

THE WAR IN YEMEN:

SACRIFICING HUMAN RIGHTS
IN THE NAME OF AN ILLEGITIMATE WAR



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“And what reason have you that you should not fight in the way of Allah and of the weak among the men and the women and the children, (of) those who say: Our Lord! cause us to go forth from this town, whose people are oppressors, and give us from Thee a guardian and give us from Thee a helper.”

[Qur'an 4:75]

Table of Contents

I. Executive Summary	7
II. Introduction	8
III. War in Yemen: Background to the conflict	8
IV. War in Yemen: The outbreak	9
V. War in Yemen: The illegality of the war	9
VI. War in Yemen: A record of violations	14
VII. Conclusions	17
Endnotes	20

CED

The 2014 campaign "Democratization and Empowerment in Bahrain, Bangladesh, Egypt and Saudi Arabia"(CED) is one of the major projects that Universal Justice Network (UJN), in collaboration with Islamic Human Rights Commission (IHRC), has initiated in recent years. The campaign aims at addressing recurring issues of disenfranchisement and often violent repression of legitimate political and social expression in the four named countries.

UJN is an umbrella organisation founded in 2008 for Muslim-led non-governmental organisations around the world. It is committed to address the increasingly pressing global issue of democratization that is challenging the Muslim world. It has a joint secretariat consisting of Citizens International in Malaysia and IHRC in the UK. For further information, please visit <http://www.ihrc.org.uk/activities/projects/11364-democratization-and-empowerment-in-bahrain-bangladesh-egypt-and-saudi-arabia->

I. Executive Summary

The Saudi led coalition intervention in Yemen is an illegal war that flagrantly violates the prohibition against the use of armed force enshrined in article 2(4) of the UN Convention.

US support for the coalition is also an act of war in contravention of international law.

The Saudi-led coalition states and the US are not able to rely on the principle of self-defence recognised in Article 51. President Hadi is not the legitimate ruler of Yemen and so not in a position to request support from the international community. Nor is Saudi Arabia or its coalition partners at any risk of military action against them by the Houthis.

The Saudi-led coalition has committed war crimes in Yemen. The coalition forces have done very little to distinguish between military and civilian targets, with the Yemeni civilian population the main victim of this conflict.

All States' parties must be held accountable for the human rights violations committed against civilians, in respect of the obligations imposed by the Fourth Geneva Convention and the two Optional Protocols on the conduct of war in a non-international conflict. All States' parties to the conflict also must abide by the principles of the customary laws of war, which reflect at large the private humanitarian laws.

Through this war, the Yemeni people's political aspirations have been silenced, as well as their legitimate right to put an end to a dictatorship.

II. Introduction

Freedom House's report on Yemen reveals the real face of Saudi Arabia's barbaric war that is reducing to ashes one of the poorest countries in the world, where nearly two thirds of the population were already in need of aid before the war¹. The figures make for shocking reading. Up to 12 May almost 4,000 people were killed, 571 of whom are children, 6,887 injured and 1153 civil buildings, service utilities, fundamental infrastructures, health and educational institutions disrupted in just over two months.²

Saudi officials have explained their actions by stating that the aim of their military campaign is to restore the ousted President Abdu Rabbu Mansour Hadi to power. Supported by Western powers and their Arab allies, they consider Hadi as the only legitimate president to rule the country, not withstanding his election in an undemocratic one-candidate poll and the lack of popular support for his rule.

III. War in Yemen: Background to the conflict

The armed conflict between the Yemeni government and the Houthis first erupted back in 2004, but it is only in February 2011 that the conflict gained momentum, when over 20,000 protestors, galvanised by the Arab Spring revolutions in the region, took to the street en masse demanding democracy, an end to corruption and new elections. As a result, on 23 November the then President Saleh signed a power-transfer agreement brokered by the Gulf Cooperation Council in Riyadh, under which he agreed to transfer his power to his Vice-President within 30 days in exchange for immunity. Accordingly, a one-candidate election in February 2012 ushered in the rule of Abd Rabbuh Mansur al-Hadi as the new Yemeni President with a total of 99.8% of the vote. Thereafter, the newly elected President formed a unity government, including a prime minister from the opposition, in charge of drafting a new constitution followed by parliamentary and presidential elections expected in 2014.

In spite of the escalating protests objecting to the election outcome and the return of Saleh to Yemen, the new parliament clearly governed to restore the pre-revolution state of play. Saleh was granted full immunity from prosecution and the old ruling ranks, represented by Saleh's son General Ahmed Ali Abdullah Saleh, were allowed to play a key role in the control of the military and security forces. Furthermore, the new government managed to halt the increasing terror attacks by Al-Qaeda insurgent groups who had been infiltrating the revolutionary forces with the support, according to many analysts, of the Yemeni government at the time of Saleh's rule, for the purpose of destabilising the country and arresting the Houthis' revolutionary efforts.³ The Al-Qaeda insurgency had been progressively pushed back by Houthi forces who carved out a leading role in driving the revolutionary project.

The Houthi armed forces succeeded in gaining more control of territory and continued to apply pressure on Hadi and his ministers until finally placing the president under house arrest. As a result, the government was forced into a mass resignation in January 2015, the parliament was dissolved and the Revolutionary Committee declared to be the interim authority under the leadership of Mohammed Ali al-Houthi. Afterwards, once safe in Riyadh where he had fled to seek refuge, the exiled president withdrew his resignation, declaring it void as it had been made under the threat of further punitive actions by the Houthis, who had orchestrated the coup d'état with the alleged aim of restoring Zaidi rule.⁴

The Houthis for their part rejected the accusation by saying they preferred a republican political system and recognised the role of women in governing the country. Further, they underscored the vocal role of the group in expressing Yemenis' grievances for 'more government accountability, an end to corruption, fair fuel prices and job opportunities'.⁵ Within this context, in an interview with the Yemen Times Hussein Al-Bukhari, a Houthi activist, rebutted the accusation that this was a Zaidi coup to implement Shia rule, by saying that a cleric-led system would not work in Yemen because the followers of the Shafi doctrine are greater in number than the Zaydis.⁶

IV. War in Yemen: The outbreak

Spearheading a military coalition, Saudi Arabia began carrying out airstrikes in Yemen on 25 March 2015, heralding the start of a military intervention known as ‘Operation Decisive Storm’. The intervention came in response to requests for assistance from the contested Yemeni President Hadi, fearing that the Houthi offensive was advancing towards the capital, Aden.

The military coalition is made up of nine Arab countries, comprising of Saudi Arabia, Egypt, Jordan, Sudan, Bahrain, United Arab Emirates, Kuwait, Qatar, and Morocco, actively supporting the war by sending fighter jets. Saudi Arabia has deployed 150,000 soldiers as part of this conflict.⁷ Somalia has made its airspace, territorial waters and military bases available for the coalition to use, while the United States has accelerated the sale of weapons to coalition states and is providing intelligence and logistical support, including a search-and-rescue facility for downed coalition pilots. Additionally, Pakistan was called on by Saudi Arabia to join the coalition, but its parliament voted to maintain neutrality. Despite this, Pakistan agreed to provide warships to help enforce an arms embargo by the coalition against the Houthis.

One month into the conflict, Saudi Arabia announced the launch of a second operation called ‘Operation Restoring Hope’, saying the intervention’s focus would shift from military operations to the political process and announced the start of a transitional conciliatory process. However, under the second operation, airstrikes and shelling against Houthi targets have continued with one aerial attack destroying the main runway at Sana’a International Airport.

Due to the inhumane conditions imposed on the Yemeni people and desperate appeals from international organisations, a five-day ceasefire was agreed, starting on 12 May, to allow humanitarian agencies to get aid into Yemen. The truce did not suspend the airstrikes that continued without any respite, over the major populated areas of North Yemen. On 12 May, Oxfam warned that the five day humanitarian ceasefire was not sufficient to fully address Yemen’s humanitarian crisis.⁸

V. War in Yemen: The illegality of the war

a) Self-defence and article 51

It is a general rule in international humanitarian law that, in the absence of an armed attack against a country or its allies, any use of force or any threat of the use of force must be avoided unless it refers to a case of self-defence, and had been endorsed by the UN Security Council. According to international law, any military action against another state that is not in self-defence encroaches upon the customary principle of non-interference in the affairs of another State, as postulated in article 2(4) of the UN Charter. The article stipulates a general restraint from the use of force by states whereby:

All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations.

This is also true of US involvement in the Yemeni war. The US has supported the Saudi intervention with military and financial aid in terms of logistic and intelligence supplies from the very outset. According to international law, the US commitment amounts in all respects to an action of belligerency even if it did not deploy military forces on the ground. In this regard, the International Court of Justice judges that, on the same footing with military actions, the activities of ‘training, arming, equipping, financing and supplying rebel forces, or otherwise encouraging, supporting and aiding military and paramilitary activities in and against a State’ are equivalent to acts of war.⁹

Saudi Arabia or other neighbouring states could appeal to the right to self-defence in order to justify the necessity of a direct military action in Yemen, as established by Article 51 of the UN Charter. Not surprisingly, both Saudi Arabia and the US tried to play the self-defence card claiming that their actions were in response to a specific request from a neighbouring country in need (the exiled President Hadi). Accordingly, the exiled President Hadi addressed a letter from exile to the UN asking for a prompt military intervention by invoking Article 51 of the UN Charter, the right to self-defence. A similar argument was advanced by US officials who said that President Obama's endorsement came at the request of the Yemeni government (President Hadi). The right to engage in military action in self-defence is legal under international law as provided by Article 51 of the UN Charter, which states:

Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.

However, it is a misreading of Article 51 to suggest it applies to the conflict in Yemen. Indeed, Article 51 gives a state the right to engage in self-defence, including collective self-defence, but only in response to armed attacks across international borders. In other words, Article 51 applies only to the cases of explicit threats of or use of force against the territorial integrity of a certain state by another state, and not when resulting from domestic disputes.¹⁰ In this regard, it does not seem that the Houthis' takeover of Yemen presented an imminent and direct threat to the US and Saudi Arabia or any of the neighbouring countries to such an extent that their attacks are justifiable under Article 51, especially when other techniques, for instance sanctions or mediation, were not exhausted prior to the conflict's outbreak. There are no reports of any verified raids into Saudi territory at the outset of the conflict. Saudi state media reported the first attacks on its territory occurred on 12 April over the province of Najran; the second attack was on 1 May and on 6 June, when an offensive allied to the Houthis and the former president Saleh attacked Jizan province bordering Yemen.¹¹ Hence, the legality of Saudi and US action is likely to continue relying upon the questionable legitimacy of an exiled ruler.

The claim to legality of this conflict requires further considerations on the political role played by the former President Hadi in calling for military action. Mischaracterised as the only democratic and legitimate ruler of Yemen, the legitimacy of Hadi's request to the UN is undoubtedly at the core of the question of whether this conflict is legal or illegal under the international laws of war. Hence, does Hadi have the legitimacy to request external intervention as president of Yemen?

Sticking to the facts, Yemen's President Abdu Rabu Mansour Hadi was elected in 2012 elections in an undemocratic way by being the only candidate to run for presidency. Moreover, at the time of the letter to the UN, Hadi had overstayed his term in office, lost popular support, resigned and was exiled in another country. He had no actual authority or power in Yemen. Thus, the weakness of Hadi's democratic mandate casts doubts on the legitimacy of his request for military action, and places the Saudi military action 'in murky legal territory'.¹²

In view of this, once scrutinised in reference to the international requirements, the legitimacy of an armed intervention in Yemen, in whatever way it is justified, either in the form of self-defence or aid to a neighbouring country in need, clearly cracks on all fronts.

b) International or non-international conflict?

The International humanitarian law, or the laws of war, distinguishes between “international” and “non-international” armed conflicts. It is therefore important to assess the character of Yemen’s conflict to determine the applicability of these conventions on the state parties.

The Geneva Conventions and the two Additional Protocols are the focal instruments upon which the bulk of international humanitarian law is erected.¹³ They govern the general conduct of international and non-international conflict, and impose limitations on the effects of war for the protection of those who are not part of the hostilities (non-combatants / civilians).

All belligerent States, namely Saudi Arabia, USA, Egypt, Jordan, Sudan, Bahrain, United Arab Emirates, Kuwait, Qatar, and Morocco, have ratified all four Geneva Conventions and both the Additional Protocols. The only exception is that of the US which has not ratified the Second Optional Protocol on the protection of civilians in non-international conflicts.

Furthermore, all Geneva Conventions have now passed into the body of customary international law, as established in articles 1- 3 of the Report of the Secretary General, and finally approved by the Security Council resolution 827 of 1993.¹⁴ Therefore, they are now legally binding on all states regardless of their ratification of the Conventions, and whenever they engage in armed conflicts of whichever nature.

• The fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War: distinction between international and non-international conflict

Generally, all the Geneva Conventions accommodate situations related to *international armed conflicts*, whose definition has not always been easy to ascertain and sometimes gives rise to controversial debates. In addition to the other Geneva Conventions, the Fourth Geneva Convention put forth additional legal restraints on the protection over civilians in international conflicts against certain consequences of war, specifically addressed by Part II of the treaty. Successively the issue has been further developed by the First Additional Protocol of 1977 on the protection of civilians in international conflict (AP I).

As for the Fourth Geneva Convention, the Article 13 states in generic terms:

The provisions of Part II cover the whole of the populations of the countries in conflict, without any adverse distinction based, in particular, on race, nationality, religion or political opinion, and are intended to alleviate the sufferings caused by war.

Article 13, and the provisions contained in Part II, have been intentionally left as general and extensive in scope as possible: they are meant to define the field of application of the Convention by covering the whole population of the countries in conflict, and not only the protected persons, who are the object of the other Geneva Conventions.

Article 3, which is common in all Geneva Conventions, further extends the scope of the Geneva Conventions by exceptionally imposing on State parties an adherence to a minimum protection also to those who are not party to conflicts and are, at the same time, *out of the scope of the ‘international conflict’ definition*. Indeed, Article 3 stipulates that:

Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria. To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

- (1) *violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;*
- (2) *taking of hostages;*
- (3) *outrages upon dignity, in particular humiliating and degrading treatment; and*

(4) *the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.*

(5) *The wounded and sick shall be collected and cared for.*

As it can be inferred in the ICRC's commentaries, Article 3 of the Fourth Geneva Convention covers all *armed conflicts*, that is all those 'conflicts occurring between the Government and rebel forces, or two rebel forces, or to other conflicts that have all the characteristics of war but that are carried out within the confines of a single country'.¹⁵

For all the considerations above, reference to international and non-international conflict is important in order to understand the extent to which state parties to a conflict are accountable for war crimes committed during the armed conflicts.

c) Protection of civilian and civilian objects in Geneva Protocols

In addition to the provision in Article 3(1), generally stating that any killing or violent act is severely condemned by the treaty regardless of the nature of the conflict, the issue of the protection of civilians has been further covered by the two Additional Protocols to the Geneva Conventions of 1977.

Articles 48-54 of AP I introduces the prohibition of direct attacks against civilians and civilian objects in *international conflicts* in accordance with the customary principle of distinction, whereby belligerents must distinguish between combatants and civilians (art. 48). While inferred in an approximate manner through the previous Geneva conventions, for the first time the Protocol provides the definition of civilian in legal terms as "any person not belonging to the armed forces," including "non-nationals and refugees" (art. 50).

Further, the scope of the law is extended to all indiscriminate attacks that are not directed at a specific and distinguishable military objective (art. 51), and whose effects cannot be circumscribed. A particular mention must be made of attacks "by bombardment against single military target located in a city, town, village with a similar concentration of civilians" (art. 51, 5a) or "which may be expected to cause incidental loss of civilian life, injury to civilians and damage to civilian objects in an excessive manner compared to the concrete and direct military advantage anticipated" (art. 51, 5b). Innovatively, the war crime of starvation as a means of warfare was introduced (art. 54), along with provisions relative to the protection of objects indispensable to the survival of civilians, such as agricultural areas, livestock, drinking water installations and medical units as well, including hospitals and shelter units (art. 12 to 23).

AP II extended all the previous provisions to the case of *conflicts with a non-international character*, namely to all those conflicts between the government forces and one or more non-state armed groups, or two or more non-state armed groups. For the purposes of international law, the armed groups must exhibit sufficient organization and sustain military operations to constitute an armed conflict.

The protocol defines certain minimum humanitarian standards to situations that had all the characteristics of war, without being an international war. The focal principle underlining the AP II is that the distinction between internal and international armed conflict is artificial from the point of view of a victim and that internal conflicts, amounting to 80% of all armed conflicts, are often more protracted and involve far greater levels of cruelty.¹⁶

Both protocols aimed to codify customary principles of proportionality, distinction and military necessity already known in international humanitarian law, governing the legal use of force in armed conflicts of whichever nature.

As to the principle of proportionality, "launching an attack 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 military advantage anticipated, is prohibited".¹⁷

The principle of distinction means that the parties to the conflict must at all times distinguish between

civilians and combatants. Attacks may only be directed against combatants, and not against civilians. The principle is applicable in both international and non-international armed conflicts.¹⁸

In addition to the principles above, the principle of military necessity is governed by several constraints. An attack or action must be intended to help in the military defeat of the enemy; the attack must be against a military object and the harm caused to civilians or civilian property must be proportional and not excessive in relation to the concrete and direct military advantage anticipated.

In this regard, Chief Prosecutor Luis Moreno-Ocampo clarifies when violations occur:

Under international humanitarian law, the death of civilians during an armed conflict, no matter how grave and regrettable, does not in itself constitute a war crime. International humanitarian law permits belligerents to carry out proportionate attacks against military objectives, even when it is known that some civilian deaths or injuries will occur. A crime occurs if there is an intentional attack directed against civilians (principle of distinction), or an attack is launched on a military objective in the knowledge that the incidental civilian injuries would be clearly excessive in relation to the anticipated military advantage (principle of proportionality).¹⁹

The principle of military necessity is applicable also to weapons. In addition to indiscriminate attacks, which strike military objectives and civilians or civilian objects without distinction, the laws of war also prohibit the use of weapons that cannot be directed at a specific military objective. Article 35 of AP I states that:²⁰

- (1) In any armed conflict, the right of the Parties to the conflict to choose methods or means of warfare is not unlimited;*
- (2) It is prohibited to employ weapons, projectiles and material and methods of warfare of a nature to cause superfluous injury or unnecessary suffering;*
- (3) It is prohibited to employ methods or means of warfare which are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment.*

To sum up, there is no evidence that the Houthi insurgency represented a direct threat to any state involved in the conflict. Nor is the military action intended to help a neighbouring state in need. In this context, against a backdrop of political and legal incertitude in terms of legitimacy and governance, the right to self-defence as governed in Article 51 and argued by Saudi and US governments does not hold water. As stated, Hadi's claim to the presidency was poor; Hadi's mandate lost full consensus from Yemen's citizenry, he had overstayed his term and finally he resigned in January and was exiled in another country.

However, the fact that former President Hadi cannot be considered the legitimate ruler does not automatically imply that Houthis can instead be considered as such. The very short-lived Revolutionary Council established in February to form a new 551-seat parliament, which would then select a five-member presidential council to rule the country for two years, has been stifled by the Saudi military campaign in too short a time period for us to determine whether they had given a popular mandate to put forth institutional reforms. In another words, the Houthi authority does not appear to meet the requirements of statehood.

In view of the above, there are three possible routes to follow in the framework of international humanitarian law, according to whether we consider former President Hadi or the Houthis as the legitimate authority representing the state in Yemen. The first scenario is to consider the former president Hadi as the only legitimate ruler of the state of Yemen. In this case Hadi's consent to the military intervention would indicate the absence of an international armed conflict between Yemen and the coalition forces, as there would be no conflict arising if the Yemeni government and the coalition States agree to a military action.

On the other hand, the second scenario is to consider the Houthis as the only legitimate ruling forces of the state of Yemen. In this case, the rules on *international conflicts* could apply to Yemen and the coalition states, with a particular reference to the obligations imposed by the Fourth Geneva Convention and the First Protocol, which Yemen and the coalition states to a large extent have ratified.

Ultimately, international humanitarian law could open the way to a third possible legal settlement of the conflict, under the regime of *armed conflicts of a non-international dimension*. In fact, the conflict between the Houthis and Hadi's forces appears to be attributable to a conflict with a domestic dimension, rather than a conflict between two states. In other words, the Houthi revolution should be accounted for as a bottom-up movement of domestic aspiration within national borders, and the Houthi forces as a political entity in the process of consolidating its authority as the ruling party of the country. In view of this, the legal regime for a *non-international armed conflict* applies in respect of the common Art. 3 of the Geneva Conventions, and the Second Optional Protocol.²¹

Worthy of note, as a practical matter international humanitarian law on the means and methods of warfare is largely the same whether an international or non-international armed conflict.²²

VI. War in Yemen: A record of violations

Direct and indiscriminate attacks on civilians and civilian objects, as discussed above, are prohibited by the international laws of war. Further, prohibited indiscriminate attacks include, among others attacks, area bombardment that treats as a single military objective a number of clearly separated and distinct military objectives, in an area containing a concentration of civilians and civilian objects.²³

Several major human rights organisations discussed the possibility that war crimes may have been committed by the coalition during the air campaign in Yemen. In this regard, Human Rights Watch wrote that since the Saudi-led air campaign started on 26 March 2015, airstrikes have been conducted in blatant violation of the laws of war.²⁴ Some examples of violations of humanitarian law are:

- March 30 attack on a displaced persons camp in Mazraq, northern Yemen, which struck a medical facility and a market, killing over 30 civilians.²⁵ The attack clearly represents a breach of Article 3 of the Fourth Geneva Convention on protection of persons taking no active part in the hostilities in the cases of armed conflict not of an international character.²⁶ Further, an attack of this kind generally infringes Article 4 of AP II relating to the protection of victims of non-international armed conflict, and more specifically Art. 13 on the protection of the civilians against dangers arising from military operations. Art. 13 states that the "civilian population shall not be the object of attacks in all circumstances".²⁷
- A strike on 31 March on a dairy factory outside the Red Sea port of Hodaida causing 31 civilian deaths.²⁸ Accordingly, Article 14 of AP II prohibits "any attack against objects indispensable to the survival of the civilian population".²⁹
- A strike against a humanitarian aid warehouse of the international aid organisation Oxfam in Sa'ada on 18 April.³⁰ Attacks against functional places performing relief actions of an exclusively humanitarian nature are forbidden as stated in Article 18 of AP II.³¹
- The airstrikes in the first week of May against five densely populated areas Sa'dah, Sana'a, Hodeidah, Hajjah and Ibb, where many civilians were trapped, leading to the deaths of at least 97 civilians and injuries to 157 others.³² Once again, attacks over undistinguished targets resulting in damage and mass killings are severely prohibited by Article 13 of AP II.
- The sabotage of Yemen's oil pipelines and a naval blockade of Yemen's key port city of Aden, in place since the end of March. According to media sources, the sabotage has caused a shortage of fuel supplies nationwide, extremely important for the population's survival.³³ As reported by Human Rights Watch, the blockade is in breach of international humanitarian law as fuel is urgently needed to power

generators for hospitals and to pump water to civilian residences.³⁴ According to figures reported by Oxfam, almost two-thirds of the Yemeni population have no access to clean water and sanitation, and the lives of at least 16 million civilians are in jeopardy, equivalent to the total population in the European capitals of Berlin, London, Paris and Rome.³⁵ This is in violation respectively of Article 17 on protection and care of civilians, Article 18 on relief actions toward civilian population “suffering undue hardship owing to a lack of supplies essential to its survival”; and last but not least, Article 14, whereby “starvation of civilians as a method of combat is prohibited”.³⁶

- The airstrikes against the water network.³⁷ Similarly, the articles above apply also to attacks directed at damaging infrastructure, such as the water pipe system.
- The 27 May airstrikes against Sanaa and Hajjah provinces in Yemen’s west and northwest respectively, causing the death of 80 civilians.³⁸ These attacks do not respect the principle of protection of civilians, according to Article 13 in the Second Protocol.³⁹
- The airstrikes on 12 June over the Yemeni capital’s old quarter, considered a UNESCO heritage site. The attack killed five people and destroyed homes in the centuries-old heritage site described as a “jewel” of Islamic culture.⁴⁰ These attacks do not respect the principle of protection of civilians, according to Article 13 of AP II, and the obligations under international humanitarian law to protect cultural heritage, especially the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict.⁴¹

The figures reported by Freedom House give an extremely alarming picture of the scale of the conflict: 4,000 people killed and 7,300 injured; 7,021 civilian buildings completely or partially damaged including; 931 civil utilities (among them 192 schools, three of which were bombed whilst the students were present); 62 health institutions and hospitals; five commercial sea ports and civil airports; 61 food materials warehouses and 65 bridges and roads.⁴² According to CNN, over 10,160,000 Yemenis were deprived of water, food, and electricity as a result of the conflict.⁴³

The adherence of the coalition states to the aforementioned legal instruments may differ by degrees. All in all, the totality of the states that are party to the conflict should abide by Article 3 of the Fourth Geneva Convention.⁴⁴ As to the Optional Protocols, the enforceability of the legal obligations may envisage a less transparent situation where most countries, with the US and Saudi Arabia in the frontline, are not parties to the treaties.

Nonetheless, given the humanitarian dimension of the effects of war caused by the military attacks, and in view of the fact that all legal provisions contained in the protocols reflect in all aspects the inviolable principles contained in international customary law of proportionality, military necessity and distinction, all the above-mentioned actions therefore should be classed as war crimes. Consequently, all states party to the conflict should be held to account for the violation of the laws of war.

a) The use of cluster bombs

In early May, Human Rights Watch accused Saudi Arabia of using US-supplied cluster munitions in Yemen, especially in the northern Sa’ada governorate, the Houthi rebel stronghold near Saudi Arabia. The particular cluster munitions systems reportedly used are CBU-105 Sensor Fused Weapons, which are guided bombs intended to take out tanks and other armoured vehicles with a flurry of explosions spread out over an area. The Saudi military acknowledged using CBU-105 bombs, but claimed that they were only employed against armoured vehicles and not in population centres, and accused Human Rights Watch of getting information from the Houthi militia.⁴⁵

The use of cluster bombs is severely condemned in international law. It has been prohibited under any circumstances by the Convention on Cluster Munitions of 2008, which forbids the use, manufacture, transfer,

stockpile and incitement to the use of cluster bombs over an area (art. 1).⁴⁶ The critical aspect of this type of bomb is its capability to disperse sub-munitions over an area, which, failing to detect their target, may lay dormant and unexploded until people stumble upon them. For its indiscriminate effects, such bombs are considered to pose a lethal danger to the civilian population in an armed conflict.

Not surprisingly, neither the US nor the countries forming the coalition have signed the Convention and therefore are not liable to be held accountable to the violation thereof. However, the use of cluster bombs are prohibited in reference to another treaty, the UN Convention on Certain Conventional Weapons, concluded at Geneva in 1980, generally referring to 'weapons that are in relatively wide use but that are not weapons of mass destruction, including all those small arms considered excessively injurious or whose effects are indiscriminate'.

According to media and activists' record, a nuclear bomb has been used in Yemen on 20 May. The explosion is under the scrutiny of nuclear weapons experts who seem to confirm that the explosion could have been, by a very highly probability, the result of a neutron bomb strike. The nuclear attack in Yemen remains unconfirmed due to the shortage of evidence. However, at a first sight, nuclear experts allegedly attribute the neutron bomb to Israel on the grounds of the evidenced use of two Israeli F16 aircrafts that dropped the bomb.⁴⁷ Even if the nuclear attack must be proven, the lightning effect and the duration of the fireball blast, with the traditional mushroom cloud, seem to leave no room for doubt.

VII. Conclusions

1. The principle of non-interference in the affairs of another State, as regulated by article 2(4) of the UN Charter, should be predominant unless undertaken in extreme circumstances and limited to the right to self-defence provided in article 51 of UN Charter.
2. The principle of Article 51 of UN charter on the right to self-defence applies only to the cases of explicit threats of or uses of force against the territorial integrity of a certain state by another state and not when resulting from domestic disputes.
3. Since the outbreak of the conflict, the Saudi-led coalition has done very little to distinguish between military and civilian targets, with the Yemeni civilian population the main victim of this conflict.
4. The conflict between the coalition and Houthi forces is of non-international character. As such, it falls under the obligations imposed by the common Article 3 in all Geneva Conventions of 1949 and the Second Optional Protocol. Under these laws, civilians may never be the deliberate target of attacks and that parties to a conflict must distinguish at all times between combatants and civilians.
5. The conflict between the coalition and Houthi forces must be conducted under all circumstances in compliance with the customary humanitarian principles of proportionality, necessity and distinction, which secures the principles of civilian immunity and condemns indiscriminate attacks with no distinction between combatants and civilians.
6. Cluster bombs, as mines, under all circumstances are to be considered indiscriminate weapons for posing a lethal danger against the civilian population. As such, their use is by all means prohibited by international law, and amounts to a serious violation of international law.

In view of these considerations, the CDE firmly believes that:

1. The Saudi intervention in Yemen is totally founded on false pretences. It is an illegal war that flagrantly violates the prohibition against the use of armed force enshrined in article 2(4) of the UN Convention.
2. None of the State parties to the belligerent coalition appears to be able to successfully rely on the principle of self-defence recognised in Article 51. President Hadi is not the legitimate ruler of Yemen nor are Saudi Arabia or its coalition partners at any risk of military action against them by the Houthis.
3. The Saudi intervention in Yemen represents a blatant violation of international law for failing to guarantee the protection of civilians and failing to uphold humanitarian standards.
4. The States participating in the coalition must be held accountable for the war crimes committed. All members are party to the Fourth Geneva Conventions and all states, with the only exception of the USA, are party to the Optional Protocols. As a result, they are obliged to secure minimum standards on protection of civilians, in compliance with Article 3 of the Fourth Geneva Convention, and at a greater extent the Second Protocol.

5. All states' parties to the conflict should always abide by the principles of customary laws of war reflected in the treaties. Parties to the conflict did not take all feasible precautions to minimise harm to civilians and civilian objects, and carried out attacks that fail to discriminate between combatants and civilians, in accordance with the principle of proportionality, necessity and distinction.

6. The coalition states should be accountable for the use of cluster bombs over densely populated areas. Taking into account that no member of the coalition are party to the Convention on Cluster Munitions, however other treaties should be referred to and applied, such as the 1997 Mine Ban Treaty, ratified by Jordan, Kuwait, Qatar, and Sudan, and the 1980 Convention on Certain Conventional Weapons, ratified by Saudi Arabia, Jordan, USA, UAE, Kuwait.

On these grounds, CDE recommends the following:

1. CDE calls on the warring sides in Yemen to implement an immediate ceasefire for humanitarian and political purposes. A pause in the fighting would allow crucial supplies in and permit civilians to get out of combat zones and also serve as a foundation for the warring sides to come round the negotiating table with the aim of resolving their differences without further suffering and bloodshed.

2. CDE calls for the UN Security Council to refer investigations over the coalition States to the International Criminal Court (ICC), as accorded by the Rome Statute, Article 13 (b). The coalition States should be called to answer for war crimes in compliance with Art 8, par. 2 (b) (i, ii, iii, iv, v, ix, xx, xxiv) and par. 2 (e) (i, ii, iii, iv) of the Rome Statute.

3. CDE urges the international community to implement severe sanctions against the coalition states for their indiscriminate use of cluster bombs over the Yemenis territory, contrary to the Mine Ban Treaties and the Convention on Certain Conventional Weapons.

4. CDE also recommend the international community to set out all the necessary measures to initiate investigations on the alleged use of a neutron bomb on 20 May. Such weapons are prohibited under international law, and provoke disproportionate harm to the population.

5. CDE calls on the national governments implicated in the violations to ensure impartial investigations on whether such violations occurred, and prosecute the individuals responsible in accordance with international fair-trial standards.

6. CDE calls on the USA to immediately ratify both Optional Protocols to the Geneva Conventions, which secure the principles of civilian immunity in warfare of non-international conflict.

In addition, the CDE intends to express:

1. Its well-grounded concerns on the fact that, while the Saudi led coalition has been murdering civilians with little outcry from the international community, the UK and US are quick to discuss the crimes of states they are at odds with, but they seem happy to turn a blind eye to the crimes of their allies, or even to support their allies in their murderous campaigns.

2. Its growing concerns about the consequence of this savage war on the Yemeni population. Through this war, the Yemeni people's political aspirations have been silenced, as well as their legitimate right to put an end to a dictatorship.

3. Its strong feeling that, although international humanitarian law in all its forms is based on the shared principle of protecting innocents during armed conflicts of any sort, in reality it still proves unsatisfactory in terms of containment of the effects of military action against a civilian population.

4. Its deep-rooted belief that the legal instruments preventing states from going to war to settle disputes of prove to be insufficient. Regrettably, all of the examples above show that a state can still deliberately undertake military actions against another on spurious grounds with little consequence.

Endnotes:

¹ <http://www.al-monitor.com/pulse/security/2014/01/yemen-poverty-conflict-food-insecurity.html#>

² Freedom House report, <https://piazzadcara.wordpress.com/2015/05/14/yemen-6th-statistical-report-from-freedom-house-yemen-about-humanitarian-status-in-yemen/>. The figures are still uncertain. The World Health Organization recorded 2,800 casualties, 10,000 injuries and more than 1,000,000 internally displaced. <http://www.who.int/mediacentre/news/statements/2015/yemen-situation/en/>

³ <http://web.stanford.edu/group/mappingmilitants/cgi-bin/groups/view/19#note6> and <http://www.aljazeera.com/news/2015/06/informant-yemen-saleh-helped-direct-al-qaeda-150604073415522.html>

⁴ Zaydi means followers of Zaidiyya, one the oldest branches of Shia Islam that emerged in the 8th century. From a theological point of view, Zaidi Shi'ism is considered as the closest Shia sect to Sunnis for not acknowledging the principle of infallibility of Imams after Husayn, which is otherwise at the core of the religious tenets of the other Shia sects. A Zaidi Imamate, also known as the Rassid State, ruled in Yemen since the 12th century until its fall in 1962, when a revolution deposed the last Imam at the outset of the civil war culminating in the formation of two Yemeni states. To date, Zaidis make up about 35/40% of Muslims in Yemen

⁵ <http://weekly.ahram.org.eg/2005/743/re10.htm>

⁶ <http://www.yementimes.com/en/1826/intreview/4467/Al-Bukhaiti-to-the-Yemen-Times->

⁷ <http://www.theguardian.com/football/2015/apr/10/yemen-air-strikes-countries-backing-saudi-arabia>

⁸ <http://www.bbc.com/news/world-middle-east-32719194>

⁹ ICJ on the Nicaragua v. United States of America, 1986.

available on <http://www.icj-cij.org/docket/?sum=367&p1=3&p2=3&case=70&p3=5>

¹⁰ See ICJ on Nicaragua v. United States of America, 27 June 1986, section X, par. 2.

¹¹ <http://www.aljazeera.com/news/2015/06/saudi-arabia-houthi-attack-border-foiled-150605193039833.html> ;

<http://www.aljazeera.com/news/2015/04/deaths-houthi-rebels-yemen-attack-saudi-border-150412011907290.html>;

¹² <http://www.irinnews.org/report/101320/is-the-saudi-war-on-yemen-legal>

¹³ <https://www.icrc.org/applic/ihl/ihl.nsf/vwTreaties1949.xsp>

¹⁴ The 827 Security Council Resolution:

[http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/827\(1993\);](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/827(1993);) Secretary-general Report: http://www.un.org/ga/search/view_doc.asp?symbol=S/25704. Of particular concern, par. 33-44. For Further readings, please refer to the Rome Statute and the commentaries

¹⁵ Commentary on the II Geneva Convention, by J. S. Pictet, Director for General Affairs of the International Committee of the Red Cross.

¹⁶ https://www.icrc.org/fr/assets/files/other/irrc_850_stewart.pdf and <https://www.icrc.org/applic/ihl/ihl.nsf/INTRO/475?OpenDocument>

¹⁷ https://www.icrc.org/customary-ihl/eng/docs/v1_cha_chapter4_rule14

¹⁸ https://www.icrc.org/customary-ihl/eng/docs/v1_cha_chapter1_rule1

¹⁹ http://www.icc-cpi.int/NR/rdonlyres/F596D08D-D810-43A2-99BB-B899B9C5BCD2/277422/OTP_letter_to_senders_re_Iraq_9_February_2006.pdf

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<https://www.icrc.org/applic/ihl/ihl.nsf/7c4d08d9b287a42141256739003e636b/f6c8b9fee14a77fdc125641e0052b079>

²¹ <http://www.hrw.org/news/2015/04/06/q-conflict-yemen-and-international-law>

²² <http://www.hrw.org/news/2015/04/06/q-conflict-yemen-and-international-law>

²³ <http://www.hrw.org/news/2015/04/06/q-conflict-yemen-and-international-law>

²⁴ <http://www.hrw.org/news/2015/04/06/q-conflict-yemen-and-international-law>

²⁵ <http://www.hrw.org/news/2015/04/01/yemen-airstrike-camp-raises-grave-concerns>

²⁶

<https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=A4E145A2A7A68875C12563CD0051B9AE>

²⁷

<https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=A366465E238B1934C12563CD0051E8A0>

²⁸ <http://www.hrw.org/news/2015/04/15/yemen-factory-airstrike-killed-31-civilians>

²⁹

<https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=ACF5220D585326BCC12563CD0051E8B6>

³⁰ <http://www.hrw.org/news/2015/04/22/yemen-warehouse-strike-threatens-aid-delivery>

³¹

<https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=C97EBA985969303BC12563CD0051E90B>

³² <https://www.amnesty.org/en/articles/news/2015/05/yemen-mounting-evidence-of-high-civilian-toll-of-saudi-led-airstrikes/>

³³ <http://www.hrw.org/news/2015/05/10/yemen-coalition-blocking-desperately-needed-fuel>

³⁴ <http://www.hrw.org/news/2015/05/10/yemen-coalition-blocking-desperately-needed-fuel>

³⁵ <http://www.sott.net/article/296913-US-UK-Saudi-attacks-on-Yemen-leave-16-million-Yemenis-without-clean-water>

³⁶

<https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=ACF5220D585326BCC12563CD0051E8B6>

³⁷ <http://www.sott.net/article/296913-US-UK-Saudi-attacks-on-Yemen-leave-16-million-Yemenis-without-clean-water>

³⁸ <http://www.reuters.com/article/2015/05/27/us-yemen-security-port-idUSKBN0OC0MT20150527>

³⁹

<https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=A366465E238B1934C12563CD0051E8A0>

⁴⁰ <http://www.aljazeera.com/news/2015/06/world-heritage-sites-attacked-yemen-sanaa-150612162938541.html>

⁴¹ <http://www.un.org/apps/news/story.asp?NewsID=50441>

⁴² Freedom House report, <https://piazzadcara.wordpress.com/2015/05/14/yemen-6th-statistical-report-from-freedom-house-yemen-about-humanitarian-status-in-yemen/>

⁴³ http://edition.cnn.com/2015/04/08/middleeast/yemen-saudi-6-things-lister/index.html?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+rss%2Fedition_world+%28RSS%3A+CNNi+-+World%29

⁴⁴

https://www.icrc.org/applic/ihl/ihl.nsf/States.xsp?xp_viewStates=XPages_NORMStatesParties&xp_treatySelected=380

⁴⁵ <http://www.hrw.org/news/2015/05/03/yemen-saudi-led-airstrikes-used-cluster-munitions>

⁴⁶ <https://www.icrc.org/ihl/INTRO/620?OpenDocument>

⁴⁷ According to media, Israel is the only nation that openly deploys neutron bombs. See <http://www.veteranstoday.com/2015/05/28/nuclear-war-has-begun-in-yemen/> and <http://www.globalresearch.ca/possible-tactical-nuclear-strike-neutron-bomb-in-yemen/5452876>

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