17-8-january-7-2019/
168	Baqdaad, Lower Juba, Somalia	January 7, 2019	Yes	al-Shabaab members	No	https://airwars.org/casualties/ussom17-9-january-7-2019/
169	Vicinity of Deerow Sanle, Bay, Somalia	January 6, 2019	Yes	al-Shabaab members and vehicle	No	https://airwars.org/casualties/ussom17-7-january-6-2019/
170	Deerow Sanle, Bay, Somalia	January 2, 2019	Yes	al-Shabaab training camp	No	https://airwars.org/casualties/ussom17-6-january-2-2019/
171	Jilib, جيليب, Middle Juba, Somalia	December 30, 2018	No	al-Shabaab training camp	No	https://airwars.org/casualties/ussom17-

ID	Location	Date	Claimed by AFRICOM?	Description of target	DPH claim?	URL
						5-december-30-2018/
172	Beled Amin South, Lower Shabelle, Somalia	December 19, 2018	Yes	al-Shabaab members attacking AMISOM troops	Yes	https://airwars.org/civilian-casualties/ussom17-3-december-19-2018/
173	Beled Amin South, Lower Shabelle, Somalia	December 19, 2018	Yes	al-Shabaab members attacking AMISOM troops	Yes	https://airwars.org/civilian-casualties/ussom17-4-december-19-2018/
174	غندرشه, Lower Shabelle, Somalia	December 16, 2018	Yes	al-Shabaab encampment	No	https://airwars.org/civilian-casualties/ussom17-1-december-16-2018/
175	غندرشه, Lower Shabelle, Somalia	December 16, 2018	Yes	al-Shabaab encampment	No	https://airwars.org/civilian-casualties/ussom17-2-december-16-2018/
176	Mountainous area near Gandarshe, Lower Shabelle, Somalia	December 15, 2018	Yes	al-Shabaab encampment, possible imminent attack	Maybe	https://airwars.org/civilian-casualties/ussom16-7-december-15-2018/
177	غندرشه, Lower Shabelle, Somalia	December 15, 2018	Yes	al-Shabaab encampment, possible imminent attack	Maybe	https://airwars.org/civilian-casualties/som121a-december-15-2018/
178	غندرشه, Lower Shabelle, Somalia	December 15, 2018	Yes	al-Shabaab encampment, possible imminent attack	Maybe	https://airwars.org/civilian-casualties/ussom16-9-december-15-2018/
179	غندرشه, Lower Shabelle, Somalia	December 15, 2018	Yes	al-Shabaab encampment, possible imminent attack	Maybe	https://airwars.org/civilian-casualties/ussom17-0-december-15-2018/
180	Baladul Rahma, Lower Shabelle, Somalia	December 8-9, 2018	Yes	al-Shabaab members engaging partner forces	Yes	https://airwars.org/civilian-casualties/ussom16-6-c-december-8-2018/

ID	Location	Date	Claimed by AFRICOM?	Description of target	DPH claim?	URL
181	Awdheegle, Lower Shabelle, Somalia	December 4, 2018	Yes	al-Shabaab members engaging partner forces	Yes	https://airwars.org/civilian-casualties/ussom165-december-4-2018/
182	Geelway mountain, Mudug, Somalia	November 30, 2018	Yes	al-Shabaab members	No	https://airwars.org/civilian-casualties/ussom164-november-30-2018/
183	Debatscile, Mudug, Somalia	November 27, 2018	Yes	al-Shabaab vehicles	No	https://airwars.org/civilian-casualties/ussom163-november-27-2018/
184	Hargeysa هر جيسا, Yarey, Middle Juba, Somalia	November 24, 2018	No	al-Shabaab members	No	https://airwars.org/civilian-casualties/ussom162-november-24-2018/
185	Either Jimo-Luqunyar or Adaley, near Debatscile, Mudug, Somalia	November 21, 2018	Yes	al-Shabaab cache site	No	https://airwars.org/civilian-casualties/ussom161-november-21-2018/
186	Jimo Luqunyar or Adaley, near Debatscile, Mudug, Somalia	November 21, 2018	Yes	al-Shabaab weapons cache	No	https://airwars.org/civilian-casualties/ussom160-november-21-2018/
187	Caad, Mudug, Somalia	November 20, 2018	Yes	al-Shabaab members	No	https://airwars.org/civilian-casualties/ussom159-november-20-2018/
188	Debatcile, Mudug, Somalia	November 19, 2018	Yes	al-Shabaab members and vehicles	No	https://airwars.org/civilian-casualties/ussom158-november-19-2018/
189	Vicinity of Quy Cad near Debatscile/ Dabad Shil, Hobyo, Somalia	November 19, 2018	Yes	al-Shabaab members	No	https://airwars.org/civilian-casualties/ussom157-november-19-2018/
190	Radio Andalus, Jilib, Middle Juba, Somalia	November 18, 2018	No	al-Shabaab radio station	No	https://airwars.org/civilian-casualties/ussom15

ID	Location	Date	Claimed by AFRICOM?	Description of target	DPH claim?	URL
						6-c-november-18-2018/
191	Vicinity of حرمك, Kunyo Barrow, Lower Juba, Somalia	October 25, 2018	Yes	al-Shabaab member	No	https://airwars.org/civilian-casualties/ussom154-october-25-2018/
192	Bulo Haji, Lower Juba, Somalia	October 18, 2018	No	town	No	https://airwars.org/civilian-casualties/ussom153-c-october-18-2018/
193	Araara, Lower Juba, Somalia	October 14, 2018	Yes	al-Shabaab members engaging Somali forces	Yes	https://airwars.org/civilian-casualties/ussom152-october-14-2018/
194	Jowle, Mudug, Somalia	October 12, 2018	Yes	al-Shabaab training camp	No	https://airwars.org/civilian-casualties/ussom151-october-12-2018/
195	حرمك, Kunyo Barrow, Lower Shabelle, Somalia	October 6, 2018	Yes	al-Shabaab member	No	https://airwars.org/civilian-casualties/ussom150-october-6-2018/
196	Ceel Gadde, El Adde, Gedo, Somalia	October 4, 2018	No	al-Shabaab members and civilian town	No	https://airwars.org/civilian-casualties/ussom149-c-october-4-2018/
197	Baasra, Lower Shabelle, Somalia	October 2–3, 2018	No	village including al-Shabaab hideouts	No	https://airwars.org/civilian-casualties/ussom148-october-2-2018/
198	Jamaame, Lower Juba, Somalia	October 1, 2018	Yes	al-Shabaab members who attacked Somali forces	Maybe	https://airwars.org/civilian-casualties/ussom147-october-1-2018/
199	50 km northwest of Kismayo, Lower Juba, Somalia	September 21, 2018	Yes	al-Shabaab members engaging US and partner forces	Yes	https://airwars.org/civilian-casualties/ussom146-september-21-2018/
200	Saakow, ساكور, Middle Juba, Somalia	September 19, 2018	No	al-Shabaab training school	No	https://airwars.org/civilian-casualties/ussom145-c-september-19-2018/
201	Mubaraak, مبارك, Lower Shabelle, Somalia	September 11, 2018	Yes	al-Shabaab members engaging US and partner forces	Yes	https://airwars.org/civilian-casualties/ussom144/

ID	Location	Date	Claimed by AFRICOM?	Description of target	DPH claim?	URL
						4-september-11-2018/
202	40 km southwest of Mogadishu, Lower Shabelle, Somalia	August 27, 2018	Yes	al-Shabaab members	No	https://airwars.org/civilian-casualties/ussom14-3-august-27-2018/
203	46 km northeast of Kismayo, Lower Juba, Somalia	August 21, 2018	Yes	al-Shabaab members	No	https://airwars.org/civilian-casualties/ussom14-2-august-21-2018/
204	Basra, Lower Shabelle, Somalia	August 20–26, 2018	No	village	No	https://airwars.org/civilian-casualties/ussom14-1-c-august-20-2018/
205	Vicinity of Baladul-Rahma and Geeshaan, near Basraa, Lower Shabella, Somalia	August 14, 2018	No	villages	No	https://airwars.org/civilian-casualties/ussom14-0-c-august-14-2018/
206	Gobanle (Gobaale), Lower Shabelle, Somalia	August 2, 2018	Yes	vehicle including al-Shabaab members and civilians	No	https://airwars.org/civilian-casualties/ussom13-8-c-august-2-2018/
207	Baar Sanguni, 50 km north of Kismayo, Lower Juba, Somalia	July 23, 2018	Yes	al-Shabaab members, possibly after attacking Somali forces	Maybe	https://airwars.org/civilian-casualties/ussom13-6-july-23-2018/
208	Qalimow, Middle Shabelle, Somalia	July 24–25, 2018	No	al-Shabaab vehicles	No	https://airwars.org/civilian-casualties/ussom13-7-july-23-2018/
209	Marka, Lower Shabelle, Somalia	July 22–27, 2018	No	village	No	https://airwars.org/civilian-casualties/ussom13-5-c-july-22-2018/
210	Jawaari, Middle Juba, Somalia	July 10–11, 2018	No	al-Shabaab members	No	https://airwars.org/civilian-casualties/ussom13-4-july-10-2018/
211	Baar, Lower Juba, Somalia	June 8, 2018	Yes	al-Shabaab members engaging US and partner forces after an offensive	Yes	https://airwars.org/civilian-casualties/ussom13-3-june-8-2018/
212	24 miles southwest of Bosaso, Bari, Somalia	June 3, 2018	Yes	al-Shabaab members	No	https://airwars.org/civilian-casualties/ussom13-2-june-3-2018/

ID	Location	Date	Claimed by AFRICOM?	Description of target	DPH claim?	URL
						casualties/ussom13-2-june-3-2018/
213	Galgala mountains, 26 miles southwest of Bosaso, Bari, Somalia	June 2, 2018	Yes	al-Shabaab members after attacking a Somali force	Maybe	https://airwars.org/civilian-casualties/ussom13-1-june-2-2018/
214	Bariire, Lower Shabelle, Somalia	May 29–June 3, 2018	No	field, with al-Shabaab members and/or civilians	No	https://airwars.org/civilian-casualties/ussom13-0-c-may-31-2018/
215	30 miles southwest of Mogadishu, Lower Shabelle, Somalia	May 31, 2018	Yes	al-Shabaab members	No	https://airwars.org/civilian-casualties/ussom12-9-may-31-2018/
216	Arbiska, Lower Shabelle, Somalia	May 23, 2018	Yes	al-Shabaab members	No	https://airwars.org/civilian-casualties/ussom12-8-may-23-2018/
217	Bulcida Macalinka (northeast), Lower Shabelle, Somalia	May 9–10, 2018	Yes	farm including al-Shabaab members and civilians	No	https://airwars.org/civilian-casualties/ussom12-7-c-may-9-2018/
218	Leego, Lower Shabelle, Somalia ليغو	April 16, 2018	Yes	al-Shabaab members	No	https://airwars.org/civilian-casualties/ussom12-6-april-16-2018/
219	Jana Cabdalle, Lower Shabelle, Somalia	April 11, 2018	Yes	al-Shabaab vehicle with IED	Yes	https://airwars.org/civilian-casualties/ussom12-5-april-11-2018/
220	Jilib, Middle Juba, Somalia جيليب	April 5, 2018	Yes	al-Shabaab members and vehicle	No	https://airwars.org/civilian-casualties/ussom12-4-april-5-2018/
221	Ceel Buur, Galmudug, Somalia	April 1, 2018	Yes	vehicle including al-Shabaab members and civilians	No	https://airwars.org/civilian-casualties/ussom12-3-c-april-1-2018/
222	Mubaraak, Lower Shabelle, Somalia مبارك	March 19, 2018	Yes	al-Shabaab members and vehicle	No	https://airwars.org/civilian-casualties/ussom12-2-march-19-2018/
223	Vicinity of Jamecco and Singulle, Middle Shabelle, Somalia	March 13, 2018	Yes	al-Shabaab members	No	https://airwars.org/civilian-casualties/ussom12-1-march-13-2018/

ID	Location	Date	Claimed by AFRICOM?	Description of target	DPH claim?	URL
224	Kamsuuma, Lower Juba, Somalia	March 12, 2018	Yes	al-Shabaab members	No	https://airwars.org/civilian-casualties/ussom120-march-12-2018/
225	Jilib, جيليب, Middle Juba, Somalia	February 26, 2018	Yes	al-Shabaab members	No	https://airwars.org/civilian-casualties/ussom119-february-26-2018/
226	Bangeeni, Lower Juba, Somalia	February 21, 2018	Yes	village including al-Shabaab and civilians	No	https://airwars.org/civilian-casualties/ussom118-c-february-21-2018/
227	Jilib, جيليب, Middle Juba, Somalia	February 19, 2018	Yes	al-Shabaab training camp	No	https://airwars.org/civilian-casualties/ussom117-february-19-2018/
228	Vicinity of حريمك, Kunya Barrow, Middle Juba, Somalia	February 6, 2018	Yes	al-Shabaab member	No	https://airwars.org/civilian-casualties/ussom116-february-6-2018/
229	Jameeco Jilyaale near Beled ul Amin, Lower Shabelle, Somalia	January 18, 2018	Yes	al-Shabaab members	No	https://airwars.org/civilian-casualties/ussom115-c-january-18-2018/
230	Beer Xaani, Lower Juba, Somalia	January 18, 2018	Yes	al-Shabaab members	No	https://airwars.org/civilian-casualties/ussom114-january-18-2018/
231	Bariire, Lower Shabelle, Somalia	January 2, 2018	Yes	vehicle IED	Yes	https://airwars.org/civilian-casualties/ussom113-january-2-2018/
232	Mubaraak, مبارك, Lower Shabelle, Somalia	December 27, 2017	Yes	al-Shabaab members	No	https://airwars.org/civilian-casualties/ussom112-december-27-2017/
233	Ball Raho, between Buusaar and Burahache, Gedo, Somalia	December 24, 2017	Yes	al-Shabaab encampment, possible imminent attack	Maybe	https://airwars.org/civilian-casualties/ussom111-december-24-2017/

ID	Location	Date	Claimed by AFRICO M?	Description of target	DPH claim?	URL
234	30 miles northwest of Kismayo, IVO Qudus, Lower Juba, Somalia	December 15-16, 2017	Yes	al-Shabaab members and vehicle	No	https://airwars.org/civilian-casualties/ussom110-december-15-2017/
235	Mubaraak, مبارک, Lower Shabelle, Somalia	December 11-12, 2017	Yes	vehicle IED but shown to contain bananas, explosion likely too small for IED claim	Maybe	https://airwars.org/civilian-casualties/ussom109-december-12-2017/
236	130 km southwest of Mogadishu, Lower Shabelle, Somalia	December 6, 2017	No	vehicle including al-Shabaab members	No	https://airwars.org/civilian-casualties/ussom108-c-december-6-2017/
237	Tortoroo, Lower Shabelle, Somalia	November 29, 2017	Yes	al-Shabaab training camp	No	https://airwars.org/civilian-casualties/ussom107-november-29-2017/
238	Hills around Dasaan, Bari, Somalia	November 27, 2017	Yes	al-Shabaab members	No	https://airwars.org/civilian-casualties/ussom106-november-27-2017/
239	Bur Elade, Bay, Somalia	November 21, 2017	Yes	al-Shabaab encampment	No	https://airwars.org/civilian-casualties/ussom105-november-21-2017/
240	Idow Jalaad, near Leego, Lower Shabelle, Somalia	November 14, 2017	Yes	al-Shabaab members	No	https://airwars.org/civilian-casualties/ussom104-november-14-2017/
241	Awhiigle, Gaduud, Lower Juba, Somalia	November 13, 2017	Yes	al-Shabaab members	No	https://airwars.org/civilian-casualties/ussom103-november-13-2017/
242	Golis Mountains, Puntland, Somalia	November 12, 2017	Yes	al-Shabaab members	No	https://airwars.org/civilian-casualties/ussom102-november-12-2017/
243	Southeast of Darusalaam,	November 12, 2017	Yes	al-Shabaab members or civilian farmers	No	https://airwars.org/civilian-casualties/ussom101-november-12-2017/

ID	Location	Date	Claimed by AFRICOM?	Description of target	DPH claim?	URL
	Lower Shabelle, Somalia					1-c-november-12-2017/
244	Osman Gaduud, Lower Shabelle, Somalia	November 11, 2017	Yes	al-Shabaab member	No	https://airwars.org/civilian-casualties/ussom10-0-november-11-2017/
245	2km north of Baasra, Lower Shabelle, Somalia	November 10-11, 2017	Yes	al-Shabaab members	No	https://airwars.org/civilian-casualties/ussom09-9-c-november-10-2017/
246	Buulo Fuulay, Bay, Somalia	November 9, 2017	Yes	al-Shabaab members	No	https://airwars.org/civilian-casualties/ussom09-8-november-9-2017/
247	Farah Waeyis, Lower Shabelle, Somalia	October 16, 2017	Yes	vehicle with al-Shabaab members	No	https://airwars.org/civilian-casualties/ussom09-5-c-october-16-2017/
248	Mubaraak, مبارك, Lower Shabelle, Somalia	October 2, 2017	Yes	al-Shabaab members	No	https://airwars.org/civilian-casualties/ussom09-4-october-2-2017/
249	Kunya حرمك, Barrow, Middle Juba, Somalia	September 30, 2017	Yes	al-Shabaab members	No	https://airwars.org/civilian-casualties/ussom09-3-september-30-2017/
250	Kunya حرمك, Barrow, Middle Juba, Somalia	September 12-13, 2017	Yes	al-Shabaab members	No	https://airwars.org/civilian-casualties/ussom09-2-september-12-2017/
251	Kunya حرمك, Barrow, Lower Shabelle, Somalia	September 7, 2017	Yes	al-Shabaab member	No	https://airwars.org/civilian-casualties/ussom09-1-september-7-2017/
252	Tortorow and Dodale, Bay, Somalia	September 5, 2017	Yes	al-Shabaab members	No	https://airwars.org/civilian-casualties/ussom09-0-september-5-2017/

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253	Kunya حرمك. Barrow near Barawe, Middle Juba, Somalia	August 31–September 1, 2017	Yes	al-Shabaab members and vehicle	No	https://airwars.org/civilian-casualties/ussom089-august-31-2017/
254	Sheikh Ahmed Yare, 15 miles from Jilib, Middle Juba, Somalia	August 16–17, 2017	Yes	al-Shabaab members	No	https://airwars.org/civilian-casualties/ussom087-c-august-16-2017/
255	Banadir, Somalia	August 10, 2017	Yes	al-Shabaab members engaging US and partner forces after an offensive	Yes	https://airwars.org/civilian-casualties/ussom085-august-10-2017/
256	Shashweyne, Banadir, Somalia	August 10, 2017	Yes	al-Shabaab members	No	https://airwars.org/civilian-casualties/ussom086-august-10-2017/
257	Tortoroo, Lower Shabelle, Somalia	July 30, 2017	Yes	al-Shabaab member	No	https://airwars.org/civilian-casualties/ussom084-july-30-2017/
258	Tortoroo, Lower Shabelle, Somalia	July 29, 2017	Yes	al-Shabaab member	No	https://airwars.org/civilian-casualties/ussom083-july-29-2017/
259	Southern Somalia, Somalia	July 28, 2017	Yes	al-Shabaab members	No	https://airwars.org/civilian-casualties/ussom082-july-28-2017/
260	Tortoroo, Lower Shabelle, Somalia	July 21, 2017	Yes	al-Shabaab compound	No	https://airwars.org/civilian-casualties/ussom080-july-21-2017/
261	Gaduud, Lower Juba, Somalia	July 20, 2017	Yes	al-Shabaab members	No	https://airwars.org/civilian-casualties/ussom079-july-20-2017/
262	Sunguuni, Lower Juba, Somalia	July 15, 2017	Yes	al-Shabaab members	No	https://airwars.org/civilian-casualties/ussom078-july-15-2017/
263	Luglaaw, Lower Juba, Somalia	July 5, 2017	Yes	al-Shabaab members engaging Somali forces	Yes	https://airwars.org/civilian-casualties/ussom076-july-5-2017/
264	Kunya حرمك. Barrow, Middle Juba, Somalia	July 2, 2017	Yes	al-Shabaab member	No	https://airwars.org/civilian-casualties/ussom075-july-2-2017/

ID	Location	Date	Claimed by AFRICOM?	Description of target	DPH claim?	URL
						casualties/ussom07-4-july-2-2017/
265	O'wdhiile, 55 miles south of Mogadishu, Lower Shabelle, Somalia	July 2–10, 2017	No	village	No	https://airwars.org/civilian-casualties/ussom07-5-c-july-2-2017/
266	Bohol Jawarey, Middle Juba, Somalia	June 11, 2017	Yes	al-Shabaab members	No	https://airwars.org/civilian-casualties/ussom07-3-june-11-2017/
267	Welmarow, Lower Juba, Somalia	June 3, 2017	No	al-Shabaab camp	No	https://airwars.org/civilian-casualties/ussom07-2-june-3-2017/
268	Andalus, دار السلام, Radio, Darusalaam, Lower Shabelle, Somalia	May 4–5, 2017	Yes	al-Shabaab compound, allegedly attacked US and Somali forces prior	No	https://airwars.org/civilian-casualties/ussom07-1-may-5-2017/
269	Wargaduud and El Adde, Gedo, Somalia	April 14–15, 2017	No	al-Shabaab members	No	https://airwars.org/civilian-casualties/ussom07-0-april-15-2017/
270	Hawina, north of Kismayo, Lower Juba, Somalia	February 24, 2017	No	village	No	https://airwars.org/civilian-casualties/ussom06-9-february-24-2017/
271	Gaduud, Lower Juba, Somalia	January 7, 2017	Yes	al-Shabaab members, allegedly 'threatened' AMISOM forces	Maybe	https://airwars.org/civilian-casualties/ussom06-8-january-7-2017/
272	Omar Beere/Ibrahim Ali Berre camp near Tortorow, Lower Shabelle, Somalia	December 5–6, 2016	No	al-Shabaab base	No	https://airwars.org/civilian-casualties/ussom06-7-december-6-2016/
273	Jehdin, 30 km east of Galkayo, Mudug, Somalia	September 28, 2016	Yes	friendly militia falsely believed to be al-Shabaab	No	https://airwars.org/civilian-casualties/ussom06-6-c-september-28-2016/
274	Caba, Lower Juba, Somalia	September 26, 2016	Yes	al-Shabaab members engaging US and Somali forces	Yes	https://airwars.org/civilian-casualties/ussom06-5-september-26-2016/

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275	Saakow, ساكورو, Middle Juba, Somalia	September 10, 2016	Yes	unknown al-Shabaab objective	No	https://airwars.org/civilian-casualties/ussom064-september-10-2016/
276	Tortoroo, Lower Shabelle, Somalia	September 5, 2016	Yes	al-Shabaab members engaging US and Somali forces after offensive	Yes	https://airwars.org/civilian-casualties/ussom062-september-5-2016/
277	Tortoroo, Lower Shabelle, Somalia	September 5, 2016	Yes	al-Shabaab members engaging US and Somali forces after offensive	Yes	https://airwars.org/civilian-casualties/ussom063-september-5-2016/
278	Gobanle, Lower Shabelle, Somalia	August 30, 2016	Yes	al-Shabaab members engaging US and Somali forces after offensive	Yes	https://airwars.org/civilian-casualties/ussom061-august-30-2016/
279	El Adde, Gedo, Somalia	July 24, 2016	No	al-Shabaab members	No	https://airwars.org/civilian-casualties/ussom059-july-24-2016/
280	South-central, Somalia	June 21, 2016	Yes	al-Shabaab members, allegedly preparing an attack against US forces	Maybe	https://airwars.org/civilian-casualties/ussom058-june-21-2016/
281	Galgala, Bari, Somalia	June 11, 2016	No	al-Shabaab hideout	No	https://airwars.org/civilian-casualties/ussom057-june-11-2016/
282	Farwamo, near Bulogadud, Lower Juba, Somalia	May 31, 2016	Yes	al-Shabaab members	No	https://airwars.org/civilian-casualties/ussom056-may-31-2016/
283	Jilib, جيليب, Middle Juba, Somalia	May 27, 2016	Yes	al-Shabaab member	No	https://airwars.org/civilian-casualties/ussom055-may-27-2016/
284	Southern Somalia, Somalia	May 13, 2016	Yes	al-Shabaab members	No	https://airwars.org/civilian-casualties/ussom054-may-13-2016/
285	Sabiid, Lower Shabelle, Somalia	May 12, 2016	Yes	al-Shabaab members engaging AMISOM forces after offensive	Yes	https://airwars.org/civilian-casualties/ussom053-may-12-2016/

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286	Tortorow, Lower Shabelle, Somalia	May 9–10, 2016	Yes	al-Shabaab members during a raid	Maybe	https://airwars.org/civilian-casualties/ussom052-may-9-2016/
287	1.2 km east of Yontoy, Lower Juba, Somalia	April 11, 2016	Yes	village including al-Shabaab and civilians	No	https://airwars.org/civilian-casualties/ussom051-c-april-11-2016/
288	Al Shabaab جيليب police station and vicinity in Jilib, Middle Juba, Somalia	April 6, 2016	Yes	al-Shabaab members, allegedly posing an imminent threat to US forces	Maybe	https://airwars.org/civilian-casualties/ussom050-april-6-2016/
289	Lower Juba, Somalia	April 2, 2016	Yes	al-Shabaab members, allegedly posing an imminent threat to US and Somali forces	Maybe	https://airwars.org/civilian-casualties/ussom049-april-2-2016/
290	Buufow, Lower Shabelle, Somalia	April 1, 2016	Yes	al-Shabaab members, allegedly posing an imminent threat to US and Somali forces	Maybe	https://airwars.org/civilian-casualties/ussom048-c-april-1-2016/
291	Between Jilib and Kamsuuma, Middle Juba, Somalia	March 31, 2016	Yes	vehicle including al-Shabaab members	No	https://airwars.org/civilian-casualties/ussom047-march-31-2016/
292	Awdheegle, Lower Shabelle, Somalia	March 8, 2016	Yes	al-Shabaab-controlled town	No	https://airwars.org/civilian-casualties/ussom046-march-8-2016/
293	Raso camp, Hiiraan, Somalia	March 5, 2016	Yes	al-Shabaab training camp	No	https://airwars.org/civilian-casualties/ussom045-march-5-2016/
294	Shanta Ameriko, Lower Shabelle, Somalia	December 22, 2015	No	al-Shabaab members	No	https://airwars.org/civilian-casualties/ussom044-december-22-2015/
295	Kunyo-Barow, Lower Shabelle, Somalia	December 2, 2015	Yes	al-Shabaab members	No	https://airwars.org/civilian-casualties/ussom043-december-2-2015/
296	Yasooman, Ceeldheer, Ceel Lahelay, Hiiraan, Somalia	November 29, 2015	No	al-Shabaab-controlled villages	No	https://airwars.org/civilian-casualties/ussom042-november-29-2015/

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297	Balad Amiin, Lower Shabelle, Somalia	November 22, 2015	Yes	al-Shabaab base	No	https://airwars.org/civilian-casualties/ussom041-november-22-2015/
298	Baardheere, Gedo, Somalia	July 15, 2015	Yes	vehicle including al-Shabaab members, allegedly planning an attack on AMISOM	Maybe	https://airwars.org/civilian-casualties/ussom039-july-15-2015/
299	مدينة براوة, Baraawe, Lower Shabelle, Somalia	July 15, 2015–July 18, 2019	Yes	al-Shabaab members	No	https://airwars.org/civilian-casualties/ussom040-july-15-2015/
300	Abaq Xaltuul, Bay, Somalia	March 12, 2015	Yes	al-Shabaab member	No	https://airwars.org/civilian-casualties/ussom038-march-12-2015/
301	Tortoroo (and Ambereso), Lower Shabelle, Somalia	March 10, 2015	No	al-Shabaab camps	No	https://airwars.org/civilian-casualties/ussom037-march-10-2015/
302	Diinsoor, Bay, Somalia	February 2, 2015	Yes	unknown al-Shabaab objective	No	https://airwars.org/civilian-casualties/ussom036-february-2-2015/
303	Diinsoor, Bay, Somalia	January 31, 2015	Yes	vehicle including al-Shabaab members and civilians	No	https://airwars.org/civilian-casualties/ussom035-c-january-31-2015/
304	Dugule, Lower Shabelle, Somalia	January 31, 2015	No	al-Shabaab training camp	No	https://airwars.org/civilian-casualties/ussom034-c-january-31-2015/
305	Saakow, ساكورو, Middle Juba, Somalia	December 29, 2014	Yes	al-Shabaab members	No	https://airwars.org/civilian-casualties/ussom033-december-29-2014/
306	Sablaale, Lower Shabelle, Somalia	September 1, 2014	Yes	al-Shabaab encampment and vehicle	No	https://airwars.org/civilian-casualties/ussom032-september-1-2014/
307	Farigow, 3 km west of Jilib,	June 1–30, 2014	No	colony, including civilians or al-Shabaab members	No	https://airwars.org/civilian-casualties/ussom031-june-1-2014/

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	Middle Jubba, Somalia					casualties/ussom031-c-may-20-2014/
308	Haway, Lower Shabelle, Somalia	January 26, 2014	Yes	al-Shabaab members	No	https://airwars.org/casualties/ussom030-c-january-26-2014/
309	جيب, Jilib, Middle Juba, Somalia	November 1–30, 2013	No	civilian house, possibly with al-Shabaab members	No	https://airwars.org/casualties/ussom029-c-november-1-2013/
310	Dhaytubako, Middle Juba, Somalia	October 28, 2013	Yes	vehicle including al-Shabaab members	No	https://airwars.org/casualties/ussom028-october-28-2013/
311	جيب, Jilib, Middle Juba, Somalia	June 1–30, 2013	No	al-Shabaab members and civilians	No	https://airwars.org/casualties/ussom026-c-june-1-2013/
312	K60, Lower Shabelle, Somalia	February 24, 2012	Yes	vehicle including al-Shabaab members	No	https://airwars.org/casualties/ussom022-c-february-24-2012/
313	Elasha Biyaha, Lower Shabelle, Somalia	January 21, 2012	Yes	al-Shabaab member (Bilal el Berjawi)	No	https://airwars.org/casualties/ussom020-january-21-2012/
314	Kismayo, Lower Juba, Somalia	January 21, 2012	No	al-Shabaab stronghold town	No	https://airwars.org/casualties/ussom021-c-january-21-2012/
315	Afgooye, Lower Shabelle, Somalia	November 14, 2011	No	al-Shabaab training camp	No	https://airwars.org/casualties/ussom019-november-14-2011/
316	Kismayo, Lower Juba, Somalia	October 23, 2011	No	al-Shabaab base	No	https://airwars.org/casualties/ussom018-october-23-2011/
317	Afimadow, Lower Juba, Somalia	October 22, 2011	No	town	No	https://airwars.org/casualties/ussom017-c-october-22-2011/

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318	10 km east of Taabta, Lower Juba, Somalia	October 13, 2011	No	al-Shabaab base	No	https://airwars.org/civilian-casualties/ussom016-c-october-13-2011/
319	Dolbiyow, 35 kilometers east of Dhobley, Lower Juba, Somalia	October 6, 2011	No	civilian farmers after al-Shabaab fled the area	No	https://airwars.org/civilian-casualties/ussom015-c-october-6-2011/
320	Kismayo, Lower Juba, Somalia	September 25, 2011	No	al-Shabaab-controlled town	No	https://airwars.org/civilian-casualties/ussom014-september-25-2011/
321	Kismayo, Lower Juba, Somalia	September 15, 2011	No	al-Shabaab-controlled town	No	https://airwars.org/civilian-casualties/ussom013-c-september-15-2011/
322	Afmadow, Lower Juba, Somalia	July 6, 2011	No	al-Shabaab training camp	No	https://airwars.org/civilian-casualties/ussom012-c-july-6-2011/
323	Taabta, Lower Juba, Somalia	June 28, 2011	No	al-Shabaab-controlled village	No	https://airwars.org/civilian-casualties/ussom011-june-28-2011/
324	Kismayo, Lower Juba, Somalia	June 21–23, 2011	Yes	al-Shabaab training camp	No	https://airwars.org/civilian-casualties/ussom010-june-21-2011/
325	Dhobley, Gedo, Somalia	April 3, 2011	No	al-Shabaab-controlled town	No	https://airwars.org/civilian-casualties/ussom009-april-3-2011/
326	مدينة براوة, Baraawe, Lower Shabelle, Somalia	September 14, 2009	Yes	vehicle including al-Shabaab member	No	https://airwars.org/civilian-casualties/ussom008-c-september-14-2009/
327	Dusa Marreb, Galgaduud, Somalia	May 1, 2008	Yes	al-Shabaab-controlled village	No	https://airwars.org/civilian-casualties/ussom007-c-may-1-2008/
328	Dhobley, Lower Juba, Somalia	March 3, 2008	Yes	al-Shabaab-controlled town	No	https://airwars.org/civilian-casualties/ussom006-c-march-3-2008/

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329	Bargaal, Bari, Somalia	June 1, 2007	Yes	al-Qaeda members attacking US forces	Yes	https://airwars.org/civilian-casualties/ussom005-c-june-1-2007/
330	Waldena, Lower Juba, Somalia	January 23, 2007	Yes	al-Shabaab member	No	https://airwars.org/civilian-casualties/ussom004-c-january-23-2007/
331	Xayo, Garer, Bankajirow and Badmadow, Ras Kambooni, Lower Juba, Somalia	January 9, 2007	Yes	towns with al-Qaeda members and civilians	No	https://airwars.org/civilian-casualties/ussom003-c-january-9-2007/
332	Hayo, Lower Juba, Somalia	January 8–9, 2007	No	towns with al-Qaeda members and civilians	No	https://airwars.org/civilian-casualties/ussom002-c-january-9-2007/
333	Ras Kamboni (possibly vicinity of Lag Badana Bushbush National Park), Lower Juba, Somalia	January 7, 2007	Yes	towns with al-Qaeda members and civilians	No	https://airwars.org/civilian-casualties/ussom001-c-january-7-2007/