

## THE LAW OF ARMED CONFLICT – HUMANITARIAN LAW VIOLATIONS IN YEMEN

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### 1. Law of Armed Conflict

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The Law of Armed Conflict is one that was formulated by civilized nations to provide a sense of civility on the brutish nature of war. However ironic that may sound, the Law of Armed Conflict was put in place to ensure that any essential non-combatants and civilians were not harmed during an armed conflict. The difference between non-combatants and civilians is one that was created to provide clarity in a war. Non-combatants include all military medical personnel and religious personnel that are part of the armed entity.<sup>1</sup> A group of civilians accompanying a military group does not come under the scope of the provisions stated. Armed conflicts are divided into 2 broad types - international armed conflict (IAC) and non-international armed conflict (NIAC). International armed conflict is a conflict that takes place between two or more states.<sup>2</sup> A NIAC is a conflict between two parties within a state or, one party and the Government, or more than one party and the Government of a state. For a NIAC to exist there has to be two fulfilling conditions. These two conditions are (I) intensity of the hostilities (II) intention of the parties.<sup>3</sup>

After analyzing as to what is a combatant and a non-combatant, and the types of an armed conflict, we can realize the objective that the LOAC tries to achieve, and is thus pertinent for us to discuss the principles of LOAC.

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#### 1.1 The Principles of Law of Armed Conflict

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The Law of Armed Conflict (LOAC) has 3 major principles which it follows. They have each been described in brief.

**Military Necessity** is one of the major principles of LOAC. This principle essentially requires the military forces to only attack or destroy targets which are absolutely necessary and such that ensures the submission of the enemy. Hence, it refers to those acts which are

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<sup>1</sup> ICRC, Definition Of Combatants, Customary IHL Database (Jan. 31, 2019, 8:02PM), [https://ihl.databases.icrc.org/customaryihl/eng/docs/v1\\_rul\\_rule3](https://ihl.databases.icrc.org/customaryihl/eng/docs/v1_rul_rule3)

<sup>2</sup> Geneva Convention Relative to the Protection of Civilian Persons in Time of War art. 2, Aug. 12, 1949, 75 UNTS 287.

<sup>3</sup> Prosecutor v. Tadić, Case IT-94-1-T, Judgment, ¶562 (Int'l Crim. Trib. for the Former Yugoslavia Jun. 7, 1997)

required to accomplish a ‘necessary military objective’. A military objective is such an object that provides an, ‘effective contribution to military action and whose partial or total destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage’.<sup>4</sup>

Inferring from the principle, the objective it tries to achieve is that it tries to reduce the amount of destruction of property that takes place during a war, hence leading to a reduction of casualties. However, according to the military manual of several prominent states such as Canada, Australia, Belgium, a definition clause of the term ‘military necessity’ is of utmost importance as such a clause is necessary to govern the actions of the military and to prevent the violation of humanitarian law, which would lead to accountability on the offending nations part.

The principle of military necessity brings about the prohibition of permanently injuring of enemy soldiers when not in a fight, torturing of soldiers to exact confessions or otherwise to exact damage upon the enemies which does not further the military objective.<sup>5</sup>

**Principle of Distinction** remains as the most important of the three principles of LOAC. In order to ensure respect for and protection of the civilian population and civilian object, the Parties to the conflict shall at all times distinguish between the civilian population and the armed military combatants.<sup>6</sup> The principle directs the combatants to differentiate between the military personnel and the civilian population. This principle forms one of the major cruxes of International Humanitarian Law. A principle which attempts to create accountability in the event of a genocide or a mass murder of innocents taking place.

**Proportionality** is the use of force, and if the degree of force used is in proportion to the offence being committed. Proportionality refers to the launch of an attack which may lead to the incidental loss of civilian life and if such an attack is disproportionate to the military advantage that is to be gained.<sup>7</sup> The principle can be applied to both IACs and NIACs. This

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<sup>4</sup> ICRC, Definition Of Military Objectives, Customary IHL Database, (Jan. 31, 2019, 9:10PM), [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule8](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule8).

<sup>5</sup> Gary D. Solis, *The Law of Armed Conflict: International Humanitarian Law in War*, 258(1st ed. Cambridge University Press, 2010).

<sup>6</sup> Protocol Additions to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts.

<sup>7</sup> ICRC, Proportionality In Attack, Customary IHL Database (Jan. 20, 2019, 8:20PM), [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule14](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule14).

can be inferred from the fact that the ICRC has constantly reminded parties to IACs and NIACs to adhere to the principle of proportionality. The military manual of a number of countries recognize the principle of proportionality as a customary rule of humanitarian law. In fact, the IHL Manual that was adopted by Sweden in 1991 refers to the principle of proportionality as one of the governing principles of humanitarian law.

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## **2 The Situation in Yemen**

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The situation in Yemen has been very volatile since 2004, when the government was involved in an armed conflict with Ansar Allah, also known as the Houthis. The Houthis are a politically motivated armed group based around the northern part of Yemen and has been involved in various activities since the 1990's. Yemen under the rule of President Ali Abdallah Saleh imposed a number of sanctions after the Houthis started a violent insurgency against the ruling government.<sup>8</sup>

Things got more tense when during heavy protests in 2011, President Saleh decided to step down. He handed over his presidency to his deputy Abdrabbuh Mansour Hadi. Hadi officially became the president of Yemen through the general elections that took place in February 2012. The next 2 years in Yemen were marked with political instability with continuous protests erupting across the northern parts of the country. These protests were instigated by the Houthis. Around September 2014, the Houthis captured the capital city of Sana'a. The Hadi-led government was able to reach an agreement with the Houthis which provided temporary relief until January, 2015 but tensions rose again and the temporary peace was broken.<sup>9</sup>

Hadi then moved to Aden with the aim to re-establish the government of Yemen and also declared Aden to be the new capital of Yemen. Hadi appealed to the other nations of the Middle East, namely Saudi Arabia, Bahrain, United Arab Emirates, Oman, Kuwait and Qatar

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<sup>8</sup> Geneva Academy, Non-International Armed Conflicts in Yemen (Jan. 23, 2019, 4:15 PM)

<http://www.rulac.org/browse/conflicts/non-international-armed-conflicts-in-yemen#collapse4accord>.

<sup>9</sup> S. Arraf, The Armed Conflict in Yemen: A Complicated Mosaic, 3(Geneva Academy, 2017).

<sup>10</sup> Al Jazeera Centre for Studies, Operation Decisive Storm: Reshuffling Regional Order, 4-5(Al Jazeera, 2015).

to support the government in the conflict against the Houthis and also authorized these countries to provide military intervention. This authorization of military intervention by the Yemeni-government is a debatable topic from the point of view of law, which has been discussed subsequently. The middle-eastern countries of Kuwait, Bahrain, Saudi Arabia, Morocco started Operation Decisive Storm. Operation Decisive Storm was led by Saudi Arabia, who already had a very volatile relationship with Yemen since 1934. The major reason for the Saudi forces to target Yemen was because the Houthis in the name of establishing a Yemeni state, were actually letting in Iran into the country and providing increasing access to the country. The Saudi also felt obligated to intervene in the name of international peace after their appeal to the United States was not accepted, as the United States refused to get involved.<sup>10</sup>

The current political and military landscape of Yemen remains deeply fragmented. The Houthi – Saleh alliance which was formed collapsed after Saleh was killed by the Houthi militia when he attempted to collaborate with the coalition forces of Saudi Arabia. The Security Council adopted resolution 2216 which recognized Hadi as the legitimate President of Yemen. The Al-Qaida and the Islamic State control large parts of Yemen's territory, and have been conducting terror attacks across the country. Iran has also been furnishing the Houthis with arms and ammunition. The situation in 2018 and 2019 is still dire with heavy losses being reported by both sides, regularly. Fighting has also broken out in Aden due to allegations against the current government for being involved in corrupt practices. In July, 2018, four Saudi snipers were killed as retaliation for the numerous airstrikes carried out by Saudi Arabia against Yemen. There are various conflicting reports on the number of casualties that are created daily<sup>11</sup>. But the things that are for certain is that there is a massive loss of life that is taking place and there is no means to curb the violence.

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<sup>11</sup> S. Arraf, *The Armed Conflict in Yemen: A Complicated Mosaic*, 3(Geneva Academy, 2017).

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## 2.1 Applicability of Law

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As discussed earlier, the conflict in Yemen gives rise to various points of International Law. However, only those points of law arising out of actions of parties to the Geneva Conventions, 1949 are highlighted. To bring the conflict under the ambit of the Geneva Conventions, the paper shall discuss 2 major points of law.

- The nature of Yemen's conflict
- The laws applicable to the Conflict in Yemen

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## 2.2 Classification of Conflict

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To establish if the conflict is an IAC or an NIAC, we need to realize the rules pertaining to the classification. Logically speaking, as there is more than one country involved in the conflict it should be classified as an IAC, however according to the UN, since consent to military intervention was granted by Yemen, it is beyond the domain of international armed conflict. It can thus be inferred that even though the war involves foreign states it is, in essence, a conflict with Yemen's governmental forces, aided by foreign forces and the Houthi insurgents. Thus, the governing rules to be applied are those of a NIAC. Furthermore, we can see the two requirements for the existence of an NIAC, (i) intensity of the hostilities and (ii) organization of the parties.<sup>12</sup> It can be confirmed the conflict is indeed, intense. The types of weapons used, the duration of the conflict and the types of forces involved in the fighting all act as indicators of intensity of the conflict. The involvement of the Security Council is also an indicator of intensity of a conflict.<sup>13</sup> The organization of the parties refers to the presence of a command structure, headquarters, rules and regulations within the party, including the ability to create cease-fires or peace accords.<sup>14</sup> Here again, the Houthis have been shown to have excellent organizational skills, including having a very efficient command system which enabled them to overthrow and capture parts of Southern Yemen and also the capital of Sana'a.

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<sup>12</sup> Prosecutor v. Tadić, Case IT-94-1-T, Judgment, ¶ 562(Intl' Crim. Trib. for the Former Yugoslavia Jun. 7, 1997)

<sup>13</sup> Prosecutor v. Haradinaj, Case IT-04-84-T, Judgment, ¶ 49 (Intl' Crim. Trib. for the Former Yugoslavia Apr. 3, 2008)

<sup>14</sup> Prosecutor v. Limaj, Case No. IT-03-66-T, Judgment, ¶ 94-170 (Intl' Crim. Trib. for the Former Yugoslavia Sept. 27, 2007)

According to international jurisprudence, a NIAC can become an IAC, or that both of these conflicts can exist simultaneously.<sup>15</sup> For a NIAC to turn into an IAC, it has to be proved that the party in conflict with the government is backed by a third-party state. For example, in the case of Yemen if it can be proved that Iran had an hand in organizing, supplying, or coordinating the actions of the Houthis, while also exercising majority control over them, Iran could still be held accountable. However, there wasn't sufficient evidence for the fulfillment of this test.<sup>16</sup> Hence, as it stands today, the conflict non-international armed conflict or NIAC.

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### 2.3 Applicability of International Humanitarian Law

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The presence of a NIAC ensures the application of IHL and subsequently, 3 bodies of law are applicable, namely (a) Common Article 3 to the Four Geneva Conventions, (b) Additional Protocol II (APII) to the 1949 Geneva Conventions, and (c) Customary international law. Applicability of each of these 3 have been discussed. Being a party to the convention gives rise to the obligations defined under it and thus, obligations rise on part of Yemen and Saudi Arabia.

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#### 2.3.1 Common Article 3 to the 1949 Geneva Conventions

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Restrictions imposed by Common Article 3 is mostly general in nature, but since Yemen and Saudi Arabia are both parties to it, they are nonetheless, binding. Common Article 3, restricts "violence to life and person" of those persons who are "taking no active part in the hostilities". The term "violence" here includes not only hurt, but also murder, torture or any other form of degrading and inhuman treatment that is detriment to the human being. Albeit vague, the breach of Common Article 3 constitutes serious violations of IHL.<sup>17</sup> A violation of Common Article 3 is binding upon States, but it can lead to individual criminal liability, depending on a case to case basis.<sup>18</sup>

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<sup>15</sup> Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.), Judgment, 1986 I.C.J. 14 (June 27)

<sup>16</sup> A. Clapham & 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, 12(Oxfam and Saferworld, 2015)

<sup>17</sup> Prosecutor v. Blaškić, Case IT-95-14-T, Judgment, ¶ 176 (Int'l Crim. Trib. for the Former Yugoslavia Mar. 3 2000).

<sup>18</sup> Prosecutor v. Tadić, Case IT-94-1-T, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction,

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### 2.3.2 Additional Protocol II (1977)

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Additional Protocol II 1977 to the Geneva Conventions, 1949 provides protection to victims of NIAC. The provisions of APII applicable in this scenario are:

- The prohibition of violence to life, health and physical or mental well-being and collective punishment (Article 4): Civilians who are not involved in the conflict cannot be attacked with intent to kill them or in other way damage or hurt them. Also they cannot be subjected to torture for the purpose to obtaining information or otherwise.
- Medical transports and units are beyond the scope of attack (Article 11): Medical units and transport vehicles that carry medical personnel, civilians or supplies cannot be attacked or otherwise destroyed. This also relates to civilian hospitals housing injured persons including soldiers.
- Individuals not partaking in hostilities cannot be attacked (Article 13): This means that any individual that is not involved in the conflict cannot be attacked under any pretext.
- Historic buildings & monuments, artistic works, sacred places & places of worship which form the cultural identity and heritage of the people of the land are not to be attacked or destroyed.(Article 16).

Violating Additional Protocol II gives rise to ‘state responsibility’ if such an act is committed by the armed forces under the command of the state and/or committed by any group that is working with the state or under instructions from the state. Violations under APII does not require the establishment of any ‘intent’ and thus, convictions can be done on a ‘collective’ basis. But this format for convictions is only applicable to states. APII can be applied to individual persons, but then the required ‘intent’ has to be established.<sup>19</sup>

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¶ 128-129(Intl’ Crim. Trib. for the Former Yugoslavia Oct. 2, 1995).

<sup>19</sup>Prosecutor v. Tadić, Case IT-94-1-T, Judgment, ¶ 288(Intl’ Crim. Trib. for the Former Yugoslavia Jun. 7, 1997).

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### 2.3.3 Customary International Law

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Customary International Law (CIL) arises from state practice and is not derived from obligations created by treaties. CIL does not differentiate between NIAC's and IAC's and thus, the rules derived from CIL are applicable to both scenarios. Violations of CIL include:

- Attacks directed against the civilians and/or civilian objects like schools, hospitals or places of worship. Attacks on such buildings are prohibited by CIL as well as the Geneva Conventions, provided that such buildings are not a military objective. A military objective is an objective which due to their nature, purpose or location make an effective ground for military action)
- Indiscriminate attacks that do not distinguish between military objects and civilian objects also violate CIL. Attacks carried out by Saudi Arabia against civilian targets in Yemen are in violation of these laws.

Hence from the above distinctions we can infer that there has been a gross violation of International Humanitarian Law. However, due to the nature of the conflict, one side alone cannot be blamed for the violations. It has been found and reported by various new agencies that both Yemen and Saudi Arabia have carried out acts which are under the ambit of the abovementioned laws. But since the conflict is not yet resolved and the facts pertaining to various issues remain unclear, any type of legal action cannot be instituted against these nations involved.

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### 3. Conclusion

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The coalition forces were led by Saudi Arabia when Yemen appealed for help from the other Middle Eastern nations. Due to the consent by Yemen, this act became an NIAC. But, the Saudi Arabia led coalition forces have been subject to a lot of scrutiny because of the attacks they have carried out. Multiple attacks carried out by Saudi-forces are in violation of the IHL, the Additional Protocols and Customary International Law. They have also received major criticism from the UN. As for 2019, the war in Yemen is still continuing at a brisk pace. After 2015, with the inclusion of Saudi Arabia, the perspective of the war has become that of a Shia-Sunni conflict.

In November, 2018 the UN brokered a ceasefire between the Houthis and the Yemen government known as the “Stockholm Agreement”.<sup>20</sup> However, both sides have accused the other side of breaking the ceasefire. As the things stand today, the situation is extremely grim and dark. It is probable that we are looking at one of the biggest violations of Humanitarian Law and Human Rights in the 21<sup>st</sup> Century.

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<sup>20</sup> Centre for Preventive Action, The Top Conflicts to Watch in 2019: Yemen, Council On Foreign Relations(Jan. 8, 2019), <https://www.cfr.org/blog/top-conflicts-watch-2019-yemen>.