



## ARMED CONFLICT IN YEMEN; AN ILLUSTRATION OF THE PERTINENCE AND DEFICIENCIES OF EXISTING IHL RULES

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### ABSTRACT

The armed conflict in Yemen is one of the most devastating and catastrophic crises the international community is currently facing. It is entering its seventh year. This situation has raised numerous questions under International Humanitarian Law (IHL) as the set of rules the main aim of which is to limit the effects of armed conflicts for humanitarian reasons. This is also an occasion to test the pertinence and efficiency of IHL rules in the face of current armed conflicts. Accordingly, the present article seeks to study certain important issues in IHL raised by Yemen armed conflict. Doing so, firstly, the type of armed conflict in Yemen is addressed (1). Then, it goes through the principles of distinction, proportionality and precautions (2). Thereafter, the issues of blockade and siege are dealt with (3). After that, the situation of certain persons is examined (4). And finally, the very challenging and significant question of humanitarian assistance is studied (5). I will conclude that most of the humanitarian problems except the issue of humanitarian assistance and sieges are adequately regulated by IHL and that the problem is mainly that those rules are not respected. The controversy about the classification of the conflict, whether it is an international armed conflict (IAC) or a non-international armed conflict (NIAC), does not fundamentally affect those rules.

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## Introduction

For more than a decade, the Republic of Yemen has been torn apart by multiple armed conflicts involving domestic extremist groups and foreign countries which have eroded Yemen's centralized rule and split the country into various local centers of power. Geostrategic concerns aside, the collapse of Yemen's institutions during the war exacerbated poor living conditions in what was long the poorest Arab country and is now considered the world's worst humanitarian crisis. In 2014, the Ansar Allah/Houthi movement (the Houthis) based in northern Yemen captured the capital Sanaa/Sana'a and in early 2015 moved south from the capital to Aden. In March 2015, Saudi Arabia formed a coalition of several Arab partners (the Saudi-Led Coalition (SLC)) by which a military offensive was launched in order to restore the Yemeni President Abdu Rabbu Mansour Hadi's rule and expel the Huthis from Sanaa and other regions. The conflict has led to killing of thousands of Yemeni people, grave humanitarian suffering and serious damage of Yemen's infrastructure.<sup>1</sup>

The armed conflict in Yemen conflict is one of the most devastating and catastrophic crises the international community is facing. It is entering its seventh year. According to International Committee of the Red Cross (ICRC), thousands of civilian people have been killed and have lost their property. Around 4 million people across the country have been forced to flee to safer places. Basic services have all but collapsed, leaving millions of Yemenis facing a humanitarian crisis. This country faces the world's biggest food crisis, with some 20 million people in need of humanitarian assistance.<sup>2</sup> This situation has raised numerous questions under International Humanitarian Law (IHL) as the set of rules the main aim of which is to limit the effects of armed conflicts for humanitarian reasons. Additionally, this raises the question of the pertinence and efficiency of IHL rules in the face of current armed conflicts.

Accordingly, the present article seeks to study certain important issues in IHL raised by Yemen armed conflict. Doing so, firstly, the type of armed conflict in Yemen has to be discussed

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1. See Congressional Research Service, 'Yemen: Civil War and Regional Intervention', Summarized by: Jeremy M. Sharp (updated March 12, 2021) available at: <https://sgp.fas.org/crs/mideast/R43960.pdf>

2. See <https://www.icrc.org/en/where-we-work/middle-east/yemen>



(1). Next, the principles of distinction, proportionality and precaution have to be applied to the conduct of hostilities (2). Thereafter, the issues of blockade and siege are dealt with (3). After that, the situation of certain persons is examined (4). And finally, the very challenging and significant question of humanitarian assistance is studied (5).

## 1. IHL and the Classification of the Conflict in Yemen

While the customary rules applicable to international armed conflicts (IACs) and non-international armed conflicts (NIACs) are allegedly largely the same,<sup>1</sup> to identify the applicable treaty rules, the situation has to be classified as IAC, to which the four Geneva Conventions and Protocol Additional I applies, or as NIAC, to which only Article 3 common to the Geneva Conventions and Protocol Additional II applies.<sup>2</sup> Some experts suggest that IHL of IAC should apply to an outside intervention, even if it is consented by the government. Undoubtedly, this is a nice idea but does not correspond to state practice. Obviously, the law of IAC also applies if there is foreign support to the rebels. As to the situation in Yemen, in my assessment, Iran does not have overall control over the Huthis. Internationalization could only happen if a foreign state does not just support or help, but has overall control over the rebels.<sup>3</sup>

Sometimes the law of IAC was applicable in Yemen, for instance, when there were hostilities between forces controlled by Saudi Arabia and forces controlled by UAE. This was the case of the *Southern Transitional Council* in Aden. Anyway, the classification of the conflict is not so important because on most issues the law of IAC and NIAC is the same, but not on all obviously. When it comes to occupation of territory, the concept and the IHL regime of military occupation applies only in IACs. Equally, POWs and combatant status exist technically only in IACs.

So, let us apply the law of NIAC to the armed conflict in Yemen. Then question is when Additional Protocol II (AP II or Protocol II) to the Geneva Conventions to which Yemen is a state party applies? At least under the letter of Article 1 of Protocol II,<sup>4</sup> it is only Yemen which is bound by Protocol II but not foreign states which intervene to help Yemen. However, one may claim that if a state intervenes to help the government of another state, which is bound by Protocol II, it has to respect the Protocol too. Finally, the question arises whether the US and the UK are parties under the support-based approach? The ICRC has suggested that in an NIAC, if foreign states commit acts which would constitute a direct participation in hostilities in the

1. Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law – Volume 1: Rules*, (ICRC and CUP 2005).

2. For more information about when does IHL apply, see Marco Sassòli, *International Humanitarian Law: Rules, Controversies, and Solutions to Problems Arising in Warfare*, (Edward Elgar Publishing 2019), 168-203.

3. For more information regarding the internationalization of an NIAC see Djemila Carron, 'When is a Conflict International? Time for New Control Tests in IHL' (2016) 98 *International Review of the Red Cross* 1019, 1019-1041. Also, for more information on the ICRC position on the notion of armed conflicts involving foreign intervention see Tristan Ferraro, 'The ICRC's Legal Position on the Notion of Armed Conflict Involving Foreign Intervention and on Determining the IHL Applicable to this Type of Conflict' (2015) 97 *International Review of the Red Cross* 1227, 1227-1252.

4. Article 1 of AP II:

"1. This Protocol, which develops and supplements Article 3 common to the Geneva Conventions of 12 August 1949 [...] shall apply to all armed conflicts which are not covered by Article 1 of [...] Protocol I and which take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol (my emphasis)".



support of one of the parties, they become a party even if the intensity of their support would not be sufficient to trigger the applicability of the law of NIAC.<sup>1</sup>

The Saudi-led coalition entered the war in Yemen on March 26, 2015, launching Operation Decisive Storm. A day before the start of the operation, the United States announced its “logistical and intelligence support” to the military operation of the coalition. But US officials cautiously insisted that this assistance would not involve direct military action. Although this military assistance did not involve the “direct” use of force, it was significant and included the provision of intelligence and the establishment of joint planning cells with the Saudi military. Additionally, US officials met with Saudi intelligence and military officials to identify targets shortly before the operation began. As noted at the time, and as the conflict unfolded, the Saudi coalition relied heavily on U.S. surveillance and intelligence services to conduct military operations, particularly air strikes. The exchange of intelligence and targeted information quickly became controversial as the attacks became more frequent. Similarly, U.S. arms sales and aerial refueling have met with significant opposition from human rights and civil society groups, as well as some members of the U.S. Congress. This military support required significant U.S. assets and personnel. The aerial refueling operation involved U.S. tankers outside Yemeni airspace, and intelligence sharing included the deployment of U.S. personnel to Riyadh. Additionally, at least a small number of US troops are stationed in Yemen, working with coalition forces to provide advice and support on operational planning, reconnaissance, and logistics.<sup>2</sup>

Following President Trump’s election in November 2016, US foreign policy changed significantly, and US military aid to the Saudi coalition increased following Trump’s inauguration in 2017 and his decision to resume arms sales with the Saudi government. The following month, US senators took steps to block the sale of precision-guided weapons to Saudi Arabia, citing concerns over the high number of civilian deaths in Saudi airstrikes. To boost confidence and secure arms sales, the Saudi officials assured their U.S. counterparts that the Saudi military will take greater care for reducing civilian casualties. A pivotal aspect of achieving this goal was to provide more U.S. military support. Finally, and very importantly, U.S. military personnel will return to Riyadh to support targeted operations, but will have expanded access to Saudi operations and will be working in operations control centers. In summary, despite the conflict showing little signs of resolution and widespread allegations of violations of international humanitarian law, including war crimes related to the coalition’s military operations in Yemen, the Saudi coalition forces’ U.S. military support continues.<sup>3</sup>

Regarding the support provided by the United Kingdom to the Saudi Arabia and the Coalition, *inter alia*, the members of the House of Commons have declared that the United King-

1. This theory which is termed “support-based approach” is recently developed by the International Committee of the Red Cross (ICRC) that is concerned with interventions made by ‘one or more States, a coalition of States or an international or regional organization’ in a pre-existing non-international armed conflict (NIAC) for supporting one of its parties. See Tristan Ferraro, ‘The Applicability and Application of International Humanitarian Law to Multinational Forces’ (2013) 95 *International Review of the Red Cross* 561, 583–687. The support-based theory contributes to define the *ratione personae* scope of International Humanitarian Law (IHL) application. For more information as to support-based approach and its functions see R. van Steenberghe and P. Lesaffre, ‘The ICRC’s ‘support-based approach’: A suitable but incomplete theory’ (2019) 59 *Questions on International Law Journal* 5, 5-23.

2. Quoted in: John Hursh, ‘International Humanitarian Law Violations, Legal Responsibility, and US Military Support to the Saudi Coalition in Yemen: A Cautionary Tale’ (2020) 7 *Journal on the Use of Force and International Law* 122, 124-125.

3. *Ibid* 125-126.



dom's assistance for military action of Saudi Arabia in Yemen has been considerable. However, this assistance does not suffice for making this state a party to the conflict. They have added that the UK support includes both providing aircraft and bombs for airstrikes and participation of UK personnel in the Joint Combined Planning Cell and Saudi Air Operations Center. According to them, such an engagement which does not meet the legal threshold for becoming a party to the conflict has no precedence and shows the good relationship which exists between the UK and Saudi Arabia and its military. Furthermore, they are not persuaded that the UK government has enough oversight of "coalition procedures and operations."<sup>1</sup> It should be noted that the US government has always announced that the limited support with which the coalition has been provided by the US is not legally sufficient to make the United States a party to the conflict.<sup>2</sup>

## 2. Principles of Distinction and Proportionality in the Armed Conflict in Yemen

One of the most important and challenging issues in Yemen, is the unfortunate bombardments, which should under IHL distinguish between civilians and combatants.<sup>3</sup> According to news and reports, residential areas, markets, funerals, detention facilities, medical facilities, religious sites, refugee camps etc. have been bombed. A *Group of Eminent International and Regional Experts on Yemen* analyzed some of the airstrikes launched by the due to their disproportionate impact on civilians. For example, in accordance with the report of the *Group of Experts on Yemen*, the first attack hit the house shortly after 8:00 am, followed 10 minutes later by a second attack about 150 meters from the house. The third attack, which occurred about four to five minutes later, hit a clearing far from the village and caused no damage to people or property. The expert group was unable to confirm the exact number of casualties, but the Yemeni Residents and Humanitarian Coordinator's Office reported the following day that 12 people, including six children, had been killed and 16 injured. Most of the victims belonged to the same IDP families who fled their birthplaces in the Haradh district of Hajjah Governorate in 2015. Another example is the series of airstrikes launched by coalition forces at around 11:45 pm on 31 August 2019 at a complex called Dhamar Community College, located about 10 kilometers north of Dhamar city, Dhamar governorate. One of the buildings was used by the Houthis as an informal detention center and housed mostly male civilians. The existence of this detention facility has been publicly known since at least 2018 after it was alerted by a UN Security Council panel of experts. This informal camp was known to human rights groups and the ICRC who had visited it before the airstrikes. At least 134 male prisoners died and 40 were injured as a result of the strike. An analysis of satellite imagery and other material reviewed by the group

1. House of Commons Foreign Affairs Committee, 'The Use of UK-Manufactured Arms in Yemen, Fourth Report of Session 2016-17' (15 September 2016) 40; Available at: <https://www.justsecurity.org/wp-content/uploads/2016/09/UK-Parliament-Foreign-Affairs-Committee-Report-on-UK-arms-in-Yemen.pdf>

2. Quoted in: Hursh (no 9) 141.

3. In this regard, inter alia, see Human Rights Council, 'Situation of Human Rights in Yemen, Including Violations and Abuses since September 2014: Report of the Detailed Findings of the Group of Eminent International and Regional Experts on Yemen' (September 3, 2019) A/HRC/42/CRP.1, 28-220; Human Rights Council, 'Situation of Human Rights in Yemen, Including Violations and Abuses since September 2014: Detailed Findings of the Group of Eminent International and Regional Experts on Yemen' (September 29, 2020) A/HRC/45/CRP.7, 20-31; Human Rights Council, 'Situation of Human Rights in Yemen, Including Violations and Abuses since September 2014: Report of the Group of Eminent International and Regional Experts on Yemen' (September 10, 2021) A/HRC/48/20, 4-14.



confirms that four buildings, including the detention center, were severely damaged and one building was completely destroyed.<sup>1</sup> However, the fact that they were destroyed and people there were killed under IHL is not yet decisive for a violation, because the question is what was that target. There may be a legitimate target in a residential area if there is a rebel commander or a weapons factory, so the residential area may be affected. Even in a refugee camp there could be a legitimate target, but obviously then the proportionality principle becomes applicable and the attacker must even take all feasible actions to minimize civilian impacts if that principle is respected. Therefore, it is very difficult to judge whether IHL is violated.

Until recently, an international commission existed,<sup>2</sup> the UN Group of Eminent International and Regional Experts on Yemen,<sup>3</sup> which asked all kinds of question to the Saudi-Led Coalition (SLC) to understand why there were so often civilians killed in these acts. The problem is that belligerent does not have an obligation to give an answer to that. However, we would need to know not only what was hit but also what was targeted and, to apply the proportionality rule, how important that target was for the plans of the SLC compared to the expected incidental effects on civilians. For this we would need know the plans of the SLC. It appears that effective mechanisms should be resorted to aiming at making the parties to the conflict accountable. In this regard, the Group of Expert, in its 2020 report, recommended the United Nations and the international community to make concrete efforts to support accountability for gross violations and crimes; advocate mainstreaming human rights into peace process negotiations and avoid any measures that undermine respect for human rights and accountability; and support processes for effective transitional justice.<sup>4</sup> In particular, it recommended that the Security Council integrate the human rights dimension of the conflict in Yemen more fully into the agenda, refer the situation in Yemen to the International Criminal Court and extend the list of sanctions directed against persons involved in order to ensure that the most serious crimes do not go unpunished.<sup>5</sup>

At present, one of the interesting but also dangerous developments in Yemen is that there are no-strike lists and a Humanitarian Notification System. The mechanism of this system notifies the Saudi-led coalition of the locations of humanitarian static locations and humanitarian movements in Yemen aimed at ensuring the safety and security of humanitarian installations, personnel, equipment and activities in active military operations areas. This mechanism is coordinated by the UN Office for the Coordination of Humanitarian Affairs (OCHA). This gives the wrong impression that everything else may be hit. On the contrary, the basic idea of IHL is

1. Human Rights Council, Situation of Human Rights in Yemen, Including Violations and Abuses since September 2014: Detailed Findings of the Group of Eminent International and Regional Experts on Yemen (29 September 2020) A/HRC/45/CRP.7, paras. 66-69.

2. Unfortunately, on October 7, 2021, the Human Rights Council rejected a resolution to renew the mandate of the Group.

3. A Group of Eminent Experts (GEE) on Yemen was established by the United Nations Human Rights Council (HRC) in September 2017 to investigate international law's violations and abuses committed by all parties to the conflict and make general recommendations to improve the situation of human rights in Yemen. The mission of the Group is to establish the facts and circumstances surrounding violations and abuses and, where possible, identify the individuals responsible for those violations and abuses.

4. Human Rights Council, 'Situation of Human Rights in Yemen, Including Violations and Abuses since September 2014: Detailed Findings of the Group of Eminent International and Regional Experts on Yemen' (29 September 2020) A/HRC/45/CRP.7, 111.

5. Ibid.



that you may only target something if you know that it is a military objective. The Humanitarian Notification System mechanism gives somehow the reverse impression. It gives the impression that everything which has not been notified as a humanitarian site is a legitimate target of attack. In addition, why should a hospital run by an NGO like Doctors Without Borders (MSF) be better protected than a local hospital? Why should offices of an NGO be better protected than a simple civilian house? Furthermore, can the humanitarian organizations which notify those positions control that there is no military use? Obviously, a humanitarian impartial organization would be very embarrassed if it had to notify loss of protection. If the organization discovers the military use of a humanitarian site which is for distribution of food for the civilian population, it would probably not inform the SLC that now protection is lost. Therefore, I think this is a very doubtful idea.

Regarding proportionality, again, there is a need of an *ex ante* evaluation which includes the reverberating effects, in particular in urban areas. Indeed, if a military objective is targeted in midst of a town and you destroy this military objective, you will also destroy the water pipes and the electricity lines under and near this military objective. This attack may not be disproportionate, but if you have several such attacks then the whole infrastructure for the civilian population will be affected and many civilians will die not from the bombs but from the lack of purified drinking water. Furthermore, for instance, hospitals can no longer operate because there is no more electricity and this is something which should be much more taken into account because proportionality is not only about the individuals who are standing or living near the targeted objective but it is also about second and third order effects of an attack. Civilians are affected in many ways when civilian housing and critical infrastructure are damaged or destroyed, especially if densely populated areas are under attack for a long period of time. In many cases, the lingering effects of an attack, especially one that disables a country's power system, can far outweigh the immediate civilian casualties caused by the attack.<sup>1</sup>

One thing which is particularly raising concern in Yemen is that many hospitals were destroyed.<sup>2</sup> It is often argued including by humanitarian organizations that they are deliberately targeted to weaken the resilience of the civilian population or of the fighters. I must say I can nearly not imagine that but unfortunately it may be the case. Nevertheless, we have to understand that even a hospital loses protection if it is used to commit outside its humanitarian functions and acts harmful to the enemy. But there must be at first a warning and an appropriate time limit before you may attack it. Therefore, it is not admissible that a party claims only after an attack that a hospital was used by the enemy for hostile purposes. It must first warn the hospital and the hospital must have time to rectify the situation. Furthermore, to increase visibility of such specifically protected objects, medical units, including hospitals are entitled to use one of

1. Quoted in: Isabel Robinson and Ellen Nohle, 'Proportionality and Precautions in Attack: The Reverberating Effects of Using Explosive Weapons in Populated Areas' (2016) 98 *International Review of the Red Cross* 107, 108.

2. Since the conclusion of 1864 Geneva Convention, "[t]he wounded and sick shall be collected and cared for" has become a fundamental principle of international humanitarian law. Based on this principle, a general protection is given to all wounded and sick persons, including civilians and wounded combatants who are considered hors de combat. Additionally, the fourth Geneva Convention as well as customary international humanitarian law, extend the mentioned protection to civilian medical units such as hospitals where the wounded and sick are cared for. See Lara Hakki, Eric Stover and Rohini J. Haar, 'Breaking the Silence: Advocacy and Accountability for Attacks on Hospitals in Armed Conflict' (2021) 102 *International Review of the Red Cross* 1201, 1202.



the distinctive emblems of the Red Cross, the Red Crescent or the Red Crystal. When it comes to schools,<sup>1</sup> in existing IHL they do not have special protection like hospitals.<sup>2</sup> They are obviously civilian objects, but it is not unlawful to use schools for military purposes. Obviously, you have first to evacuate the children. But, if then the school is destroyed, children have no more education, and in my view, this has to be taken into account in the proportionality evaluation.<sup>3</sup>

### 3. Siege and Blockade and the Armed Conflict in Yemen

Two particular issues raising major humanitarian concern in Yemen are also sieges and blockades. Siege exists in land warfare when one party besieges a town and does not let anyone in or out, which means the civilians in the besieged town will starve. For the solution of this problem IHL does not fit to the reality. One solution under existing IHL is to let the civilians quit the besieged town, but obviously the fighters who are besieged do not want let the civilians out, because if they let the civilians out the enemy can simply attack the entire town and there are no more civilians, who have to be respected. The other solution is that humanitarian assistance for the civilian population must be let in. But here the problem is that besieging party may insist on a distribution in the besieged town which makes sure that only civilians will benefit from the humanitarian assistance. This obviously never works because no organization can guarantee that at the end assistance will not also benefit to fighters, while under IHL humanitarian assistance may only benefit to the civilian population. It is lawful to starve combatants, but obviously combatants may surrender and then they must be fed.

Another significant and challenging problem is related to the institution of the blockade in naval warfare. First and foremost, it should be said that it is a very old-fashioned institution. I am not sure that such an institution exists also in aerial warfare, although we often make analogies between aerial warfare and naval warfare. Astonishingly, under traditional customary law it is lawful to declare a blockade, but only in an IAC, over an enemy coast, which means you do not let anything in and you do not let anything out. The only exceptions are that the blockade is prohibited if the sole objective of the blockade is starvation of the civilian population and perhaps also when the effect in terms of starvation of the civilian population are disproportionate compared with the military aim of the blockade. One could in addition argue that humanitarian assistance for the civilian population must be let through a blockade but here again the problem arises how to control that the assistance only benefits to the civilian population.

The problem in Yemen is, first, that this is a NIAC and, in my view, there can be no blockade in an NIAC. Anyway, no blockade was declared by the Coalition and also the UN Security

1. The Yemen's conflict has devastating effects on civilians, particularly vulnerable groups such as women and children. According to the United Nations Children's Fund (UNICEF) and the ICRC, in addition to destruction of and damages to schools and using them for military purposes, children's education for children is among the main casualties of the conflict. See UNICEF, 'Conflict shuts a third of schools in Yemen's port city of Hudaydah', November 30, 2018. Available at <https://www.unicef.org/mena/press-releases/conflict-shuts-third-schools-yemens-port-city-hudaydah>; ICRC, 'War in Yemen', (May 31, 2019); available at <https://www.icrc.org/en/where-we-work/middle-east/yemen/war-yemen>; UNICEF, 'Geneva Palais briefing note on education under attack in Yemen', (September 14, 2018); available at <https://www.unicef.org/press-releases/geneva-palais-briefing-note-education-under-attack-yemen>.

2. See, however, the Safe Schools Declaration, An inter-governmental political commitment to protect students, teachers, schools, and universities from the worst effects of armed conflict, at <https://ssd.protectingeducation.org/>

3. See on all this also Office of the Special Representative of the Secretary-General for Children and Armed Conflict, Protect Schools and Hospitals: Guidance Note on Security Council Resolution 1998 (United Nations Publication 2014) 16.



Council did not authorize a blockade.<sup>1</sup> So, officially, the Coalition only controls Yemeni ports and the Security Council requested all member States to control their ports. In Yemen itself, the same measures could be taken without a UN Security Council resolution if we start from the idea that Hadi government is the government of Yemen. But the real problem are bureaucratic delays. This is something we see in many conflict areas, such as Syria, that there is a consent to let humanitarian assistance enter, but there are also so many controls, conditions and permissions necessary that finally the civilian population will starve. In Yemen, there is also a UN verification and inspection mechanism. Therefore, together with the Coalition, there are two controls by the UN and by the Coalition and they never found any weapons in controlling these ships. It is clear that weapons enter Yemen, but apparently not by the ships which are controlled. They must bring in the food necessary for the civilian population because Yemen is well-known to be a net importer of food.

#### 4. Certain Persons and the Armed Conflict in Yemen

Another significant IHL issue raised by the armed conflict in Yemen is the protection of wounded, sick and hospitals and ambulances. Under IHL, the wounded and sick must be respected, collected and cared for without discrimination. Both enemy's and own fighters have to be treated in the same way. As previously mentioned, hospitals may only in very exceptional circumstances be targeted. But hospitals and ambulances may be searched. So, it is not unlawful for a party to take control over the place where the hospital is situated, to enter a hospital and to try to find enemies in that hospital and to arrest those enemies. But if they are patients, wounded and sick, they must be continued to be treated.

Detention and the status of detainees in NIAC<sup>2</sup> is considered to be one of the current challenges of IHL. When it comes to detainees, unfortunately we have reports about ill-treatment of detainees, about rape, about detention conditions which are not acceptable. From a legal point of view, obviously we have also to make sure whether persons may at all be detained. There must be a reason for detention. There must be a legal basis and procedure for internment. And, in my view, both the government and the rebels can and must establish courts and mechanisms which make sure that there is a control of the legality of the detention of persons.

Another problem is the association of children with government armed forces and armed groups. Under the Additional Protocols children under 15 years may not be used to participate in hostilities and may not be recruited. Unfortunately, sometimes this has been violated in Yemen.<sup>3</sup>

1. It is noteworthy that UN Security Council in paragraph 15 of its resolution 2216 (14 April 2015) "calls upon Member States, in particular States neighboring Yemen, to inspect, in accordance with their national authorities and legislation and consistent with international law, in particular the law of the sea and relevant international civil aviation agreements, all cargo to Yemen, in their territory, including seaports and airports, if the State concerned has information that provides reasonable grounds to believe the cargo contains items the supply, sale, or transfer of which is prohibited by paragraph 14 of this resolution for the purpose of ensuring strict implementation of those provisions" (my emphasis). See S/RES/2216 (2015). A blockade, however, would be enforced on the high seas. Although Security Council did not authorize blockade in this resolution, it appears that this resolution has been invoked by the Saudi-led coalition in order to conduct inspections in situations in which there is no legitimate concern about weapons. This has led to delay in the delivery of humanitarian goods and has contributed to severe shortages of food and other critical needs.

2. For a detailed analysis of detention in NIAC under IHL and IHRL and its different aspects, see Lawrence Hill-Cawthorne, *Detention in Non-International Armed Conflict* (OUP 2016).

3. According to art. 77 of API:

"1. Children shall be the object of special respect and shall be protected against any form of indecent assault. The Parties to the conflict shall provide them with the care and aid they require, whether because of their age or for any other reason.



## 5. Humanitarian Assistance and the Armed Conflict in Yemen

An important issue is obviously humanitarian access and humanitarian assistance.<sup>1</sup> According to *World Food Program*, Yemen is experiencing an unexampled level of hunger which poses serious hardships for many people around the country. About 16.2 million of people are faced with food insecurity in spite of humanitarian assistance which is currently provided. More than 5 million Yemenis are at risk of starvation. Due to the conflict and a declining economy, the families have many problems to find enough food to pass the day. Child malnutrition rates are among the highest in the world and nutritional status is going to be worsen. Nearly a third of families have incomplete diets, eating very few foods such as legumes, vegetables, fruits, dairy products and meat. Yemen still has the highest rates of malnutrition among women and children in the world, with 1.2 million pregnant or breastfeeding women and 2.3 million children under the age of five in need of acute malnutrition treatment caused by decrease in food consumption. The humanitarian situation in Yemen is so fragile that millions could face starvation and death if critical supplies such as food, fuel and medicine are cut off.<sup>2</sup>

Under IHL, the starting point is that the starvation of the civilian population is prohibited. The parties must accept relief actions if the civilian population is in need of humanitarian assistance. However, this is subject to several conditions. Article 18(2) of Additional Protocol II, which is relevant to the situation in Yemen reads (and I directly add my comments): “If the civilian population is suffering undue hardship [which is certainly the case in Yemen] owing to a lack of the supplies essential for its survival, such as foodstuffs and medical supplies [I would say in Yemen fuel is also an object indispensable for the survival of the civilian population, because you need fuel to operate the water pumps and the lorries which transport the food into the region where the civilian population is in need], relief actions for the civilian population [this is again the problem that they are only for the civilian population and therefore a party letting them through may insist to have some control that it only benefits to the civilians] which are of an exclusively humanitarian and impartial nature and which are conducted without any adverse distinction shall be undertaken [unfortunately the provision continues requiring the following] subject to the consent of the High Contracting Party concerned”.<sup>3</sup>

2. The Parties to the conflict shall take all feasible measures in order that children who have not attained the age of fifteen years do not take a direct part in hostilities and, in particular, they shall refrain from recruiting them into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, the Parties to the conflict shall endeavor to give priority to those who are oldest.

3. If, in exceptional cases, despite the provisions of paragraph 2, children who have not attained the age of fifteen years take a direct part in hostilities and fall into the power of an adverse Party, they shall continue to benefit from the special protection accorded by this Article, whether or not they are prisoners of war.

4. If arrested, detained or interned for reasons related to the armed conflict, children shall be held in quarters separate from the quarters of adults, except where families are accommodated as family units as provided in Article 75, paragraph 5.

5. The death penalty for an offence related to the armed conflict shall not be executed on persons who had not attained the age of eighteen years at the time the offence was committed”.

See also Art. 4(3)(c) and (d) of AP II for NIACs and Arts. 3 and 4 of the 2000 Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (25 May 2000) 2173 UNTS 222.

1. It should be mentioned that according to UN Secretary-General, enhancing humanitarian access is among the five main challenges facing the civilians’ protection in armed conflict. The other four core challenges are: enhancing compliance with international law; enhancing compliance by non-State armed groups; enhancing protection through more effective and better resourced United Nations peacekeeping and other relevant missions; and enhancing accountability for violations. See UNSG, ‘Report of the Secretary-General on the Protection of Civilians in Armed Conflict’ (May 29, 2009) U.N. Doc. S/2009/277 para. 26.

2. See <https://www.wfp.org/emergencies/yemen-emergency>.

3. Humanitarian access to vulnerable populations in conflict areas has often become more problematic and complicated in recent years, and many humanitarian organizations see it as the greatest challenge of the current humanitarian response to be addressed in the future. On the one hand, this is because many of today’s armed conflicts are fragmented and complex, with



The UN Security Council has adopted many resolutions concerning humanitarian assistance to Yemen.<sup>1</sup> Generally, it has considered in recent resolutions that the arbitrary denial of consent is prohibited.<sup>2</sup> One could make the argument that for the regions controlled by the Huthis it is sufficient if the Huthis agree with the humanitarian assistance brought, for instance, from Oman. It is important to address that humanitarian assistance is not only and mainly the task of the humanitarian organizations but the government has the obligation to make sure that inhabitants of its territory benefit from humanitarian assistance. And all belligerents must let humanitarian assistance in, if the civilian population is in need.

The denial of consent is justified (and therefore not arbitrary) if either the civilian population does not actually need the humanitarian assistance or if the entity offering it is unable to carry out relief actions that are exclusively humanitarian and impartial in character without any adverse distinction. Beyond that, in my view, the focus should not be on defining what is arbitrary but on the respect of other international obligations that make it compulsory to accept an offer of assistance. Indeed, denying consent in violation of international obligations must be considered as “arbitrary”, and the fact that IHL subjects relief actions to a State’s consent does not absolve that State from complying with its other obligations. Such other obligations under IHL include the very limited obligation to allow passage of certain items under Article 23 of Convention IV; the obligation to facilitate medical assistance to the wounded and sick (even for the benefit of combatants); the obligation to allow relief societies, subject to certain conditions, to provide relief to POWs and protected civilians; and the prohibition against starving civilians as a method of warfare as outlined above. Beyond IHL, International Human Rights Law (IHRL) continues to apply in armed conflicts to persons under the jurisdiction of a state, which is obliged to respect, protect and fulfil the rights to life, food, shelter and health as well as the prohibition against inhuman and degrading treatment. A State that cannot comply with these

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many different groups fighting each other. Complexities also emerge when a protracted crisis intersects with conflict and/or when a natural disaster strikes an already conflict-ridden country. Most of today’s armed conflicts are not international and are seen as threats to national sovereignty, which can lead to denial of humanitarian action. Meanwhile, the number of humanitarian organizations has increased significantly. This means that further coordination and negotiations on humanitarian access are needed. Moreover, the boundaries between military, political and humanitarian activities are gradually blurring. If conflict parties or segments of the population begin to perceive humanitarian aid as an instrument of their political agenda, access to those in need may become more difficult or impossible. This blurring of boundaries increases the risk of even humanitarian workers themselves being targeted. This assessment is quoted from Felix Schwendimann, ‘The Legal Framework of Humanitarian Access in Armed Conflict’ (December 2011) 93 *International Review of the Red Cross* 993, 993-994.

1. UN Security Council’s resolutions concerning Yemen conflict are: S/RES/2201 (15 February 2015); S/RES/2204 (24 February 2015); S/RES/2216 (14 April 2015); S/RES/2266 (24 February 2016); S/RES/2342 (23 February 2017); S/RES/2402 (26 February 2018); S/RES/2451 (21 December 2018); S/RES/2452 (16 January 2019); S/RES/2456 (26 February 2019); S/RES/2481 (15 July 2019); S/RES/2505 (13 January 2020); S/RES/2511 (25 February 2020); S/RES/2534 (14 July 2020); S/RES/2564 (25 February 2021); S/RES/2586 (14 July 2021).

2. See UN Security Council Resolution 2216 (2015), preambular para. 10. Arbitrary denial of humanitarian access is increasingly recognized by the international community as a violation of IHL. For example, in response to the conflict in Syria, the UN Security Council, in a presidential statement adopted in October 2013, condemned the denial of humanitarian access by parties to the conflict, and recalled “that arbitrarily depriving civilians of objects indispensable to their survival, including willfully impeding relief supply and access, can constitute a violation of international humanitarian law.” A few months later, in its Resolution 2139 of February 21, 2014, the Council “recall[ed] that arbitrary denial of humanitarian access and depriving civilians of objects indispensable to their survival, including willfully impeding relief supply and access, can constitute a violation of international humanitarian law.” Similar statements were made by the Council in 2015 in addressing the Yemen crisis. Similarly, the UN General Assembly, the UN Human Rights Council as well as the UN Human Rights Committee have all dealt with the legality of humanitarian access obstructions occurred in Syria, South Sudan and Sudan from the point of view of “arbitrary denial” of access. This correct assessment is quoted from Dapo Akande and Emanuela-Chiara Gillard, ‘Arbitrary Withholding of Consent to Humanitarian Relief Operations in Armed Conflict’ (2016) 92 *International Law Studies* 483, 485.



IHRL obligations by itself violates them if it withholds consent to outside assistance when it is offered. Finally, and perhaps most importantly, the prohibition of discrimination enshrined both in IHL (referred to as the “prohibition of adverse distinction”) and IHRL also applies to humanitarian assistance. IHL is therefore violated if, which is often the case, including in Yemen, the denial of consent only concerns or affects beneficiaries of a certain race, color, religion, faith, sex, birth or economic class.



## Conclusion

The armed conflict in Yemen is one of the most devastating and catastrophic crises which the international community is facing. It is entering its seventh year. According to the ICRC, a great number of civilians have been killed or have lost their property. Furthermore, approximately 4 million people nationwide need to evacuate to safer places. Basic services have virtually collapsed and millions of Yemenis face a humanitarian crisis. Yemen faces the world's biggest food security, leaving nearly 20 million people for which humanitarian assistance has become a pressing necessity. This situation has raised numerous questions under IHL as the set of rules the main aim of which is to limit the effects of armed conflicts for humanitarian reasons.

This article attempted to examine briefly certain important issues in IHL raised by Yemen armed conflict. Doing so, firstly, the type of armed conflict in Yemen was addressed. Then, the principles of distinction and proportionality were studied. Thereafter, the issues of blockade and siege were dealt with. After that, the situation of certain persons such as wounded and sick was examined. And finally, the very challenging and significant question of humanitarian assistance was assessed.

To conclude, generally speaking, it appears that most of the humanitarian problems except the issues of humanitarian assistance and sieges, are adequately regulated by IHL and the problem is mainly respect. Even the controversy about the classification of the conflict, whether it is an IAC or a NIAC, does not fundamentally impact the rules that have to be respected. Unfortunately, how do we get the respect of those rules by the belligerents is the problem of all conflict areas including Yemen. This is a problem of political will and it has to be tackled regardless of who is right and who is wrong in the conflict.



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