

Yemen, Humanitarian Impact of the Conflict

INTRODUCTORY TEXT: *A group of independent experts mandated by the UN reported that it has reasonable grounds to believe that the parties to the armed conflict in Yemen have committed a substantial number of violations of international humanitarian law. This case presents the context of the situation and facts evidencing alleged violations of IHL.*

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N.B. As per the disclaimer ^[1], 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. Situation of Human Rights in Yemen since September 2014

[Source: “Situation of Human Rights in Yemen, Including Violations and Abuses since September 2014”, OHCHR, 17 August 2018, available at <https://www.ohchr.org/> ^[2], Footnotes Omitted]

[...]

I. Findings of the Group of Independent Eminent International and Regional Experts on Yemen

[...]

D. Context

17. In 2011, a popular revolution arose against the 33-year rule of Ali Abdullah Saleh, President of Yemen. A deal brokered by the Gulf Cooperation Council granted Saleh immunity and transferred power to Vice-President Abd Rabbo Mansour Hadi. [...] In 2014, the conflict escalated between the government forces led by President Hadi, the Houthis and other armed groups over power-sharing arrangements and the draft constitution. In September, the Houthis and the armed forces aligned to former President Saleh seized and consolidated control over the capital, Sana’a and other parts of the country.

18. In March 2015, Saudi Arabia formed a coalition with Bahrain, Egypt, Jordan, Kuwait, Morocco, Senegal, the Sudan and the United Arab Emirates to initiate military action at the request of President Hadi. The United States and the United Kingdom, among other States, advise and support the coalition. The coalition forces launched an air campaign causing

significant civilian casualties. [...] In addition to air strikes, coalition naval forces imposed severe restrictions and, in late 2017, enforced a *de facto* blockade on Yemeni seaports, hindering imports of essential supplies to the country. In August 2016, the coalition effectively closed Sana'a International Airport. [...]

19. Intense hostilities continue in certain parts of Yemen despite the grave humanitarian impact on the population. The violence is exacerbated by food insecurity, limited access to health care and restrictions on imports of vital commodities. The non-payment of public sector salaries since August 2016, following the Government's move of the central bank from Sana'a to Aden, has also had a devastating impact on civilians.

[...]

22. On 4 November 2017, the Houthis fired a missile into Saudi Arabia. Two days later, the coalition announced a complete blockade of all the country's borders — air, sea and land; over the following weeks, it was gradually lifted. In 2018, the Houthis continued to launch missiles into Saudi Arabia.

23. The simplistic view of a binary conflict between the Government and the Houthi-Saleh alliance, while never accurate, had become increasingly muddled as loyalties shifted, armed groups proliferated and factions fragmented.

24. Following continued tensions between the Houthis and Saleh allies, their forces clashed in Sana'a in December 2017. Former President Saleh was killed by the Houthis. In January 2018, the Southern Transitional Council, established in May 2017, declared a state of emergency in Aden and its supporters clashed heavily with government forces. A cautious calm resumed following intervention by the coalition. The Southern Transitional Council forces, backed heavily by the United Arab Emirates, continue to control major cities in

southern Yemen.

[...]

E. Violations of international law

1. Attacks affecting civilians

27. From March 2015 to June 2018, there were at least 16,706 civilian casualties, with 6,475 killed and 10,231 injured in the conflict; however, the real figure is likely to be significantly higher.

28. Coalition air strikes have caused most of the documented civilian casualties. In the past three years, such air strikes have hit residential areas, markets, funerals, weddings, detention facilities, civilian boats and even medical facilities. [...].

[...]

35. Despite the special protection afforded to medical facilities and educational, cultural and religious sites under international humanitarian law, many such facilities and sites have been damaged or destroyed by coalition air strikes throughout the conflict. The Group of Experts reviewed information concerning at least 32 such incidents. It received credible information that the no-strike list of protected objects was not being adequately shared within the coalition command chain.

36. Several air strikes have damaged facilities operated by Médecins sans frontières [...] All the locations of the Médecins sans frontières facilities had been shared with the coalition and the ambulance was clearly marked. [...]

37. The specific cases investigated by the Group of Experts raise serious concerns about the targeting process applied by the coalition. The Group submitted a request to the coalition for specific information on this process; regrettably, it has not received any response to date. The brief public reports by the coalition's Joint Incidents Assessment Team do not provide any detail on the targeting process. Therefore, the Group has been limited to examining the results of air strikes.

[...]

42. The information available indicates that civilians, including women and children, were hit by shelling and snipers from the Houthi-Saleh forces and other parties to the conflict while in their homes, just outside their homes, fetching water at local wells, on their way to purchase food, travelling to seek medical attention and delivering critical supplies. [...].

[...]

44. A small number of victims were caught in crossfire, but many said they were not near active hostilities or near military forces or objects when they were hit, and witnesses were often able to corroborate this information.

45. The Group of Experts is concerned by the alleged use by the Houthi-Saleh forces of weapons with wide area effect in a situation of urban warfare, as the use of such weapons in an urban setting is indiscriminate. Such acts would be violations of international humanitarian law.

2. Access restrictions

46. Restrictions on humanitarian access remained a critical constraint in Yemen.

International humanitarian law requires all parties to the conflict to allow and facilitate rapid and unimpeded passage of humanitarian relief, including medicine, food and other survival items.

47. The coalition has imposed severe naval and air restrictions in Yemen, to varying degrees, since March 2015, citing the arms embargo provisions of Security Council resolution 2216 (2015). Prior to the conflict, Yemen imported nearly 90 per cent of its food, medical supplies and fuel. These de facto blockades have had widespread and devastating effects on the civilian population, in particular in the areas controlled by the de facto authorities.

48. Following the imposition of severe restrictions, the United Nations Verification and Inspection Mechanism was established to facilitate commercial shipping to Red Sea ports not under the control of the Government. The coalition nonetheless maintained an additional inspection process, and has denied entry to vessels on a seemingly arbitrary basis. [...].

49. On 6 November 2017, in response to missiles fired at Saudi Arabia by Houthi forces, the coalition imposed a total blockade on all the borders of Yemen, preventing all humanitarian aid and commercial trade, including food and fuel, from entering the country. [...].

[...]

54. Despite their significant impact on civilians, these restrictions are unlikely to be effective in achieving their stated military objectives due to the absence of a clear and published list of prohibited items. Moreover, in the three years that the naval restrictions have been in place, no searches by either the United Nations Verification and Inspection

Mechanism or coalition forces have discovered weapons.

[...]

56. On 9 August 2016, the coalition effectively closed Sana'a International Airport to commercial traffic. This has prevented thousands of Yemenites from seeking medical care abroad. In the meantime, the health-care system in Yemen has disintegrated. [...].

57. Prior to August 2016, commercial flights to Yemen were required to stop in Saudi Arabia for inspection en route. The coalition has not explained the military necessity of closing the airport completely, including to those genuinely seeking immediate medical treatment abroad.

58. There are reasonable grounds to believe that these naval and air restrictions are imposed in violation of international human rights law and international humanitarian law. [...].

[...]

3. Arbitrary detentions, enforced disappearances, torture and ill-treatment

65. Investigations by the Group of Experts confirm widespread arbitrary detention throughout the country, and ill-treatment and torture in some facilities. [...] Parties to the conflict are using undeclared detention facilities in an apparent, and if confirmed unlawful, attempt to put detainees outside the reach of the law. A few individuals detained in areas under the control of the *de facto* authorities reported that they had been brought before tribunals where proceedings flouted basic due process standards, including the right to legal representation. [...].

[...]

5. Sexual violence

[...]

92. There are reasonable grounds to believe that government personnel and Security Belt Forces have committed rape and other forms of serious sexual violence targeting vulnerable groups, including foreign migrants, internally displaced persons and other vulnerable groups, including women and children. The Government is responsible for violations of international human rights law and, as these appear to be conflict-related, international humanitarian law. Other States may also have responsibility.

[...]

6. Child recruitment and use

[...]

96. The Group of Experts received substantial information indicating that the Government, the coalition-backed forces and the Houthi-Saleh forces have all conscripted or enlisted children into armed forces or groups and used them to participate actively in hostilities. In most cases, the children were between 11 and 17 years old, but there have been consistent reports of the recruitment or use of children as young as 8 years old. The Group found reliable information on the use of children in many conflict-affected governorates.

[...]

99. While parties in Yemen expressed opinions to the contrary, the instruments that Yemen has ratified remain binding, and these acts would constitute violations of international human rights law and, in some cases, violations of international humanitarian law and war crimes.

F. Accountability

[...]

101. The primary legal responsibility for addressing these violations and crimes lies with the Government, which bears the duty to protect persons under its jurisdiction. All States that are parties to the conflict, including Yemen and the member States of the coalition, have responsibilities to investigate and prosecute violations that amount to crimes by their nationals and armed forces.

[...]

104. In 2016, the coalition established the Joint Incidents Assessment Team to investigate allegations of unlawful coalition attacks. It would appear, however, that the Team lacks independence, its public findings contain insufficient details and that there is no mechanism to ensure implementation of its recommendations.

[...]

B. All Sides in Yemen May be Responsible for War Crimes, Say UN Experts

[Source: “All Sides in Yemen May be Responsible for War Crimes, Say UN Experts”, The Guardian, 28 August 2018, available at <https://www.theguardian.com/> ^[3]

[...]

[1] A long-awaited report released on Tuesday ^[4] catalogues abuses including rape, torture, disappearances and “deprivation of the right to life” during the three-year Yemeni conflict, in which Houthi rebels and their allies are fighting a Saudi-led coalition that backs the UN-recognised government of President Abd Rabbu Mansour Hadi.

[2] In a particularly damning section of the report, the three experts said the Saudi-led coalition routinely failed to consult its own “no-strike list” of more than 30,000 sites in Yemen, including refugee camps and hospitals. They also said the Saudi air force had failed to cooperate with them about its targeting process.

[...]

[3] “There is little evidence of any attempt by parties to the conflict to minimise civilian casualties, the group’s chair, Kamel Jendoubi, said in a statement. “I call on them to prioritise human dignity in this forgotten conflict.”

[...]

[4] The report also says that restrictions Saudi Arabia has placed on the delivery of aid by sea or air have had such a severe humanitarian impact that “such acts, together with the requisite intent, may amount to international crimes.”

[...]

[5] The report also says that the Houthi rebels and their allies loyal to the former president Ali Abdullah Saleh are also accused of impeding the delivery of aid and other important goods, particularly in the city of Taiz.

[6] In a clear call for western countries such as the US and Britain to stop arming the two Gulf states most involved in the conflict – Saudi Arabia and the United Arab Emirates – the experts urged the international community to “refrain from providing arms that could be used in the conflict”. The remark could also be taken as a call for Iran to refrain from providing missiles to Houthi forces.

[...]

[7] Britain and other western powers have continued to arm Saudi Arabia, claiming there is no serious risk of it breaching international humanitarian law. A case brought in the UK high court last year to suspend the issuing of arms exports control licences failed after the court ruled the UK government had sought to minimise the risk of breaches.

[...]

Discussion

I. Classification of the Situation and Applicable Law

1. (*Document A, paras 17-24; Document B, para. 1*) According to the facts of the case, how would you classify the situation in Yemen? If there is an armed conflict? If yes, who

are the Parties to the conflict? Are States forming the coalition force individually Parties or as a group? Are the US and UK Parties to the conflict? (GC I-IV, Art. 2 ^[5], 3 ^[6]; P I, Art. 1 ^[7]; P II, Art. 1 ^[8])

2. (*Document A, para. 18*) Would your classification of the situation be different had a request from President Hadi been absent?

3. What is the law applicable to the situation? If it was classified as a NIAC, is Additional Protocol II applicable?

4. What is the applicable law that regulates the blockade in Yemen?

II. Alleged Violations of International Law

5. (*Document A, paras 28 and 37*) Are air strikes that have hit residential areas, markets, funerals, weddings, detention facilities, civilian boats and even medical facilities violations of IHL *per se*? What needs to be taken into consideration to determine whether these were legitimate targets? Why does the Commission ask questions instead of finding violations? Must the attacker answer such questions about the targeting process? Is the Commission justified to examine the results if it does not obtain an answer about the targeting process? Could a belligerent have legitimate reasons not to be transparent about its targeting process? (CIHL, Rules 1 ^[9], 6 ^[10], 7 ^[11], 10 ^[12], 19 ^[13]; P II, Art. 13 ^[14])

6. (*Document A, paras 35-36; Document B, paras 2-3*)

a. Do you agree with the Group of Experts that medical facilities and educational, cultural and religious sites are afforded special protection under IHL? How about refugee camps? Does this hold true for NIACs as well? Does that mean such sites can never be

targeted during military operations? (CIHL, Rules 28 ^[15], 29 ^[16], 38 ^[17]; P II, Art. 11 ^[18])

b. The Group of Experts said that the no-strike list of protected objects was not being adequately shared within the coalition command chain. In your opinion, is this information relevant to analyse the conformity with IHL of the coalition's targeting process? Does the coalition have an obligation under IHL to submit specific information on its targeting process to the Group of Experts? (CIHL, Rule 15 ^[19]; P II, Art. 13 ^[14])

7. (*Document A, paras 42-45*) Is the Houthi-Saleh forces shelling and sniper attack on persons in and around homes while engaged in different chores violation of IHL? Could such activities by the civilians' amount to direct participation in hostilities? When could have these activities been considered as direct participation in hostilities? (PI, Art. 51; ^[20] P II, Art. 13 ^[14]; CIHL, Rule 6 ^[10])

8. (*Document A, paras 46-58; Document B, paras 4-5*)

a. Do you agree with the Group of Experts that the *de facto* naval blockade may have violated IHL and IHRL? Do IHL treaties regulate blockades? Does your answer depend on whether the conflict is classified as international or non-international? If you consider that IHL does not allow imposition of naval blockade in 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? Must a State declaring a blockade publish a clear list of prohibited items? (GC IV, Art 23 ^[21]; P I, Arts 18 ^[22], 35 ^[23], 70 ^[24], 71 ^[25]; CIHL, Rules 17 ^[26], 55 ^[27], 56 ^[28]; San Remo Manual, Arts 93-108 ^[29])

b. Is it true that IHL "requires all parties to the conflict to allow and facilitate rapid and unimpeded passage of humanitarian relief, including medicine, food and other survival items." (Document A, para. 46)? If so, in what circumstances and under what conditions? (GC IV, Art. 23

[30]; P I, Art. 70 [31]; P II, Art. 18 [32]; CIHL, Rule 55 [33]; San Remo Manual, Rules 102-103 [34])

c. Can a blockade constitute occupation in general? In this case? What are the similarities and differences between blockades and occupation? 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 in NIACs? (GC I-IV, Art. 2 [35]; GC IV, Art 23 [36], 55 [37]-56 [38], 59-63 [39]; P I, Arts 18 [22], 35 [23], 70 [24], 71 [25]; Hague Convention IV, Art 42 [40]; CIHL, Rules 17 [26], 55 [27], 56 [28]; San Remo Manual, Arts 93-108 [29])

d. Do you think that the UNSC arms embargo (See Yemen, Potential Existence and Effects of Naval Blockade, A. United Nations Security Council Resolution 2216 [41]) justifies the blockade of Yemen's naval and aerial ports, as executed by the Coalition? Does the fact that an embargo was mandated by the UNSC have bearing on the lawfulness of the blockade under IHL? (GC I-IV, Art. 1 [42])

e. Does prevention by the coalition of humanitarian aid and commercial trade, including food and fuel, from entering Yemen amount to violation of IHL? How about denial of access to medical treatment abroad? Must depriving civilians of means of sustenance or access to medical treatment have been the sole or primary purpose of the blockading party in order for the relevant IHL prohibition to apply? What do you think about the accusation that the Houthi rebels and their allies loyal to the former president Ali Abdullah Saleh have been impeding the delivery of aid and other important goods? (CIHL, Rules 53 [43], 55 [27])

9. (*Document A, para. 65*) Does IHL regulate the alleged arbitrary detention, ill-treatment and torture in detention facilities in Yemen? How about the proceedings carried out before tribunals under the control of the *de facto* authorities in Yemen that allegedly flouted basic due process standards? Is IHRL applicable to these situations? Do both IHL

and IHRL apply concurrently? Which one is the *lex specialis* in this situation? (GC I-IV, Art. 3 [44]; P I, Art. 75 [45]; P II, Art. 5 [46], 6 [47]; CIHL, Rules 99 [48], 100 [49])

10. (*Document A, para. 92*) What protection does IHL provide against rape and other forms of sexual violence? Does IHL expressly prohibit rape and other forms of sexual violence in IAC? In NIAC? Would such violation trigger individual criminal responsibility or state responsibility, or both? (GC I-IV, Art. 1 [42], 3 [50]; P I, Art. 75 [45], 76 [51]; P II, Art. 4 [52]; CIHL, Rule 93 [53]; Rome Statute, Art. 8(2)(e)(vi) [54])

11. (*Document A, paras 96 and 99*)

a. How are children protected by IHL? Is their protection different in IAC and NIAC? Is there a prohibition on the recruitment of children into armed forces/groups? (CIHL, Rules 135-137 [55]; P II, Art. 4(3) [52]; P I, Arts 77 [56]-78 [57]; GC IV, Arts 14 [58], 17 [59], 23 [21], 24 [60], 50 [61], 51 [62], 68 [63], 82 [64], 94 [65]; Convention on the Rights of the Child [66]; Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict [67])

b. Are all the government, the coalition-backed forces and the Houthi-Saleh forces subject to the same prohibitions concerning the association of children with them? How could the difference between the obligations of States and non-state armed groups concerning recruitment of children be justified? With which principle of IHL could this difference conflict? (Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, Arts 3 and 4 [67])

c. What is the age below which the recruitment and use of children in hostilities is prohibited under AP I? Under AP II? Under the Optional Protocol to the Convention on the Rights of the Child? Under the ICC Statute? (P I, Art. 77(2) [56]; P II, Art. 4(3)(c) [52]; ICC Statute, Art. 8(2)(b)(xxvi))

[68])

d. Is there a legal difference between the wording of the prohibition of recruitment and use of children contained in PI Art. 77 (2) [56] and PII Art. 4 (3) (c) [52]?

e. Are children allowed under IHL to voluntarily join the armed forces of a State? Armed group? Does IHL differentiate between children who willingly take up arms and those who have been forced to do so? (P II, Art. 4(3)(c) and (d) [52]; P I, Art. 77(2) and (3) [56]; ICC Statute, Arts 8(2)(b)(xxvi) and 8(2)(e)(vii) [68])

f. How are children who have directly participated in hostilities meant to be treated upon capture? (P I, Art. 77(4) [56], 77 [56]-78 [57]; P II, Art. 4(3) [52]; CIHL, Rule 120 [69]; Optional Protocol on the Convention on the Rights of the Child, on the Involvement of Children in Armed Conflict [67])

12. (*Document A, paras 101 and 104*) Are States obliged to investigate and prosecute violations of IHL committed by their nationals? By members of armed groups? (CIHL, Rule 158 [70])

13. (*Document B, paras 6-7*) Does IHL prohibit provision of arms to the Parties to an armed conflict? How could the Group of Experts' call for the international community to "refrain from providing arms that could be used in the conflict" be justified under IHL? (GC I-IV, Art. 1 [42])

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