

Bearing the Brunt of War in Yemen: International Law Violations and their Impact on the Civilian Population

A Briefing Paper

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The present briefing provides analysis of selected legal questions arising in the context of the armed conflicts that are currently taking place in Yemen. In particular, it considers alleged violations of international humanitarian law (IHL) and human rights law reportedly committed by the parties to the conflicts, on the basis of information publicly available from UN and NGO sources. The briefing primarily concerns three issues: the conduct of hostilities and conflict-related detention; access to humanitarian relief for the civilian population; and arms transfers. Although multiple armed conflicts exist in Yemen, to which several States and armed groups are parties,¹ the briefing focuses on actions of the Saudi Arabia-led coalition, the internationally recognized government of Yemen and the Houthis.

For purposes of analysing international law violations, the present briefing will consider only facts that have occurred after 26 March 2015, the starting date of the Saudi Arabia-led military intervention.

1. Brief Historical and Political Background

Since 2004, the Yemeni government has been in an armed conflict with Ansar Allah, commonly known as the Houthis, a political armed group established in the northern part of the country in the 1990s. The violent activity at the start of the conflict was prompted by the heavy security measures employed by the then President Ali Abdallah Saleh to curb an insurgency initiated by the Houthis.² In late 2011, President Saleh stepped down due to the months-long protests that arose during the wider "Arab Spring." He handed over the presidency to his deputy Abdrabbuh Mansour Hadi, who was later confirmed as president in the general elections that took place in February 2012. The ensuing two years were marked by continuous political instability, which eventually led to a political crisis in June 2014, when heavy protests against cuts on fuel subsidies erupted in Houthi-controlled territories in northern Yemen. In September 2014, the Houthis managed to take control of the capital Sana'a. Shortly thereafter, they reached an agreement with Hadi's government which led to relative political stability until January 2015, when tensions rose again due to a contested constitutional draft.³

In February 2015, President Hadi moved to Aden with a view to re-establishing the official government. On 21 March 2015, he declared Aden the temporary capital of Yemen. Faced with the Houthis advancement towards the city, joined and supported by forces loyal to former President Saleh, on March 24 President Hadi made a request to Saudi Arabia, the United Arab Emirates (UAE), Bahrain, Oman, Kuwait and Qatar to provide support to its government in the conflict against the Houthis, including military intervention.⁴ On March 25, he fled the country towards the Saudi capital Riyadh. Saudi Arabia, the UAE, Bahrain, Egypt, Jordan,

¹ Geneva Academy, *Non-International Armed Conflicts in Yemen*, at <http://www.rulac.org/browse/conflicts/non-international-armed-conflicts-in-yemen#collapse4accord>.

² Ibid.

³ S. Arraf, *The Armed Conflict in Yemen: A Complicated Mosaic*, Geneva Academy, October 2017, at <https://www.geneva-academy.ch/joomlatools-files/docman-files/The%20Armed%20Conflict%20in%20Yemen.pdf>, pp. 3–4.

⁴ UN Doc. S/2015/217, 27 March 2015, at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N15/089/21/pdf/N1508921.pdf?OpenElement>. Whether or not an ousted government, particularly one acting from abroad, is still entitled to consent to foreign intervention on national territory remains questionable. This point has legal significance in terms of both *jus ad bellum* (consent excludes a breach of Article 2(4) UN Charter) and *jus in bello*. Due to consent to military intervention granted by Yemen, there is no international armed conflict between the foreign States and the territorial State of Yemen, meaning that the governing rules are those applicable to non-international armed conflicts. The acknowledgment by the UN Security Council that Hadi remains the legitimate President of the country may be considered as evidence of its ability to provide consent to foreign military intervention; see Resolution 2216 (2015), UN Doc. S/RES/2216, 14 April 2015, preambular para. 8.

Kuwait, Morocco, Qatar and Sudan initiated Operation Decisive Storm,⁵ which marked the beginning of the armed conflict between the Saudi Arabia-led coalition and the Houthis. In April 2015, the Security Council adopted Resolution 2216, recognizing Hadi as the legitimate President of Yemen and adding an arms embargo to the existing sanctions regime against the Houthis imposed since February 2014.⁶

At the present time, the political and military landscape of Yemen remains deeply fragmented.⁷ The Houthi-Saleh alliance fell into crisis during the second half of 2017. It definitively collapsed on 4 December 2017, when Houthi forces killed Saleh for having reached out to the Saudi Arabia-led coalition seeking possible collaboration.⁸ In the meantime, the internationally recognized government of Yemen is increasingly losing control of southern territories, where a secessionist movement backed by the UAE has arisen and is successfully consolidating its own governmental and military institutions, to the detriment of President Hadi's authority. Al-Qaida in the Arabian Peninsula and the Islamic State remain in control of certain parts of Yemen's territory and are capable of orchestrating terrorist attacks across the country. For its part, Iran continues to furnish the Houthis with military assistance through the transfer of arms and other equipment.⁹

2. Conflict Classification and Applicable Law

Under international humanitarian law (IHL), there are two types of armed conflicts identified for determining applicable rules: international and non-international. While international armed conflicts involve two or more States,¹⁰ non-international armed conflicts are fought between the armed forces of one or more States and one or more organized non-State armed groups,

⁵ S. Arraf, *The Armed Conflict in Yemen: A Complicated Mosaic*, Geneva Academy, October 2017, at <https://www.geneva-academy.ch/joomlatools-files/docman-files/The%20Armed%20Conflict%20in%20Yemen.pdf>, p. 5. Qatar was excluded from the coalition in February 2017 after a number of Gulf countries severed economic and diplomatic relations with the country. Furthermore, it is worth noting that the US has significantly supported the coalition's military operations by providing mid-air refueling and on-ground assistance to locate and destroy caches of ballistic missiles and launch sites employed by the Houthis to target Saudi Arabia's territory; see O Hathaway et al, *The Yemen Crisis and the Law: The Saudi-Led Campaign and U.S. Involvement*, Just Security, 20 February 2018, at <https://www.justsecurity.org/52718/js-yemen-crisis-forum-saudi-campaign-us-involvement/>; H. Cooper at al, *Army Special Forces Secretly Help Saudis Combat Threat From Yemen Rebels*, New York Times, 3 May 2018, at <https://www.nytimes.com/2018/05/03/us/politics/green-berets-saudi-yemen-border-houthi.html>. According to some views, the US is party to the conflict in Yemen; see Geneva Academy, *Non-International Armed Conflicts in Yemen*, at <http://www.rulac.org/browse/conflicts/non-international-armed-conflicts-in-yemen#collapse4accord>.

⁶ Resolution 2216 (2015), UN Doc. S/RES/2216, 14 April 2015. See also Resolution 2140 (2014), UN Doc. S/RES/2140, 26 February 2014; Resolution 2266 (2016), UN Doc. S/RES/2266, 24 February 2016; Resolution 2342 (2017), UN Doc. S/RES/2342, 23 February 2017; Resolution 2402 (2018), UN Doc. S/RES/2402, 26 February 2018.

⁷ Panel of Experts, *Final Report on Yemen*, UN Doc. S/2018/68, 26 January 2018, at http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2018/68, p. 2: "After nearly three years of conflict, Yemen, as a State, has all but ceased to exist. Instead of a single State there are warring statelets, and no one side has either the political support or the military strength to reunite the country or to achieve victory on the battlefield."

⁸ A.L. Alley, *The Killing of Former President Saleh Could Worsen Yemen's War*, International Crisis Group, 6 December 2017, at <https://www.crisisgroup.org/middle-east-north-africa/gulf-and-arabian-peninsula/yemen/killing-former-president-saleh-could-worsen-yemen-war>.

⁹ Panel of Experts, *Final Report on Yemen*, UN Doc. S/2018/68, 26 January 2018, at http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2018/68, paras. 26–40, 86–105.

¹⁰ *Convention relative to the Protection of Civilian Persons in Time of War*, 12 August 1949 (GC IV), Art. 2.

or between such groups.¹¹ For a non-international armed conflict to exist, certain conditions must be met concerning (a) intensity of the hostilities and (b) organization of the parties.¹²

First, the hostilities must reach a certain level of intensity. Indicators to determine whether this threshold has been met include “the number, duration and intensity of individual confrontations; the type of weapons and other military equipment used; the number and calibre of munitions fired; the number of persons and type of forces partaking in the fighting; the number of casualties; the extent of material destruction; and the number of civilians fleeing combat zones. The involvement of the UN Security Council may also be a reflection of the intensity of a conflict.”¹³

Second, the armed group must be cohesively organized. As specified by the ICTY, “indicative factors include the existence of a command structure and disciplinary rules and mechanisms within the group; the existence of a headquarters; the fact that the group controls a certain territory; the ability of the group to gain access to weapons, other military equipment, recruits and military training; its ability to plan, coordinate and carry out military operations, including troop movements and logistics; its ability to define a unified military strategy and use military tactics; and its ability to speak with one voice and negotiate and conclude agreements such as cease-fire or peace accords.”¹⁴

International jurisprudence has clarified that international and non-international armed conflicts may co-exist on the same territory.¹⁵ Furthermore, a non-international armed conflict between a State and an organized armed group may become international if a third State exercises overall control over such a group.¹⁶

The armed conflicts between the internationally recognized government of Yemen and the Houthis, on the one hand, and the Saudi Arabia-led coalition and the Houthis, on the other hand, should be currently classified as non-international for the following reasons: (1) parties to the conflicts are an organized armed group and States;¹⁷ (2) the hostilities between the

¹¹ GC IV, Art. 3; International Criminal Tribunal for the former Yugoslavia (ICTY), *Prosecutor v. Tadić*, Case IT-94-1, Appeals Chamber, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995, para. 70. A conflict is classified as non-international when one of the parties is an organized armed group over which no State exercises overall control. Accordingly, when one or more foreign States intervene in a non-international armed conflict on the side of the government, the nature of such a conflict does not change. See ICRC, *2016 Commentary on the First Geneva Convention: Article 3*, at <https://ihl-databases.icrc.org/ihl/full/GCI-commentary>, paras. 402–405.

¹² ICTY, *Prosecutor v. Tadić*, Case IT-94-1-T, Trial Chamber, Judgment, 7 May 1997, para. 562. See also ICRC, *Pictet Commentary, Convention (IV) relative to the Protection of Civilian Persons in Time of War*, at <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=BE12C9954AC2AEC2C12563CD0042A25C>, pp. 35–36.

¹³ ICTY, *Prosecutor v. Haradinaj*, Case IT-04-84-T, Trial Chamber, Judgment, 3 April 2008, para. 49.

¹⁴ *Ibid.*, para. 60. See also ICTY, *Prosecutor v. Limaj*, Case No. IT-03-66-T, Trial Chamber, Judgment, 30 November 2005, paras. 94–170; *Prosecutor v. Lukic*, Case No. IT-98-32, Trial Chamber, Judgment, IT-98-32/1-T, paras. 880–884.

¹⁵ International Court of Justice, *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America)*, Judgment, 27 June 1986, para. 219.

¹⁶ ICTY, *Prosecutor v. Tadić*, Case IT-94-1-A, Appeals Chamber, Judgment, 15 July 1999, paras. 137: “The control required by international law may be deemed to exist when a State (or, in the context of an armed conflict, the Party to the conflict) has a role in organising, coordinating or planning the military actions of the military group, in addition to financing, training and equipping or providing operational support to that group.”

¹⁷ The Saudi Arabia-led coalition has intervened in Yemen upon the request of the ousted government. As long as such consent is validly provided, an international armed conflict between the intervening State and the territorial State does not arise; see ICRC, *2016 Commentary on the First Geneva Convention: Article 2*, at <https://ihl-databases.icrc.org/ihl/full/GCI-commentary>, paras. 257–263.

parties have reached the requisite threshold of intensity as evidenced, among other things, by the methods and means employed in the fighting; (3) the Houthis' organization is evidenced by their ability to take control of large swathes of Yemen's territory, including the capital Sana'a, and oust the official government.

In principle, if it could be demonstrated that Iran exercised overall control over the Houthis, both conflicts could be re-classified as international. For this purpose, it would have to be proven that Iran has a role in organizing, coordinating or planning the military actions of the Houthis, in addition to financing, training and equipping or providing operational support to them.¹⁸ According to an early assessment, Iran did not exercise sufficient control over the Houthis for this test to be met.¹⁹ In its 2018 report, however, the UN Panel of Experts on Yemen (Panel of Experts) acknowledged the existence of media reports that claim Iran deployed advisers in support of the Houthis, a matter which the Panel is still investigating. The Panel of Experts also "identified strong indicators of the supply of arms-related material manufactured in, or emanating from, the Islamic Republic of Iran subsequent to the establishment of the targeted arms embargo on 14 April 2015," finding that Iran had violated the arms embargo by supplying short-range ballistic missile technology and unmanned aerial vehicles to the Houthis.²⁰ Even in light of these new findings and based on the available information, Iran's actions in Yemen do not yet fulfil all the above-mentioned conditions to qualify as exercise of overall control for the purposes of conflict classification.

The major IHL treaty law sources applicable to non-international armed conflicts are Common Article 3 to the 1949 Geneva Conventions (GCs) and 1977 Additional Protocol II (AP II),²¹ both of which specifically apply to the non-international armed conflicts under consideration. Yemen and all the States belonging to the Saudi Arabia-led coalition are parties to the GCs and AP II.²² Additionally, the Houthis meet the requirements set forth in Article 1(1) AP II, namely acting under a responsible command and controlling a sufficient portion of territory that enables them to "carry out sustained and concerted military operations and to implement th[e] Protocol." Together with treaty law, customary IHL also applies. Notably, many of the rules governing the conduct of hostilities in international armed conflicts contained in 1977 Additional Protocol I (AP I)²³ are also applicable to the non-international armed conflicts in Yemen as customary international law.²⁴

Certain serious violations of treaty or customary rules of IHL amount to war crimes when committed with the requisite mental element.²⁵ While many of these are identified as war

¹⁸ ICTY, *Prosecutor v. Tadić*, Case IT-94-1-A, Appeals Chamber, Judgment, 15 July 1999, para. 137.

¹⁹ P. Sands, A. Clapham and B. Ní Ghráiligh, *The Lawfulness of the Authorisation by the United Kingdom of Weapons and Related Items for Export to Saudi Arabia in the Context of Saudi Arabia's Military Intervention in Yemen*, Legal Opinion Prepared on Instructions from Amnesty International UK, Oxfam and Saferworld, 11 December 2015, at

https://www.amnesty.org.uk/files/webfm/Documents/issues/final_legal_opinion_saudi_arabia_18_december_2015_-_final.pdf, paras. 2.6, 2.9.

²⁰ Panel of Experts, *Final Report on Yemen*, UN Doc. S/2018/68, 26 January 2018, at http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2018/68, paras. 62, 79, 90(i), 104.

²¹ *Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of Non-International Armed Conflicts*, 8 June 1977 (AP II).

²² If considered a party to the conflict, the US would be the only State not bound by AP II.

²³ *Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts*, 8 June 1977 (AP I).

²⁴ ICRC Customary IHL Database, at https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul.

²⁵ ICTY, *Prosecutor v. Tadić*, Case IT-94-1, Appeals Chamber, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995, para. 94.

crimes in the provisions of the GCs and AP I, which identify grave breaches of the Conventions in international armed conflicts,²⁶ many of these same violations have also been recognized as war crimes under customary international law applicable in non-international armed conflicts, and are reflected in the statutes of international criminal tribunals and the International Criminal Court (ICC).²⁷ Examples of offences include violence to life and person, particularly murder, mutilation, torture and ill-treatment, the taking of hostages, and directing attacks against civilians and civilian objects. Individuals may be held criminally liable for committing, ordering to commit or, under command responsibility, failing to prevent or punish the commission of a war crime. When a credible allegation or reasonable suspicion that a war crime has been committed arises, States must open an investigation; if there are reasonable grounds to believe that a crime has been committed, they must pursue prosecution.²⁸ Besides triggering individual criminal responsibility, serious violations of IHL also engage State responsibility. A State has an obligation to make reparation for breaches of IHL committed by its armed forces and by persons or groups acting on its instruction or under its direction or control.²⁹ This rule is applicable in both international and non-international armed conflicts.³⁰

In addition to IHL, human rights law continues to apply in situations of armed conflict.³¹ The two legal frameworks are complementary, meaning that one body of law may reinforce the protections offered by the other.³² Where violations of applicable IHL rules also result in any impairment of the enjoyment of human rights, there may be an infringement of certain rights under human rights law.³³ For example, deliberate or indiscriminate attacks conducted in violation of the principle of distinction will infringe the right to life under applicable human rights treaties and customary law.

Certain States involved in the Yemeni conflict, e.g. Saudi Arabia and the UAE, are not party to some relevant human rights treaties, such as the International Covenant on Civil and Political Rights (ICCPR).³⁴ However, the human rights protections afforded by the ICCPR, and in particular for present purposes the prohibition of arbitrary deprivation of life, is part of customary international law,³⁵ which is binding on all States. In addition, these States are

²⁶ GC IV, Art. 147; AP I, Arts. 11, 85.

²⁷ ICRC Customary IHL Database, at https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul, Rule 156; *Updated Statute of the International Criminal Tribunal for the Former Yugoslavia*, September 2009, Art. 3; *Rome Statute of the International Criminal Court*, 17 July 1998 (ICC Statute), Art. 8(c, e).

²⁸ ICRC Customary IHL Database, at https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul, Rule 158; GC IV, Arts. 146–147. Under specific circumstances, international justice mechanisms such as the ICC may also investigate and prosecute war crimes that fall under their jurisdiction. See ICC Statute, Arts. 8, 12–17.

²⁹ *Hague Convention IV respecting the Laws and Customs of War on Land and annexed Regulations*, 18 October 1907 (HC IV), Art. 3; AP I, Art. 91; International Law Commission, *Articles on Responsibility of States for Internationally Wrongful Acts*, November 2001 (ARSIWA), Arts. 4, 8; *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, UN Doc. A/RES/60/147, 16 December 2005, Principles 15–23.

³⁰ ICRC Customary IHL Database, at https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul, Rule 150.

³¹ International Court of Justice, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 9 July 2004, para. 106.

³² Human Rights Committee, *General Comment no. 31: Nature of the General Legal Obligation on States Parties to the Covenant*, UN Doc. CCPR/C/21/Rev.1/Add.13, 26 May 2004, para. 11.

³³ African Commission on Human and Peoples' Rights, *General Comment no. 3: The Right to Life (Article 4)*, 57th Ordinary Session, 4–18 November 2015, para. 33.

³⁴ *International Covenant on Civil and Political Rights*, 16 December 1966 (ICCPR).

³⁵ African Commission on Human and Peoples' Rights, *General Comment no. 3: The Right to Life (Article 4)*, 57th Ordinary Session, 4–18 November 2015, paras. 5, 14.

party to the Convention on the Rights of the Child, which recognizes the right to life under article 6 and reaffirms IHL protections under article 38.³⁶ Such obligations also apply when a State acts in an extraterritorial context.³⁷

Economic, social, and cultural rights, including those provided for in the International Covenant on Economic, Social and Cultural Rights (ICESCR),³⁸ apply during armed conflict as well. These comprise, among others, the right to food, housing, health and water.³⁹ States have an obligation to respect these rights at all times, meaning that they cannot prevent or interfere with their enjoyment.⁴⁰ For instance, the unlawful targeting of local markets, medical facilities and water infrastructures constitute violations of the rights to food, health and water, respectively, in particular when the population is in need of basic goods and services. The same goes for action that prevents food and medicines from being delivered to the civilian population and access to safe drinking water.⁴¹ Direct or indiscriminate attacks against residential areas may breach the right to housing, especially when they result in forced eviction of the affected civilians.⁴² The rights to food, housing, health and water are strictly interrelated to the right to life and crucial for its very enjoyment.⁴³ It follows that all parties to the conflict, including States that are not yet parties to the ICESCR, have a legal obligation to

³⁶ *Convention on the Rights of the Child*, 20 November 1989 (CRC); Committee on the Rights of the Child, *Concluding Observations: Saudi Arabia*, UN Doc. CRC/C/SAU/CO/3-4, 25 October 2016, para. 39.

³⁷ Human Rights Committee, *Concluding Observations: United States of America*, UN Doc. CCPR/C/USA/CO/4, 23 April 2014, para. 9; African Commission on Human and Peoples' Rights, *General Comment no. 3: The Right to Life (Article 4)*, 57th Ordinary Session, 4–18 November 2015, para. 14.

³⁸ *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966 (ICESCR).

³⁹ Special Rapporteur on the Right to Food, *Yemen spiraling into major food crisis – UN expert warns against deliberate starvation of civilians*, 11 August 2015, at

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16307&LangID=E>; Special Rapporteur on the Right to Health, *Report on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health*, UN Doc. A/68/297, 9 August 2013, at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N13/422/97/pdf/N1342297.pdf?OpenElement>, paras. 2, 5; Office of the High Commissioner for Human Rights, *Information Received Concerning the Negative Impact on the Enjoyment of Human Rights and the Apparent Blockage of Aircraft and Vessels Carrying Essential Goods from Entering Yemen*, 17 November 2016, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?qId=22818>.

⁴⁰ Committee on Economic Social and Cultural Rights, *General Comment no. 12: The Right to Adequate Food (Art. 11)*, UN Doc. E/C.12/1999/5, 12 May 1999, para. 15; *General Comment no. 7: The Right to Adequate Housing (Art. 11 (1)): Forced Evictions*, UN Doc. E/1998/22, 20 May 1997, paras. 4–5; *General Comment no. 14: The Right to the Highest Attainable Standard of Health (Art. 12)*, UN Doc. E/C.12/2000/4, 11 August 2000, paras. 33–34; *General Comment no. 15: The Right to Water (Arts. 11 and 12)*, UN Doc. E/C.12/2002/11, 20 January 2003, para. 21.

⁴¹ Committee on Economic Social and Cultural Rights, *General Comment no. 12: The Right to Adequate Food (Art. 11)*, UN Doc. E/C.12/1999/5, 12 May 1999, para. 19; *General Comment no. 14: The Right to the Highest Attainable Standard of Health (Art. 12)*, UN Doc. E/C.12/2000/4, 11 August 2000, para. 34; *General Comment no. 15: The Right to Water (Arts. 11 and 12)*, UN Doc. E/C.12/2002/11, 20 January 2003, paras. 21–22.

⁴² Committee on Economic Social and Cultural Rights, *General Comment no. 7: The Right to Adequate Housing (Art. 11 (1)): Forced Evictions*, UN Doc. E/1998/22, 20 May 1997, paras. 5–6. Forced displacement of the civilian population is prohibited under IHL and amounts to a war crime under the ICC Statute. See AP II, Art. 17; ICRC Customary IHL Database, at https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul, Rule 129; ICC Statute, Art. 8(2)(e)(viii).

⁴³ Committee on Economic Social and Cultural Rights, *General Comment no. 12: The Right to Adequate Food (Art. 11)*, UN Doc. E/C.12/1999/5, 12 May 1999, paras. 1, 4, 6; *General Comment no. 7: The Right to Adequate Housing (Art. 11 (1)): Forced Evictions*, UN Doc. E/1998/22, 20 May 1997, para. 4; *General Comment no. 14: The Right to the Highest Attainable Standard of Health (Art. 12)*, UN Doc. E/C.12/2000/4, 11 August 2000, paras. 1, 3; *General Comment no. 15: The Right to Water (Arts. 11 and 12)*, UN Doc. E/C.12/2002/11, 20 January 2003, para. 3.

respect these and other social and economic rights, particularly to the extent that their violation may negatively impact the right to life. Based on statements by the UN Security Council, General Assembly and other UN bodies, there is some authority to suggest that organized armed groups exercising *de facto* control over a territory are also required to respect relevant human rights norms.⁴⁴

3. Conduct of Hostilities and Conflict-related Detention

Several UN and international NGOs' reports have raised credible allegations of serious violations of IHL and human rights law relating to the conduct of hostilities and detention in Yemen. Since the inception of its military intervention, the Saudi Arabia-led coalition has been accused of conducting "indiscriminate attacks" against civilians and civilian objects, including residential buildings, medical facilities and personnel, local markets and food storage sites.⁴⁵ The Houthis have allegedly carried out "indiscriminate attacks" against hospitals and made use of prohibited landmines and other explosive ordnances.⁴⁶ Furthermore, the UAE, the internationally recognized government of Yemen and the Houthis have reportedly engaged in arbitrary arrests and detention, torture, ill-treatment and/or enforced disappearances of captured individuals, particularly civilians and suspect affiliates of Al-Qaida in the Arabian Peninsula and the Islamic State.⁴⁷ Both IHL and human rights law regulate the action of the parties to the conflict in relation to the use of lethal force and the treatment of persons deprived of their liberty.

3.1. Conduct of Hostilities

IHL sets a number of rules for the conduct of hostilities, regulating the methods and means of warfare that the parties to an armed conflict may employ. It aims to temper military action with limitations, the objective of which is to reduce human suffering, particularly of civilians. Among the main principles governing the execution of attacks are distinction, proportionality and precaution.

⁴⁴ A. Bellal, *Human Rights Obligations of Armed Non-State Actors: An Exploration of the Practice of the UN Human Rights Council*, Geneva Academy, December 2016, at https://www.geneva-academy.ch/joomlatools-files/docman-files/InBrief7_web.pdf, p. 26; Committee on the Elimination of Discrimination against Women, *General Recommendation no. 30: Women in Conflict Prevention, Conflict and Post-Conflict Situations*, UN Doc. CEDAW/C/GC/30, 18 October 2013, para. 16; Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, *Armed Non-State Actors: The Protection of the Right to Life*, UN Doc. A/HRC/38/44, 5 June 2018.

⁴⁵ Panel of Experts, *Final Report on Yemen*, UN Doc. S/2018/193, 31 January 2017, at <https://undocs.org/S/2018/193>, paras. 119 ff.; *Final Report on Yemen*, UN Doc. S/2018/68, 26 January 2018, at http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2018/68, para. 161; Human Rights Watch, *Targeting Saada. Unlawful Coalition Airstrikes on Saada City in Yemen*, June 2015, at https://www.hrw.org/sites/default/files/report_pdf/yemen06154_up.pdf; Amnesty International, 'Nowhere Safe for Civilians': *Airstrikes and Ground Attacks in Yemen*, 18 August 2015, at https://www.amnesty.nl/content/uploads/2015/08/nowhere_safe_for_civilians_-_taiz_aden_report.pdf?x44743.

⁴⁶ Office of the High Commissioner for Human Rights, *Situation of Human Rights in Yemen, including Violations and Abuses since September 2014*, UN Doc. A/HRC/36/33, 13 September 2017, at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/266/39/pdf/G1726639.pdf?OpenElement>, paras. 22–27; Panel of Experts, *Final Report on Yemen*, UN Doc. S/2018/68, 26 January 2018, at http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2018/68, pp. 294–297.

⁴⁷ Panel of Experts, *Final Report on Yemen*, UN Doc. S/2016/73, 26 January 2016, at <https://undocs.org/S/2018/192>, paras. 144–149; *Final Report on Yemen*, UN Doc. S/2018/193, 31 January 2017, at <https://undocs.org/S/2018/193>, paras. 132–134, 150–155; *Final Report on Yemen*, UN Doc. S/2018/68, 26 January 2018, at http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2018/68, paras. 166–171, 180–182.

The principle of distinction – covering both direct and indiscriminate attacks – dictates, “the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives.”⁴⁸ In non-international armed conflicts, the position of “combatants” pursuant to this principle is typically assumed by civilians taking direct part in hostilities who, while not strictly “combatants”, are subject to targeting in the same way that combatants in international armed conflicts may be. Civilians directly participating in hostilities lose their protection from direct attacks, yet only for the duration of such participation.⁴⁹ Civilian objects, including hospitals, cannot be targeted as such; they can be lawfully attacked only if they are turned into military objectives.⁵⁰ Accordingly, as a rule, direct attacks on civilians and civilian objects are strictly prohibited. In addition to such direct attacks, indiscriminate attacks are also prohibited.⁵¹ Indiscriminate attacks are those which strike military objectives and civilian objects without distinction. IHL further forbids spreading terror among the civilian population, using starvation as a method of warfare, and removing or rendering useless objects indispensable to the survival of the civilian population, such as crops and water supplies. Hostage taking and the use of human shields are likewise prohibited.⁵²

The principle of proportionality requires the methods and means used by a party to the conflict to be proportionate to the legitimate military gain anticipated from the operation. Accordingly, this principle prohibits the conduct of attacks “which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.”⁵³ An attack is prohibited if collateral damage is disproportionate to the concrete and direct military advantage anticipated. The proportionality assessment is made on a case-by-case basis and by assessing specific attacks.

The principle of precaution prescribes, “[i]n the conduct of military operations, constant care shall be taken to spare the civilian population, civilians and civilian objects.”⁵⁴ Therefore, the parties to the conflict must verify at all times that the selected target is a military objective and ensure that the methods and means of warfare are employed “with a view to avoiding, and in any event to minimizing incidental loss of civilian life, injury to civilians and damage to civilian objects.”⁵⁵ An attack under execution must be cancelled if it turns out that the target is not a military objective or that collateral damage would be disproportionate.⁵⁶ Additionally, advanced warning to the civilian population must be given, unless circumstances do not so allow.⁵⁷ Hence, while IHL accepts that civilian casualties may be sustained during attacks on military targets, the parties to the conflict are required to take all feasible measures to minimize injury to and death of civilians as well as damage to civilian objects.

⁴⁸ AP I, Art. 48.

⁴⁹ AP I, Art. 51(3); AP II, Art. 13(3).

⁵⁰ AP I, Art. 52. Certain objects, e.g. cultural property, are granted additional protection; see AP I, Art. 53; AP II, Art. 16.

⁵¹ AP I, Art. 51(4–5).

⁵² GC IV, Arts. 3, 28, 34; AP I, Arts. 12(1), 51(2, 7), 52(1), 54(2), 75(2)(c); AP II, Arts. 4(2)(c), 11, 13(2), 14.

⁵³ AP I, Art. 51(5)(b).

⁵⁴ AP I, Art. 57(1). Paragraph 3 of the same article further provides, “[w]hen a choice is possible between several military objectives for obtaining a similar military advantage, the objective to be selected shall be that the attack on which may be expected to cause the least danger to civilian lives and to civilian objects.”

⁵⁵ AP I, Art. 57 (2)(a)(i–ii).

⁵⁶ AP I, Art. 57(2)(b).

⁵⁷ AP I, Art. 57(2)(c).

Another basic principle of IHL prescribes that the choice of methods and means of warfare by the parties to the conflict is not unlimited. IHL prohibits the use of weapons that cause unnecessary suffering or superfluous injury to those taking part in hostilities or that may cause widespread, long-term and severe damage to the natural environment.⁵⁸ Moreover, certain treaties impose a ban on the use of specific types of weapons and ammunitions such as biological and chemical weapons, incendiary weapons and blinding lasers, anti-personnel mines and cluster munitions.⁵⁹ As a general rule, any method or means of warfare, irrespective of whether it is regulated by a specific standard, must comply with the IHL rules governing the conduct of hostilities.

The above-mentioned principles are among the rules on the conduct of hostilities that have attained customary status and are thus binding on all States; they are applicable to both international and non-international armed conflicts.⁶⁰

In relation to operations in 2017, the Panel of Experts concluded that all parties to the conflict failed in significant measure to abide by their obligations under IHL and human rights law. The Panel of Experts identified ten airstrikes conducted by the Saudi Arabia-led coalition that resulted in at least 157 deaths and 135 injuries, including 85 children. The strikes targeted five residential buildings, two civilian vessels, a market, a motel and a location controlled by Yemeni Government forces. The Panel of Experts found that in absence of verifiable information to the contrary, "the evidence strongly demonstrate[d] that these air strikes violated the IHL obligations of individual member States of the Saudi Arabia-led coalition."⁶¹ The Panel of Experts reached this conclusion on the basis of the following considerations: (1) precision-guided weapons were used, which is a strong indicator that the affected objects were the actual targets of the strikes; (2) there is an absence of evidence that the civilians involved had lost their immunity from attack; (3) even when legitimate military objectives were targeted, it is highly unlikely that the coalition respected the principles of proportionality and precaution; and (4) the effects of the airstrikes on civilians and civilian infrastructure show that any precautionary measures adopted have proven largely inadequate or ineffective.⁶² Previous reports published by the UN, international NGOs and other experts had already concluded that in the conduct of airstrikes the Saudi Arabia-led coalition had failed numerous times to abide by applicable IHL, particularly by targeting residential buildings, food markets and storage sites, and medical facilities.⁶³ In their concluding observations, the Committee on

⁵⁸ AP I, Art. 35.

⁵⁹ *Convention on the Prohibition of Biological Weapons*, 10 April 1972; *Convention Prohibiting Certain Conventional Weapons* (CCW), 10 October 1980; *CCW Protocol Prohibiting Incendiary Weapons*, 10 October 1980; *Convention on the Prohibiting of Chemical Weapons*, 13 January 1993; *CCW Protocol on Blinding Laser Weapons*, 13 October 1995; *Anti-Personnel Mine Ban Convention*, 18 September 1997; *Convention on Cluster Munitions*, 30 May 2008. See also *Treaty on the Prohibition of Nuclear Weapons*, 7 July 2017 (not yet entered into force at the time of writing).

⁶⁰ ICRC Customary IHL Database, at https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul, Rules 1–86.

⁶¹ Panel of Experts, *Final Report on Yemen*, UN Doc. S/2018/68, 26 January 2018, at http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2018/68, p. 235. For detailed analysis of four of the airstrikes, see Annex 58 of the report.

⁶² *Ibid.*, para. 161.

⁶³ Panel of Experts, *Final Report on Yemen*, UN Doc. S/2016/73, 26 January 2016, at <https://undocs.org/S/2016/192>, paras. 137–140; Panel of Experts, *Final Report on Yemen*, UN Doc. S/2018/193, 31 January 2017, at <https://undocs.org/S/2018/193>, paras. 120–131; Human Rights Watch, *Targeting Saada. Unlawful Coalition Airstrikes on Saada City in Yemen*, June 2015, at https://www.hrw.org/sites/default/files/report_pdf/yemen06154_up.pdf, pp. 16 ff.; Amnesty International, *'Nowhere Safe for Civilians': Airstrikes and Ground Attacks in Yemen*, 18 August 2015, at https://www.amnesty.nl/content/uploads/2015/08/nowhere_safe_for_civilians_-

the Rights of the Child and the Committee on the Elimination of Discrimination against Women specifically called on Saudi Arabia to respect the IHL principles of distinction, proportionality and precaution.⁶⁴

With reference to the Houthis, the Panel of Experts investigated ten incidents involving the use of explosive ordnance in densely populated areas, particularly in the southwestern city of Ta'izz, and which resulted in 23 civilian casualties. Similarly to what it observed in relation to the Saudi Arabia-led coalition, the Panel of Experts presented the following findings: (1) no evidence that the civilians involved had lost their immunity from attack; (2) even when legitimate military objectives were targeted, it is highly unlikely that the principles of proportionality and precaution were respected; and (3) the effects on civilians and civilian infrastructure demonstrated that any precautionary measures that were adopted were largely inadequate or ineffective. Accordingly, the Panel of Experts concluded that the Houthis had engaged in the indiscriminate use of explosive ordnance in densely populated areas in violation of IHL. In a number of instances, such weapons had intentionally been used to damage or destroy houses.⁶⁵ The Houthis had further engaged in indiscriminate attacks against civilian objects, especially homes and hospitals.⁶⁶ They have also made significant use of prohibited landmines, which have killed and wounded dozens of civilians.⁶⁷ It was further reported that the Houthis had engaged in the recruitment of child soldiers,⁶⁸ a practice which is prohibited under IHL.⁶⁹

The Panel of Experts highlighted the frequent use of heavy explosive weapons in densely populated areas by the parties to the conflict.⁷⁰ These weapons have a wide impact area due to their large destructive radius, an inaccurate delivery system and the capacity to deliver multiple munitions over a wide area.⁷¹ The use of these weapons in densely populated areas

[_taiz_aden_report.pdf?x44743](#), pp. 12 ff.; P. Sands, A. Clapham and B. Ní Ghrálaigh, *The Lawfulness of the Authorisation by the United Kingdom of Weapons and Related Items for Export to Saudi Arabia in the Context of Saudi Arabia's Military Intervention in Yemen*, Legal Opinion Prepared on Instructions from Amnesty International UK, Oxfam and Saferworld, 11 December 2015, at https://www.amnesty.org.uk/files/webfm/Documents/issues/final_legal_opinion_saudi_arabia_18_december_2015_-_final.pdf, pp. 79 ff.

⁶⁴ Committee on the Rights of the Child, *Concluding Observations: Saudi Arabia*, UN Doc. CRC/C/SAU/CO/3-4, 25 October 2016, para. 39; Committee on the Elimination of Discrimination against Women, *Concluding Observations: Saudi Arabia*, UN Doc. CEDAW/C/SAU/CO/3-4, 14 March 2018, para. 18(c).

⁶⁵ Panel of Experts, *Final Report on Yemen*, UN Doc. S/2018/68, 26 January 2018, at http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2018/68, pp. 294–296. For detailed analysis of three of the attacks, see Annex 64 of the report.

⁶⁶ Panel of Experts, *Final Report on Yemen*, UN Doc. S/2016/73, 26 January 2016, at <https://undocs.org/S/2018/192>, paras. 127–128; Panel of Experts, *Final Report on Yemen*, UN Doc. S/2018/193, 31 January 2017, at <https://undocs.org/S/2018/193>, paras. 141 ff.

⁶⁷ Panel of Experts, *Final Report on Yemen*, UN Doc. S/2016/73, 26 January 2016, at <https://undocs.org/S/2018/192>, para. 127; Human Rights Watch, *Yemen: Houthi Landmines Claim Civilian Victims*, 8 September 2016, at <https://www.hrw.org/news/2016/09/08/yemen-houthi-landmines-claim-civilian-victims>.

⁶⁸ Panel of Experts, *Final Report on Yemen*, UN Doc. S/2018/68, 26 January 2018, at http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2018/68, pp. 315–317.

⁶⁹ ICRC Customary IHL Database, at https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul, Rules 136–137.

⁷⁰ Panel of Experts, *Final Report on Yemen*, UN Doc. S/2016/73, 26 January 2016, at <https://undocs.org/S/2018/192>, para. 125.

⁷¹ ICRC, *Q&A on the Issue of Explosive Weapons in Populated Areas*, 11 April 2017, at <https://www.icrc.org/en/international-review/article/icrc-qa-issue-explosive-weapons-populated-areas>, pp. 98–100.

presents a high likelihood of violating the prohibitions of indiscriminate and disproportionate attacks.⁷² The Panel of Experts further highlighted the risks associated with the proliferation of explosive remnants of war, which pose an immediate danger to civilians and imperil the safe return of displaced persons in the long term.⁷³

Direct and indiscriminate attacks against civilians and civilian objects, including hospitals and food markets and storage sites, amount to war crimes.⁷⁴ When such attacks result in the death of individuals, they also constitute arbitrary deprivation of life which breaches human rights law.⁷⁵ Attacks against medical facilities and personnel may reduce the availability of healthcare services and may thus entail a violation of the right to health of all persons.⁷⁶ Attacks against markets, food storage sites and trucks, water installations and supplies constitute violations of the rights to food and water, when they result in food and water shortage for the civilian population.⁷⁷ Unlawful destruction of homes may constitute an unlawful forced eviction in contravention of the right to adequate housing.⁷⁸

International law requires States to hold to account all perpetrators of serious violations of IHL and human rights law. IHL prescribes that the parties to the conflict must investigate and prosecute all credible allegations of war crimes committed by their armed forces or by persons or groups under their control.⁷⁹ Human rights law requires the investigation of any suspected unlawful death and the prosecution of responsible persons in accordance with fair trial standards. Investigations must be effective, namely, capable of establishing the facts and identifying the alleged perpetrators. To be effective, investigations must comply with the international standards of thoroughness, promptness, independence, impartiality and transparency.⁸⁰

⁷² Ibid., p. 100: “[E]xplosive weapons with a wide impact area should not be used in densely populated areas due to the significant likelihood of indiscriminate effects, meaning that their use against military objectives located in populated areas is likely to fall foul of the IHL rules prohibiting indiscriminate and disproportionate attacks.”

⁷³ Panel of Experts, *Final Report on Yemen*, UN Doc. S/2018/193, 31 January 2017, at <https://undocs.org/S/2018/193>, para. 144.

⁷⁴ AP I, Art. 85(3)(a–b); ICRC Customary IHL Database, at https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul, Rule 156; ICC Statute, Art. 8(e)(i–iv).

⁷⁵ African Commission on Human and Peoples’ Rights, *General Comment no. 3: The Right to Life (Article 4)*, 57th Ordinary Session, 4–18 November 2015, para. 33.

⁷⁶ ICESCR, Art. 12; Committee on Economic Social and Cultural Rights, *General Comment no. 14: The Right to the Highest Attainable Standard of Health (Art. 12)*, UN Doc. E/C.12/2000/4, 11 August 2000, paras. 17, 34, 50.

⁷⁷ ICESCR, Arts. 11–12; Committee on Economic Social and Cultural Rights, *General Comment no. 12: The Right to Adequate Food (Art. 11)*, UN Doc. E/C.12/1999/5, 12 May 1999, paras. 14–15; *General Comment no. 15: The Right to Water (Arts. 11 and 12)*, UN Doc. E/C.12/2002/11, 20 January 2003, paras. 21–22.

⁷⁸ ICESCR, Art. 11; Committee on Economic Social and Cultural Rights, *General Comment no. 7: The Right to Adequate Housing (Art. 11 (1)): Forced Evictions*, UN Doc. E/1998/22, 20 May 1997, paras. 5–6, 12.

⁷⁹ ICRC Customary IHL Database, at https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul, Rule 158.

⁸⁰ Human Rights Committee, *General Comment no. 31: Nature of the General Legal Obligation on States Parties to the Covenant*, UN Doc. CCPR/C/21/Rev.1/Add.13, 26 May 2004, paras. 15, 18; *Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions*, UN Doc. E/1989/89, January 1991, Principle 9; *The Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016)*, Office of the High Commissioner for Human Rights, New York/Geneva, 2017, at <http://www.ohchr.org/Documents/Publications/MinnesotaProtocol.pdf>, paras. 15–37.

3.2. Arbitrary Arrest and Detention

IHL and human rights law prohibit arbitrary arrest and detention.⁸¹ Both bodies of law further prescribe that detainees must at all times be respected and protected. Common Article 3 GCs and Article 4 AP II impose an obligation on the parties to the conflict to humanely treat any person who is detained or whose liberty has otherwise been restricted. This obligation is also a rule of customary international law.⁸² Acts threatening the life and personal integrity of detainees, including torture and other ill-treatment, enforced disappearance, rape and other forms of gender-based violence, are absolutely prohibited.⁸³ Article 7 ICCPR, the Convention against Torture (CAT) and the Convention against Enforced Disappearances (CED) prohibit acts of torture and ill-treatment and enforced disappearance against any persons, including detainees.⁸⁴ Additionally, article 10 ICCPR provides, “[a]ll persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.” While not all concerned States are parties to all of these treaties, they remain bound by customary human rights law, which equally prohibits acts of arbitrary arrest and detention, torture and ill-treatment, and enforced disappearance.⁸⁵

The Panel of Experts found that the UAE has acted in violation of IHL and human rights law mainly in relation to the detention of captured individuals. At the time of publication, the UAE was running at least three detention facilities in Burayqah (Aden), at Al Rayyan airport (Mukalla), and in the port of the southern city of Balhaf. The Panel of Experts investigated twelve incidents which involved human rights violations, including torture and ill-treatment, arbitrary arrest and detention, denial of timely medical treatment, denial of due process rights and enforced disappearance. Such allegations have not been investigated by either the Emirati or Yemeni government.⁸⁶ Previously, the Panel of Experts pointed out that human rights violations, particularly enforced disappearances against suspect members of al-Qaida in the Arabian Peninsula, had been committed by the Hadrami Elite Forces in Mukalla, a city located in the southern part of the country on the Gulf of Aden. While formally under the authority of the Yemeni government, these forces are believed to act under the operational control of the UAE, even though the latter government denies this claim.⁸⁷ It should be noted that States have a duty to prevent and punish IHL and human rights law violations committed by groups

⁸¹ ICRC Customary IHL Database, at https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul, Rule 99; ICCPR, Article 9.

⁸² ICRC Customary IHL Database, at https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul, Rule 87.

⁸³ GC IV, Art. 3(1); AP II, Art. 4(1–2); ICRC Customary IHL Database, at https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul, Rules 89–95, 98.

⁸⁴ ICCPR, Arts. 7, 9, 16; *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984 (CAT), Art. 2; *International Convention for the Protection of All Persons from Enforced Disappearance*, 20 December 2006 (CED), Art. 1.

⁸⁵ Working group on Arbitrary Detention, *Deliberation no. 9 concerning the Definition and Scope of Arbitrary Deprivation of Liberty under Customary International Law*, UN Doc. A/HRC/22/44, 24 December 2012, para. 43; ICTY, *Prosecutor v. Furundžija*, Case IT-95-17/1-T, Trial Chamber, Judgment, 10 December 1998, para. 153; Inter-American Court of Human Rights, *La Cantuta v. Peru*, Series C no. 162, 29 November 2006, para. 157.

⁸⁶ Panel of Experts, *Final Report on Yemen*, UN Doc. S/2018/68, 26 January 2018, at http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2018/68, paras. 166–171 See also Middle East Eye, *UAE Forces Have Sexually Abused Detainees in Yemen Prisons: AP*, 20 June 2018, at <http://www.middleeasteye.net/news/uae-forces-have-sexually-abused-detainees-yemen-prisons-ap-139242355>.

⁸⁷ Panel of Experts, *Final Report on Yemen*, UN Doc. S/2018/193, 31 January 2017, at <https://undocs.org/S/2018/193>, paras. 132–134.

under their control or acting on their instruction. The actions of the Hadrami Elite Forces may indeed trigger the UAE's international responsibility.⁸⁸

According to the Panel of Experts, the internationally recognized government of Yemen has engaged in arbitrary arrest and detention, enforced disappearance, torture and ill-treatment, and denial of timely medical assistance. In 2017, these violations concerned at least 21 individuals mainly in the southern cities of Aden and Ma'rib and the Lahij governorate.⁸⁹ In previous reports, the Panel of Experts found that local government authorities in the South had implemented policies of forced deportation of individuals to the North of the country. It also concluded that forces associated with the Yemeni government had either committed or contributed to attacks against hospitals.⁹⁰

The Panel of Experts further pointed out that the Houthis had systematically committed human rights law violations such as suppression of freedom of expression and assembly, arbitrary detention, torture and enforced disappearance.⁹¹

The parties to the conflict have an obligation to release and provide reparation to any person who has been arbitrarily arrested or detained.⁹² They also have a duty to investigate and prosecute torture and ill-treatment, and enforced disappearances.⁹³ Whenever a credible allegation arises that any of these acts has been committed, they must open an effective investigation in compliance with relevant international standards.⁹⁴

- **The parties to the conflict have an obligation to protect the civilian population and to abide by the applicable provisions of IHL and human rights law. Accordingly, the Saudi Arabia-led coalition and the Houthis must cease all direct, indiscriminate or disproportionate attacks against civilians and civilian objects, including local markets, food storage sites, water installations and supplies, and medical facilities. The UAE, the internationally recognized government of Yemen and the Houthis must end practices which seriously violate IHL and human rights law such as arbitrary arrest and detention, torture and ill-treatment, and enforced disappearance.**
- **The internationally recognized government of Yemen and the States belonging to the Saudi Arabia-led coalition must investigate all credible allegations of war crimes and other serious violations of IHL and human rights law committed by their armed forces and by persons or groups under their control. Acting as the de facto authorities in large swathes of Yemen's territory, the Houthis should also investigate alleged IHL and human rights law violations committed by persons and**

⁸⁸ ARSIWA, Article 8.

⁸⁹ Panel of Experts, *Final Report on Yemen*, UN Doc. S/2018/68, 26 January 2018, at http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2018/68, paras. 180–182. For detailed analysis of detention cases involving the Yemeni government, see Annex 65 of the report.

⁹⁰ Panel of Experts, *Final Report on Yemen*, UN Doc. S/2018/193, 31 January 2017, at <https://undocs.org/S/2018/193>, paras. 150–155.

⁹¹ Panel of Experts, *Final Report on Yemen*, UN Doc. S/2016/73, 26 January 2016, at <https://undocs.org/S/2016/73>, paras. 144–149.

⁹² ICCPR, Art. 9; Human Rights Committee, *General Comment no. 35: Article 9 (Liberty and Security of Person)*, UN Doc. CCPR/C/GC/35, 16 December 2014, paras. 36–52.

⁹³ ICRC Customary IHL Database, at https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul, Rule 158; CAT, Art. 12–16; CED, Arts. 3, 10, 12;

⁹⁴ Human Rights Committee, *General Comment no. 31: Nature of the General Legal Obligation on States Parties to the Covenant*, UN Doc. CCPR/C/21/Rev.1/Add.13, 26 May 2004, paras. 15, 18; *Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, UN Doc. A/RES/55/89, 4 December 2000, Principle 2.

groups under their control. Investigations must be effective and comply with the international standards of thoroughness, promptness, independence, impartiality and transparency.

- **There must be no impunity for serious IHL and human rights law violations committed in Yemen. When identified, alleged perpetrators must be prosecuted and tried in accordance with international fair trial standards.**

4. Access to Humanitarian Relief

Since March 2015, both the Saudi Arabia-led coalition and the Houthis have systematically hindered humanitarian relief from reaching the civilian population. The Saudi Arabia-led coalition has imposed a sea, land and air blockade as part of its effort to fight the Houthis. This blockade has restricted the inflow of food, fuel and medicines in a country that imports between 80 and 90 percent of these products for its sustainability.⁹⁵ The ICRC has stated, “[w]ith over 20 million in need of aid, Yemen is the world’s single largest humanitarian crisis.”⁹⁶

Malnourishment, unavailability of safe drinking water and the collapse of the health system are among the causes of a cholera outbreak that has rapidly expanded throughout the country since October 2016. As of December 2017, suspected cases had reached one million.⁹⁷ The cholera outbreak is a direct consequence of the dire humanitarian situation created by the conflict, which is worsened by the blockade imposed by the Saudi Arabia-led coalition.⁹⁸ On 4 November 2017, in response to a missile strike against Riyadh’s main international airport, the Saudi Arabia-led coalition tightened the blockade and closed all Yemen’s entry points. On 22 November 2017, it allowed the re-opening of the port of Hudaydah, a city located in the West of the country, as well as the airport of the capital Sanaa for the consignment of urgent humanitarian relief. In a joint statement, seven humanitarian agencies called for the complete lifting of the blockade, warning that “[w]ithout the urgent resumption of commercial imports, especially food, fuel and medicines, millions of children, women and men risk mass hunger, disease and death.”⁹⁹

The Houthis have constantly blocked attempts to deliver humanitarian aid to the cities of Ta’izz, Hajjah and Hudaydah. The distribution of humanitarian relief, including cholera response material, is obstructed by aid diversion, delay and refusal of distribution, detention,

⁹⁵ Human Rights Watch, *Yemen: Coalition Blockade Imperils Civilians*, 7 December 2017, at <https://www.hrw.org/news/2017/12/07/yemen-coalition-blockade-imperils-civilians>.

⁹⁶ ICRC, *Yemen in Focus*, at <https://www.icrc.org/en/where-we-work/middle-east/yemen>.

⁹⁷ BBC, *Yemen Cholera Cases Reach One Million – ICRC*, 21 December 2017, at <http://www.bbc.com/news/world-middle-east-42440805>.

⁹⁸ WHO and UNICEF, *Statement on the Cholera Outbreak in Yemen as Suspected Cases Exceed 200,000*, 24 June 2017, at https://www.unicef.org/yemen/media_12062.html; ICRC, *Yemen: Border Closure Shuts Down Water, Sewage Systems, Raising Cholera Risk*, 17 November 2017, at <https://www.icrc.org/en/document/yemen-border-closure-shuts-down-water-sewage-systems-raising-cholera-risk>.

⁹⁹ OCHA, WHO, UNDP, UNHCR, UNICEF, WFP and IOM, *United Nations Leaders Call on the Saudi-led Coalition to Fully Lift Blockade of Yemeni Red Sea Ports*, 2 December 2017, at <https://reliefweb.int/report/yemen/united-nations-leaders-call-saudi-led-coalition-fully-lift-blockade-yemeni-red-sea>.

intimidation and torture of humanitarian workers, as well as by declarations of areas as military zones so as to make them inaccessible to humanitarian consignments.¹⁰⁰

Under the IHL rules applicable to non-international armed conflicts, the parties to the conflict are bound by a number of obligations aimed at protecting the civilian population. A blockade or a siege is unlawful as long as it does not distinguish between civilians and combatants/civilians directly participating in hostilities (principle of distinction); or, if the incidental starvation of the civilian population is excessive in relation to the concrete and direct military advantage anticipated (principle of proportionality).¹⁰¹ Article 14 AP II prohibits the parties to the conflict from employing starvation as a method of combat, and to attack, destroy, remove, or render useless objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas, crops, livestock, drinking water installations and supplies, and irrigation works.¹⁰² These rules develop the obligation under Common Article 3 GCs to guarantee the life and humane treatment of all persons not participating in hostilities,¹⁰³ and they are part of customary IHL.¹⁰⁴ The use of starvation as a method of combat qualifies as a war crime.¹⁰⁵

Common Article 3 GCs and Article 18 AP II provide that impartial humanitarian bodies may offer their services to the parties to the conflict, including humanitarian relief and assistance,¹⁰⁶ for the benefit of civilians and persons *hors de combat*. Article 18 AP II further requires the parties to the conflict to allow humanitarian relief, especially foodstuffs and medical supplies, to be provided to the civilian population in need.¹⁰⁷ The duty to provide rapid and unimpeded passage to impartial and non-discriminatory humanitarian relief is a rule of customary international law.¹⁰⁸ IHL further requires humanitarian relief objects and personnel to be respected and protected, and to ensure such personnel the freedom of movement

¹⁰⁰ Panel of Experts, *Final Report on Yemen*, UN Doc. S/2018/68, 26 January 2018, at http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2018/68, para. 192; Human Rights Watch, *2018 World Report: Yemen*, at <https://www.hrw.org/world-report/2018/country-chapters/yemen>.

¹⁰¹ Security Council Resolution 2401 (2018), UN Doc. S/RES/2401, 24 February 2018, preambular para. 6: "... reaffirming that sieges directed against civilian populations in Syria are a violation of international humanitarian law"; Max Planck Encyclopedia of Public International Law (MPEPIL), *Siege*, December 2009, at <http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e407?prd=EPIL>, paras. 9–10. In relation to the law of blockade, see *San Remo Manual on International Law Applicable to Armed Conflicts at Sea*, 12 June 1994, paras. 102–104.

¹⁰² An equivalent provision is set in Article 51(4) AP I for international armed conflicts.

¹⁰³ ICRC, *Commentary on the Additional Protocols*, at <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=22A3363FA0482A57C12563CD0043AB5D>, para. 4794.

¹⁰⁴ ICRC Customary IHL Database, at https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul, Rules 53–54.

¹⁰⁵ ICRC Customary IHL Database, at https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul, Rule 156. See also Security Council Resolution 2417 (2018), UN Doc. S/RES/2417, 24 May 2018, preambular para. 14. It should be noted that Article 8(b)(xxv) ICC Statute criminalizes the use of starvation in international armed conflicts.

¹⁰⁶ ICRC, *2016 Commentary on the First Geneva Convention: Article 3*, at <https://ihl-databases.icrc.org/ihl/full/GCI-commentary>, paras. 807–809: "The notion of services is not defined in common Article 3 and no examples are provided. ... absent any indication to the contrary, the term 'services' in common Article 3 should be interpreted broadly, i.e. as encompassing all types of humanitarian activities required to meet the needs of all persons affected by the armed conflict".

¹⁰⁷ ICRC, *Commentary on the Additional Protocols*, at <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=22A3363FA0482A57C12563CD0043AB5D>, paras. 4885–4886.

¹⁰⁸ ICRC Customary IHL Database, at https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul, Rule 55. See also GC IV, Art. 23; AP I, Art. 71.

necessary to the exercise of their functions.¹⁰⁹ The parties to the conflict have the right to prescribe specific measures for the consignment of humanitarian relief, for instance the location and time of delivery of goods as well as a search of goods.¹¹⁰ Although consent is necessary to deliver humanitarian consignments, the parties to the conflict cannot arbitrarily withhold it. Similarly, any arbitrary delay or restriction imposed on humanitarian action runs contrary to international law.¹¹¹ Impeding the provision of humanitarian relief or arbitrarily withholding consent may amount to prohibited starvation of the civilian population in breach of Article 14 AP II and customary IHL. The UN Security Council has repeatedly voiced its concern in relation to the impediment of delivery of humanitarian relief to the Yemeni civilian population.¹¹²

The Saudi Arabia-led coalition justifies the imposition of the blockade as a means to implement the arms embargo against the Houthis imposed by Security Council Resolution 2216 (2015).¹¹³ It should be noted that the Resolution requests “all parties to facilitate the delivery of humanitarian assistance, as well as rapid, safe and unhindered access for humanitarian actors to reach people in need of humanitarian assistance, including medical assistance.”¹¹⁴ Accordingly, the Saudi Arabia-led coalition has acted in breach of Resolution 2216 (2015) to the extent that the blockade has impeded the delivery of humanitarian relief to the civilian population.¹¹⁵ This means that any action that enforces the blockade beyond what is authorized by Resolution 2216 (2015), particularly outside the territorial waters of Yemen, would lack legal basis under international law¹¹⁶ and infringe the rights of third countries under the law of the sea.

A blockade that has a disproportionate impact on the humanitarian situation of the civilian population violates the principle of proportionality. Given Yemen’s structural dependence on the import of essential supplies such as food, medicines and fuel, the blockade has been unlawfully and adversely affecting the living conditions of the civilian population. The situation

¹⁰⁹ ICRC Customary IHL Database, at https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul, Rules 31–32, 56.

¹¹⁰ In non-international armed conflicts, the consent of non-State armed groups is also necessary. See ICRC, *2016 Commentary on the First Geneva Convention: Article 3*, at <https://ihl-databases.icrc.org/ihl/full/GCI-commentary>, para. 825.

¹¹¹ ICRC, *2016 Commentary on the First Geneva Convention: Article 3*, at <https://ihl-databases.icrc.org/ihl/full/GCI-commentary>, paras. 833–839. See also Security Council Resolution 2139 (2014), UN Doc. S/RES/2139, 22 February 2014, preambular para. 10 [Syria]; Resolution 2216 (2015), UN Doc. S/RES/2216, 14 April 2015, preambular para. 10 [Yemen].

¹¹² Security Council Resolution 2216 (2015), UN Doc. S/RES/2216, 14 April 2015, preambular para. 10; Resolution 2266 (2016), UN Doc. S/RES/2266, 24 February 2016, preambular para. 11; Resolution 2342 (2017), UN Doc. S/RES/2342, 23 February 2017, preambular para. 11; UN Resolution 2402 (2018), Doc. S/RES/2402, 26 February 2018, preambular para. 11.

¹¹³ Saudi Press Agency, *Statement of Command of Coalition to Support Legitimacy in Yemen*, 29 July 2016, at <https://www.spa.gov.sa/viewstory.php?lang=en&newsid=1522998>. See Security Council Resolution 2216 (2015), UN Doc. S/RES/2216, 14 April 2015, operative paras. 14–15.

¹¹⁴ Security Council Resolution 2216 (2015), UN Doc. S/RES/2216, 14 April 2015, operative para. 9. This commitment is reinforced by the Security Council’s practice of subjecting those who impede the delivery of humanitarian relief to targeted sanctions. See Security Council Resolution 2417 (2018), UN Doc. S/RES/2417, 24 May 2018, operative para. 9: “Recalls that the Council has adopted and can consider to adopt sanction measures, where appropriate and in line with existing practice, that can be applied to individuals or entities obstructing the delivery of humanitarian assistance, or access to, or distribution of, humanitarian assistance”.

¹¹⁵ Panel of Experts, *Final Report on Yemen*, UN Doc. S/2018/68, 26 January 2018, at http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2018/68, para. 189.

¹¹⁶ MPEPIL, *Blockade*, October 2015, at <http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e252>, para. 57.

in Yemen has in fact been described as the “largest food insecurity emergency in the world”.¹¹⁷ Moreover, the total closure of all entry points into Yemen between 4 and 22 November 2017 constituted a breach of the principle of distinction, which prescribes that parties to the conflict must always employ methods and means of warfare capable of distinguishing between civilians and combatants/civilians directly participating in hostilities. As affirmed by the Panel of Experts, “the complete and unconditional closure of Sana’a International Airport to those genuinely seeking immediate medical treatment abroad, particularly those who do not have any other meaningful alternatives, is an infringement of Common Article 3.”¹¹⁸ The internationally recognised government of Yemen also bears an obligation to protect the civilian population from the effects of the armed conflict. Since the Saudi Arabia-led coalition is acting on the basis of its consent, the Yemeni government has a duty to ensure that the coalition’s blockade does not have disproportionately negative consequences on the civilian population.

The prevention of food imports into Yemen in order to further military efforts, with the knowledge of the country’s almost total dependence on food imports, has deprived the civilian population of objects and foodstuffs indispensable to their survival and amounts to using starvation as a method of combat, in outright violation of Common Article 3 GCs, article 14 AP II and customary IHL. In Resolution 2417 (2018), the Security Council has generally urged States to investigate all acts amounting to starvation of the civilian population and to hold those responsible to account.¹¹⁹ Under Article 7 ICC Statute, the deprivation of access to food and medicines may even amount to the crime against humanity of extermination, when committed as part of a widespread or systematic attack directed against the civilian population.¹²⁰

Preventing humanitarian supplies from reaching the civilian population in need is in violation of human rights law, in particular the rights to food, health and water.¹²¹ As the Committee on Economic, Social and Cultural rights affirmed, “[v]iolations of the right to food can occur through the direct action of States [including] the prevention of access to humanitarian food aid in internal conflicts or other emergency situations.”¹²² States must not deny or limit access to healthcare of civilians and, in particular, they must refrain from “limiting access to health services as a punitive measure, e.g. during armed conflicts in violation of international humanitarian law.”¹²³ Similarly, States have a duty not to deny or limit access to adequate water by destroying water services and infrastructure, especially when this is a punitive measure in the context of armed conflicts. In this regard, the right to water embraces many

¹¹⁷ Statement of the President of the Security Council, UN Doc. S/PRST/2017/7, 15 June 2017, at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N17/173/16/pdf/N1717316.pdf?OpenElement>.

¹¹⁸ Panel of Experts, *Final Report on Yemen*, UN Doc. S/2018/68, 26 January 2018, at http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2018/68, Annex 70, para. 10.

¹¹⁹ Security Council Resolution 2417 (2018), UN Doc. S/RES/2417, 24 May 2018, operative para. 10.

¹²⁰ ICC Statute, Art. 7(2)(b): “‘Extermination’ includes the intentional infliction of conditions of life, *inter alia* the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population.”

¹²¹ ICESCR, Arts. 11–12. See also Office of the High Commissioner for Human Rights, *Information Received Concerning the Negative Impact on the Enjoyment of Human Rights and the Apparent Blockage of Aircraft and Vessels Carrying Essential Goods from Entering Yemen*, 17 November 2016, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=22818>.

¹²² Committee on Economic Social and Cultural Rights, *General Comment no. 12: The Right to Adequate Food (Art. 11)*, UN Doc. E/C.12/1999/5, 12 May 1999, para. 19.

¹²³ Committee on Economic Social and Cultural Rights, *General Comment no. 14: The Right to the Highest Attainable Standard of Health (Art. 12)*, UN Doc. E/C.12/2000/4, 11 August 2000, para. 34.

of the applicable obligations set forth by IHL on the matter.¹²⁴ The interference with the enjoyment of the rights to food, health and water may further entail a violation of the right to life.¹²⁵ In general, respect for the rights to food, health and water constitute a legal obligation of all parties to the conflict where their infringement may have negative consequences on the right to life, which is protected under both treaty and customary human rights law.¹²⁶ It is worth noting that the Committee on the Rights of the Child and the Committee on the Elimination of Discrimination against Women have called on Saudi Arabia to allow and facilitate the rapid and unimpeded passage of humanitarian relief for civilians in need.¹²⁷

It is also an obligation of the parties to the conflict to allow humanitarian bodies to provide relief to the civilian population at risk of cholera. Blockading or confiscating supplies necessary to treat the disease amounts to a violation of IHL and human rights law. Preventing the import of fuel, which is necessary for the functioning of energy generators for hospitals, as well as sewage and water systems, may constitute an attack that renders useless objects indispensable for the survival of the civilian population, in breach of Common Article 3 GCs, Article 14 AP II, customary IHL and the right to water and sanitation.¹²⁸ Additionally, impeding civilians' access to health treatment necessary for the prevention or cure of cholera violates the rights to health and life, and constitutes a breach of applicable human rights treaty and customary norms.¹²⁹

- **The parties to the conflict must cease all actions that unduly hinder or restrict the consignment of humanitarian relief to the civilian population in need and allow its rapid and unimpeded passage.**
- **The Saudi Arabia-led coalition must lift the blockade on Yemeni land, sea and air entry points and it must permit the unrestricted import of food, medicines and fuel intended for the civilian population. The Yemeni government must ensure that the coalition, who is acting under its consent, implements the blockade in compliance with IHL and human rights law.**
- **The Houthis must lift all sieges and stop obstructing the consignment of humanitarian relief. In particular, they must neither confiscate, divert or delay the distribution of humanitarian relief, including cholera response material, nor intimidate, detain or torture humanitarian workers.**

¹²⁴ Committee on Economic Social and Cultural Rights, *General Comment no. 15: The Right to Water (Arts. 11 and 12)*, UN Doc. E/C.12/2002/11, 20 January 2003, paras. 21–22.

¹²⁵ Panel of Experts, *Final Report on Yemen*, UN Doc. S/2016/73, 26 January 2016, at <https://undocs.org/S/2018/192>, para. 151: "the commercial blockade ... has an impact on the social and economic rights of the people of Yemen and, as such, on the right to life."

¹²⁶ CRC, Art. 6; African Commission on Human and Peoples' Rights, *General Comment no. 3: The Right to Life (Article 4)*, 57th Ordinary Session, 4–18 November 2015, paras. 5, 14.

¹²⁷ Committee on the Rights of the Child, *Concluding Observations: Saudi Arabia*, UN Doc. CRC/C/SAU/CO/3-4, 25 October 2016, para. 39; Committee on the Elimination of Discrimination against Women, *Concluding Observations: Saudi Arabia*, UN Doc. CEDAW/C/SAU/CO/3-4, 14 March 2018, para. 18(c).

¹²⁸ ICESCR, Arts. 11–12. Committee on Economic Social and Cultural Rights, *General Comment no. 15: The Right to Water (Arts. 11 and 12)*, UN Doc. E/C.12/2002/11, 20 January 2003, paras. 21–22.

¹²⁹ Committee on Economic Social and Cultural Rights, *General Comment no. 14: The Right to the Highest Attainable Standard of Health (Art. 12)*, UN Doc. E/C.12/2000/4, 11 August 2000, paras. 16, 34.

5. Arms Transfers

An issue that has come to the fore in the context of the conflict in Yemen is the role of third States – including the United States (US), the United Kingdom (UK), Italy and Iran – in supplying weapons and military technology to the parties to the conflict. Recently, the transfer of arms by the UK to Saudi Arabia was the object of a domestic case brought by the UK-based NGO *Campaign Against Arms Trade*. The claimant sought to demonstrate that the UK government has an obligation to suspend arms export to Saudi Arabia in light of the well-documented allegations of serious IHL violations committed by the latter in Yemen.¹³⁰

In Italy, a complaint was filed by three NGOs – *European Center for Constitutional and Human Rights*, *Rete Italiana per il Disarmo* and *Mwatana Organization for Human Rights* – alleging the criminal liability of the directors of RWM Italia S.p.A. and senior officials of Italy's National Authority for the Export of Armament. The complaint refers to a single airstrike allegedly carried out by the Saudi Arabia-led coalition on 8 October 2016 against the village of Deir Al-Hajari in northwest Yemen, which killed a family of six. The complaint centers on the licensed export of arms to Saudi Arabia or another State of the coalition despite Italy's knowledge of credible allegations of serious IHL violations attributed to the coalition.¹³¹

In its 2018 report, the Panel of Experts further reported that Iran had either directly supplied the Houthis with military equipment or failed to adopt necessary measures to prevent indirect transfers, in breach of the arms embargo established by the UN Security Council.¹³² On the other hand, certain European States, e.g. the Netherlands, Norway and Germany, have suspended or refused to authorise the exports of arms to Saudi Arabia and the UAE.¹³³

A number of provisions in international treaties and rules of customary international law are relevant to arms transfers by third States to the parties to the conflict in Yemen. Common Article 1 GCs provides, "[t]he High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances."¹³⁴ This provision applies in both international and non-international armed conflicts and enjoys customary character.¹³⁵ Common Article 1 GCs requires the parties to the conflict to respect IHL in all circumstances, even when other parties have committed violations thereof. It also places an obligation on States to ensure that all persons belonging to their armed forces or acting under their control respect IHL. The specific obligation to "ensure respect" imposes a duty on third States not to

¹³⁰ *R (on the application of Campaign Against The Arms Trade) -v- The Secretary of State for International Trade and interveners*, [2017] EWHC 1726 (QB), 10 July 2017, at <https://www.judiciary.gov.uk/judgments/r-on-the-application-of-campaign-against-the-arms-trade-v-the-secretary-of-state-for-international-trade-and-intervenors/> (at the time of writing, the case is awaiting appeal).

¹³¹ ECCHR, *European Responsibility for War Crimes in Yemen: Are RWM Italia and Italian Arms Export Authority Complicit in Deadly Saudi-coalition Airstrike?*, at <https://www.ecchr.eu/en/case/european-responsibility-for-war-crimes-in-yemen-1/>.

¹³² Panel of Experts, *Final Report on Yemen*, UN Doc. S/2018/68, 26 January 2018, at http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2018/68, paras. 86–91, 97–104.

¹³³ The Independent, *Netherlands Votes to Ban Weapons Exports to Saudi Arabia*, 16 March 2016, at <https://www.independent.co.uk/news/world/europe/netherlands-votes-to-ban-weapons-exports-to-saudi-arabia-a6933996.html>; The New Arab, *Norway and Germany Have Banned Weapons Sales to Countries Fighting in Yemen*, 18 February 2018, at <https://www.alaraby.co.uk/english/indepth/2018/2/8/Will-Europe-ban-weapons-to-countries-fighting-in-Yemen>.

¹³⁴ This norm is reproduced in Article 1(1) AP I.

¹³⁵ ICRC, *2016 Commentary on the First Geneva Convention: Article 1*, at <https://ihl-databases.icrc.org/ihl/full/GCI-commentary>, paras. 125–126; ICRC Customary IHL Database, at https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul, Rule 139.

encourage, aid or assist the parties to the conflict in committing violations of IHL.¹³⁶ As clarified by the ICRC, this obligation should be understood as covering all cases in which States provide “[f]inancial, material or other support in the knowledge that such support will be used to commit violations of humanitarian law ... Common Article 1 requires High Contracting Parties to refrain from transferring weapons if there is an expectation, based on facts or knowledge of past patterns, that such weapons would be used to violate the Conventions.”¹³⁷

An equivalent obligation is set out in Article 1 of the Convention on Cluster Munitions (CCM):¹³⁸ “[e]ach State Party undertakes never under any circumstances to: ... (b) ... transfer to anyone, directly or indirectly, cluster munitions; (c) Assist, encourage or induce anyone to engage in any activity prohibited to a State Party under this Convention.”¹³⁹ The transfer of cluster munitions to a State that is party to an armed conflict, in the knowledge that these will be used in the conduct of hostilities, is therefore prohibited under the CCM.¹⁴⁰ Cluster munitions have reportedly been used in the conflict in Yemen.¹⁴¹ The principal manufacturers are Brazil, the US and the UK. In May 2016, the US decided to suspend transfers of cluster munitions to Saudi Arabia; in December 2016, Saudi Arabia announced that it would stop using UK-made cluster munitions.¹⁴² As of 15 February 2017, Amnesty International had documented attacks carried out by the Saudi Arabia-led coalition on three residential areas in the north-western city of Sa’da (Gohza, al-Dhubat and al-Rawdha) during which Brazilian-made cluster munitions were used.¹⁴³ While neither Brazil, the US, Yemen, nor any of the States belonging to the Saudi Arabia-led coalition are parties to the CCM, the UK is in fact a State party. Accordingly, in 2010 the UK banned the transfer of cluster munitions. Those used in Yemen were acquired by Saudi Arabia in the 1980s.¹⁴⁴ It should be noted that both Brazil and the US may be held responsible for the transfer of cluster munitions under Common Article 1, as long as they are

¹³⁶ International Court of Justice, *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America)*, Judgment, 27 June 1986, para. 220. See also ARSIWA, Art. 16.

¹³⁷ ICRC, *2016 Commentary on the First Geneva Convention: Article 1*, at <https://ihl-databases.icrc.org/ihl/full/GCI-commentary>, paras. 160, 162.

¹³⁸ *Convention on Cluster Munitions*, 30 May 2008 (CCM).

¹³⁹ See also *Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction*, 13 January 1993, Article 1(c–d); *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction*, 18 September 1997, Article 1(c–d).

¹⁴⁰ Article 21(3) regulates so-called interoperability, i.e. the ability of a State party to the CCM to cooperate with a non-party State: “Notwithstanding the provisions of Article 1 of this Convention and in accordance with international law, States Parties, their military personnel or nationals, may engage in military cooperation and operations with States not party to this Convention that might engage in activities prohibited to a State Party.” The requirement that interoperability be in accordance with international law excludes any form of cooperation that does not ensure compliance with Common Article 1 GCs. This means that a State party to the CCM cannot cooperate militarily with a non-party State that employs cluster munitions in a manner inconsistent with IHL.

¹⁴¹ Human Rights Watch, *Technical Briefing Note: Cluster Munition Use in Yemen*, 14 February 2016, at <https://www.hrw.org/news/2016/02/14/technical-briefing-note-cluster-munition-use-yemen>; Cluster Munition Coalition, *Use of Cluster Bombs in Yemen*, at <http://stopclustermunitions.org/en-gb/cluster-bombs/use-of-cluster-bombs/in-yemen.aspx>.

¹⁴² Human Rights Watch, *Yemen: Cluster Munitions Wound Children*, 17 March 2017, at <https://www.hrw.org/news/2017/03/17/yemen-cluster-munitions-wound-children>.

¹⁴³ Amnesty International, *Yemen: Saudi Arabia-led coalition uses banned Brazilian cluster munitions on residential areas*, 9 March 2017, at <https://www.amnesty.org/en/latest/news/2017/03/yemen-saudi-arabia-led-coalition-uses-banned-brazilian-cluster-munitions-on-residential-areas/>.

¹⁴⁴ BBC, *UK-made Cluster Bombs Used in Yemen, Michael Fallon Confirms*, 19 December 2016, at <http://www.bbc.com/news/uk-politics-38364694>.

used in a manner that does not comply with IHL, e.g. to carry out indiscriminate attacks in populated areas.¹⁴⁵

The Arms Trade Treaty (ATT)¹⁴⁶ prohibits the transfer of weapons in cases of the actual or potential occurrence of serious violations of IHL and/or human rights law. Article 6 ATT imposes an absolute prohibition on the transfer of arms, munitions and other items covered by the ATT,¹⁴⁷ used for the commission of “genocide, crimes against humanity, grave breaches of the Geneva Conventions of 1949, attacks directed against civilian objects or civilians protected as such, or other war crimes as defined by international agreements to which it is a Party.”¹⁴⁸ Such transfers are forbidden when the exporting State is aware, or should have been aware at the time of the authorization, of a real risk that the transferred items would be used to commit the aforementioned serious violations of IHL and human rights law.¹⁴⁹ If a transfer is not prohibited under Article 6 ATT, Article 7 requires States, prior to the authorization of the export, to assess whether arms or other items to be transferred could be used by the end-user State to commit or facilitate serious violations of IHL and/or human rights law. If an overriding risk exists in this respect, a State must not authorize the transfer.¹⁵⁰

Member States of the European Union (EU) must also comply with the 2008 Common Position on Arms Export.¹⁵¹ Criterion 2 of the Common Position prescribes that EU Member States must deny the export of military technology or equipment where there is a clear risk that such technology and equipment might be used to commit serious violations of IHL. To assess such a risk, EU Member States must verify the end-user State’s record concerning the ratification and implementation of IHL treaties, and consider any past patterns of IHL violations and the degree of readiness to respond to allegations of breaches of IHL.¹⁵² In relation to human rights law, Criterion 2 requires EU Member States not only to assess the end-user’s human rights performance, but also to “exercise special caution and vigilance in issuing licences ... to countries where serious violations of human rights have been established by the competent bodies of the United Nations, by the European Union or by the Council of Europe.” Under

¹⁴⁵ Human Rights Watch, *Yemen: Brazil-Made Cluster Munitions Harm Civilians*, 23 December 2016, at <https://www.hrw.org/news/2016/12/23/yemen-brazil-made-cluster-munitions-harm-civilians>.

¹⁴⁶ *Arms Trade Treaty*, 2 April 2013 (ATT).

¹⁴⁷ ATT, Arts. 2–4.

¹⁴⁸ ATT, Art. 6(3).

¹⁴⁹ P. Sands, A. Clapham and B. Ní Ghráiligh, *The Lawfulness of the Authorisation by the United Kingdom of Weapons and Related Items for Export to Saudi Arabia in the Context of Saudi Arabia’s Military Intervention in Yemen*, Legal Opinion Prepared on Instructions from Amnesty International UK, Oxfam and Saferworld, 11 December 2015, at https://www.amnesty.org.uk/files/webfm/Documents/issues/final_legal_opinion_saudi_arabia_18_december_2015_-_final.pdf, paras. 5.12–5.14, 5.21.

¹⁵⁰ The risk assessment under Article 7 ATT is wider than the determination under Article 6 since (1) it encompasses serious violations of IHL and human rights law, without listing specific war crimes; (2) it covers both the commission and facilitation of violations; and (3) it focuses on whether the transferred arms or items ‘could’ rather than ‘would’ be used, which lowers the threshold. See *ibid.*, para. 5.41.

¹⁵¹ Council Common Position 2008/944/CFSP, 8 December 2008.

¹⁵² P. Sands, A. Clapham and B. Ní Ghráiligh, *The Lawfulness of the Authorisation by the United Kingdom of Weapons and Related Items for Export to Saudi Arabia in the Context of Saudi Arabia’s Military Intervention in Yemen*, Legal Opinion Prepared on Instructions from Amnesty International UK, Oxfam and Saferworld, 11 December 2015, at https://www.amnesty.org.uk/files/webfm/Documents/issues/final_legal_opinion_saudi_arabia_18_december_2015_-_final.pdf, para. 6.14. See also EU Council General Secretariat, *User’s Guide to Council Common Position 2008/944/CFSP defining common rules governing the control of exports of military technology and equipment*, Doc. COARM 172 CFSP/PESC 393, 20 July 2015.

Criterion 6, EU Member States must generally consider the recipient State's compliance with both international law regulating the use of force (*jus ad bellum*) and IHL.

The challenge against the UK government brought by the NGO *Campaign Against Arms Trade* was based on the consolidated criteria, which incorporates the EU Common Position and the ATT standards, employed since 2014 by the Secretary of State to issue arms export licenses. The claimant asserted that, based on the body of publicly available evidence, there was a clear risk that the arms transferred by the UK to Saudi Arabia would be used to commit serious violations of IHL and accordingly that this would fulfil the condition for any such transfer to be banned. The court of first instance rejected this claim, accepting that the UK government had thorough procedures in place to verify whether Saudi armed forces respect IHL during military operations, as well as whether they review and investigate alleged violations. The procedures were said to guarantee constant monitoring in relation to the risk that the transferred arms could be used in the commission of serious violations of IHL. The court held that the UK government was entitled to conclude that there was no clear risk that Saudi Arabia would use the transferred arms to commit serious violations of IHL and thus that it was not obliged to suspend or cancel arms sales to Saudi Arabia.¹⁵³ If the evidence presented is evaluated differently at the appeals stage of the proceedings,¹⁵⁴ the UK could be obliged to stop arms transfers to Saudi Arabia under Article 6 ATT and Criterion 2 of the EU Common position. Its international responsibility could also be engaged.

Under general international law, a State may be held responsible for aiding or assisting in the commission of an internationally wrongful act. Article 16 of the International Law Commission's Articles on the Responsibility of States for Internationally Wrongful Acts provides, "[a] State which aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if: (a) That State does so with knowledge of the circumstances of the internationally wrongful act; and (b) The act would be internationally wrongful if committed by that State."¹⁵⁵ Although Article 16 may demand a higher threshold of application than Common Article 1 GCs,¹⁵⁶ a State's international responsibility can be triggered under this provision for arms transfers to a party to the conflict engaged in the commission of serious violations of IHL or human rights law.¹⁵⁷

As indicated above, the US and certain EU countries have entered into arms export deals with Saudi Arabia and the UAE in the years following their direct involvement in the armed conflict in Yemen.¹⁵⁸ These arrangements were concluded notwithstanding the wealth of information

¹⁵³ *R (on the application of Campaign Against The Arms Trade) -v- The Secretary of State for International Trade and interveners*, [2017] EWHC 1726 (QB), 10 July 2017, at <https://www.judiciary.gov.uk/judgments/r-on-the-application-of-campaign-against-the-arms-trade-v-the-secretary-of-state-for-international-trade-and-interveners/>, paras. 199–211.

¹⁵⁴ At the time of writing, the case is awaiting appeal.

¹⁵⁵ This norm has attained customary status; see International Court of Justice, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, 26 February 2007, para. 420.

¹⁵⁶ ICRC, *2016 Commentary on the First Geneva Convention: Article 1*, at <https://ihl-databases.icrc.org/ihl/full/GCI-commentary>, para. 159.

¹⁵⁷ O. Hathaway et al., *State Responsibility for U.S. Support of the Saudi-led Coalition in Yemen*, Just Security, 25 April 2018, at <https://www.justsecurity.org/55367/state-responsibility-u-s-support-saudi-led-coalition-yemen/>.

¹⁵⁸ CNN, *US Approves \$2 Billion Arms Sale to UAE*, 11 May 2017, at <https://edition.cnn.com/2017/05/11/politics/us-2-billion-arms-sale-uae/index.html>; CNBC, *US-Saudi Arabia Seal Weapons Deal Worth Nearly \$110 Billion Immediately, \$350 Billion over 10 Years*, 22 May 2017, at <https://www.cnbc.com/2017/05/20/us-saudi-arabia-seal-weapons-deal-worth-nearly-110-billion-as-trump->

available from international organizations that reported credible allegations of serious violations of IHL attributed to the Saudi Arabia-led coalition. Such violations include indiscriminate attacks against civilians, civilian objects, cultural sites, and medical personnel and facilities.¹⁵⁹ A State that transfers arms or other military equipment to a State forming part of the Saudi Arabia-led coalition, with knowledge that these may or will be used in attacks and operations that do not comply with IHL, is acting in breach of international law.

With reference to the abovementioned Italian case, the NGOs that filed the criminal complaint provided evidence of the use of an Italian manufactured weapon by a State belonging to the Saudi Arabia-led coalition. In this respect, the complainant alleged, “[a]t the site of the airstrike, bomb remnants were found, which indicate that the type of bomb used was a guided bomb of the MK80-family. Also in the rubble a suspension lug, which is needed to attach the bomb to the plane, was found. Its serial marks clearly indicate that it was manufactured by RWM Italia S.p.A., an Italian subsidiary of German Rheinmetall AG”.¹⁶⁰ If the reported facts were to be proven in the course of judicial proceedings, Italy could be held internationally responsible for having breached its obligations under Common Article 1 GCs. Such a transfer would also violate its obligations under the ATT and the EU Common Position.¹⁶¹

According to the findings of the Panel of Experts, Iran has not complied with the arms embargo established against the Houthis. In particular, Iran has failed to adopt the necessary measures to prevent the direct or indirect supply or transfer of extended-range and short-range ballistic missiles and unmanned aerial vehicles to the group. Given the extensive reports concerning serious violations of IHL committed by the Houthis in the context of the Yemeni conflict, the direct supply of such military equipment would appear to engage Iran’s responsibility under Article 1 GC.¹⁶²

- **All States must suspend or cancel arms transfers to States belonging to the Saudi Arabia-led coalition. Iran must stop either directly supplying military equipment to the Houthis or adopt adequate measures to prevent indirect transfers.**

[begins-visit.html](http://www.euronews.com/2017/11/30/which-eu-countries-sell-arms-to-saudi-arabia-); Euronews, *Which EU Countries Sell Arms to Saudi Arabia?*, 30 November 2017, at <http://www.euronews.com/2017/11/30/which-eu-countries-sell-arms-to-saudi-arabia->.

¹⁵⁹ Office of the High Commissioner for Human Rights, *Situation of Human Rights in Yemen, including Violations and Abuses since September 2014*, UN Doc. A/HRC/36/33, 13 September 2017 at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/266/39/pdf/G1726639.pdf?OpenElement>, paras. 28–35; Panel of Experts, *Final Report on Yemen*, UN Doc. S/2018/193, 31 January 2017, at <https://undocs.org/S/2018/193>, paras. 119 ff.; Panel of Experts, *Final report on Yemen*, UN Doc. S/2018/68, 26 January 2018, at http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2018/68, para. 161; Human Rights Watch, *Targeting Saada. Unlawful Coalition Airstrikes on Saada City in Yemen*, June 2015, at https://www.hrw.org/sites/default/files/report_pdf/yemen06154_up.pdf, pp. 16 ff.; Amnesty International, *'Nowhere Safe for Civilians': Airstrikes and Ground Attacks in Yemen*, 18 August 2015, at https://www.amnesty.nl/content/uploads/2015/08/nowhere_safe_for_civilians_-_taiz_aden_report.pdf?x44743, pp. 12 ff.

¹⁶⁰ ECCHR, *European Responsibility for War Crimes in Yemen: Are RWM Italia and Italian Arms Export Authority complicit in deadly Saudi-coalition airstrike?*, at <https://www.ecchr.eu/en/case/european-responsibility-for-war-crimes-in-yemen-1/>.

¹⁶¹ Italy has ratified the ATT and is an EU Member State.

¹⁶² Iran has not yet acceded to the ATT and the CCM.

6. Accountability and Access to Justice

Evidently, there are widespread serious violations of IHL and human rights law attributable to all parties to the conflict in Yemen. Many of these violations, including direct, indiscriminate or disproportionate attacks against civilians or civilian objects, starvation, denial of access to humanitarian relief, torture and ill-treatment, and enforced disappearances, may amount to war crimes. Unlawful attacks against civilians and civilian objects and actions that impede humanitarian consignments may further violate the right to life and the rights to food, housing, health and water. Arbitrary arrest and detention also constitute breaches of applicable human rights obligations. To the extent that it is part of a widespread or systematic attack against the civilian population, the deprivation of food and medicines to civilians may further qualify as the crime against humanity of extermination. The internationally recognized government of Yemen and States parties to the Saudi Arabia-led coalition have a duty to conduct effective investigations and hold those responsible to account.¹⁶³

Victims have a right to seek redress for harm suffered, including access to effective remedies and reparation.¹⁶⁴ Under IHL, the internationally recognized government of Yemen, the States belonging to the Saudi Arabia-led coalition and the Houthis have an obligation to provide victims of violations with adequate, effective and prompt reparation. Reparation must include restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition, as the situation demands.¹⁶⁵

It is paramount that responsible actors in the international community endeavour to ensure that the parties to the conflict in Yemen cease violating international law and that the civilian population stops bearing the brunt of war. By acting under Article 41 UN Charter, the Security Council should request that the parties to the conflict lift the blockade and the sieges that prevent the import of food and medicines to the country and that impede humanitarian relief from reaching the civilian population. States, individually and collectively, must also take action to hold to account perpetrators of crimes under international law committed in Yemen. In this respect, the Security Council should refer the situation in Yemen to the International Criminal Court. Additionally, third States should consider exercising universal jurisdiction over any alleged responsible person present on their territory or under their jurisdiction.

- **The parties to the conflict should guarantee the right to an effective remedy for victims leading to adequate, effective and prompt reparation, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.**
- **States, individually and collectively, must take effective measures to put an end to international law violations in Yemen and ensure the accountability of perpetrators. The UN Security Council should call on the parties to the conflict to lift all blockades and sieges against the civilian population and refer the situation in Yemen to the International Criminal Court.**
- **While the internationally recognized government of Yemen and the States belonging to the Saudi Arabia-led coalition have a primary duty to**

¹⁶³ *Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity*, UN Doc. E/CN.4/2005/102/Add.1, 8 February 2005, Principle 19.

¹⁶⁴ *Ibid.*, Principle 31.

¹⁶⁵ *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, UN Doc. A/RES/60/147, 16 December 2005, Principles 15–23.

investigate and prosecute alleged perpetrators of crimes under international law committed in Yemen, third States should consider exercising universal jurisdiction and prosecuting alleged perpetrators that are present on their territory or otherwise under their jurisdiction.

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