

Yemen, Naval Blockade

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N.B. As per the disclaimer, neither the ICRC nor the authors can be identified with the opinions expressed in the Cases and Documents. Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. **Similarly, in some of the texts used in the case studies, the facts may not always be proven;** nevertheless, they have been selected because they highlight interesting IHL issues and are thus published for didactic purposes.

A. Yemen: Events of 2015

[Source: "World Report 2016: Yemen", *Human Rights Watch*, 27 January 2016. Available at <https://www.hrw.org/world-report/2016/country-chapters/yemen>]

[1] In January 2015, Houthi forces, also known as Ansar Allah, effectively ousted Yemeni President Abdu Rabu Mansour Hadi and his cabinet; he subsequently relocated to Saudi Arabia and re-established a government there.

[2] In March, after Houthi and allied forces advanced south, threatening the port city of Aden, a Saudi Arabia-led coalition of Arab countries, with the participation of the United States, began a campaign of airstrikes against them. On March 26, coalition warplanes attacked Houthi forces in Sanaa, the capital, and other locations. The airstrikes continued throughout 2015 as fighting occurred across the country, with Bahrain, Sudan, Saudi Arabia, and the United Arab Emirates sending ground troops to battle Houthi and allied forces.

B. Yemen: Coalition Blocking Desperately Needed Fuel

[Source: "Yemen: Coalition Blocking Desperately Needed Fuel", *Human Rights Watch*, 10 May 2015. Available at <https://www.hrw.org/news/2015/05/10/yemen-coalition-blocking-desperately-needed-fuel>]

[1] (Beirut) – The Saudi Arabia-led coalition's blockade of Yemen is keeping out fuel needed for the Yemeni population's survival in violation of the laws of war. Yemen is in urgent need of fuel to power generators for hospitals overwhelmed with wounded from the fighting and to pump water to civilian residences.

[2] The 10-country coalition, which has United States logistics and intelligence support, should urgently implement measures for the rapid processing of oil tankers to allow the safe, secure, and speedy distribution of fuel supplies to the civilian population. The Houthis and other armed groups controlling port areas should permit the safe transfer of fuel to hospitals and other civilian entities. Fuel should be allowed to go through whether or not a proposed ceasefire takes effect.

[...]

[3] The coalition began an aerial-bombing campaign against Houthi forces on March 26, 2015, and instituted a naval and aerial blockade. Under the laws of war, fuel and other goods with military uses can be prevented from entering the country unless it would threaten the population's survival or otherwise cause disproportionate harm to the civilian population compared with the expected military gain.

[4] But the overall situation in Yemen is dire, Human Rights Watch said. The United Nations Office for the Coordination of Humanitarian Affairs' (OCHA) humanitarian coordinator for Yemen, Johannes van der Klaauw, stated on April 23 that Yemen's "airports and seaports constitute a lifeline given that Yemen relies on imports for 90 percent of its food and most of its fuel. However, these lifelines have been hampered as most of Yemen's airports are not open to civilian traffic, and transports by sea are subject to the coalition's inspection regime related to the arms embargo mandated by the UN Security Council."

[5] [...] On May 8, the United Nation's Children's Fund stated that "More children in Yemen are at risk of dying from hunger and lack of health services than from bombs and bullets."

[6] According to shipping logs, since April 16, coalition forces granted permission to 19 ships carrying rice, grain, palm oil, steel, and timber permission to berth at Hodaida and Saleef ports, and they were able to unload their cargo. [...] In contrast, no fuel tankers have been able to berth at Yemeni ports since March 28, though at least seven have tried, according to shipping records.

[...]

[7] Protection Vessels International stated that as of May 1 seven ships with over 349,000 metric tons (mT) of fuel supplies were anchored outside Yemeni territorial waters awaiting permission to berth at one of the country's ports. Sources in the shipping industry told Human Rights Watch that one of these ships, the *RISA*, has been waiting to berth at western Yemen's Hodaida port since April 21. The *RISA* is carrying around 33,000 metric tons of gasoline, which would provide Yemen with enough fuel to cover two days of its peacetime consumption needs. According to shipping logs shared with Human Rights Watch, on April 23, at

4:06 p.m., six coalition marine officers boarded the vessel and for one hour inspected its cargo, then disembarked. But the coalition has not granted the vessel permission to berth, despite its repeated requests.

[...]

[8] Shipping sources told Human Rights Watch that for the ports of Hodaida and Saleef, which is also on Yemen's west coast, applications must be filed with the Yemeni Transport Ministry, currently based in Jeddah, Saudi Arabia, and are subject to approval by coalition forces. For Aden, applications need to be filed with an office of the "Popular Resistance Committee" in Aden, which reports to the coalition forces. They said that they have been told that vessels must additionally prove that their cargo "will not benefit the Houthis," but that they do not understand what is required for them to do this, and the coalition has not issued any clarifying instructions.

[9] On May 7, coalition forces threatened to open fire on any vessel not complying with instructions to stay well clear of Yemen Territorial Waters, shipping sources told Human Rights Watch. [...]

[10] Human Rights Watch does not know to what extent other fuel tankers are declining to head to Yemeni ports due to security and insurance considerations. Major marine insurers have advised merchant vessels to avoid Yemeni territorial waters if possible while some shipping companies have publicly declared that they will no longer accept bookings to transport cargo to or from Yemen.

[...]

Humanitarian Situation in Yemen

[11] The coalition's naval and aerial blockade of Yemen was put in place soon after the bombing campaign began on March 26. A coalition spokesman said on March 30 that "all the navy vessels needed for the blockade are in place," and that they would "monitor all ships entering and leaving Yemeni ports." The United Nations Security Council on April 14 imposed an arms embargo and travel restrictions against the Houthis. Beyond this, the goods embargoed and the procedures for enforcing the blockade have not publicly been made clear.

[12] Even before the beginning of this armed conflict, according to MercyCorps, 40 percent of the country was reported as food insecure. UNICEF reported that one million children under 5 years old were acutely malnourished. At least 61 percent of the population, half of whom are children, was in need of some kind of humanitarian assistance. The WFP estimates that 12 million people are now food insecure, a 13 percent increase.

[13] The fuel shortages have exacerbated the limited access to water, given Yemenis' heavy reliance on

water trucks and pumps. OCHA reported that 13.4 million people lacked access to safe drinking water even before the beginning of the crisis. UNICEF's representative to Yemen, Julien Harnies, said: "The vast majority of water is pumped up using diesel generators ... which will mean that people will end up using very bad quality water. You will get water-borne diseases, diarrhoea and eventually cholera and people will die of that." On May 3, the WHO noted a doubling in cases of bloody diarrhoea in children under 5 as well as measles and malaria infections since March 26.

[14] The fuel shortage has also impacted many of the country's hospitals, which do not have enough fuel for their generators to run. Heavy fighting, including aerial bombing by coalition forces, has wounded several thousand people in urban areas, taxing the country's already substandard healthcare system. The World Health Organization (WHO), the International Committee of the Red Cross (ICRC), and other humanitarian agencies have pointed to the imminent shutdown of hospitals and medical services for lack of fuel and basic supplies. A statement issued by the ICRC quoted Issa Alzub, head of al-Kuwait Hospital in Sanaa, the capital, saying, "We are facing tremendous logistical difficulties in trying to keep this hospital working. We are running out of diesel. Our ambulances can no longer transport patients. Only half of our staff can come to work as the hospital buses have stopped running."

[...]

[15] The WHO said on April 21 that ambulance services and the delivery of medical supplies had been critically disrupted. It said that because of electricity cuts, refrigerated vaccine-storage sites are in danger, which may leave millions of children below age 5 unvaccinated. [...]

[16] According to information obtained by the World Food Programme (WFP) on May 3, prices for fuel have increased by about 450 percent in some regions. [...]

[17] The increase in fuel prices has also contributed to skyrocketing prices for basic food stuffs. [...] Yemen imports 95 percent of its wheat products and 90 percent of its basic food needs, making its population extremely vulnerable to fluctuations in import prices. According to the WFP, retail prices for wheat have risen by up to 90 percent in the hardest hit locations since February. Most essential food and non-food commodities disappeared in areas such as Saada, Aden, al-Dhale'a, Lahj, Taiz, and Shabwa due to disruptions of the supply chain, market dysfunctionalities, and transport restrictions on account of fuel shortages. [...]

[...]

[18] All of Yemen's energy production is oil and gas based, according to the US Energy Information Administration (USEIA). [...] [O]ver the last 15 years Yemen has increasingly relied on petroleum imports. [...] Given the lack of a pipeline to its neighbors, Saudi Arabia and Oman, all fuel shipments reach Yemen via one of its six ports, making it particularly vulnerable to naval disruptions.

[...]

Blockades and the Laws of War

[19] International law on naval blockades is set out in the 1908 London Declaration concerning the Laws of Naval War and in the 1994 San Remo Manual on International Law Applicable to Armed Conflicts at Sea (“San Remo Manual”), which are widely recognized as reflecting customary laws of war at sea. Similar rules relating to aerial blockades are found in the 2009 HPCR Manual on International Law Applicable to Air and Missile Warfare.

[20] Parties to an armed conflict may enforce and maintain a blockade using methods and means of warfare that do not violate the laws of war. Blockades need to be publicly declared and be effectively enforced.

[21] A blockade is unlawful if it has the sole purpose of starving the civilian population or denies the population goods indispensable for its survival. A blockade also violates the laws of war if it has a disproportionate impact on the civilian population, when the harm to civilians is, or may be expected to be, greater than the concrete and direct military advantage anticipated from the blockade.

[22] A blockading party may capture merchant vessels “believed on reasonable grounds to be breaching a blockade.” A party may attack a merchant vessel that, after prior warning, “clearly resist[s] capture.” However, blockades cannot be used to stop needed humanitarian assistance. If inadequate food and other goods essential for the survival of the civilian population are not being adequately provided, the blockading party must provide for free passage of food and other essential supplies. To allow passage, the blockading party may set technical arrangements, including permission to “visit and search” vessels; and require distributing the supplies under the local supervision of a government or an impartial humanitarian organization. Medical supplies for both civilians and combatants shall also be permitted, subject to meeting technical arrangements, including visit and search.

[...]

[23] A blockading party can only confiscate goods on board a neutral merchant vessel (or aircraft) if they are “contraband.” Contraband is defined as goods that “are ultimately destined for territory under the control of the enemy and which may be susceptible for use in armed conflict.” A blockading party must have published contraband lists, which may vary according to the particular circumstances of the armed conflict. Contraband lists shall be reasonably specific. “Free goods” are those not subject to capture, and that include religious objects; articles intended exclusively for the treatment of the wounded and sick; and clothing, bedding, essential foodstuffs, and means of shelter for the civilian population in general, and women and children in particular, unless there is a serious reason to believe that such goods will be diverted to a military purpose;

and other goods not susceptible for use in armed conflict.

[...]

Discussion

I. Classification of the situation

1. (Document A)

a. How would you classify the situation in Yemen? Would the classification be different for the periods before and after January 2015? (GC I-IV, Art. 2 and 3; P I, Art. 1; P II, Art. 1)

b. (Document B, para. 2) Does Human Rights Watch explicitly classify the situation in Yemen? Does it do so implicitly by referring to the Houthis as an armed group? Would classification make a difference in the present case or is the legal framework applicable to blockades the same for both types of armed conflict? (GC I-IV, Art. 2 and 3; P I, Art. 1; P II, Art. 1; San Remo Manual on International Law Applicable to Armed Conflicts at Sea, 12 June 1994)

c. Does the consent by the government in exile suffice to make the coalition forces' intervention against the Houthis subject to IHL of non-international armed conflicts rather than to IHL of international armed conflicts? (GC I-IV, Art. 2 and 3; P I, Art. 1; P II, Art. 1)

2. What is the law applicable to the situation? If the situation is a NIAC, is it also covered by AP II? (GC I-IV, Art. 2 and 3; P I, Art. 1; P II, Art. 1)

II. Blockade

3. (Document B, paras 3, 19-20)

a. Is blockade unlawful under the laws of war? Does this depend on its type (naval, aerial, land blockade)? Do IHL treaties regulate blockades? Does your answer depend on whether the conflict is international or non-international? If you consider that the legal institution of blockade does not apply to non-international armed conflicts, could the government, or third States with the consent of the government, nevertheless prohibit ships from entering its ports and/or inspect such ships?

b. What may render a blockade unlawful? Under IHL? Under IHRL? Does the coalition have obligations under IHL or IHRL *vis-à-vis* the Yemeni population? Could one argue that, under the functional theory of occupation, the powers imposing a blockade have [rights and] obligations that are akin to those of an Occupying Power? What about for NIACs? Is the imposition of a blockade relevant for the purposes of establishing jurisdiction under IHRL?

c. Does the coalition have an obligation to allow free passage of humanitarian relief supplies? (GC IV, Art. 23; P I, Art. 70; P II, Art. 18; CIHL, Rule 55; San Remo Manual, Rules 102-103)

4. (Document B, paras 1, 4-7)

a. What objects are indispensable to the survival of the civilian population? Is fuel as such covered by this definition? Does the fact that it is indispensable for the functioning of water installations and the powering of hospital generators affect your answer? May the blockade's impact on fuel prices and, by way of consequence, on food prices, be taken into account? (P I, Art. 54(2); P II, Art. 14; CIHL, Rule 54)

b. Do you think this blockade was specifically enacted with the specific purpose of depriving civilians of means of sustenance? Must this have been the sole or primary purpose of the blockading party in order for the relevant IHL prohibition to apply? (P I, Art. 54(2); P II, Art. 14; CIHL, Rule 54)

5. (Document B, para. 4) Does the fact that the embargo was mandated by the UN have bearing on the

lawfulness of the blockade under IHL?

6.

a. (Document B, para. 7 and 22) Do the coalition forces have the right, as part of the blockade, to inspect neutral ships outside Yemeni territorial waters? If the conflict is not of an international character (and if, by hypothesis, the legal institution of blockade did not apply to such conflicts)? (San Remo Manual, Rule 122)

b. (Document B, para. 9 and 22) May coalition forces attack neutral ships if they do not comply with the instructions?

7. (Document B, para. 23)

a. May the coalition forces confiscate fuel under the pretext that it constitutes contraband, given that fuel may equally benefit armed groups and civilians? (San Remo Manual, Rule 148)

b. Is fuel, on the contrary, a “free good” not subject to capture? (San Remo Manual, Rule 150)

8. May blockade constitute collective punishment? May the blockade in the present case be considered so? (Hague Regulations, Article 50; GC III, Art. 87; GC IV, Art. 33; CIHL, Rule 103)