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The Crisis in Yemen: Armed Conflict and International Law

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THE CRISIS IN YEMEN: ARMED CONFLICT AND INTERNATIONAL LAW

Dr. Waseem Ahmad Qureshi†

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I. Introduction

The United Nations (“UN”) has dubbed the humanitarian crisis in Yemen the worst human crisis in the world.¹ Tens of thousands of people have died in the ongoing war² and from the outbreak of deadly diseases.³ About half of Yemen’s population is in dire need of humanitarian aid,⁴ millions of people have been internally displaced,⁵ hundreds of thousands of refugees have migrated to other countries,⁶ children have been recruited as child soldiers,⁷ and the illegal use of mines and cluster bombs has put at risk the lives of many more.⁸

¹ GIULIO COPPI, *THE HUMANITARIAN CRISIS IN YEMEN: BEYOND THE MAN-MADE DISASTER*, INT’L PEACE INST. 6 (Albert Trithart & Madeline Brennan, eds., 2018), <https://www.ipinst.org/wp-content/uploads/2018/01/IPI-Rpt-Humanitarian-Crisis-in-Yemen.pdf> [hereinafter Coppi] [<https://perma.cc/BX8F-JNLL>].

² Int’l Crisis Grp., *Crisis Group Yemen Update #7* (Mar. 8, 2017), <https://www.crisisgroup.org/middle-east-north-africa/gulf-and-arabian-peninsula/yemen/crisis-group-yemen-update-7> [<https://perma.cc/CV4R-8AF8>].

³ Stephanie Nebehay, *World Has Just Months to Stop Starvation in Yemen, Somalia: Red Cross*, REUTERS (Mar. 22, 2017, 6:16 AM), <https://www.reuters.com/article/us-africa-hunger/world-has-just-months-to-stop-starvation-in-yemen-somalia-red-cross-idUSKBN16T132> [<https://perma.cc/J28U-RVKT>].

⁴ U.N. Office for the Coordination of Humanitarian Affairs [OCHA], *Yemen*, 29 HUMANITARIAN BULL. (Nov. 20, 2017), https://www.ecoi.net/en/file/local/1418542/1788_1511878299_yemen.pdf [<https://perma.cc/32NZ-BXXZ>].

⁵ TASK FORCE ON POPULATION MOVEMENT, *YEMEN: 16TH REPORT 4* (Oct. 2017), https://reliefweb.int/sites/reliefweb.int/files/resources/tfpm_16th_report_oct2017.pdf [<https://perma.cc/JQ6C-GMET>].

⁶ U.N. High Comm’r for Refugees [UNHCR], *Yemen Situation: Regional Refugee and Migration Response Plan Overview* (Jan.-Dec. 2016), <https://data2.unhcr.org/en/documents/download/32372> [<https://perma.cc/6CBP-R45A>].

⁷ See Coppi, *supra* note 1, at 6–7.

⁸ See *id.*

The crisis started when the Houthi rebels ousted the existing government to seize power and governmental control.⁹ The Hadi government asked its allies to save it from the crisis,¹⁰ and so the war between the Saudi-led coalition and the Houthis began, resulting in this humanitarian crisis. Therefore, to understand what factors acted to fuel the crisis, this Article is an attempt to explore the underlying realities that led to this situation. In doing so, this Article will explore the key players in the war and the events in the fight in Yemen that shaped this crisis, while discussing the humanitarian situation. Parties will be divided into two groups: one is the state-centric group acting on behalf of the Yemeni government, and the other is the anti-state group acting against the Yemeni government's interest. Moreover, this Article will also attempt to investigate the legality of the use of force by all parties to this conflict, to be able to conclude who is using legitimate force and who is using illegitimate force in Yemen, in accordance with international law. Then, this Article will analyze the conduct of both parties using force to comprehend the violations of international humanitarian and human rights laws in the Yemeni conflict.

For these reasons, this Article is divided into eight parts. Part II will explain the background that led to this armed conflict between the Saudi-led coalition/Hadi government and the Houthis. Part III will classify the key players in this conflict into two categories: those acting for the Hadi government and those supporting the Houthi rebels or acting against the interests of the Yemeni government. Part IV will explore the legitimacy of using force in Yemen. For this, Part IV will analyze the international law of consent to use force in the host state and will list nations' formal positions regarding the legitimacy of using force in Yemen. Part V

⁹ Int'l Comm'n of Jurists, *Bearing the Brunt of War in Yemen: International Law Violations and Their Impact on the Civilian Population* 3 (July 2018), <http://www.icj.org/wp-content/uploads/2018/09/Yemen-War-impact-on-populations-Advocacy-Analysis-Brief-2018-ENG.pdf> [https://perma.cc/6JEB-DJNT] [hereinafter *Bearing the Brunt*].

¹⁰ Luca Ferro & Tom Ruys, *The Saudi-led Military Intervention in Yemen's Civil War—2015*, in *THE USE OF FORCE IN INTERNATIONAL LAW: A CASE-BASED APPROACH* 899, 900 (Tom Ruys et al. eds., 2018) [hereinafter Ferro & Ruys]. See also U.N. Security Council [SCOR], Letters dated 26 March 2015 from the Permanent Representative of Qatar to the U.N. Addressed to the Secretary-General and the President of the Security Council, 3-5, U.N. Doc. S/2015/217 (Mar. 27, 2015) [hereinafter U.N.S.C. Qatar Letters].

will enquire whether the nature of this conflict is international or non-international to be able to identify which rules and laws are applicable to the Yemeni conflict. Part VI will elaborate on the humanitarian crisis in Yemen, supported by statistics on damages, casualties, people in need of humanitarian aid, outbreaks of disease, and migration crises. Part VII will evaluate the applicable human rights laws and international humanitarian laws in Yemen to perceive the violations of these laws by both parties to this conflict. Part VII will further examine the laws and conduct of both parties regarding arms transfer, arbitrary detentions, and counterterrorism activities in Yemen. Part VIII concludes.

II. Background

The Yemeni government and the Houthis have been in an armed conflict since 2004.¹¹ The Houthis are a group of nonstate actors (NSAs), specifically a Zaidi Shia rebel group established in 1990, with the aim of gaining political power in the country and eradicating the Saudi-backed Salafi influence in the region.¹² The conflict began after then-president Ali Abdullah Saleh used heavy security measures to arrest the leader of the Houthi rebellion in an effort to curtail insurgencies in the country.¹³ After the Arab Spring hit Yemen in 2011, the Houthi rebellion gained a stronghold and initiated months-long protests against the government in the name of fighting corruption and the U.S.-backed dictator, in the end forcing the president out of office.¹⁴ The government was handed over to Saleh's deputy, Abdrabbuh Mansour Hadi, who was elected president in the 2012 election.¹⁵ From 2012 to 2014, Yemen faced intense political instability due to widespread protests against fuel prices in the Houthi stronghold regions.¹⁶ Within a few months, the

¹¹ See *Bearing the Brunt*, *supra* note 9, at 3.

¹² *Who Are the Houthis?*, TRT WORLD (Dec. 18, 2018), <https://www.trtworld.com/middle-east/who-are-the-houthis-22592> [<https://perma.cc/X5YU-GY92>] [hereinafter *Houthis*].

¹³ *Non-International Armed Conflicts in Yemen*, RULAC GENEVA ACAD. (last updated May 14, 2019), <http://www.rulac.org/browse/conflicts/non-international-armed-conflicts-in-yemen> [<https://perma.cc/7DXA-ECPG>] [hereinafter *Non-International Armed Conflicts*].

¹⁴ *Houthis*, *supra* note 12.

¹⁵ *Bearing the Brunt*, *supra* note 9, at 3.

¹⁶ *Id.*

Houthis managed to gain control of the capital city, Sana'a.¹⁷ The government negotiated with the Houthis and reached a temporary peace agreement brokered by the UN, which only lasted a few months, until the contested constitutional draft in January 2015.¹⁸ Within a month, the Houthis took over the president's residence and forced him to resign.¹⁹ They announced their assumption of power in Yemen after gaining control of the armed forces, fighter planes, and ammunition.²⁰ In March 2015, President Hadi moved to the city of Aden and declared it the new capital in the hope of regaining control.²¹ However, when the country faced major protests on both sides, President Hadi fled to Saudi Arabia and invited neighboring countries to intervene by force.²² As a result, a nine-member coalition, comprising Saudi Arabia, the United Arab Emirates (UAE), Bahrain, Egypt, Jordan, Kuwait, Morocco, Qatar, and Sudan, commenced Operation Decisive Storm,²³ which initiated armed conflict between the Saudi-led coalition and the Houthis. In April 2015, the United Nations Security Council adopted Resolution 2216 and recognized President Hadi as the legitimate president of Yemen.²⁴ The arms embargo against the Houthis has been in place since February 2014.²⁵

¹⁷ *Id.*

¹⁸ SARI ARRAF, *THE WAR REPORT 2017: THE ARMED CONFLICT IN YEMEN: A COMPLICATED MOSAIC*, GENEVA ACAD. 3–4 (2017), <https://www.geneva-academy.ch/joomlatools-files/docman-files/The%20Armed%20Conflict%20in%20Yemen.pdf> [<https://perma.cc/BB58-BRKD>] [hereinafter ARRAF].

¹⁹ *See id.*

²⁰ *See Bearing the Brunt*, *supra* note 9, at 3.

²¹ *See id.*

²² U.N.S.C. Qatar Letters, *supra* note 10, at 3. *See also* S.C. Res. 2216 (Apr. 14, 2015).

²³ ARRAF, *supra* note 18, at 5. *See also* Oona Hathaway et al., *The Yemen Crisis and the Law: The Saudi-Led Campaign and U.S. Involvement*, JUST SECURITY (Feb. 20, 2018), <https://www.justsecurity.org/52718/js-yemen-crisis-forum-saudi-campaign-us-involvement/> [<https://perma.cc/TC6P-BSJ4>]. *See also* Helene Cooper et al., *Army Special Forces Secretly Help Saudis Combat Threat from Yemen Rebels*, N.Y. TIMES (May 3, 2018), <https://www.nytimes.com/2018/05/03/us/politics/green-berets-saudi-yemen-border-houthi.html> [<https://perma.cc/3VHK-8NFS>]. *See also Non-International Armed Conflicts*, *supra* note 13.

²⁴ ARRAF, *supra* note 18, at 5.

²⁵ *See* S.C. Res. 2216, ¶ 14 (Apr. 14, 2015); *see also* S.C. Res. 2140 (Feb. 26, 2014); S.C. Res. 2266 (Feb. 24, 2016); S.C. Res. 2342 (Feb. 23, 2017); S.C. Res. 2402 (Feb. 26, 2018).

In 2016, UAE ground troops forced Al Qaeda out of Mukalla,²⁶ where Saleh and the Houthi forces had concluded an agreement to form the Supreme Political Council.²⁷ In 2017, the Houthis killed former president Saleh for calling upon Saudi Arabia to negotiate²⁸ for peace and stability in the country. Currently, the present Yemeni government is increasingly losing control over its territory to the UAE-backed movement, Al Qaeda, ISIS, and other NSA/terrorist groups in the region.²⁹ The UAE supported movements for the autonomy of provinces, for which Hadi forces have condemned certain UAE-backed movements.³⁰

As the UAE and the U.S. accuse Iran³¹ and North Korea of providing arms and missile technology to the Houthis, Iran categorically denies these accusations.³² In 2017, Operation Golden Arrow was initiated by the Saudi-led coalition to cut off Houthi

²⁶ Thomas Joscelyn, *Arab Coalition Enters AQAP Stronghold in Port City of Mukalla, Yemen*, FDD'S LONG WAR J. (Apr. 25, 2016), <https://www.longwarjournal.org/archives/2016/04/arab-coalition-enters-aqap-stronghold-in-port-city-of-mukalla-yemen.php> [<https://perma.cc/7T24-NWTH>].

²⁷ U.N. Sec. Council, Final Rep. of the Panel of Experts on Yemen, ¶ 20, U.N. Doc. S/2017/81 (Jan. 31, 2017).

²⁸ April Longley Alley, *The Killing of Former President Saleh Could Worsen Yemen's War*, INT'L CRISIS GROUP (Dec. 6, 2017), <https://www.crisisgroup.org/middle-east-north-africa/gulf-and-arabian-peninsula/yemen/killing-former-president-saleh-could-worsen-yemen-war> [<https://perma.cc/U46G-4A7N>].

²⁹ See Peter Beaumont, *'Scores' Killed in Yemen as UAE-backed Fighters Seize Parts of Aden*, THE GUARDIAN (Aug. 14, 2019, 11:13 PM), <https://www.theguardian.com/global-development/2019/aug/14/scores-killed-in-yemen-as-uae-backed-fighters-seize-parts-of-aden> [<https://perma.cc/ABB3-6BAJ>]; see also Sudarsan Raghavan, *With the ISIS Caliphate Defeated in Syria, an Islamist Militant Rivalry Takes Root in Yemen*, WASH. POST (Apr. 13, 2019), https://www.washingtonpost.com/world/middle_east/with-the-once-declared-caliphate-of-isis-defeated-in-syria-an-islamist-militant-rivalry-takes-root-in-yemen/2019/04/13/d54148a6-34d3-4a67-a40a-9dc4f783338e_story.html [<https://perma.cc/3PNU-HASH>].

³⁰ *Yemen at the UN – April 2017 Review*, SANA'A CTR. FOR STRATEGIC STUD. (May 8, 2017), <https://sanaacenter.org/publications/yemen-at-the-un/99> [<https://perma.cc/MT5N-B7B7>] [hereinafter *Yemen at the UN*]. See also Stephen A. Seche, *Shaping the South: The UAE in Yemen*, ARAB GULF STATES INST. IN WASH. (May 4, 2017), <https://agsiw.org/shaping-south-uae-yemen/> [<https://perma.cc/7ZGY-7WQ3>].

³¹ See U.N. Sec. Council, Final Rep. of the Panel of Experts on Yemen, ¶ 111, U.N. Doc. S/2018/68 (Jan. 26, 2018).

³² *Iran Denies U.S. Allegations of Arms Supply to Yemen Houthis*, XINHUA NET (Dec. 1, 2018), http://www.xinhuanet.com/english/2018-12/01/c_137644470.htm [<https://perma.cc/JF2J-YAG2>] [hereinafter *Iran Denies U.S. Allegations*].

supply lines.³³ As a result, within a few months, Hadi forces had managed to gain control of the port of Mocha.³⁴

III. Key Players

The key players in the Yemeni armed conflict are categorized into two main categories in this Article: anti-state actors and state actors. State actors have authority to use force in the Yemeni armed conflict, and nonstate/anti-state actors have no such legitimate basis under international law. Section A will list the anti-state actors, and Section B will list the state actors in the Yemeni armed conflict.

A. *Anti-state Actors*

This Article identifies Houthis, Al Qaeda, ISIS, and Hezbollah as the anti-state actors working against or without the legal authority of the Yemeni government. Moreover, in some instances, it also discusses activities undertaken by Iran and the United States against Yemen's interest or without Yemen's consent in the sovereign territory of Yemen.

1. *Houthis*

The Houthis, also known as Ansar Allah, are a Zaidi Shia rebel group using force in Yemen.³⁵ They are nonstate actors, but claimed the presidency in 2017 and assumed control of the government in Yemen.³⁶ The Houthis had been in armed conflict with the Saleh regime since 2004, but later joined forces with Saleh's forces in 2014 to gain control of the capital;³⁷ they are also responsible for killing former president Saleh in 2017.³⁸ The Houthis comprise militant groups and several military units with Zaidi and Sayyid

³³ OPERATION GOLDEN ARROW: THE PROSPECTS FOR A RESOLUTION TO THE YEMENI CONFLICT IN 2017, ARAB CTR. FOR RES. & POL'Y STUD. (Mar. 2017), https://www.dohainstitute.org/en/lists/ACRPS-PDFDocumentLibrary/Yemen_March_2017_Assessment_Report.pdf [https://perma.cc/D9C9-6J8B].

³⁴ *Gulf-Backed Yemeni Forces Capture Red Sea Coast City*, REUTERS (Feb. 7, 2017, 3:54 PM), <https://af.reuters.com/article/africaTech/idAFL5N1FS71O> [https://perma.cc/762U-WJP5].

³⁵ ARRAF, *supra* note 18, at 8.

³⁶ *See id.* at 8–9.

³⁷ *See id.*

³⁸ *Id.*

backgrounds.³⁹ The Houthis control most of the major cities in Yemen, including Sana'a, Al Mahwit, Raymah, Damar, Hajjah, Amran, Saada, Al bayda, and Ibb.⁴⁰ Presently, the U.S. is considering characterizing the Houthis as a terrorist group.⁴¹

2. *Al Qaeda and ISIS*

Al Qaeda has gained a presence in several parts of Yemen since 2011, after the political vacuum created by the Houthis.⁴² This group comprises a sub-branch of Al Qaeda known as Ansar al-Sharia.⁴³ It has a presence in the areas of Abyan, Aden, Balhaf, Mukalla, and Ash Shihr.⁴⁴ Al Qaeda aims to expand its territorial control,⁴⁵ however, Al Qaeda and the Houthis are in armed conflict with each other to secure their different interests.⁴⁶ Similarly, since 2014, ISIS has also gained influence in certain parts of Yemen owing to the political vacuum.⁴⁷ Yet ISIS has less presence in Yemen than Al Qaeda, and it targets mosques and government institutes in its attacks.⁴⁸

3. *Iran*

The Saudi-led coalition blames Iran for supporting and arming

³⁹ U.N. Sec. Council, Final Rep. of the Panel of Experts on Yemen, at 3, U.N. Doc. S/2017/81 (Jan. 31, 2017).

⁴⁰ Ali Chughtai & Faisal Edroos, *Yemen Conflict: Who Controls What*, AL-JAZEERA (Mar. 24, 2019, 3:02 PM), <https://www.aljazeera.com/indepth/interactive/2016/08/yemen-conflict-controls-160814132104300.html> [https://perma.cc/X42G-CYMQ] [hereinafter Chughtai & Edroos].

⁴¹ Missy Ryan, *Trump Administration Considers Naming Yemen's Houthi Rebels a Terrorist Group*, WASH. POST (Nov. 8, 2018), https://www.washingtonpost.com/world/national-security/trump-administration-could-name-houthi-rebels-a-terrorist-group/2018/11/08/4d007bf4-e35b-11e8-b759-3d88a5ce9e19_story.html [https://perma.cc/C62H-A847].

⁴² ARRAF, *supra* note 18, at 9.

⁴³ *Id.*

⁴⁴ Chughtai & Edroos, *supra* note 40.

⁴⁵ DYLAN O'DRISCOLL, VIOLENT EXTREMIST ORGANISATIONS IN YEMEN, K4D HELPDESK 4 (June 25, 2018), https://assets.publishing.service.gov.uk/media/5b6db3aded915d6d132f26dd/Violent_extremist_organisations_in_Yemen.pdf [https://perma.cc/N92Y-YNAR].

⁴⁶ *See id.* at 4.

⁴⁷ *See id.* at 2.

⁴⁸ *See id.*

the Houthis. Iran categorically denies any involvement.⁴⁹ There are claims, nonetheless, that Iran has been providing training and arms to Houthis through Hezbollah.⁵⁰ The UN is of the view that there is no large-scale Iranian involvement or support for the Houthis.⁵¹ Above all, there is a paranoia that Houthis are Iranian-backed Shia.⁵² However, the Zaidi Shias are different from the Twelver Shias in Iran.⁵³ In a UN report, the Panel of Experts found that the weapons materials and technology used by the Houthis were manufactured in or derived from Iran.⁵⁴

4. *Hezbollah*

The Houthis are not dependent on Iran for financial and arms support.⁵⁵ Hezbollah is the Houthis' chief ally in Lebanon.⁵⁶ Hezbollah provides the necessary training and arms support to the Houthis.⁵⁷ A Hezbollah commander said in an interview that "after we are done with Syria, we will start with Yemen, Hezbollah is already there. . . . Who do you think fires Tochka Missiles in Saudi Arabia? It's not Houthis in their sandals, it's us."⁵⁸

⁴⁹ *Iran Denies U.S. Allegations*, *supra* note 32.

⁵⁰ FAREA AL-MUSLIMI, IRAN'S ROLE IN YEMEN EXAGGERATED, BUT DESTRUCTIVE, CENTURY FOUND. (May 29, 2017), <https://production-tcf.imgix.net/app/uploads/2017/05/03104439/irans-role-in-yemen-exaggerated-but-destructive.pdf> [<https://perma.cc/B877-97PN>]. See Mareike Transfeld, *Iran's Small Hand in Yemen*, CARNEGIE ENDOWMENT FOR INT'L PEACE (Feb. 14, 2017), <https://carnegieendowment.org/sada/67988> [<https://perma.cc/E2JA-NRKG>].

⁵¹ Rep. of the S.C., Letter Dated 5 February 2018 from the Permanent Representative of Saudi Arabia to the U.N. Addressed to the President of the Sec. Council, ¶ 62, U.N. Doc. S/2018/93 (Feb. 6, 2017).

⁵² See ARRAF, *supra* note 18, at 10.

⁵³ *Id.*

⁵⁴ See Final Rep. of the Panel of Experts on Yemen (2018), transmitted by Letter dated 26 January 2018 Mandated by Security Council Resolution 2342 (2017) Addressed to the President of the Security Council, ¶ 96, U.N. Doc. S/2018/68 (Jan. 26, 2018).

⁵⁵ JEREMY M. SHARP, CONG. RES. SERV., YEMEN: CIVIL WAR AND REGIONAL INTERVENTION 9 (2018) [hereinafter SHARP].

⁵⁶ *See id.*

⁵⁷ *Id.*

⁵⁸ Alexander Corbeil & Amarnath Amarasingam, *The Houthi Hezbollah: Iran's Train-and-Equip Program in Sanaa*, FOREIGN AFF. (Mar. 31, 2016), <https://www.foreignaffairs.com/articles/2016-03-31/houthi-hezbollah> [<https://perma.cc/EM6Y-Q72R>]. See also SHARP, *supra* note 55, at 9.

5. *United States*

The U.S. has been conducting drone strikes in different regions of Yemen against Al Qaeda and other suspected terrorists since Saleh's era, and continues to do so.⁵⁹ The Yemeni government rejected U.S. authority to use drone strikes in the sovereign territory of Yemen.⁶⁰ In response, the UN acknowledged that the drone strikes by the U.S. do not adhere to the principles of international humanitarian law.⁶¹ In 2017, the Hadi government again formally asked the U.S. government to stop its use of force against suspected terrorists in the sovereign territory of Yemen.⁶²

B. *State Actors*

State actors are parties to the Yemeni conflict that use force with the legal authority of the Yemeni government; these actors include the Hadi government (which is recognized by the UN as the legitimate government of Yemen), the Saleh forces (which have joined the Hadi forces in the fight against the Houthis), and the Saudi-led coalition (which initiated intervention in Yemen against the Houthis, upon the request of the Hadi government).⁶³

1. *Hadi Government*

Most of the military groups under the command of Ali Mohsin are loyal to the present president, Hadi, whereas only a few military units have joined forces with the Saleh forces and the Houthis.⁶⁴ The Hadi forces comprise most of Yemen's military forces and tribal forces.⁶⁵ The Hadi forces are also in charge of the Hadrami Elite forces, which are operating under the UAE's control.⁶⁶ Since

⁵⁹ See ARRAF, *supra* note 18, at 9.

⁶⁰ ALKARAMA FOUNDATION, U.S. DRONE STRIKES IN YEMEN (2019), https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/USA/INT_CCPR_CS_S_USA_16494_E.pdf [<https://perma.cc/H3Q3-L8B8>] [hereinafter ALKARAMA].

⁶¹ *Id.*

⁶² See ARRAF, *supra* note 18, at 9.

⁶³ *Id.* at 8–9.

⁶⁴ See *id.* at 9.

⁶⁵ *Id.*

⁶⁶ Permanent Rep. of Burundi to the U.N., Letter dated March 6, 2017 from the Permanent Rep. of Somalia to the United Nations addressed to the President of the Security Council, ¶ 312, U.N. Doc. S/2017/193 (Mar. 6, 2017). See ARRAF, *supra* note 18, at 9; Ryan Goodman & Alex Moorehead, *UAE, a Key US Partner in Yemen, Implicated in Detainee Abuse*, JUST SECURITY (May 15, 2017), <https://www.justsecurity.org/40978/uae->

2017, the Hadi government has had an alliance with the Saudi-led coalition and Saleh's loyal forces.⁶⁷ The Hadi government has a force presence in the areas of Marib, Shabwa, Lahij, Al Mahrah, Hodeidah, and Al Jawf.⁶⁸

2. *Saleh Forces*

The Saleh forces comprise tribal, political, and military forces that are still loyal to the deceased former president Saleh.⁶⁹ These forces continue to have certain influence in the major regions of Yemen.⁷⁰ The Saleh forces have joined the Hadi forces in the fight against the Houthis since 2017.⁷¹

3. *Saudi-Led Coalition*

In 2015, the Saudi-led coalition began the use of force in Yemen upon invitation from President Hadi with the aim of ousting the Houthi rebellion in the country and gaining control for the legitimate government of President Hadi.⁷² The coalition was initially comprised of nine members, including Saudi Arabia, the UAE, Bahrain, Egypt, Jordan, Kuwait, Morocco, Sudan, and Qatar.⁷³ But, owing to Qatar's diplomatic crises in 2017, Qatar had to leave the coalition.⁷⁴ Recently, Morocco has also desired to leave the coalition.⁷⁵ The operations are mainly led by Saudi Arabia and the UAE, whose agendas seem to diverge from one another at occasions.⁷⁶ Saudi Arabia controls the air operations from its headquarters in Riyadh⁷⁷ and retains power to control ground

key-partner-yemen-implicated-detainee-abuse/ [https://perma.cc/9X7G-Z3BU].

⁶⁷ See ARRAF, *supra* note 18, at 8–9.

⁶⁸ Chugtai & Edroos, *supra* note 40.

⁶⁹ See ARRAF, *supra* note 18, at 8.

⁷⁰ *See id.*

⁷¹ *See id.* at 8–9.

⁷² *See id.* at 9.

⁷³ *See id.* at 9.

⁷⁴ *Id.*

⁷⁵ Amira El Masaiti, *Morocco Re-Evaluates Role in Saudi-led Yemen War Coalition*, WASH. TIMES (Feb. 7, 2019), <https://www.washingtontimes.com/news/2019/feb/7/morocco-freezes-involvement-in-saudi-led-coalition/> [https://perma.cc/B37K-TTTHE].

⁷⁶ See ARRAF, *supra* note 18, at 9.

⁷⁷ Final Rep. of the Panel of Experts on Yemen (2017), transmitted by Letter dated 27 January 2017 from the Panel of Experts on Yemen Addressed to the President of the

operations in Marib, whereas the UAE controls ground operations in Aden and in the areas around Mukalla.⁷⁸

i. United States (U.S.)

After establishing the coalition, Saudi Arabia sought U.S. military support.⁷⁹ President Obama authorized logistical and intelligence support to the Saudi-led coalition in 2015.⁸⁰ Since then, the U.S. has been supplying weapons to Saudi Arabia for the use of force in Yemen and has signed weapon sales deals running into the hundreds of billions of dollars, and Saudi Arabia has been found on several occasions to be in violation of international humanitarian law in Yemen.⁸¹ The U.S. also supplies air refueling for coalition jets for airstrikes in Yemen.⁸²

ii. United Kingdom and France

The United Kingdom and France⁸³ have been providing arms to the Saudi Arabian-led coalition for the use of force in Yemen despite the coalition's violations of International Humanitarian Law (IHL).⁸⁴ The UK has sold arms worth more than £3.3 billion to Saudi Arabia, and the UK High Court also ruled in July 2017 that

Security Council, ¶ 30, U.N. Doc. S/2018/193 (Jan. 31, 2017).

⁷⁸ *Id.*

⁷⁹ See SHARP, *supra* note 55, at 12.

⁸⁰ *See id.*

⁸¹ *Yemen: Airstrikes Against Civilians Are an Alarming Trend*, INT'L COMM. OF THE RED CROSS [ICRC] (Aug. 8, 2017), <https://www.icrc.org/en/document/yemen-airstrikes-against-civilians-are-alarming-trend> [<https://perma.cc/29G8-CAEQ>].

⁸² Jesse Mechanic, *The Ongoing U.S. Role in the Decimation of Yemen*, HUFFINGTON POST (Feb. 18, 2017, 7:13 AM), https://www.huffpost.com/entry/the-ongoing-us-role-in-the-decimation-of-yemen_b_58a65d82e4b026a89a7a2913 [<https://perma.cc/2WHK-ZH9X>]. See also Oriana Pawlyk, *Two Years In to Yemen War, US Ramps Up Refueling of Saudi Jets*, MILITARY.COM (Feb. 15, 2017), <https://www.military.com/daily-news/2017/02/15/2-years-yemen-war-us-ramps-up-refueling-saudi-jets.html> [<https://perma.cc/HC89-WR3J>].

⁸³ *Court Ruling over UK Arms Sales to Saudi Arabia a 'Deadly Blow' to Yemeni Civilians*, AMNESTY INT'L (July 10, 2017), <https://www.amnesty.org/en/latest/news/2017/07/court-ruling-over-uk-arms-sales-to-saudi-arabia-a-deadly-blow-to-yemeni-civilians/> [<https://perma.cc/Q3VW-M9FF>].

⁸⁴ *UK Arms Sales to Saudi Arabia*, CAMPAIGN AGAINST ARMS TRADE (Feb. 3, 2017), <https://www.caat.org.uk/campaigns/stop-arming-saudi/arms-sales> [<https://perma.cc/P6E7-NP4F>].

arms sale to Saudi Arabia was lawful.⁸⁵ The UK and France train Saudi-led coalition pilots and oversee their operations from their headquarters in Riyadh.⁸⁶

IV. Use of Force

The Houthis took control of missiles when they took over the capital city, Sana'a.⁸⁷ Since 2016, the Houthis have been firing these missiles, which have a range of 500–620 miles, into the sovereign territory of Saudi Arabia.⁸⁸ In November 2017, when the Houthis fired longer-range Burkan-2H missiles targeting the populated cities of Saudi Arabia, the U.S. concluded that the missiles used had Iranian technology.⁸⁹ Since the Houthis had not used such technology before this incident, the U.S. concluded that Iran had supported the Houthis.⁹⁰ The UN acknowledged that the missiles had a technology similar to that possessed by Iran, and that it is probable that they had been manufactured abroad.⁹¹ Saudi Arabia has also successfully intercepted a missile fired by the Houthis that was targeted to destroy Makkah, which is the holiest place for Muslims worldwide.⁹²

The Houthis took over the capital city, Sana'a, and major

⁸⁵ See ARRAF, *supra* note 18, at 10.

⁸⁶ Final Rep. of the Panel of Experts on Yemen (2017), transmitted by Letter dated 27 January 2017 from the Panel of Experts on Yemen Addressed to the President of the Security Council, ¶ 30, U.N. Doc. S/2018/193 (Jan. 31, 2017).

⁸⁷ See SHARP, *supra* note 55, at 10.

⁸⁸ See *id.*

⁸⁹ Press Release, U.S. Mission to the U.N., Ambassador Haley on Weapons of Iranian Origin Used in Attack on Saudi Arabia (Nov. 7, 2017), <https://usun.usmission.gov/press-release-ambassador-haley-on-weapons-of-iranian-origin-used-in-attack-on-saudi-arabia/> [<https://perma.cc/GY3G-KHUE>]. See also SHARP, *supra* note 55, at 10.

⁹⁰ House Armed Services Committee Hearing on Terrorism and Iran, 115th Cong. 27-28 (2018) (statement of Rep. Langevin, Member, House Armed Services Committee). See also SHARP, *supra* note 55, at 10.

⁹¹ Agence France-Presse, *UN Panel Finds Further Evidence of Iran Link to Yemen Missiles*, THE NAT'L (July 31, 2018), <https://www.thenational.ae/world/mena/un-panel-finds-further-evidence-of-iran-link-to-yemen-missiles-1.755610> [<https://perma.cc/8Z3W-YD6Q>]. See also SHARP, *supra* note 55, at 10.

⁹² *Saudi Arabia intercepts Houthi Missile Near Mecca*, AL-JAZEERA (Oct. 28, 2016), <https://www.aljazeera.com/news/2016/10/yemens-houthis-accused-firing-missile-mecca-161028132859767.html> [<https://perma.cc/Y9T5-52TE>].

institutes of the government,⁹³ and unlawfully ousted the legitimate Hadi government.⁹⁴ In addition, the Houthis continue to use lethal force against protesters,⁹⁵ while also using civilians as human shields.⁹⁶ They have captured, tortured, and murdered hostages,⁹⁷ bombed and shelled civilians including children,⁹⁸ kidnapped journalists,⁹⁹ and killed the former president, Saleh.¹⁰⁰ Houthis have captured coastlines, have been targeting foreign ships, endangering maritime security,¹⁰¹ and have fired more than 100 missiles in the sovereign territory of Saudi Arabia.¹⁰² In sum, they have destroyed Yemen by initiating and conducting civil war against their own state, overthrown a government in a coup, taken over the capital,

⁹³ See ARRAF, *supra* note 18, at 8–9.

⁹⁴ Mohammed Mukhashef, *Yemen's Pro-Government Coalition Fractures as Separatists Grab Control in Aden*, REUTERS (Aug. 10, 2019), <https://www.reuters.com/article/us-yemen-security/yemens-pro-government-coalition-fractures-as-separatists-grab-control-in-aden-idUSKCN1V007B> [<https://perma.cc/9EHR-65XG>].

⁹⁵ *Yemen: Houthis Use Deadly Force Against Protesters*, HUM. RTS. WATCH (Apr. 7, 2015), <https://www.hrw.org/news/2015/04/07/yemen-houthis-use-deadly-force-against-protesters> [<https://perma.cc/Q42L-2UVC>].

⁹⁶ *Houthi Militia 'Continues to Use Civilians as Human Shields'*, ARAB NEWS (Nov. 12, 2018), <https://www.arabnews.com/node/1403491/saudi-arabia> [<https://perma.cc/2J3H-46CL>].

⁹⁷ *Yemen's Houthi Hostage-Taking*, HUM. RTS. WATCH (Sept. 25, 2018), <https://www.hrw.org/news/2018/09/25/yemen-houthi-hostage-taking> [<https://perma.cc/BSM9-H7J6>].

⁹⁸ Mohammed Al-Rumim, *This Is How We Welcomed 2019: Civilians Killed in Houthi Attack*, AL-JAZEERA (Jan. 6, 2019), <https://www.aljazeera.com/news/2019/01/welcomed-2019-civilians-killed-houthi-attack-190106141240211.html> [<https://perma.cc/84U4-UEHY>].

⁹⁹ Alkhatib Alrawhani, *The Houthis Have No Right to Talk About Freedom of the Press*, WASH. POST (Nov. 12, 2018), <https://www.washingtonpost.com/news/democracy-post/wp/2018/11/12/the-houthis-have-no-right-to-talk-about-freedom-of-the-press/> [<https://perma.cc/K3AF-F5KT>].

¹⁰⁰ Patrick Wintour, *Yemen Houthi Rebels Kill Former President Ali Abdullah Saleh*, THE GUARDIAN (Dec. 4, 2017), <https://www.theguardian.com/world/2017/dec/04/former-yemen-president-saleh-killed-in-fresh-fighting> [<https://perma.cc/A33G-PMTY>].

¹⁰¹ Curtis Bell, *Yemen's War Against the Houthis Has Always Been About Ports and the Sea*, STABLE SEAS (Aug. 13, 2018), <https://stableseas.org/rule-of-law/yemen's-war-against-houthis-has-always-been-about-ports-and-sea> [<https://perma.cc/MQ29-XX6Y>].

¹⁰² Bruce Riedel, *What You Need to Know about the Latest Houthi Attack on Riyadh*, BROOKINGS INST. (Mar. 27, 2018), <https://www.brookings.edu/blog/order-from-chaos/2018/03/27/what-you-need-to-know-about-the-latest-houthi-attack-on-riyadh/> [<https://perma.cc/5KT3-GSY4>].

Sana'a, killed the former president,¹⁰³ killed civilians, attacked other states by sea and land, and successfully disturbed the peace and security of not only Yemen, but the whole region.

In response, the present legitimate Hadi government invited its regional allies to restore the governmental mandate and peace in the region.¹⁰⁴ As a result, the Saudi-led government has initiated several operations to recover control of Yemen's shores and governmental institutions, including but not limited to Operation Decisive Storm¹⁰⁵ and Operation Golden Arrow¹⁰⁶ in 2015. This intervention and civilian war between the Houthis and the Hadi government/Saudi-led coalition has created the worst humanitarian crisis in the world, according to UN reports,¹⁰⁷ killing thousands of civilians¹⁰⁸ and creating a food and health crisis among Yemen's population.¹⁰⁹

A. Invitation/Consent

The use of force in other states is prohibited by the UN Charter;¹¹⁰ the only exceptions are the use of force in self-defense¹¹¹ and the use of force with UN Security Council authorization.¹¹² Iran

¹⁰³ See ARRAF, *supra* note 18, at 8–9.

¹⁰⁴ See Ferro & Ruys, *supra* note 10. See also Permanent Rep. of Qatar, Identical Letters dated 26 March 2015 from the Permanent Representative of Qatar to the United Nations addressed to the Secretary-General and the President of the Security Council, 3–5, U.N. Doc. S/2015/217 (Mar. 27, 2015).

¹⁰⁵ See ARRAF, *supra* note 18, at 5. See also Oona Hathaway et al., *The Yemen Crisis and the Law: The Saudi-Led Campaign and U.S. Involvement*, JUST SECURITY (Feb. 20, 2018), <https://www.justsecurity.org/52718/js-yemen-crisis-forum-saudi-campaign-us-involvement/> [<https://perma.cc/UL3T-LMEM>]. See also Helene Cooper et al., *Army Special Forces Secretly Help Saudis Combat Threat from Yemen Rebels*, N.Y. TIMES (May 3, 2018), <https://www.nytimes.com/2018/05/03/us/politics/green-berets-saudi-yemen-border-houthi.html> [<https://perma.cc/2H27-A5WJ>]; *Non-International Armed Conflicts*, *supra* note 13.

¹⁰⁶ *Yemen at the UN*, *supra* note 30. See also Seche, *supra* note 30.

¹⁰⁷ YEMEN COUNTRY UPDATE #7, INT'L CRISIS GROUP (Mar. 8, 2019), <https://www.crisisgroup.org/middle-east-north-africa/gulf-and-arabian-peninsula/yemen/crisis-group-yemen-update-7> [<https://perma.cc/Q3AC-DC5V>].

¹⁰⁸ See COPPI, *supra* note 1, at 6.

¹⁰⁹ U.N. Office for the Coordination of Humanitarian Affairs, *Yemen Humanitarian Bulletin* (Nov. 20, 2017).

¹¹⁰ U.N. Charter art. 2, ¶ 4.

¹¹¹ U.N. Charter art. 51.

¹¹² U.N. Charter arts. 39–41.

has accused Saudi Arabia of using force in Yemen as an unlawful international intervention in Yemen's sovereign territory.¹¹³ In response, Saudi Arabia claims that the legitimate government of Yemen is the Hadi government, referring to the UN's statements, and that this legitimate government has invited Saudi Arabia to use force in Yemen to restore order and peace to counter the illegitimate use of force by the Houthis.¹¹⁴

In a letter dated March 25, 2015, President Hadi officially invited intervention and the use of force in Yemen to restore peace.¹¹⁵ The letter read:

The threat is therefore not only to the security of Yemen, but also to that of the entire region and to international peace and security The Houthi militias have committed several acts of aggression, most recently deploying military columns to attack and take control of Aden and the rest of the south I therefore appeal to you, and to the allied States that you represent, to stand by the Yemeni people as you have always done and come to the country's aid. I urge you, in accordance with the right of self-defence set forth in Article 51 of the Charter of the United Nations, and with the Charter of the League of Arab States and the Treaty on Joint Defence, to provide immediate support in every form and take the necessary measures, including military intervention, to protect Yemen and its people from the ongoing Houthi aggression, repel the attack that is expected at any moment on Aden and the other cities of the South, and help Yemen to confront Al-Qaida and Islamic State in Iraq and the Levant.¹¹⁶

Therefore, it is relevant to enquire about the legality of using force by invitation or consent of the host state, and then to evaluate whether the use of force by Saudi Arabia is aligned with the international law of using force.

1. International Law on Consent/Intervention by Invitation

Intervention by invitation is the use of force by a foreign state

¹¹³ KJETIL SELVIK, *WAR IN YEMEN: THE VIEW FROM IRAN* (2015).

¹¹⁴ *Id.*

¹¹⁵ U.N.S.C. Qatar Letters, *supra* note 10.

¹¹⁶ *See* Ferro & Ruys, *supra* note 10. *See also* U.N.S.C. Qatar Letters, *supra* note 10.

in a host state under the legal authority of the host state.¹¹⁷ Such intervention is usually acted upon in aid of the legitimate government to maintain peace and order in the host state.¹¹⁸ First, consent by the highest acting official of the host state is required¹¹⁹ to be able to identify any abuse of consent. Second, the legitimacy of the consenting government must also be recognized by the international community.¹²⁰ In this regard, recognition of the host government as a legitimate government by the UN is enough to establish the legitimacy of the consent by the acting government.¹²¹

In the state practice under customary international law, consent or invitations by host states against military coups and secessionist groups have never been opposed by any states.¹²² Other cases of State practice have taken place, inter alia, in Afghanistan (beginning in 2001, UNSC Res. 1386 [2001]); the Middle East (Lebanon 1976–90, Yemen 1978, Iraq since 2004 [UNSC Res. 1546 (2004)]); in Africa (Angola 1976–88, Ethiopia 1978, Sierra Leone 2000); in Southeast Asia (Laos 1975, Cambodia 1978, Timor-Leste 2006); in South Asia (Sikkim 1949, Nepal 1951 and 1953, Sri Lanka 1987–90, Maldives 1988); within micro States (St. Vincent and the Grenadines 1979, Vanuatu 1980, Trinidad and Tobago 1990, Solomon Islands 2003, Tonga 2006); and in Western Europe (Bosnia and Herzegovina 1995, Macedonia 2001, Kosovo 2008). Taken together, these cases show that intervention by invitation of the government has been practised in all regions.¹²³

Moreover, the International Court of Justice (ICJ), in the landmark *Nicaragua*¹²⁴ case, set a general dictum and stated that: “it is difficult to see what would remain of the principle of non-intervention in international law if intervention, which is already allowable at the request of the government of a State, were also to

¹¹⁷ See Ferro & Ruys, *supra* note 10.

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ STEFAN TALMON, *RECOGNITION OF GOVERNMENTS IN INTERNATIONAL LAW* 149 (1998).

¹²² Georg Nolte, *Intervention by Invitation*, *MAX PLANCK ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW* (2010) [hereinafter Nolte].

¹²³ *Id.*

¹²⁴ *Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.)*, Judgment, 1986 I.C.J. 14 (June 27).

be allowed at the request of the opposition.”¹²⁵ Similarly, in the case of *DRC v. Uganda*,¹²⁶ the ICJ established that intervention by invitation is “allowable at the request of the government.”¹²⁷ In sum, intervention by invitation is legally permissible under international laws and doctrines of using force, which are endorsed by state practice, the practice of the UN Security Council (UNSC),¹²⁸ the case law of the ICJ,¹²⁹ and the definition of aggression by the UN General Assembly.¹³⁰ Therefore, under customary international law, intervention by the invitation of the host state is seen as a third exception to the UN Charter’s prohibition on using force.¹³¹

In the present case, it is clear that the Hadi government has been recognized as the legitimate government by the UN: Resolution 2216 (2015) acknowledged President Hadi as the legitimate acting president of the government of Yemen.¹³² The UN has also acknowledged the letter of invitation by the highest official, President Hadi, to the Saudi-led coalition in Yemen.¹³³ Therefore, the UN unequivocally implies that the actions undertaken by the Saudi-led coalition do not violate the international law of using force, the law of nonintervention, or the prohibition on the use of force, because they are aligned with the customary laws of intervention by invitation endorsed by state practice,¹³⁴ ICJ case law,¹³⁵ and legal doctrines.¹³⁶ On the other hand, the use of drones by the U.S. against suspected terrorists in the sovereign territory of Yemen has no legal basis in the international law of using force, since the Yemeni government has categorically refused the U.S.

¹²⁵ *Id.* at 126, ¶ 246.

¹²⁶ *Armed Activities on the Territory of the Congo (Dem. Rep. Congo v. Uganda)*, Judgment, 2005 I.C.J. 168 (Dec. 19).

¹²⁷ *Dem. Rep. Congo v. Uganda*, 2005 I.C.J. 196–99, ¶¶ 42–53.

¹²⁸ *See* S.C. Res. 387 (Mar. 31, 1976).

¹²⁹ *Nicar. v. U.S.*, 1986 I.C.J. 126, ¶ 246. *See also* *Dem. Rep. Congo v. Uganda*, 2005 I.C.J. 196–99, ¶¶ 42–53.

¹³⁰ G.A. Res. 3314 (XXIX), ¶ 3(e) (Dec. 14, 1974).

¹³¹ *See* *Nicar. v. U.S.*, 1986 I.C.J. 14; *Dem. Rep. Congo v. Uganda*, 2005 I.C.J. 168.

¹³² S.C. Res. 2216 (Apr. 14, 2015).

¹³³ *Id.*

¹³⁴ *See* Nolte, *supra* note 122.

¹³⁵ *Nicar. v. U.S.*, 1986 I.C.J. 126, ¶ 246. *See also* *Dem. Rep. Congo v. Uganda*, 2005 I.C.J. 196–99, ¶¶ 42–53.

¹³⁶ G.A. Res. 3314 (XXIX), ¶ 3(e) (Dec. 14, 1974).

permission to use force in its sovereign territory.¹³⁷

B. International Stance

Most Arab nations and several Western countries have supported the actions of the Saudi-led coalition in Yemen. For example, the League of Arab States “fully welcome[d] and support[ed] the military operations in defence [sic] of legitimate authority in Yemen . . . by the coalition composed of the States members of the Gulf Cooperation Council and a number of Arab States” and emphasized that the operation was “grounded in the Arab Treaty of Joint Defense and Article 51 of the UN Charter.”¹³⁸ In the West, the United States has supported and acknowledged that the use of force by the Saudi Arabia-led coalition was authorized by the legitimate government of President Hadi.¹³⁹ Similarly, the United Kingdom,¹⁴⁰ France,¹⁴¹ and Canada¹⁴² have also endorsed and supported Saudi actions to restore peace and stability in the region.

On the other side, international institutions and certain states preferred to take a neutral stance, reiterating that the peace, diplomatic, and political talks and negotiations are the only key to peace and stability in Yemen and the surrounding region. For instance, the Secretary-General of the UN, Ban Ki-moon, stated that “negotiations remain the only option for ultimately resolving the Yemeni crisis.”¹⁴³ Similarly, EU representatives specified that

¹³⁷ See ALKARAMA, *supra* note 60.

¹³⁸ Permanent Observer of the League of Arab States to the U.N., Note verbale dated Apr. 2, 2015 from the Permanent Observer of the League of Arab States to the United Nations addressed to the President of the Security Council, U.N. Doc. S/2015/232 (Apr. 15, 2015).

¹³⁹ WHITE HOUSE OFFICE OF THE PRESS SEC’Y, STATEMENT BY NSC SPOKESPERSON BERNADETTE MEEHAN ON THE SITUATION IN YEMEN (2015).

¹⁴⁰ Peter Foster, Louisa Loveluck & Almgidat Mojalli, *UK ‘Will Support Saudi-led Assault on Yemeni Rebels – But Not Engaging in Combat,’* THE TELEGRAPH (Mar. 27, 2015, 6:41 PM), <https://www.telegraph.co.uk/news/worldnews/middleeast/yemen/11500518/UK-will-support-Saudi-led-assault-on-Yemeni-rebels-but-not-engaging-in-combat.html> [https://perma.cc/6H4X-VKTY].

¹⁴¹ MINISTRY OF EUR. AND FOREIGN AFFAIRS, YEMEN - SITUATION (Mar. 26, 2015) (2015).

¹⁴² DEP’T OF FOREIGN AFFAIRS, TRADE AND DEV., MINISTER NICHOLSON CONCERNED BY CRISIS IN YEMEN (2015).

¹⁴³ Press Release, U.N. Secretariat, Noting Saudi Arabia Has Begun Military Operations in Yemen, Secretary-General Says Negotiations Remain Only Option for

“military action is not a solution. . . . Only a broad political consensus through negotiations can provide a sustainable solution.”¹⁴⁴ Likewise, China,¹⁴⁵ Russia,¹⁴⁶ and Oman¹⁴⁷ have argued that political and peace dialogues are the only solution to the Yemeni crisis.

However, a couple of countries have suggested that the intervention of Saudi Arabia has no legal basis in the international laws of using force. For instance, Iran accused Saudi Arabia of violating Article 2(4) of the UN Charter,¹⁴⁸ which prohibits the use of force in other countries.¹⁴⁹ Similarly, Russia argued that the Saudi-led intervention in Yemen has no legal basis in the international laws of using force.¹⁵⁰ Iraq took a somewhat similar stance and stated that there should be no interference in the internal matters of Yemen.¹⁵¹ Before the Saudi-led coalition intervention in Yemen, the UNSC declared that there should be no interference in Yemen’s internal affairs.¹⁵² However, after the Saudi intervention, the UNSC, in Resolution 2216 (2015), acknowledged the letter by President Hadi to the coalition to use force in Yemen.¹⁵³ The resolution neither authorized nor denounced the Saudi intervention in Yemen.¹⁵⁴

Resolving Yemeni Crisis, U.N. Doc. SG/SM/16621 (Mar. 26, 2015).

¹⁴⁴ EUROPEAN EXTERNAL ACTION SERV., STATEMENT OF THE HIGH REPRESENTATIVE AND VICE PRESIDENT FEDERICA MOGHERINI ON THE SITUATION IN YEMEN (2015).

¹⁴⁵ MINISTRY OF FOREIGN AFFAIRS OF CHINA, FOREIGN MINISTRY SPOKESPERSON HUA CHUNYING’S REGULAR PRESS CONFERENCE ON MARCH 26, 2015 (2015).

¹⁴⁶ See Ferro & Ruys, *supra* note 10.

¹⁴⁷ Noah Browning, *Interview-Yemen Combatants Not Ready for Talks, Says Neighbour Oman*, REUTERS (Apr. 2, 2015, 1:48 PM), <https://uk.reuters.com/article/yemen-security-oman/interview-yemen-combatants-not-ready-for-talks-says-neighbour-oman-idUKL6N0WZ3E720150402> [<https://perma.cc/S6PY-RYE5>].

¹⁴⁸ U.N. Charter art. 2, ¶ 4.

¹⁴⁹ See Ferro & Ruys, *supra* note 10.

¹⁵⁰ See *id.*

¹⁵¹ Michael R. Gordon & Eric Schmitt, *Tensions Flare Between Iraq and Saudi Arabia in U.S. Coalition*, N.Y. TIMES (Apr. 15, 2015), <https://www.nytimes.com/2015/04/16/world/middleeast/iraqi-prime-minister-criticizes-saudi-intervention-in-yemen.html> [<https://perma.cc/Q3GL-4XR9>]. See also Ferro & Ruys, *supra* note 10, at 2.

¹⁵² S.C. Pres. Statement 2015/8 (Mar. 22, 2015).

¹⁵³ S.C. Res. 2216 (Apr. 14, 2015).

¹⁵⁴ See Ferro & Ruys, *supra* note 10.

V. Nature of the Conflict

Every armed conflict can be categorized as an international or a non-international armed conflict under international humanitarian laws. International armed conflicts are fought between two or more states.¹⁵⁵ Non-international armed conflicts are fought between the armed forces of one or more states on one side, and nonstate actors on the other side.¹⁵⁶ International and non-international armed conflicts may also coexist in certain complex conditions.¹⁵⁷ Moreover, a non-international armed conflict becomes an international armed conflict as a proxy war only if the nonstate party to the non-international armed conflict is controlled by a state.¹⁵⁸

A. Non-international Armed Conflict

There are two major prerequisites for a non-international armed conflict: that there is an intensive hostility between the two parties¹⁵⁹ and that the nonstate party is well organized.¹⁶⁰ The markers or indicators of intensive hostility include the duration and intensity of hostility, number of combatants, sophistication of weapons, number of casualties, extent of destruction, and the involvement of international bodies such as the UN,¹⁶¹ whereas the markers of an

¹⁵⁵ Convention Relative to the Protection of Civilian Persons in Time of War art. 2, Aug. 12, 1949, 75 U.N.T.S. 287 [hereinafter GC IV].

¹⁵⁶ See *id.*, art. 3. See also Prosecutor v. Tadić, Case No. IT-94-1-I, Decision on Defence Motion for Interlocutory Appeal on Jurisdiction, ¶ 70 (Int'l Crim. Trib. for the Former Yugoslavia Oct. 2, 1995); ICRC, *Commentary on the First Geneva Convention: Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*, art. 3, ¶¶ 402–05 (2d ed. 2016) [hereinafter *Commentary on the First Geneva Convention*].

¹⁵⁷ Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.), Judgment, 1986 I.C.J. 14, 114, ¶ 219 (June 27, 1986).

¹⁵⁸ *Id.* at 62, ¶ 109. See also *Commentary on the First Geneva Convention*, *supra* note 156, art. 2.

¹⁵⁹ Prosecutor v. Tadić, Case No. IT-94-1-I, ¶ 562. See also ICRC, *Commentary on the Fourth Geneva Convention: Convention (IV) Relative to the Protection of Civilian Persons in Time of War* (Jean S. Pictet ed., 1959) [hereinafter *Commentary on the Fourth Geneva Convention*].

¹⁶⁰ Prosecutor v. Tadić, Case No. IT-94-1-I, ¶ 562. See also *Commentary on the Fourth Geneva Convention*, *supra* note 159.

¹⁶¹ See Prosecutor v. Haradinaj, Case No. IT-04-84-T, Judgment, ¶ 49 (Int'l Crim. Trib. for the Former Yugoslavia Apr. 3, 2008) (“These indicative factors include the number, duration and intensity of individual confrontations; the type of weapons and other military equipment used; the number and calibre of munitions fired; the number of persons and type of forces partaking in the fighting; the number of casualties; the extent of material

organized nonstate party include the “presence of command structure in the non-state party, rules among them, existence of headquarters, control of territory, access to sophisticated weapons, military training, military operations, [and] ability to sign peace accords.”¹⁶²

In this context, the present armed conflict of the Saudi-led coalition acting on the directions of the Hadi government on one side, against the Houthi rebels on the other, can be characterized as a non-international armed conflict¹⁶³ because the Houthis are considered an organized nonstate group¹⁶⁴ that has gained control of the national capital and exiled the Hadi government.¹⁶⁵ However, only if it can be proven that Iran is in control of the Houthis can it be possible for this armed conflict to be characterized as an international armed conflict. Yet, as a matter of fact, Iran does not exercise any direct or proven control over the Houthis,¹⁶⁶ so this conflict is not an international armed conflict.

VI. Humanitarian Crisis

Currently, Yemen is facing the “largest food insecurity emergency in the world.”¹⁶⁷ Even before the war broke out, Yemen was reported to be one of the poorest countries in the world, dependent on international aid for a majority of its food supply.¹⁶⁸ Since the war broke out, the humanitarian crisis in Yemen has been dubbed by the UN as the worst and largest human crisis in the

destruction; and the number of civilians fleeing combat zones. The involvement of the UN Security Council may also be a reflection of the intensity of a conflict.”).

¹⁶² *Id.* ¶ 60. See also Prosecutor v. Lukić, Case No. IT-98-32/1-T, Judgment, ¶¶ 80–84 (Int’l Crim. Trib. for the Former Yugoslavia July 20, 2009); Prosecutor v. Limaj, Case No. IT-03-66-T, Judgment, ¶¶ 94–170 (Int’l Crim. Trib. for the Former Yugoslavia Nov. 30, 2005).

¹⁶³ See *Bearing the Brunt*, *supra* note 9, at 5.

¹⁶⁴ See *Commentary on the First Geneva Convention*, *supra* note 156, art. 2, ¶¶ 257–63.

¹⁶⁵ See *Bearing the Brunt*, *supra* note 9, at 6.

¹⁶⁶ Philippe Sands et al., *The Lawfulness of the Authorisation by the United Kingdom of Weapons and Related Items for Export to Saudi Arabia in the Context of Saudi Arabia’s Military Intervention in Yemen*, AMNESTY INTL. ¶ 2.1 (Dec. 11, 2015), https://www.amnesty.org.uk/files/webfm/Documents/issues/legal_opinion_on_saudi_arms_exports_16_december_2015_correction.pdf [<https://perma.cc/WT98-N9JG>].

¹⁶⁷ U.N. President of the Sec. Council, *The Situation in the Middle East*, at 2, U.N. Doc. S/PRST/2017/7 (June 15, 2017).

¹⁶⁸ See COPPI, *supra* note 1, at 9.

world.¹⁶⁹ The economy, health care system, infrastructure, rule of law, and governance in Yemen have been devastated.¹⁷⁰ Alongside these issues, Yemen is suffering from outbreaks of deadly diseases, violence, poverty, and the displacement of its population.¹⁷¹ More than three million people are internally displaced within Yemen,¹⁷² and more than 160,000 people have migrated to other countries as refugees.¹⁷³ Saudi Arabia has received the most.¹⁷⁴ Twenty million people need humanitarian aid and more than ten million people need food aid.¹⁷⁵ Almost 10,000 innocent civilians have lost their lives in indiscriminate attacks.¹⁷⁶ Thousands of those innocents have been small children.¹⁷⁷ Approximately 20 people die every day from deadly diseases or from war wounds in Yemen.¹⁷⁸ Additionally, there is widespread use of explosives, land mines, and cluster bombs in Yemen, and thousands of children have even been recruited to be used in fighting.¹⁷⁹ In this war, more than 70 hospitals and 170 schools have been targeted.¹⁸⁰ There have also been indiscriminate attacks on 357 food farms, water infrastructure, markets, and stores.¹⁸¹ This destruction has resulted in \$7 billion of economic

¹⁶⁹ See *id.* at 6.

¹⁷⁰ Beverley Milton-Edwards, *Yemen: Ceasefires and Lost Opportunities*, BROOKINGS INST. (Nov. 29, 2016), <https://www.brookings.edu/blog/markaz/2016/11/29/yemen-ceasefires-and-lost-opportunities/> [<https://perma.cc/AJ3X-W4WD>].

¹⁷¹ See COPPI, *supra* note 1, at 5.

¹⁷² TASK FORCE ON POPULATION MOVEMENT [TFPM], YEMEN: 16TH REPORT 2 (Oct. 2017).

¹⁷³ U.N. Office of the High Comm’r for Refugees, *Yemen Situation Regional Refugee and Migrant Response Plan*, at 2 (Dec. 2015).

¹⁷⁴ U.N. Development Programme [UNDP], *Assessing the Impact of War on Development in Yemen 22* (2019) [hereinafter *Impact of War*].

¹⁷⁵ U.N. Office for the Coordination of Humanitarian Affairs [OCHA], *Yemen Humanitarian Bulletin*, at 1 (Nov. 20, 2017).

¹⁷⁶ *Impact of War*, *supra* note 174, at 49.

¹⁷⁷ U.N. Secretary-General, *Children and Armed Conflict*, ¶ 6, U.N. Doc. A/72/361–S/2017/821 (Aug. 24, 2017).

¹⁷⁸ Stephanie Nebehay, *World Has Just Months to Stop Starvation in Yemen, Somalia: Red Cross*, REUTERS (Mar. 22, 2017, 6:16 AM), <https://www.reuters.com/article/us-africa-hunger/world-has-just-months-to-stop-starvation-in-yemen-somalia-red-cross-idUSKBN16T132> [<https://perma.cc/Q8PH-S5N6>].

¹⁷⁹ See COPPI, *supra* note 1, at 6–7.

¹⁸⁰ *Id.* at 10.

¹⁸¹ See *id.*

loss in damages, more than \$7 billion of loss in production,¹⁸² and a 37.5% decline in Yemen's GDP.¹⁸³

Yemen lacks the resources to run its health care system,¹⁸⁴ and it is running short of doctors, supplies, fuel, and medical equipment.¹⁸⁵ Approximately two million people in Yemen do not have access to safe drinking water and sanitation facilities.¹⁸⁶ As a result, there has been a cholera outbreak with 895,000 suspected cases, resulting in the deaths of more than 2,200 people.¹⁸⁷ Millions of children and migrants have been declared at risk of cholera, measles, and malnutrition.¹⁸⁸ Yemen's food supply is 90% reliant on imports; since the occupation and seizure of the Hodeidah port, the food crisis in Yemen is at a record high¹⁸⁹ causing sky-high food prices,¹⁹⁰ which makes food unaffordable for the general public.¹⁹¹

A. *Applicable Laws on Humanitarian Aid*

Article 14 of Additional Protocol (AP) II of the Geneva Conventions¹⁹² prohibits the parties of a conflict from employing

¹⁸² Yara Bayoumy, *Exclusive: Civil War Costs Yemen \$14 Billion in Damage and Economic Losses – Report*, REUTERS (Aug. 16, 2016, 4:46 PM), <https://www.reuters.com/article/us-yemen-security-damages/exclusive-civil-war-costs-yemen-14-billion-in-damage-and-economic-losses-report-idUSKCN10R2B7> [<https://perma.cc/E7TF-9AT3>].

¹⁸³ *Yemen's Economic Outlook- October 2017*, WORLD BANK (Oct. 11, 2017), <https://www.worldbank.org/en/country/yemen/publication/yemen-economic-outlook-october-2017> [<https://perma.cc/FF6R-NARL>].

¹⁸⁴ See COPPI, *supra* note 1, at 8.

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ U.N. Office for the Coordination of Humanitarian Affairs [OCHA], *Yemen: Fastest Growing Cholera Epidemic Ever Recorded Brings Number of Cases to 895,000* (Nov. 2, 2017), <https://www.unocha.org/story/yemen-fastest-growing-cholera-epidemic-ever-recorded-brings-number-cases-895000> [<https://perma.cc/9LFN-EKCN>].

¹⁸⁸ *Millions of Yemeni Children Facing Triple Threat of Cholera, Measles and Malnutrition*, RELIEFWEB (Oct. 31, 2016), <https://reliefweb.int/report/yemen/millions-yemeni-children-facing-triple-threat-cholera-measles-and-malnutrition> [<https://perma.cc/KZ6U-Y38E>].

¹⁸⁹ See COPPI, *supra* note 1, at 10.

¹⁹⁰ Faisal Edroos, *Saudi Easing of Yemen Siege 'No Cause for Celebration,'* AL-JAZEERA (Nov. 22, 2017), <https://www.aljazeera.com/news/2017/11/saudi-ease-yemen-siege-millions-suffer-171122173712350.html> [<https://perma.cc/GYT2-7LN4>].

¹⁹¹ See COPPI, *supra* note 1, at 10.

¹⁹² Protocol Additional to the Geneva Convention of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), art. 14, June

starvation as a military tactic and characterizes the targeting of objects that are indispensable for human life, such as the water system,¹⁹³ a war crime¹⁹⁴ and a crime against humanity.¹⁹⁵ Denying access to food, water, and health care also violates human rights laws.¹⁹⁶ Humanitarian law allows neutral parties to be able to provide humanitarian assistance during an armed conflict,¹⁹⁷ most particularly food and medical relief.¹⁹⁸ Under customary international law, it is the duty of the parties to a conflict to allow passage to this humanitarian aid.¹⁹⁹ Since the coalition is acting with the consent and authority of the Yemeni government, it is the Hadi government's responsibility to ensure that the humanitarian law of respecting humanitarian aid is followed by the coalition and its own government.²⁰⁰

B. Obstruction of Humanitarian Aid

Both parties to the conflict, the Houthis and the Saudi-led coalition, are responsible for hindering humanitarian aid from reaching civilian populations.²⁰¹ The International Committee of the Red Cross (ICRC) has claimed that approximately 20 million civilians living in Yemen are in dire need of humanitarian aid, labeling this crisis the worst humanitarian crisis in the world.²⁰² The

8, 1977, 1125 U.N.T.S. 609 [hereinafter Protocol II].

¹⁹³ Protocol Additional to the Geneva Convention of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol I), art. 51 ¶ 4, June 8, 1977, 1125 U.N.T.S. 3 [hereinafter Protocol I].

¹⁹⁴ ICRC, *Customary IHL Database, Rule 156*, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule156 [https://perma.cc/5FXG-YXSX]. See also S.C. Res. 2417, ¶ 14 (May 24, 2018); Rome Statute of the International Criminal Court, art. 8(2)(b)(xxv), July 17, 1998, 2187 U.N.T.S. 3 [hereinafter Rome Statute].

¹⁹⁵ Rome Statute, *supra* note 194, art. 7(2)(b).

¹⁹⁶ International Covenant on Economic, Social and Cultural Rights, arts. 11–12, Dec. 16, 1966, 993 U.N.T.S. 3.

¹⁹⁷ Protocol II, *supra* note 192, art. 18, ¶¶ 4885–86.

¹⁹⁸ *Commentary on the First Geneva Convention*, *supra* note 161, art. 3, ¶¶ 807–09.

¹⁹⁹ ICRC, *Customary IHL Database, Rule 55*, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule55 [https://perma.cc/98VW-NL2Z]. See also Geneva Convention Relative to the Protection of Civilian Persons in Time of War, art. 23, Aug. 12, 1949, 75 U.N.T.S. 287; Protocol I, *supra* note 193, art. 71.

²⁰⁰ See *Bearing the Brunt*, *supra* note 9, at 18–20.

²⁰¹ See *id.* at 16–19.

²⁰² *Yemen in Focus*, ICRC (2019), <https://www.icrc.org/en/where-we-work/middle->

Saudi-led coalition has imposed a blockade on land, sea, and air routes to Yemen to be able to fight the Houthis.²⁰³ This blockade has prevented the transfer of food, medicine, and fuel to the country, whose economy relies 80–90% on imports.²⁰⁴ Since then, the health, food, and water systems of Yemen have collapsed, unleashing a cholera outbreak.²⁰⁵ By 2017, the number of people affected by cholera in Yemen were counted in the millions.²⁰⁶ These health conditions are primarily caused by the blockade imposed by the Saudi-led coalition.²⁰⁷ By the end of 2017, the coalition reinforced and strengthened this blockade in response to a missile attack by Houthis targeting an international airport in Saudi Arabia.²⁰⁸ Within a month, however, the coalition allowed humanitarian consignments to pass through.²⁰⁹ While NGOs are advocating lifting the blockade completely,²¹⁰ this action would also translate into opening arms support and material support for the Houthis, which has catastrophically devastated an entire country through rebellion, coup, and the illegitimate use of force.²¹¹ The blockade by the coalition is legally backed by UNSC Resolution 2216

east/yemen [<https://perma.cc/2HR2-9ACQ>].

²⁰³ *Yemen: Coalition Blockade Imperils Civilians*, HUM. RTS. WATCH (Dec. 7, 2017), <https://www.hrw.org/news/2017/12/07/yemen-coalition-blockade-imperils-civilians> [<https://perma.cc/2HB4-K52U>] [hereinafter *Yemen: Coalition Blockade*].

²⁰⁴ *Id.*

²⁰⁵ *Yemen Cholera Cases Reach One Million - ICRC*, BBC (Dec. 21, 2017), <https://www.bbc.com/news/world-middle-east-42440805> [<https://perma.cc/3563-SYRP>].

²⁰⁶ *Id.*

²⁰⁷ *Statement from UNICEF Executive Director Anthony Lake and WHO Director-General Margaret Chan on the Cholera Outbreak in Yemen as Suspected Cases Exceed 200000*, WHO (June 24, 2017), <https://www.who.int/news-room/detail/24-06-2017-statement-from-unicef-executive-director-anthony-lake-and-who-director-general-margaret-chan-on-the-cholera-outbreak-in-yemen-as-suspected-cases-exceed-200-000> [<https://perma.cc/3A4J-MD7Y>]. See also *Yemen: Border Closure Shuts Down Water, Sewage Systems, Raising Cholera Risk*, ICRC (Nov. 17, 2017), <https://www.icrc.org/en/document/yemen-border-closure-shuts-down-water-sewage-systems-raising-cholera-risk> [<https://perma.cc/MJW4-7729>].

²⁰⁸ See *Bearing the Brunt*, *supra* note 9, at 16.

²⁰⁹ See *id.*

²¹⁰ Press Release, U.N. Int'l Children's Emergency Fund [UNICEF], United Nations Leaders Call on the Saudi-Led Coalition to Fully Lift Blockade of Yemeni Red Sea Ports (Dec. 2, 2017), <https://www.unicef.org/press-releases/united-nations-leaders-call-saudi-led-coalition-fully-lift-blockade-yemeni-red-sea> [<https://perma.cc/2YLS-FRXH>].

²¹¹ See *Yemen: Coalition Blockade*, *supra* note 203 (“[W]e don’t want to continue to enhance the capabilities of the Houthis to generate money and to smuggle weapons.”).

(2015).²¹² The coalition argues that the blockade is to implement the arms embargo against the Houthis.²¹³ It is pertinent to note here that the same resolution advocated and supported the transfer of humanitarian aid to Yemen.²¹⁴ For these reasons, if the coalition blocks any humanitarian aid to Yemen without any reasonable grounds, then it will be acting without any legitimate grounds under international law.²¹⁵ On the other side, the Houthis have deliberately targeted humanitarian aid to stop it from reaching the civilian population.²¹⁶ They are even responsible for detaining, torturing, and killing members of the humanitarian workforce.²¹⁷ Given the severity of the humanitarian crisis due to food shortage and outbreaks of deadly diseases, UNSC Resolution 2417 (2018) urged the international community to investigate the causes of this humanitarian crisis and hold accountable those responsible.²¹⁸

VII. Laws Applicable to the Yemeni Conflict

The law dictates that the people responsible for violating any human rights or international humanitarian law must be held accountable for their crimes.²¹⁹ Human rights law requires the investigation of the arbitrary deprivation of life and other

²¹² See S.C. Res. 2216 (Apr. 14, 2015).

²¹³ Press Release, Saudi Press Agency, *Statement of Command of Coalition to Support Legitimacy in Yemen* (July 29, 2016), <https://www.spa.gov.sa/1522998> [https://perma.cc/ZC7W-83UP]. See also S.C. Res. 2216 (Apr. 14, 2015).

²¹⁴ S.C. Res. 2216 (Apr. 14, 2015). See also S.C. Res. 2417 (May 24, 2018).

²¹⁵ Wolff Heintschel von Heinegg, *Blockade*, MAX PLANCK ENCYCLOPEDIAS OF INTERNATIONAL LAW, <http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e252> [https://perma.cc/4LR3-HPY3] (last accessed Feb. 27, 2019).

²¹⁶ See *Bearing the Brunt*, *supra* note 9, at 16–17 (“The Houthis have constantly blocked attempts to deliver humanitarian aid to the cities of Ta’izz, Hajjah and Hudayah.”).

²¹⁷ See *id.* (“The distribution of humanitarian relief, including cholera response material, is obstructed by aid diversion, delay and refusal of distribution, detention, intimidation and torture of humanitarian workers.”).

²¹⁸ S.C. Res. 2417 (May 24, 2018).

²¹⁹ U.N. Human Rights Comm., General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, ¶¶ 15, 18, UN Doc. CCPR/C/21/Rev.1/Add.13 (Mar. 29, 2004). See also U.N. Econ. & Soc. Council, Principle 9, UN Doc. E/1989/89 (Jan. 1991); Office of the High Comm’r for Human Rights, *The Minnesota Protocol on the Investigation of Potentially Unlawful Death*, UN Doc. HR/PUB/17/4 (May 24, 2017); ICRC, *Customary IHL Database, Rule 158*, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule158 [https://perma.cc/7FLU-GD9D].

indispensable human rights, such as the right to a fair trial, which should be undertaken by the international standards of transparency and impartiality.²²⁰ International humanitarian law requires all states to hold those people accountable who are responsible for war crimes.²²¹

A. *Human Rights Law*

Furthermore, in addition to international humanitarian law, human rights law is also²²² applicable to non-international armed conflicts.²²³ This law includes the right to life; a prohibition on indiscriminate attacks; a prohibition on the arbitrary deprivation of life; economic, cultural, and social rights; the right to drinking water; and a right to housing.²²⁴ These rights should be respected by the parties to a non-international armed conflict.²²⁵

1. *Violations of Human Rights Law*

The indiscriminate attacks against civilian hospitals, civilian buildings, civilian markets, and hotels amount to war crimes.²²⁶ Under human rights law, civilian casualties caused by such indiscriminate attacks violate the proscription of the arbitrary deprivation of life.²²⁷ Attacks on food markets and water facilities violate the right to food and water,²²⁸ while indiscriminate attacks

²²⁰ U.N. Human Rights Comm., General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, ¶¶ 15, 18, UN Doc. CCPR/C/21/Rev.1/Add.13 (Mar. 29, 2004). *See also* U.N. Econ. & Soc. Council, Principle 9, UN Doc. E/1989/89 (Jan. 1991); Office of the High Comm'r for Human Rights, The Minnesota Protocol on the Investigation of Potentially Unlawful Death, UN Doc. HR/PUB/17/4 (May 24, 2017).

²²⁰ *Rule 158 Prosecution of War Crimes*, ICRC, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule158 [https://perma.cc/7FLU-GD9D].

²²¹ *Id.*

²²² *See Bearing the Brunt*, *supra* note 9, at 7–9.

²²³ *See id.*

²²⁴ *See id.*

²²⁵ *See id.*

²²⁶ Protocol I, *supra* note 193, art. 85. *See also Rule 158 Prosecution of War Crimes*, *supra* note 220; Rome Statute of the International Criminal Court, art. 8(e)(i–iv), July 17, 1998, 2187 U.N.T.S. 3.

²²⁷ *See Bearing the Brunt*, *supra* note 9, at 13.

²²⁸ International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, art. 11–12, 993 U.N.T.S. 3 (entered into force Jan. 3, 1976). *See also* Comm. on Econ.,

on civilian residential areas violate the right to adequate housing for civilians.²²⁹ Likewise, attacks on medical facilities such as hospitals amount to a violation of civilians' right to health care.²³⁰

B. International Humanitarian Law

Yemen and the Saud-led coalition are parties to the Geneva Conventions (GCs),²³¹ and the common Article 3 of the GCs and AP II²³² is applicable to non-international armed conflicts. On the other side, since the Houthis meet all the requirements set out by Article 1 of AP II,²³³ the treaty laws are applicable to them. In addition, the laws of AP I²³⁴ and the customary humanitarian laws are also applicable to both parties to a non-international armed conflict.²³⁵ Below are certain international humanitarian principles that have acquired the status of customary international law, enabling their applicability to all states and parties to a conflict.²³⁶

1. Principle of Proportionality

The principle of proportionality mandates that the loss and harm caused by a military operation must not be in excess to the military gains acquired by it.²³⁷ This principle precludes attacks “which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct

Soc. and Cultural Rights on its twentieth session, General Comment No. 12: The Right to Adequate Food (Art. 11), ¶¶ 14-15, UN Doc. E/C.12/1999/5 (May 12, 1999); Comm. on Econ., Soc. and Cultural Rights, General Comment No.15: The Right to Water (Arts. 11 and 12), ¶¶ 21–22, UN Doc. E/C.12/2002/11 (Jan. 20, 2003).

²²⁹ International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, art. 11, 993 U.N.T.S. 3 (entered into force Jan. 3, 1976); *see also* Comm. on Econ., Soc. and Cultural Rights, General Comment No. 7: The Right to Adequate Housing (Art. 11.1): Forced Evictions, ¶¶ 5, 6, 12, UN Doc. E/1998/22 (May 20, 1997).

²³⁰ International Covenant on Economic, Social, and Cultural Rights, Dec. 16, 1966, art. 12, 993 U.N.T.S. 3 (entered into force Jan. 3, 1976). *See also* Comm. on Econ., Soc. and Cultural Rights, General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12), ¶¶ 17, 34, 50, UN Doc. E/C.12/2000/4 (Aug. 11, 2000).

²³¹ *See Bearing the Brunt*, *supra* note 9, at 6.

²³² Protocol II, *supra* note 192.

²³³ *Id.*, art. 1.

²³⁴ Protocol I, *supra* note 193.

²³⁵ *Rule 158 Prosecution of War Crimes*, *supra* note 220.

²³⁶ *Id.*

²³⁷ Protocol I, *supra* note 193, art. 51(5)(b).

military advantage anticipated.”²³⁸ This means that the collateral damage caused by a military operation should not be disproportionate to the expected military gain. The assessment considering the gains and losses by a military operation is subjective in nature, and it can be evaluated by applying its rules to a case.²³⁹ However, it still assesses the subjective understanding of a reasonable commander while executing the military operation.

2. *Principle of Distinction*

The principle of distinction states that “the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives.”²⁴⁰ Civilians can only be targeted as combatants if they choose to take direct part in hostilities, at which point they lose their protection from war that they acquired from the principle of distinction.²⁴¹ The principle dictates that, during an armed conflict, civilian objects such as hospitals, schools, civilian buildings, and houses cannot be directly targeted, unless they are used for military or hostile purposes.²⁴² Likewise, indiscriminate attacks on civilians and civilian objects are also proscribed by this principle.²⁴³ Attacks that do not differentiate between civilian and military targets are called indiscriminate attacks.²⁴⁴ Military tactics of targeting water supplies, food supplies, and other things indispensable for civilians’ survival are also proscribed by this principle.²⁴⁵ Similarly, taking civilian hostages and using civilians as human shields are acts prohibited by international humanitarian law.²⁴⁶

²³⁸ *Id.*

²³⁹ *See Bearing the Brunt*, *supra* note 9, at 10.

²⁴⁰ Protocol I, *supra* note 193, art. 48.

²⁴¹ *Id.*, art. 51(3). *See also* Protocol II, *supra* note 192, art. 13(3).

²⁴² Protocol I, *supra* note 193, arts. 52–53. *See also* Protocol II, *supra* note 192, art. 16.

²⁴³ Protocol I, *supra* note 193, art. 51.

²⁴⁴ *Id.*

²⁴⁵ *Id.*, art. 54.

²⁴⁶ *See* Geneva Convention Relative to the Protection of Civilian Persons in Time of War, arts. 3, 28, & 34, Aug. 12, 1949. *See also* Protocol I, *supra* note 193, arts. 12, 51, 52, 54, 75; Protocol II, *supra* note 192, arts. 4, 11, 13, 14.

3. *Principle of Precaution*

The principle of precaution states that “[i]n the conduct of military operations, constant care shall be taken to spare the civilian population, civilians and civilian objects.”²⁴⁷ Therefore, all parties to a conflict must assure that, at all times while using force, the target is indeed a military target, and that, by the use of weapons of choice, the harm to civilians is minimized.²⁴⁸ Under the principle of precaution, an attack or target must be aborted if it is known that the target is civilian and not military in nature, and that the harm to civilians will be disproportionate to the military gains anticipated.²⁴⁹ Accordingly, if a situation allows, a warning to the civilian population should be given in advance.²⁵⁰ While international humanitarian law acknowledges that casualties, injuries, and harm to civilians is unavoidable during the course of war, it stipulates that military actions should be planned and undertaken in such a fashion that harm to civilians is minimized.²⁵¹ For this reason, international humanitarian law dictates that the weapon of choice should not create unnecessary suffering for civilians, nature, or the environment.²⁵² Therefore, the use of chemical bombs, cluster munitions, biological weapons, blinding lasers, and incendiary weapons is proscribed by law.²⁵³

²⁴⁷ Protocol I, *supra* note 193, art. 57.

²⁴⁸ *Id.*

²⁴⁹ *Id.*

²⁵⁰ *Id.*

²⁵¹ *Id.*

²⁵² Protocol I, *supra* note 193, arts. 55–57.

²⁵³ Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, Apr. 10, 1972, 1015 U.N.T.S. 163. *See also* Convention on Prohibitions or Restrictions on the Use of Prohibiting Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects, Oct. 10, 1980, 1342 U.N.T.S. 137; Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, Jan. 13, 1993, 1974 U.N.T.S. 45 & 1975 U.N.T.S. 3; Additional Protocol to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects (Protocol IV, entitled Protocol on Blinding Laser Weapons); Oct. 13, 1995, 2024 U.N.T.S. 163; Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, Sept. 18, 1997, 2056 U.N.T.S. 211; Convention on Cluster Munitions, May 30, 2008, 2688 U.N.T.S. 39.

4. *Violations of International Humanitarian Law*

The Panel of Experts assembled to review the attacks of 2017 concluded that the conduct of both parties—the Saudi-led coalition and the Houthis—violated international humanitarian and human rights law.²⁵⁴ The Panel added that both parties had violated the prohibition on indiscriminate and disproportionate²⁵⁵ attacks by using explosive materials and ammunition in civilian populated areas.²⁵⁶

i. Conduct of the Houthis

The Panel of Experts analyzed the Houthis' use of ammunition and explosive materials in civilian residential areas of Taizz. Most particularly, it evaluated the humanitarian ramifications of an attack by the Houthis that killed 27 civilians.²⁵⁷ The Panel concluded that: (1) the harm done to civilians suggests that the principle of precaution was not respected; (2) there was no evidence that the targeted civilians had taken part in hostilities; and (3) the harm done to civilians was disproportionate to the military gains.²⁵⁸ The Panel found that the attacks by the Houthis were indiscriminate in nature because they specifically targeted civilian residential areas, while deliberately intending to destroy civilian housing.²⁵⁹ In other instances, the Houthis violated the prohibition on indiscriminate attacks by targeting residential buildings and hospitals.²⁶⁰ The Houthis also violated other international humanitarian laws by using

²⁵⁴ ICRC, *Q&A on the Issue of Explosive Weapons in Populated Areas*, INT'L REV. OF THE RED CROSS 100 (Apr. 11, 2017). *See also* U.N. Sec. Council, Final Rep. of the Panel of Experts on Yemen, ¶ 125, U.N. Doc. S/2018/192 (Jan. 22, 2016).

²⁵⁵ ICRC, *supra* note 254.

²⁵⁶ U.N. Sec. Council, Final Rep. of the Panel of Experts on Yemen, ¶ 125, U.N. Doc. S/2018/192 (Jan. 22, 2016).

²⁵⁷ *See Bearing the Brunt*, *supra* note 9, at 11–12.

²⁵⁸ *See id.*

²⁵⁹ *See* U.N. Sec. Council, Final Rep. of the Panel of Experts on Yemen, ¶ 294–96, U.N. Doc. S/2018/594 (Jan. 26, 2018).

²⁶⁰ U.N. Sec. Council, Final Rep. of the Panel of Experts on Yemen, ¶ 127–28, U.N. Doc. S/2018/192 (Jan. 22, 2016). *See also* U.N. Sec. Council, Final Rep. of the Panel of Experts on Yemen, ¶ 141, U.N. Doc. S/2018/193 (Jan. 27, 2017).

prohibited landmines²⁶¹ and using proscribed²⁶² child soldiers.²⁶³

ii. Conduct of the Saudi-Led Coalition

The Panel particularly discussed ten airstrikes by the Saudi-led coalition.²⁶⁴ These strikes targeted civilian buildings, civilian vehicles, a civilian marketplace, a civilian hotel, and government buildings.²⁶⁵ These strikes resulted in 157 casualties and 135 injuries, of whom 85 were underage children.²⁶⁶ The Panel concluded that these attacks violated international humanitarian law.²⁶⁷ However, this conclusion was reached on the premise that no evidence supported the Saudi claims that the attacks were undertaken as military targets.²⁶⁸ The Panel cited four reasons for finding the violation: (1) there was no concrete evidence to prove the claim that the targeted civilians had taken part in hostilities, therefore they had no protection; (2) the weapon of choice was precision-guided missiles and, therefore, it can be rightly assumed that the targets hit were the targets intended; (3) the harm done to civilians, including 85 children who lost their lives, proves that precaution was not taken while undertaking the attacks; and (4) if the attacked targets had indeed been military targets, then the harm done to the civilians was disproportionate to the military gain.²⁶⁹ Similarly, other reports by the UN and NGOs also concluded that the attacks by the Saudi-led coalition violated international

²⁶¹ U.N. Sec. Council, Final Rep. of the Panel of Experts on Yemen, ¶ 127, U.N. Doc. S/2019/194 (Jan. 22, 2016). *See also Yemen: Houthi Landmines Claim Civilian Victims*, HUM. RTS. WATCH (Sept. 8, 2016, 12:00 AM), <https://www.hrw.org/news/2016/09/08/yemen-houthi-landmines-claim-civilian-victims> [<https://perma.cc/LH2S-3DNW>].

²⁶² *See* U.N. Sec. Council, Final Rep. of the Panel of Experts on Yemen, ¶ 146, U.N. Doc. S/2018/193 (Jan. 27, 2017).

²⁶³ ICRC, *Customary IHL Database, Rule 136*, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule136 [<https://perma.cc/WU7Q-UZTJ>]; ICRC, *Customary IHL Database, Rule 137*, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule137 [<https://perma.cc/8F8X-QPWH>].

²⁶⁴ *See Bearing the Brunt*, *supra* note 9, at 11.

²⁶⁵ *See id.* at 11–13.

²⁶⁶ *Id.*

²⁶⁷ *Id.*

²⁶⁸ *See* U.N. Sec. Council, Final Rep. of the Panel of Experts on Yemen, at 235, U.N. Doc. S/2018/68 (Jan. 26, 2018).

²⁶⁹ *See id.*, ¶ 161.

humanitarian law, particularly through their targeting of civilian markets, hospitals, and civilian buildings.²⁷⁰ Committees for the protection of women and children also iterated that the Saudi-led coalition must respect the principles of proportionality, precaution, and distinction in their armed attacks.²⁷¹

C. *Transfer of Arms*

There is global outcry over the arms transfer by the West to the Saudi-led coalition for use in the armed conflict in Yemen against the Houthis.²⁷² NGOs in the UK²⁷³ and Italy²⁷⁴ have initiated cases in domestic courts to stop arms supplies to the coalition on the basis that the coalition was responsible for violating International Humanitarian Law (IHL) in Yemen.²⁷⁵ However, this Article is not concerned with arms supplies to the coalition, as the coalition is using legitimate force in Yemen with the authority of the Yemeni government,²⁷⁶ which is facing a serious humanitarian crisis and armed conflict against Houthi rebels with no arms embargo.

The point of concern here is that the arms supplied to the Houthis, who are nonstate actors, are being used in unlawful force against the government and people of Yemen. In a true sense, the Houthis are responsible for the Yemeni crisis. The landmark

²⁷⁰ U.N. Sec. Council, Final Rep. of the Panel of Experts on Yemen, ¶¶ 137–40, U.N. Doc. S/2016/73 (Jan. 26, 2016); *See also* U.N. Sec. Council, Final Rep. of the Panel of Experts on Yemen, ¶¶ 120–31, U.N. Doc. S/2018/193 (Jan. 31, 2017).

²⁷¹ Comm. On the Rights of the Child, Concluding Observations on the Combined Third and Fourth Periodic Reports of Saudi Arabia, ¶ 39, CRC/C/SAU/CO/3-4 (Oct. 25, 2016). *See also* Comm. On the Elimination of Discrimination Against Women, Concluding Observations on the Combined Third and Fourth Periodic Reports of Saudi Arabia, ¶ 18, U.N. Doc. CEDAW/C/SAU/CO/3-4 (Mar. 14, 2018).

²⁷² *See Bearing the Brunt*, *supra* note 9, at 21–26.

²⁷³ *R (on the Application of Campaign Against the Arms Trade) v. The Sec’y of State for Int’l Trade and Interveners* [2017] EWHC 1726 (QB).

²⁷⁴ *See EUROPEAN RESPONSIBILITY FOR WAR CRIMES IN YEMEN – COMPLICITY OF ITALIAN SUBSIDIARY OF GERMAN ARMS MANUFACTURER AND OF ITALIAN ARMS EXPORT AUTHORITY*, EURO. CTR. FOR CONST. & HUM. RTS. (2018), https://www.ecchr.eu/fileadmin/Fallbeschreibungen/CaseReport_Yemen_Italy_Arms_ECCHR_Mwatana_ReteDisarmo_20180418.pdf [<https://perma.cc/G5V2-6EUM>].

²⁷⁵ *See id.*; *see also* *R (on the Application of Campaign Against the Arms Trade) v. The Sec’y of State for Int’l Trade and interveners* [2017] EWHC 1726 (QB).

²⁷⁶ *See Ferro & Ruys*, *supra* note 10. *See also* Permanent Rep. of Qatar to the U.N., Letter dated March 27, 2015 from the Permanent Rep. of Qatar to the United Nations addressed to the Secretary-General and the President of the Security Council, U.N. Doc. S/2015/217, 3–5 (Mar. 26, 2015).

Nicaragua case established that providing arms support to nonstate actors is not only prohibited under international law, but tantamount to aggression and the use of force.²⁷⁷

The international media has accused Iran of supplying arms to the Houthis. In fact, the UN has acknowledged that Iranian weapons are indirectly supplied to Houthi rebels²⁷⁸ because the technology used by Houthi missiles is similar to those manufactured in Iran, if not identical.²⁷⁹ The Iranian government has categorically denied involvement in the Yemeni conflict.²⁸⁰ Therefore, it is disputable whether Iran is responsible for supporting the Houthis. If the categorization of identifying the manufacturers of weapons leads to blame for supporting the Houthis, it is interesting to note that most of the weapons used by the Houthis are manufactured by the U.S.²⁸¹ Therefore, it can be argued that the U.S. is indirectly supporting the Houthis in Yemen. The media and the West have accused the coalition of supplying U.S.-manufactured weapons to the Houthis.²⁸² But it seems highly illogical and paradoxical for the representatives of the coalition to empower actors who pose a great threat to Saudi Arabia and who occasionally fire missiles into the territory of Saudi Arabian populated cities.²⁸³

D. Arbitrary Detention

Both international humanitarian law and human rights law prohibit arbitrary detention and stipulate that people have the right to not be arbitrarily deprived of their liberty.²⁸⁴ In addition,

²⁷⁷ Military and Paramilitary Activities in and Against Nicaragua (Nicar. V. U.S.), Judgment, 1986 I.C.J. 14, ¶ 290 (June 27, 1986).

²⁷⁸ U.N. Sec. Council, Final Rep. of the Panel of Experts on Yemen, ¶¶ 86–104, U.N. Doc. S/2018/68 (Jan. 26, 2018).

²⁷⁹ *Id.*

²⁸⁰ *Iran Denies U.S. Allegations*, *supra* note 32.

²⁸¹ *Saudi Arabia, UAE Gave US Arms to al-Qaeda-Linked Groups: Report*, AL-JAZEERA (Feb. 5, 2019), <https://www.aljazeera.com/news/2019/02/saudi-arabia-uae-gave-weapons-al-qaeda-linked-groups-cnn-190205055102300.html> [<https://perma.cc/VQ64-C8W6>] [hereinafter *Saudi Arabia*]. See also Joseph Trevithick, *Houthi Rebels in Yemen Have Technical Trucks Armed with Vulcan Cannons*, THE DRIVE (July 11, 2018), <https://www.thedrive.com/the-war-zone/22094/houthi-rebels-in-yemen-have-technical-trucks-armed-with-vulcan-cannons> [<https://perma.cc/N2ZN-UVHG>].

²⁸² *Saudi Arabia*, *supra* note 281.

²⁸³ See *id.*; see also U.N. Sec. Council, Final Rep. of the Panel of Experts on Yemen, ¶ 80, U.N. Doc. S/2018/68 (Jan. 26, 2018).

²⁸⁴ ICRC, *Customary IHL Database*, Rule 99, <https://ihl->

customary international law, the common Article 3 of GCs, Article 4 of AP II, and human rights law²⁸⁵ also require that the detainees²⁸⁶ be treated humanely²⁸⁷ and not be subject to torture²⁸⁸ or ill-treatment.²⁸⁹ Upon allegations of violations of these laws, parties to a conflict are responsible for investigating them.²⁹⁰ The Panel of Experts has accused the UAE, the Houthis, and Yemen's government of violating these laws.²⁹¹ However, Yemen's government and the UAE government have not investigated these

databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule99 [https://perma.cc/EAG6-VNGX]. See also International Covenant on Civil and Political Rights art. 9, Dec. 19, 1966, 999 U.N.T.S. 171.

²⁸⁵ See Working Group on Arbitrary Detention, *Deliberation no. 9 concerning the Definition and Scope of Arbitrary Deprivation of Liberty under Customary International Law*, ¶ 43, U.N. Doc. A/HRC/22/44 (Dec. 24, 2012). See also Prosecutor v. Furundžija, Case No. IT-95-17/1-T, Judgment, ¶ 153, (Int'l Crim. Trib. For the Former Yugoslavia Dec. 10, 1998); La Cantuta v. Perú, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 162, ¶ 157 (Nov. 29, 2006).

²⁸⁶ International Covenant on Civil and Political Rights art. 10, Dec. 19, 1966, 999 U.N.T.S. 171.

²⁸⁷ *Id.* See also ICRC, *Customary IHL Database, Rule 87*, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule87 [https://perma.cc/9M6N-TJF3].

²⁸⁸ International Covenant on Civil and Political Rights arts. 7, 9, 16, Dec. 19, 1966, 999 U.N.T.S. 171. See also Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment art. 2, Dec. 10, 1984, 1465 U.N.T.S. 85 [hereinafter CAT]; International Convention for the Protection of All Persons from Enforced Disappearance art. 1, Dec. 20, 2006, 2716 U.N.T.S. 3.

²⁸⁹ ICRC, *Customary IHL Database, Rule 87*, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule87 [https://perma.cc/9M6N-TJF3]. See also Geneva Convention Relative to the Protection of Civilian Persons in Time of War art. 3, Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287; Protocol II Additional to the Geneva Conventions art. 4, June 8, 1977, 1125 U.N.T.S. 609.

²⁹⁰ See International Covenant on Civil and Political Rights art. 9, Dec. 19, 1966, 999 U.N.T.S. 171. See also Human Rights Committee, *General Comment no. 35: Article 9 (Liberty and Security of Person)*, ¶¶ 36–52, U.N. Doc. CCPR/C/GC/35 (Dec. 16, 2014); ICRC, *Customary IHL Database, Rule 158*, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule158 [https://perma.cc/F76R-XGLU]. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment arts. 12–16, Dec. 10, 1984, 1465 U.N.T.S. 85; International Convention for the Protection of All Persons from Enforced Disappearance arts. 3, 10, 12, Dec. 20, 2006, 2716 U.N.T.S. 3; Human Rights Committee, *General Comment no. 31: Nature of the General Legal Obligation on States Parties to the Covenant*, ¶¶ 15, 18, UN Doc. CCPR/C/21/Rev.1/Add.13 (May 26, 2004); G.A. Res 55/89, ¶ 2 (Dec. 4, 2000), <https://www.ohchr.org/EN/ProfessionalInterest/Pages/EffectiveInvestigationAndDocumentationOfTorture.aspx> [https://perma.cc/FU3J-YX9A].

²⁹¹ See *Bearing the Brunt*, *supra* note 9, at 14–15.

cases yet.²⁹²

The UAE runs three detention facilities located in Mukalla, Aden, and Balhaf. The Panel of Experts found that the UAE acted in violation of international humanitarian and human rights law in regard to the captured detainees in these centers.²⁹³ More specifically, the Panel acknowledged that the UAE Elite forces acted under the authority of Yemen's government,²⁹⁴ and accused it of violating IHL and human rights law on 12 counts by arbitrarily arresting, torturing, and not providing medical treatment to the captured Al Qaeda members detained in Mukalla.²⁹⁵ The Panel also accused Yemen's government of the same violations on account of 23 persons detained in Aden, Ma'rib, and Lahij.²⁹⁶ Similarly, the Panel concluded that the Houthis were responsible for violating humanitarian and human rights law regarding arbitrary detention and torture.²⁹⁷

E. Counterterror

The U.S. has conducted air and drone strikes in different regions of Yemen against Al Qaeda and other suspected terrorists since Saleh's era.²⁹⁸ In 2017 alone, the U.S. launched 131 airstrikes against Yemen.²⁹⁹ In 2018, the numbers came down to 31.³⁰⁰ The Yemeni government rejected U.S. authority to use drone strikes in Yemen's sovereign territory.³⁰¹ In response, the UN acknowledged that the drone strikes by the U.S. did not adhere to the principles of IHL.³⁰² In 2017, the Hadi government again formally asked the U.S.

²⁹² See U.N. Sec. Council, Final Rep. of the Panel of Experts on Yemen, ¶¶ 160–71, U.N. Doc. S/2018/68 (Jan. 26, 2018).

²⁹³ See *Bearing the Brunt*, *supra* note 9, at 14.

²⁹⁴ See U.N. Sec. Council, Final report of the Panel of Experts on Yemen, ¶¶ 132–34, U.N. Doc. S/2018/193 (Jan. 31, 2017) [hereinafter Final Report 2017].

²⁹⁵ See *Bearing the Brunt*, *supra* note 9, at 14.

²⁹⁶ See U.N. Sec. Council, *Final report of the Panel of Experts on Yemen*, Annex 65 ¶¶ 180–82, U.N. Doc. S/2018/68 (Jan. 26, 2018) [hereinafter Final Report 2018].

²⁹⁷ See U.N. Sec. Council, Final report of the Panel of Experts on Yemen established pursuant to Security Council resolution 2140 (2014), ¶¶ 144–49, U.N. Doc. S/2016/73 (Jan. 26, 2016).

²⁹⁸ See SHARP, *supra* note 55, at 21.

²⁹⁹ See *id.*

³⁰⁰ See *id.*

³⁰¹ See ALKARAMA, *supra* note 60, at 5.

³⁰² See *id.* at 6.

government to stop its use of force via drone strikes against suspected terrorists in the sovereign territory of Yemen.³⁰³ The use of drones by the U.S. against suspected terrorists in Yemen has no legal basis in international law, since the Yemeni government has categorically refused the U.S.'s request to use force in its sovereign territories.³⁰⁴

Although the U.S. drone strikes in Yemen have killed Al Qaeda and ISIS members, they have also killed many civilians in Yemen as collateral damage.³⁰⁵ Scholars have viewed these strikes as the prime motivator of increasing extremism in Yemen, because it furthers the cause of Al Qaeda and other extremist groups working in the region.³⁰⁶ According to reports, U.S. drone strikes have killed innocent tribesmen, as a result of poor intelligence and execution of the strikes.³⁰⁷ Thus, overall, these drone strikes have served to increase the support for and benefit to Houthis in the longer run, by spreading anti-U.S. sentiment among the general public.³⁰⁸ The U.S. has now used force via drone strikes in Yemen for at least 17 years, resulting in the deaths of thousands of people, with an average of about 100 people per year.³⁰⁹ These strikes are highly disproportionate and indiscriminate in nature, undertaken without any precaution.³¹⁰ For instance, in pursuit of one person, Qassim Al Rimi of Al Qaeda, the U.S. launched several unsuccessful drone strikes, killing more than 66 innocent people, of whom 31 were children.³¹¹ Therefore, according to UN reports, the U.S. counterterrorist activities in Yemen violate the international law of using force, international humanitarian law, and human rights law.³¹²

³⁰³ See ARRAF, *supra* note 18, at 9.

³⁰⁴ See ALKARAMA, *supra* note 60, at 5–6.

³⁰⁵ See O'Driscoll, *supra* note 45, at 9.

³⁰⁶ See *id.*

³⁰⁷ See *id.*

³⁰⁸ See *id.*

³⁰⁹ Maggie Michael & Maad Al Zikry, *Hidden Toll of US Drone Strikes in Yemen: Nearly a Third of Deaths Are Civilians, Not Al-Qaida*, MILITARY TIMES (Nov. 14, 2018), <https://www.militarytimes.com/news/your-military/2018/11/14/hidden-toll-of-us-drone-strikes-in-yemen-nearly-a-third-of-deaths-are-civilians-not-al-qaida/> [https://perma.cc/27LG-FMH8].

³¹⁰ See *id.*

³¹¹ See *id.*

³¹² See ALKARAMA, *supra* note 60.

VIII. Conclusion

Since an intervention with the consent of the host state is permissible,³¹³ the use of force by the Saudi coalition, with the permission of the Hadi government³¹⁴ against the Houthis, is legitimate.³¹⁵ Whereas the Houthis aggression against Yemen and Saudi Arabia is considered impermissible in accordance with international laws. Similarly, the use of force by the U.S. against suspected terrorists in the sovereign territory of Yemen has no legal basis in international law because the Yemeni government has unconditionally refused allowing the U.S. to use force in its sovereign territory.³¹⁶ The nature of the Saudi Coalition's intervention in Yemen, however, is non-international since it is not concretely evidenced that the Houthis (non-state actors) are backed and controlled by any other state, or by Iran.³¹⁷ It has been concluded, therefore, that the missile technology used by the Houthis against the sovereign territories of Saudi Arabia³¹⁸ was indeed either manufactured in Iran or, at least, was similar to Iranian technology,³¹⁹ and the weapons and arms used by the Houthis are mainly manufactured by the U.S.³²⁰ Yet Iran categorically denies any kind of support to the Houthi rebels.³²¹ Therefore, both human rights laws and international humanitarian laws are applicable to this Saudi-Houthi conflict. While the anti-terrorist U.S activities in Yemen, without Yemeni consent, can be considered an international

³¹³ See Nolte, *supra* note 122; see also G.A. Res. 3314, at 3e (Dec. 14, 1974); Armed Activities on the Territory of the Congo (Dem. Rep. Congo v. Uganda), Judgment, 2005 I.C.J. Rep. 168, ¶¶ 42–53 (Dec. 2005); Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.), Judgment, 1986 I.C.J. Rep. 14, ¶ 246 (June 27, 1986).

³¹⁴ See Ferro & Ruys, *supra* note 10, at 910–11; see also Permanent Rep. of Qatar to the U.N., Identical letters dated 26 March 2015 from the Permanent Rep. of Qatar to the U.N. addressed to the Secretary-General and the President of the Security Council, U.N. Doc. S/2015/217, 3–5 (Mar. 27, 2015).

³¹⁵ See *id.*

³¹⁶ See ALKARAMA, *supra* note 60, 5–6.

³¹⁷ See *Bearing the Brunt*, *supra* note 9, at 5–6.

³¹⁸ See generally Trevithick, *supra* note 281.

³¹⁹ *UN Panel Finds Further Evidence of Iran Link to Yemen Missiles*, AGENCE FRANCE PRESSE (July 30, 2018), <https://www.thenational.ae/world/mena/un-panel-finds-further-evidence-of-iran-link-to-yemen-missiles-1.755610> [https://perma.cc/7GSM-Z89X]; see also SHARP, *supra* note 55, at 10.

³²⁰ *Saudi Arabia*, *supra* note 281; see also Trevithick, *supra* note 281.

³²¹ *Iran Denies U.S. Allegations*, *supra* note 32.

conflict, only humanitarian laws are applicable to the conduct.

Under the Saudi-Houthi conflict, both parties have violated human rights laws pertaining to the right to life, adequate housing, food,³²² water, and healthcare³²³ through their indiscriminate attacks on hospitals, buildings,³²⁴ markets, and hotels.³²⁵ Likewise, the Saudi-led coalition and the Houthis have also violated international humanitarian laws. They have violated the prohibition on conducting indiscriminate and disproportionate attacks³²⁶ by using explosive materials and ammunitions in civilian populated areas that caused casualties of numerous innocent people.³²⁷ The Houthis, for example, have launched indiscriminate attacks on civilian residential areas (including buildings and hospitals),³²⁸ deliberately intending to destroy civilian housing.³²⁹ They violated the

³²² International Covenant on Economic, Social & Cultural Rights, art. 11, Dec. 19, 1966, 993 U.N.T.S. 3; *see also* Comm. on Econ., Soc. & Cultural Rights on its twentieth session, Gen. cmt. no. 12: The Right to Adequate Food (Art. 11), ¶¶ 14–15, U.N. Doc. E/C.12/1999/5 (May 12, 1999); Comm. on Econ., Soc. & Cultural Rights on its twenty-ninth session, Gen. cmt. no. 15: The right to water (Arts. 11 & 12), ¶¶ 21–22, U.N. Doc. E/C.12/2002/11 (Jan. 20, 2003).

³²³ International Covenant on Economic, Social & Cultural Rights, art. 11, Dec. 19, 1966., 993 U.N.T.S. 3; *see also* U.N. Comm. on Econ., Soc. & Cultural Rights on its twenty-second session, Gen. cmt. no 14: The Right to the Highest Attainable Standard of Health (Art. 12), ¶¶ 17, 34, 50, U.N.Doc. E/C.12/2000/4 (Aug. 11, 2000).

³²⁴ International Covenant on Economic, Social & Cultural Rights, art. 11, Dec. 19, 1966, 993 U.N.T.S. 3; *see also* U.N. Comm. on Econ., Soc. & Cultural Rights on its sixteenth session, Gen. cmt. no. 7: The right to adequate housing (Art.11.1): forced evictions, ¶¶ 5, 6, & 12, U.N. Doc. E/1998/22 (May 20, 1997).

³²⁵ *See* Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts art. 85, June 8, 1977, 1125 U.N.T.S. 3; *see also* Rome Statute of the International Criminal Court, art. 8(e)(i-iv), July 17, 1998, 2187 U.N.T.S. 90; ICRC, *Customary IHL Database, Rule 156*, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule156 [<https://perma.cc/5FXG-YXSX>].

³²⁶ *ICRC Q&A on the Issue of Explosive Weapons in Populated Areas*, 98 INT'L REV. OF THE RED CROSS 100 (Apr. 11, 2017).

³²⁷ *See* U.N. Sec. Council, Final Rep. of the Panel of Experts on Yemen, ¶ 125, U.N. Doc. S/2016/73 (Jan. 26, 2016) [hereinafter Final Report 2016]. *See also*, *Bearing the Brunt*, *supra* note 9, at 13.

³²⁸ *See* Final Report 2016, *supra* note 327, annex 64, at 294–96; *see also* Final Report 2017, *supra* note 294, ¶ 141.

³²⁹ *See* Final Report 2016, *supra* note 327, annex 64, at 294–96.

prohibitions³³⁰ on the use of landmines,³³¹ child soldiers,³³² arbitrary detention, and torture.³³³ Similarly, the Saudi-led coalition also targeted civilian buildings, civilian vehicles, civilian marketplaces, civilian hotels, and government buildings,³³⁴ resulting in 157 casualties and 135 injuries, of whom 85 were children.³³⁵ Therefore, Saudi actions can be dubbed as disproportionate to their military gains.³³⁶

Furthermore, the U.S.'s indiscriminate³³⁷ counter-terrorism attacks in Yemen are the prime motivator of increasing extremism in Yemen because they further the cause of Al Qaeda and other extremist groups working in the region.³³⁸ The U.S. has been using force in Yemen for 17 years, which has resulted in thousands of casualties of innocent people.³³⁹ These attacks are highly disproportionate and indiscriminate in nature, and they are undertaken without any precaution.³⁴⁰ Therefore, the U.S. counterterrorist activities in Yemen³⁴¹ and the Houthis aggression against Saudi Arabia and Yemen violate international laws concerning the use of force. Correspondingly, the conduct of the Houthis, the U.S., and the Saudi Coalition also violate several international humanitarian laws and human rights laws.

The humanitarian crisis in Yemen will only deteriorate if the world does not intervene to right the wrongs that the Houthis have committed, including but not limited to, orchestrating rebellions, destabilizing the region, attacking other sovereign states,

³³⁰ See generally Final Report 2018, *supra* note 296.

³³¹ See Final Report 2016, *supra* note 327, ¶ 127; see also *Yemen: Houthi Landmines Claim Civilian Victims*, HUM. RTS. WATCH (Sept. 8, 2016), <https://www.hrw.org/news/2016/09/08/yemen-houthi-landmines-claim-civilian-victims> [<https://perma.cc/U6PU-GS2P>].

³³² ICRC, *Customary IHL Database, Rule 136*, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule136#Fn_84AA34D9_00003 [<https://perma.cc/886N-SDBC>].

³³³ See Final Report 2016, *supra* note 327, ¶¶ 144–49.

³³⁴ See *Bearing the Brunt*, *supra* note 9, at 11–13.

³³⁵ See *id.* at 11.

³³⁶ See Final Report 2018, *supra* note 296, ¶ 161.

³³⁷ See *id.*

³³⁸ See O'Driscoll, *supra* note 45, at 9.

³³⁹ Michael & Al Zikry, *supra* note 309.

³⁴⁰ See *id.*

³⁴¹ See ALKARAMA, *supra* note 60.

overthrowing the Yemeni government, and killing innocent people. A just cause in this situation is to help Yemen's lawful government and the Saudi Coalition to get rid of the Houthi threat to peace and security. Therefore, all of the arms transfers, financial assistance, and training provided to Houthis by any state must be faced with strict actions from the United Nations Security Council. On the other hand, the U.S. does not have any just cause for using force in Yemen. The international community should put a stop to U.S. interventions in other countries on false pretenses, like fighting terrorism. Contrarily, host states must be assisted with arms, finances, and training to be able to fight terrorism and detect rebellions to end revolutions at early stages. For instance, in Yemen, the U.S. should not be independently fighting ISIS. Instead, the U.S. should help Yemen's government fight terrorists and Houthi rebels if it truly intends to eradicate terrorism. Nevertheless, the perpetrators of war crimes in Yemen, be it from Houthis or the Saudi Coalition, must be held accountable for their atrocities against innocent people, so that peace in the region is restored and the humanitarian exigencies are respected in the future.