

A Q&A on the student project assessing the legality of US operations in Somalia

PAX often partners with universities on student assignments: it offers the students an opportunity to apply their skills in a professional setting, while PAX receives high-quality advice or assistance. Earlier this year, students from Rijksuniversiteit Groningen's (RUG) law faculty set to work on a report for the PAX Protection of Civilians team, researching and assessing the legality of US military operations against Al Shabaab in Somalia. While not a legally focused organization per se, PAX interest in the legal context stemmed from [previous reporting](#) on this conflict, where it proved a contentious subject. Erin Bijl sat down with RUG students Cor de Boer, Hannah Griffin, Katya Hailevich, Hannah McSweeney and Judith Weerheim to discuss their experience working with PAX and their main research findings.

Erin: For this assignment, you had your pick of organizations and the legal questions with which they sought help. Why did you choose to work on PAX's request?

Judith: PAX's request immediately stood out for me as it revolved around US military action abroad. This is a topic I find very interesting, particularly in the context of the War on Terror, due to its complexity and controversy specifically in the field of international law. Next to this, I was already familiar with PAX and their work, so I was very excited to be able to contribute to this organization as a student.

Katya: I chose PAX's request as I am very interested in international humanitarian law (IHL) and in particular protecting the civilian population from the effects of hostilities. The question posed allowed me not only to apply my knowledge in a field of interest but also to delve into a complicated question of concrete classification within the framework of a specific context.

Hannah G: For me, I found that when studying international law as a Bachelor's and Master's degree it is easy to get lost in the theoretics, treaties and case law while missing the 'on the ground' applicability of what I am studying. Therefore, I chose PAX as an organization to work with because of its impact in the field of humanitarianism and peace and its effective anti-nuclear weapons campaign.

We put forward two questions for you to examine, both related to US military involvement in the conflict in Somalia. Our first question was to provide an overview of the arguments used by the US to justify the legality of its military activity against Al Shabaab in Somalia, and to assess these arguments' 'legal soundness'. What did you find overall and what in particular was striking to you?

In our analysis we have identified three legal arguments that are generally invoked by the US to justify its use of force in Somalia, which are: 1) consent by the territorial state of Somalia, 2) national and collective self-defense and, 3) the Global War on Terror.

The consent of the Somali government to the US use of force in Somali territory proved to be the most uncontroversial justification adopted by the US. However, the Somali government has limited the scope of its consent to the targeting of Al Shabaab only. Therefore, any US action which goes beyond the parameters of the Somali consent, or that violates existing international legal obligations under international human rights law or international humanitarian law, would violate the consent.

The second argument on national and collective self-defense on the other hand, we found is much more disputed. In general, and also in the case of Somalia, the US adopts a broad interpretation of national self-defense, which permits the use of force against non-state armed groups (NSAGs) and in response to credible threats of future attacks. However, we concluded that this stance has been widely disapproved of by a majority of legal scholars who assert that article 51 of the United Nations Charter

only permits self-defense in an inter-state context and solely when an armed attack actually occurs, thus not on a pre-emptive basis.

Further, the US also interprets collective self-defense more broadly in order to justify the use of force in defense of its Somali partners. Their interpretation deviates from its legal meaning under Public International Law (PIL) as the US uses collective self-defense for a concept that is actually better identified as 'unit self-defense', falling under IHL, and extends it to NSAG partner forces. In our analysis we found that legal scholars predominantly argue that NSAGs do not have an inherent right to self-defense. Moreover, the expansive interpretation is contested by legal experts as it applies PIL standards to an IHL concept, resulting in a more expansive use of collective self-defense than permissible under PIL. The report also found that the US actually assisted in offensive attacks by the Somali National Army in the name of collective self-defense, which appears inconsistent with the principles of necessity and proportionality under international law. What we found particularly striking regarding this legal justification is that the US has endorsed, and continues to endorse much broader interpretations of international law than the international legal community and most other states do.

Finally, the existence of the 'War on Terror' as a 'war' is a contested issue. On the whole, the international legal scholarship surrounding the issue would point to the conclusion that there is no war as argued by the US. Moreover, the 2001 AUMF [the US law that allows for the use of lethal force against Al Qaeda and associated organizations] and application of 'Special Operations to Combat Terrorism' legislation as part of the legal framework surrounding the War on Terror are increasingly being criticized in terms of lack of congressional oversight and 'mission-creep'. Yet, the framework continues to be employed with no legal challenge as of now.

And then the other question was quite complex in that we asked you to assess the legality of targeting Al Shabaab under IHL. We know from previous PAX reporting that it can be very difficult to distinguish between Al Shabaab fighters, Al Shabaab members who do not have a combat function, and ordinary civilians living in Al Shabaab controlled territory. What were some of the challenges you faced in beginning to answer this question?

One of the biggest challenges was that even the distinction into these three categories may not always be clear, especially for persons who may switch between categories at different points in time by performing multiple functions. The problem was particularly exacerbated for civilians participating in hostilities, as the concept of 'direct participation in hostilities' at an international level is still not solidly clear, and leads to a discrepancy in standards. This means that an absolute conclusion cannot be drawn at times.

What conclusion did you reach in the end with regard to this question and could you find the information you needed to come to a comprehensive answer?

Due to the discrepancies mentioned, it was impossible to reach a conclusion that would be equally and effectively applicable in all situations (this is also the case due to the general practice of applying IHL on a case-by-case basis). However, we were able to conclude that the US approach to targeting and particularly their understanding of what would equate to direct participation is still broader than the common denominator that can be distinguished amongst the practice of the international community, meaning that the US' understanding of who is a combatant or fighter and thus targetable is broader than that of many other states

Part of the assignment was that we asked you for your advice on where we – as PAX – could best focus our advocacy when it comes to US military operations in Somalia. What is your conclusion?

Specifically contentious points that we found are the continuing use of a 'War on Terror' legislative framework and the extensive interpretations of national and collective self-defense endorsed by the US to justify their military operations in Somalia, which face significant criticism by the majority of the legal community. Therefore, we recommend PAX to specifically highlight these issues in future advocacy, as the US appears to be seriously pushing the boundaries of what is legal under international law.

With regard to the targeting of Al Shabaab-associated individuals, PAX should most closely examine civilian participation in hostilities. The threshold for qualification as an 'unlawful belligerent' is set too low compared to other international standards, and as the broad definition could leave persons which should be classified as civilians under IHL without civilian protection, PAX should focus on this in their future advocacy. It is important to note that 'participation' should be assessed individually in every case on the basis of available factual information.

In the report, you focus specifically on US operations in Somalia. Do you think your analysis – or parts of it – can also be applied to other contexts?

We believe that our analysis, specifically with regards to the US legal framework invoked to justify the use of force abroad, can also be applied to other contexts. There are many other cases in which the US has adopted, or currently adopts, a similar legal framework to justify military actions, such as in Syria and Yemen.

The application of legislation emanating from the 'War on Terror' is a phenomenon that continues to occur across the globe. The counterterrorism operations under 127e [a program in which US forces plan and control partner military operations in foreign countries while training and assisting these forces] have been used in 85 countries to date, including in Somalia against Al Shabaab. Therefore, an analysis and monitoring of current operations emanating from this legal framework is an important task for peace organizations such as PAX. The situation in Somalia is not a unique one, allowing for the structure of our paper to be applied to other states in which the US is conducting similar operations under the same legislative framework or legal doctrines.

For the second question, although some parts focus specifically on the US, the more general discussion, particularly concerning (1) the existence of a third category of 'unlawful combatants' more generally and (2), of what could be, at present, qualified as 'direct participation in hostilities' as accepted by the international community, could be useful as a source of general reference.

Did you have some familiarity with this specific topic or the questions that were asked before taking part in this assignment?

Hannah McS: Other than having some general knowledge on the US Global War on Terror, I was not familiar with the specific situation in Somalia, and the context in which Al Shabaab emerged. In this regard, I found researching the contextual background of the questions very interesting, and I learned a lot from this.

From previous modules I had undertaken at RUG, I was well-versed in the legal issues and considerations on the first question put forward by PAX, regarding the legality of US military operations in Somalia under public international law. However, I did not have any experience within the area of international humanitarian law prior to this assignment.

Judith: Despite my general interest in the Global War on Terror rhetoric, I was actually not so much aware of the intensity of US airstrikes in Somalia. Because of this, I found it was very interesting to conduct research in this topic as it allowed me to fully dive into the subject and learn more about it. While doing our research, it became clear to me that US military operations in Somalia are definitely not covered enough in the media and the topic is quite under researched compared to military operations

in Syria, for example. Due to my studies in Public International Law, I was familiar with the legal questions that PAX had asked us to explore, specifically the question on the legality of the US use of force in Somalia. This helped me to apply my legal knowledge to an actual situation.

Cor: Before taking part in this assignment, I had some familiarity with IHL. I have prior experience working in the field of IHL as an intern, which provided me with a foundational understanding of the legal principles and issues at play. Additionally, I have followed the IHL course at the University of Groningen, which further deepened my knowledge and expertise in this area. This background knowledge and experience helped me to approach PAX's request with a solid foundation and enabled me to contribute to the legal analysis of the issues at hand.

The work you did was greatly appreciated by us and provides a helpful reference. How did you experience this assignment: was it helpful or valuable to you and does it prepare you for your future work?

Hannah McS: Overall, I found this project to be a great learning experience in working within both the legal profession and the NGO sector, where a focus is placed on international humanitarian law. Before beginning my LLM at the University of Groningen, I completed an internship with a legal NGO in Ireland. Here, I gained invaluable experience in communicating with clients and providing advice to clients on complex legal issues. Working with PAX was the perfect opportunity to put these skills I had learned during my internship into practice in an international context, whilst working with a great team of fellow students. Working on this project has taught me that I want to use the legal skills I have learned from my studies and previous work experience in an environment where elements of both research and advocacy are combined.

Katya: Prior to this, most of my written assignments were academic essays. The fact that the outcome of the project was meant for a non-legal audience and was to be formatted as a report meant that the entire process had to be adjusted. Particularly, the representation of information through original diagrams and infographics required a degree of creative thinking with respect to design and optimal incorporation with the purpose of enhancing the report. Furthermore, the convergence between applying academic knowledge and the context of a concrete problem (which is oftentimes absent in abstract academic writing), offers a possibility to obtain experience which is reflective of actual practice.

Cor: The practical application of my academic knowledge was the most valuable aspect of this project. Writing a report for a non-legal audience required me to adjust my approach and think creatively about representing complex legal information clearly and accessible. This experience enhanced my ability to communicate complex legal concepts effectively to a non-legal audience, which is an essential skill for working in the legal field.

Hannah G: For me, this is the first time I have been able to use my knowledge and skills I have gained over the past four years of studying international law in a concrete manner within an international organization such as PAX. Moreover, US interventions abroad and its relation to international law is of particular interest to me, therefore, I found the experience extremely interesting and rewarding. Furthermore, seeing how international lawyers or those with legal knowledge are essential to the running and understanding of an international organization was very gratifying. I am pleased to see how my skills will be used and needed when I enter the workforce in the coming months and years and how I would fit into international organizations as a lawyer of public international law.