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## INTERNATIONAL HUMANITARIAN LAW V INTERNATIONAL HUMAN RIGHTS LAW: APPLICABILITY IN THE CRISIS OF YEMEN

*Undang-undang Kemanusiaan Antarabangsa V Undang-undang Hak Asasi Manusia Antarabangsa: Pemakaian kepada Krisis di Yemen*

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### ABSTRACT

The United Nations (UN) has labelled Yemen's humanitarian crisis the worst in the world. Thousands of people have died in the ongoing war and from the outbreak of deadly diseases. Almost half Yemen's population desperately needs humanitarian aid, and millions have been internally displaced; hundreds of thousands of refugees have migrated to other countries. While children have been recruited as child soldiers, the illegal use of mines and cluster bombs has put at risk many more lives. International Human Rights Law (IHRL) requires the investigation of the arbitrary deprivation of life and others. The law dictates that the people responsible for violating any human rights or international humanitarian law must be held accountable for their crimes. In contrast, International Humanitarian Law (IHL) requires all states to have those people who are responsible for war crimes. This article discusses the applicability of both IHL and IHRL in the crisis in Yemen. Therefore, the first part of the paper presents a brief history of the problem in Yemen. The second part distinguishes between IHL and IHRL. The third part then deeply discusses in detail both IHL and IHRL and their possible applicability to the conflict in Yemen. Then lastly, the paper concludes by presenting how both IHL and IHRL could work to complement each other.

**Keywords:** crisis; humanitarian; human rights; law; Yaman

## ABSTRAK

*Pertubuhan Bangsa Bangsa Bersatu (UN) telah melabel krisis kemanusiaan di Yemen sebagai krisis manusia paling teruk di dunia. Ribuan nyawa telah terkorban dan juga kematian akibat dari wabak penyakit dalam perang yang masih berlaku ketila ini. Hampir separuh penduduk Yemen sangat memerlukan bantuan kemanusiaan, berjuta-juta lagi terpaksa dipindahkan, manakala ratusan ribu pelarian telah berhijrah ke negara lain. Sementara itu, kanak-kanak telah direkrut sebagai tentera dan penggunaan secara haram bom kelompok telah menyebabkan ramai penduduk berada dalam risiko yang membahayakan nyawa. Undang-undang menetapkan bahawa sesiapa yang bertanggungjawab melanggar hak asasi manusia atau undang-undang kemanusiaan antarabangsa mesti dipertanggungjawabkan atas jenayah yang mereka lakukan. Undang-undang hak asasi manusia antarabangsa (IHRL) meminta penyiasatan dilakukan keatas kehilangan nyawa dan lain-lain sementara undang-undang kemanusiaan antarabangsa (IHL) menghendaki semua negara untuk bertanggungjawab atas jenayah perang yang dilakukan. Makalah ini bertujuan untuk membincangkan mengenai penerapan IHL dan IHRL dalam krisis di Yemen. Justeru, bahagian pertama penulisan ini adalah mengenai sejarah ringkas krisis di Yemen. Bahagian kedua kemudiannya membuat perbezaan antara IHL dan IHRL. Bahagian ketiga pula membincangkan secara mendalam mengenai IHL dan IHRL dan kemungkinan aplikasinya terhadap konflik di Yemen. Akhir sekali makalah ini merumuskan bagaimana kedua-dua IHL dan IHRL boleh berfungsi sebagai saling melengkapi antara satu sama lain.*

**Kata Kunci:** krisis; kemanusiaan; hak asasi manusia; undang-undang; Yemen

## INTRODUCTION

Although multiple armed conflicts exist in Yemen, to which several States and armed groups are parties, the briefing focuses on actions of the Saudi Arabia-led coalition, the internationally recognised government of Yemen and the Houthis. 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. 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. 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 24th, 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 (Arraf 2017).

At the present time, the political and military landscape of Yemen remains deeply fragmented. 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. (Al Alley 2017). 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.

The connection between international humanitarian law (IHL) and international human rights law (IHRL) constitutes a matter of importance as it influences the protection accorded to human beings in such different circumstances such as during a state of peace and of an armed conflict. It also impacts the punishment of culprits of international crimes such as crimes against humanity, war crimes or crime of genocide. Are these two legal systems in symbiosis or in other words are they complementary or rather are they contradictory, in a state of rivalry? This paper attempts answer – *inter alia* – those questions. To say that IHRL is applicable not only in times of peace but also in times of armed conflict is a cliché today. Despite their different historical backgrounds and their own normative specificities, the central concern of both branches of international law – IHL and IHRL – is human dignity. They originate from the same source: the laws of humanity. In accordance with the theory of complementarity, both branches of international law constitute a whole although they are not identical. They complement each other but in the end remain distinct. Humanitarian law can therefore be regarded as a species of the broader genus of human rights law. This is not a distinction in terms of their intrinsic nature, but a distinction based on the context of application of rules designed to protect human beings in different circumstances (Chetail 2003).

## HISTORY OF THE CRISIS IN YEMEN

Yemen has always been divided along the north-south divide, each having its own ideological stance and belief asserted into a “unified Yemen”. Before the unification of Yemen materialised in May 1990, the north-south relation was in tumultuous state particularly during the 1970s and early 1980s—characterised by the competing interstate relation between the city of Sanaa in the north and Aden in the south respectively trying to assert their dominance over each other until now. Yemen prior to 1990 had always been separated into North and South, each having its own sovereignty as independent state. The divide of both regions was due to the expansion by both the Ottoman Empire in the north and the British in the south during the late 19<sup>th</sup> century, resulting in a clear bordering between the two colonials (Bryjka 2016).

This conflicting region was plunged into chaos, driven by the superpowers and regional actors, since it was in their interest. The consequences of this competition lasted till now. Yemen is one of the poorest countries in the world. This situation has stemmed from the state’s chronic destabilisation caused by internal conflicts, separatist tendencies, corruption and activities of Salafist terrorist organisations (World Bank 2020).

The on-going Yemeni civil war that started in 2015 was a result of accumulated conflicts, domestic and regional alike, since the start of new millennia. Key actors that played a major role in the war now were the product of insurgencies within the first decade of 2000s, with the emergence of Al-Qaeda in the Arab Peninsula post September 11 as well as the long held discontent of the South towards the North’s dominance. The conflict has been portrayed numerous times as a civil war, a proxy war between Saudi Arabia and Iran as well as a supposedly ancient schism between Sunni and Shi’a Muslims (the latter nationally represented by Zaydi Houthis) (K. Fahim 2018). The diversity and sheer number of actors involved in the conflict however, demonstrates that these characterisations are far too simplistic and that the conflict defies neat categorisation (*BBC* 2018).

The Houthi or known as Ansar Allah (Partisan of God) and Zaydi Shia formerly ruled the North under the Imamate until the establishment of YAR in 1962. The Houthis are Zaydi revivalist who felt threatened by the dominant Sunni or Wahhabi identity. The resurgence of the Houthis is closely referred to the unresolved military aggression in Saana, started in 2004 with the quasi-police attempt to arrest Husein al-Houthi, former parliament member, that quickly escalated into an armed conflict. However, al-Houthi’s death had only worsened the conflict with on-off battles taking place until 2007 when the Houthis who during the time was led by Hussein al-Houthi’s brothers Abd-al-Malik and Yahya were accused of threatening a Jewish community in Saana (ICG 2009).

Over the years, the conflict escalated along political, tribal, and religious lines with intensifying sectarian prejudices. The involvement of other tribes—those who allied with the government or rebel—had exacerbated the sporadic and scattered skirmishes between rebels and government armies in the following years that went beyond Saana into Bani Hushasyh (Boucek 2010). Both sides, the government and rebels, were tied (or allegedly tied) to foreign powers. The government, in an attempt to discredit the rebels as a fundamentalist religious group, had sought Western (US) support and was backed by the Saudi. The government alleged that the rebels were being funded by Iran. While the rebels perceived the government as being biased towards the religious group and cautioned against the influence of Saudi Wahhabism and the US in Yemen and the Middle East.

The fighting only stopped for a while in early 2006 prior to elections when the government, pressured to end the conflict, had amnestied 600 prisoners. Cease-fire attempts made by Salih due to domestic and international pressures were to no avail. The prolonged conflict escalated in 2009 with the kidnapping of foreign aid workers in Saana governate, which was also seen as staged by Al-Qaeda to divert the government's focus on AQAP. In response, the Yemeni government launched Operation Scorched Earth in order to end the conflict. Nevertheless, it only turned out into a long and constant battle between the two armies (*ibid.*).

The Yemeni armed conflict (2015-now) provides a clear distinction of a conflict between two parties, which are the Yemeni government led by President Abdu Rabu Mansour Hadi and the Houthi rebels led by Ali Abdullah Salih. The civil war that has historical—cultural, religious, political, tribal—baggage accumulated over the years since the unification of Yemen in 1990, marked by the insurgence of South Yemen in 1994 and Houthis insurgency in 2004 in the incident of Sadaa had left the unified Yemen in an ongoing turmoil until the full-scale war broke out in 2015. Yemen, since before the unification of North and South, had always been a site of proxy wars between neighbouring countries, particularly Egypt and Saudi Arabia, over the interests in the region. The case of Yemen is an example of internationalised armed conflicts that has been going on since the 1960s and is now in a scale that includes soft intervention from foreign countries such as the US and Russia, which deem the country vital for preserving their interest in the Middle East. This section presents in detail the two parties that are currently engaging in war i.e. the Yemeni government and the Houthis with the inclusion of allies to both parties as well as the presence of non-state actors such as al-Qaeda in the Arabian Peninsula (AQAP) and the Islamic State of Iraq and the Levant (ISIL) who has considerable effect on the scale of the war. Figure 1 presents the key groups involved in the Yemen conflict (Jeremy 2019).



#### **Republic of Yemen Government (ROYG)**

The internationally recognized government has been led by Abdu Rabbu Mansour Hadi since 2012, when he was elected as caretaker president to replace President Ali Abdullah Saleh, who had been in power for 33 years. The Hadi government has been backed by the Saudi-led coalition since 2015.



#### **Houthi Forces**

The Houthi movement (also known as Ansar Allah or Partisans of God) is a predominantly Zaydi Shiite revivalist political and insurgent movement formed in the northern Yemeni governorate of Sa'dah under the leadership of members of the Houthi family. The group was allied with former President Ali Abdullah Saleh until 2017.



#### **Al Qaeda in the Arabian Peninsula (AQAP)**

AQAP has operated in Yemen since 2009 as a successor to previously active AQ members in the country, and has since been most active in Yemen's southern governorates. AQAP enjoys support from some inland tribes and has taken and has held territory along Yemen's southern coast with varying degrees of success since 2015. AQAP has attempted to carry out attacks in the United States and Europe.



#### **Southern Transitional Council (STC)**

A southern separatist force backed by the United Arab Emirates since the spring of 2017, the STC is led by Yemeni General Aidarous al Zubaidi, former governor of Aden. The STC and Hadi government have been at odds over the inclusion of Yemen's main Sunni Islamist party (Al Islah) in Hadi's government. In August 2019, the STC took control of Aden, Yemen's interim capital.

FIGURE 1 Key Groups in Yemen Conflict

Source: Compiled by the Authors

## **INTERNATIONAL HUMANITARIAN LAW (IHL) AND INTERNATIONAL HUMAN RIGHTS LAW (IHRL) PRINCIPLES AND PRACTICE**

IHL and IHRL are comparable from various perspectives, particularly concerning their points and substance. The normal point of the two parts of international law is to ensure life, wellbeing and nobility of individuals. This is communicated by the substance of specific arrangements focusing on the assurance of human life, anticipation and discipline of torment and guaranteeing reasonable preliminary certifications. Standards, for example, qualification among combatants and non-combatants, restriction on direct assaults against civilians or preclusion of aimless assaults have a similar objective – ensuring the life of people who don't take dynamic part in hostilities. Direct relations between IHL and IHRL became quite clear at the end of the 60s and beginning of the 70s of the 20th century. This was expressed in the UN General Assembly resolutions of 1968 and 1970, in the resolution of the International Conference on Human Rights in Teheran of 1968 as well as in the Additional Protocol I to the Geneva Conventions of 1977. International conference adopted resolution no. XXIII entitled Respect for Human Rights in Armed Conflicts where it has been stated generally that “peace is the underlying condition for the full observance of human rights and war is their negation” and “even during the periods of armed conflict, humanitarian principles must prevail” (Mohammed, 2014). This resolution “has been seen as a turning point, marking a change in attitude in thinking about the relationship between human rights and humanitarian law” (Provost, 2004). This relationship is

clearly visible not only with reference to “humanitarian principles”. Subsequently, res. XXIII was confirmed by the UN General Assembly res. 2444 (XXIII) of 1968 with the same title Respect for Human Rights in Armed Conflicts (ICoJ, 2018).

Direct relationship between IHL and IHRL may be found in the title of the resolution as it cannot be found in the main text. In 1970, the UN General Assembly adopted the basic principles for the protection of civilian populations in armed conflict where it established that “fundamental human rights, as accepted in international law and laid down in international instruments, continue to apply fully in situations of armed conflict”. Those efforts and opinion were crowned in Additional Protocol I to the Geneva Conventions, especially Art.75 comprising fundamental guarantees – which refers to human rights (in particular to Art. 14 of the International Covenant on Civil and Political Rights). Protection offered by IHRL and that offered by IHL overlap to a large extent. It is especially evident in such areas as prohibition of genocide and slavery, prohibition of torture, prohibition of hostage taking and arbitral deprivation of life, the right to life itself, an obligation to respect human dignity, prohibition of cruel, inhuman and degrading treatment as well as fair trial guarantees. These provisions are very much common for IHL and IHRL (Agnieszka 2014).

A vital role in the development of complementarity theory was played by the International Court of Justice (ICJ) which stated that human rights law instruments continue to apply in times of armed conflicts. This view was outlined in the ICJ advisory opinions on the *Legality of the Threat or Use of Nuclear Weapons* of 1996 and on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* of 2004. In the former, the court had to for the first time clearly express its opinion on the connection between IHL and IHRL. The ICJ observed that “[...] the protection of the International Covenant on Civil and Political Rights does not cease in times of war, except by operation of Article 4 of the Covenant whereby certain provisions may be derogated from in a time of national emergency” (ICJ, 1996 p. 2). Consequently, the ICJ confirmed the continuous application of the ICCPR or more generally of human rights in times of armed conflicts and this may lead to the conclusion of the complementarity of IHL and IHRL.

In the *Palestinian Wall* Advisory Opinion, the ICJ confirmed that “[...] the protection offered by human rights conventions does not cease in case of armed conflict, save through the effect of provisions for derogation of the kind to be found in Article 4 of the International Covenant on Civil and Political Rights. As regards the relationship between IHL and IHRL there are thus three possible circumstances: (1) some rights may be exclusively matters of IHL, (2) Some are exclusively matters of IHRL; (3) “yet others may be matters of both these branches of international law.” (2004, ICJ: 45).



Human rights are rights inherent in all human beings, whatever their nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status. These rights are all interrelated, interdependent and indivisible. They are often expressed and guaranteed by legal norms, in the form of treaties, customary international law, general principles and other sources of international law. International human rights law lays down the obligations of States to act in certain ways or to refrain from certain acts, in order to promote and protect the human rights and fundamental freedoms of individuals or groups. Human rights entail both rights and obligations. States assume obligations under international law to respect, protect and fulfil human rights (UNHR 2011).

The commitment to respect implies that States must cease from meddling with or diminishing the delight in human rights. The commitment to secure expects States to shield people and gatherings from human rights manhandles. The commitment to satisfy implies that States must make positive move to encourage the satisfaction in human rights. As people, we are totally qualified for human rights, yet every one of us ought to likewise regard the human privileges of others. International Humanitarian Law restricts the utilisation of viciousness in equipped clashes to save the individuals who don't or who no longer legitimately take an interest in threats, while simultaneously constraining the brutality to the degree important to debilitate the military capability of the foe. Both in restricting the brutality and in controlling the treatment of people influenced by furnished clashes in different regards, global helpful law finds some kind of peace among mankind and military need (UNHR 2011).

While on the face of it, the rules of international human rights law and international humanitarian law are very different, their substance is fundamentally the same as both secure people in comparable manners. The most important substantive difference is that the protection of international humanitarian law is largely based on distinctions—in particular between civilians and combatants—unknown in international human rights law. International humanitarian law is traditionally formulated in terms of objective rules of conduct for States and armed groups, while international human rights law is expressed in terms of subjective rights of the individual vis-à-vis the State. Today, an increasing number of rules of international humanitarian law, in particular fundamental guarantees for all persons in the power of a party to a conflict and rules of international humanitarian law in non-international armed conflict, are formulated in terms of subjective rights, e.g., the right of persons whose liberty has been restricted to receive individual or collective relief or the right of families to know the fate of their relatives.



Conversely, subjective rights have been translated by the United Nations General Assembly resolutions into rules of conduct for State officials. For instance, the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted at the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in 1990, provide an authoritative interpretation of the principles authorities must respect when using force in order not to infringe the right to life, and they direct, *inter alia*, law enforcement officials to "... give a clear warning of their intent to use firearms, with sufficient time for the warning to be observed, unless to do so would unduly place the law enforcement officials at risk or would create a risk of death or serious harm to other persons, or would be clearly inappropriate or pointless in the circumstances of the incident" (Sasso & Laura 2008: 603).

When comparing norms of international human rights law and international humanitarian law, it becomes clear that the latter secures just some human rights and just to the degree that they are especially imperilled by outbreaks of armed conflict, and isn't, thusly, contradictory with the very presence of an armed conflict. Hence, the privilege to government disability, the option to free speech, opportunity of thought or the privilege to self-assurance are not secured by international humanitarian law. In various circumstances, its standards could be, on the restricted issues they manage, progressively adjusted to the particular issues emerging in armed conflicts. Additionally, while the principles of international humanitarian law on the treatment of people who are in the intensity of the adversary might be comprehended as executing their human rights, considering military need and the characteristics of armed conflict, certain standards on the lead of threats manage issues not tended to by human rights, e.g., who may legitimately take an interest in threats and how such people must separate themselves from the non-military personnel populace, or the rights and distinguishing proof of military force. International humanitarian law provides for the protection of a number of civil and political rights (e.g., the right to life of enemies placed hors de combat or judicial guarantees), economic, social and cultural rights (e.g., the right to health and the right to food) and group rights (e.g., the right to a healthy environment). This is particularly evident concerning the wounded and the sick, who must be respected, protected, collected and cared for (ICRC 2015).

International human rights law forces commitments to regard, secure and satisfy that stretch over every human right. These three terms make it conceivable to decide if universal human rights commitments have been disregarded. While these terms have not customarily been utilised in international humanitarian law, the commitments coming about because of its principles might be separated into comparative classes. Since States have commitments to accomplish something (positive commitments)

or to swear off accomplishing something (negative commitments) under the two branches, they can be answerable for an infringement of universal human rights and humanitarian law through activity, exclusion or insufficient activity (ICRC 2015).

In international humanitarian law they have an express commitment to regard and to guarantee respect. In international human rights law, the commitment to respect requires States not to take any estimates that would keep people from approaching a given right. For example, the privilege to sufficient food is fundamentally to be acknowledged by rights holders themselves through their financial and different exercises. States have an obligation not to unduly impede the activity of those exercises. This commitment to regard coming from human rights law is appropriate in both normal and man-made fiascos. Likewise, the commitment to regard the privilege to sufficient lodging implies that Legislatures must keep away from doing or in any case upholding the constrained or self-assertive removal of people or gatherings. States must regard individuals' privileges to construct their own abodes and administer their surroundings in a way which most successfully suits their way of life, abilities, needs and wishes (ICRC 2015).

Many prohibitions in international humanitarian law, e.g., of physical and moral compulsion practiced against ensured regular people and detainees of war, of savagery to life and individual coordinated against people taking no dynamic part in the threats, of the demand of staples and medical clinics in involved regions, of assaults against objects crucial for the endurance of the non- military personnel populace, work along these lines. As a component of the commitment to secure, States must forestall, research, rebuff and guarantee review for human rights infringement submitted by outsiders, e.g., private people, business endeavours or other non-state on-screen characters. In this regard, the Human Rights Committee group has reviewed that

“... the constructive commitments on States Parties to guarantee Pledge rights might be completely released if people are ensured by the State, not simply against infringement of Contract rights by its specialists, yet additionally against acts submitted by private people or elements that would debilitate the delight in Agreement rights to the extent that they are manageable to application between private people or substances.”

(Refworld 2004: 17)

In international humanitarian law too, States must protect prisoners, e.g., from public curiosity, maintain law and order in occupied territories, and protect women from rape. Under the commitment to avoid potential risk against the impacts of assaults by the foe, they should even take measures, to the most extreme degree plausible, to ensure their own non-military personnel populace, e.g., by trying to get

military goals and warriors far from thickly populated regions. States additionally have a commitment to satisfy, for example, by taking authoritative, regulatory, budgetary, legal and different strides towards the full acknowledgment of human rights. This commitment might be acknowledged gradually or continuously corresponding to financial, social and social rights, and includes the duties to encourage (increment access to assets and methods for achieving rights), give (guarantee that the entire populace may understand its privileges in the event that it can't do as such all alone) and advance that right. For example, the Committee on Economic, Social and Cultural Rights has indicated that the obligation to fulfil the right to work includes the implementation by States parties of plans to counter unemployment, to take positive measures to enable and assist individuals to enjoy the right to work, to implement technical and vocational education plans to facilitate access to employment, and to undertake, for example, educational and informational programmes to instil public awareness of the right to work.

In international humanitarian law, the wounded and the sick must be collected and cared for, prisoners must be fed and sheltered, and an occupying Power must to the fullest extent of the means available to it ensure food and medical supplies, public health and hygiene in a territory it occupies. The Committee on Economic, Social and Cultural Rights, referring to the right to food, has demonstrated how these three principles apply in practice. It has stated that,

“...the right to adequate food, like any other human right, imposes three types or levels of obligations on States parties: the obligations to respect, to protect and to fulfil. In turn, the obligation to fulfil incorporates both an obligation to facilitate and an obligation to provide. The commitment to regard existing access to satisfactory food requires States parties not to take any estimates that bring about forestalling such access. The commitment to secure requires measures by the State to guarantee that ventures or people don't deny people of their entrance to sufficient food. The commitment to satisfy (encourage) implies the State should proactively take part in exercises expected to fortify individuals' entrance to and usage of assets and intends to guarantee their employment, including food security. At long last, at whatever point an individual or gathering can't, for reasons outside their ability to control, to appreciate the privilege to satisfactory food by the methods available to them, States have the commitment to satisfy (give) that privilege straightforwardly.”

(ESCR 1999: 3)

An example of the interaction of the three modes of protection in international humanitarian law is provided by the obligations of belligerents towards the education system of the adverse party. Schools may not be attacked; they are assumed not to make a successful commitment to military activity. Once heavily influenced by the adversary, in an involved region, their legitimate working must be encouraged by the possessing Force and, in the final retreat, should nearby foundations be lacking, the involving Force must make courses of action for the support and training, if

conceivable by people of their own nationality, language and religion, of youngsters who are isolated from their folks, and encourage the re-foundation of family interfaces and the reunification of families.

Nothing in human rights treaties indicates that they would not be applicable in times of armed conflict. As a result, the two bodies of law—international human rights law and international humanitarian law—are considered to be complementary sources of obligations in situations of armed conflict. For example, the Human Rights Committee, in its general comments Nos. 29 (2001) and 31 (2004), recalled that the International Covenant on Civil and Political Rights applied also in situations of armed conflict to which the rules of international humanitarian law were applicable. The Human Rights Council, in its resolution 9/9, further acknowledged that human rights law and international humanitarian law were complementary and mutually reinforcing. The Council considered that all human rights required protection equally and that the protection provided by human rights law continued in armed conflict, taking into account when international humanitarian law applied as *lex specialis*.

#### **IHL AND IHRL POSSIBLE APPLICABILITY TO THE CONFLICT IN YEMEN**

Yemen has ratified seven of the nine core international human rights treaties. It is a party to the ICCPR, ICESCR, CEDAW, CERD, CAT, CRC and the CRPD. It has also ratified a number of related Optional Protocols, including the OP-CRC-AC. As a party to these treaties, Yemen is bound to respect, protect, promote and fulfil the human rights of all persons within its territory and/or subject to its jurisdiction. This includes the responsibility to investigate and bring to justice perpetrators of violations amounting to crimes under national or international law, and to afford an effective remedy to those whose rights have been violated. Yemen is also bound by rules of international human rights law that form a part of the customary international law (Waseem 2020).

All parties to the conflict in Yemen are bound by relevant norms of international humanitarian law. The conflict between the armed forces of the Government of Yemen and the Houthis is a non-international armed conflict (NIAC) between a State and a non-State armed group. Within international humanitarian law treaty law, NIACs are regulated by Common Article 3 of the four Geneva Conventions of 1949 (“Common Article 3”), and Additional Protocol II thereto, to which Yemen is a party, provided the relevant thresholds are met. Common Article 3 applies to an “armed conflict not of an international character occurring in the territory of one of the High Contracting Parties”. Additional Protocol II adopts a narrower definition of NIACs – providing for the scope of its application to a conflict “which takes place in the territory of a High Contracting Party between its armed forces and

dissident armed forces or other organised armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol". The Group of Experts has previously concluded that the conflict occurring in Yemen meets both threshold tests. It is also bound by other international humanitarian law treaties it has ratified, including those relating to the methods and means of warfare, such as the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (Anti-Personnel Mine Ban Convention). In addition to these treaty obligations, Yemen is bound by all relevant norms of customary international humanitarian law.

In referring to 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, non-international armed conflicts are fought between the armed forces of one or more States and one or more organised non-State armed groups, or between such groups. For a non-international armed conflict to exist, certain conditions must be met concerning (a) intensity of the hostilities of which the details of hostilities such as the number, duration and intensity as well as type of weapons used are essential, and (b) organisation of the parties must be precise in matters like 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. The armed conflicts between the internationally recognised 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 organised armed group and States; (ICRC 2016) (2) the hostilities between the 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' organisation 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, since 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 organising, coordinating or planning the military actions of the Houthis, in addition to financing, training and equipping or providing operational support to them. According to an early assessment, Iran did not exercise sufficient control over the Houthis for this test to be met (Sands et al, 2015). The UN Panel of Experts on Yemen (Panel of Experts) in the 2018 report 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. Nevertheless, Iran’s actions in Yemen does 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), 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. 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.” Apart from treaty law, customary IHL also applies. Remarkably, many of the rules governing the conduct of hostilities in international armed conflicts contained in the 1977 Additional Protocol I (AP I) are also applicable to the non-international armed conflicts in Yemen as customary international 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). 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, which is binding on all States. In addition, these States are party to the Convention on the Rights of the Child, which recognises the right to life under article 6 and reaffirms IHL protections under article 38. Such obligations also apply when a State acts in an extraterritorial context.

Economic, social, and cultural rights, including those provided for in the International Covenant on Economic, Social and Cultural Rights (ICESCR), apply during armed conflict as well. These comprise, among others, the right to food, housing, health and water. States have an obligation to respect these rights at all times, meaning that they cannot prevent or interfere with their enjoyment. 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. Direct or indiscriminate attacks against residential

areas may breach the right to housing, especially when they result in forced eviction of the affected civilians. The rights to food, housing, health and water are strictly interrelated to the right to life and crucial for its very enjoyment. It follows that all parties to the conflict, including States that are not yet parties to the ICESCR, have a legal obligation to 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 organised armed groups exercising *de facto* control over a territory are also required to respect relevant human rights norms (Bellal 2016).

The applicability of both IHL and IHRL can be seen by the many violations of both types of laws in Yemen. For instance, the indiscriminate attacks against civilian hospitals, civilian buildings, civilian markets, and hotels amount to war crimes. Under human rights law, civilian casualties caused by such indiscriminate attacks violate the proscription of the arbitrary deprivation of life. Attacks on food markets and water facilities violate the right to food and water, while indiscriminate attacks on civilian residential areas violate the right to adequate housing for civilians. Likewise, attacks on medical facilities such as hospitals amount to a violation of civilians' right to health care. Apart from that, the violation can also be seen in the Houthis' use of ammunition and explosive materials in civilian residential areas of Taizz. Most particularly, it evaluated the humanitarian ramifications of an attack by the Houthis that killed 27 civilians. It was found that: (1) the harm done to civilians suggests that the principle of precaution was not respected; (2) there was no evidence that the targeted civilians had taken part in hostilities; and (3) the harm done to civilians was disproportionate to the military gains. Also, it was found that the attacks by the Houthis were indiscriminate in nature because they specifically targeted civilian residential areas, while deliberately intending to destroy civilian housing. In other instances, the Houthis violated the prohibition on indiscriminate attacks by targeting residential buildings and hospitals (Waseem 2020).

## CONCLUSION

Both IHR and IHRL play an important role in conflicts, especially in terms of what Yemen is facing. The similarities and contrast between International Human Rights and International Humanitarian Law often raise questions on its application. Again, as mentioned, there was nothing in IHR claiming that it doesn't apply in times of armed conflicts or of the sort and neither does it claim that an armed conflicts is only strictly applicable in the application of IHL. It is obvious that both laws complement each other.



Since an intervention with the consent of the host state is permissible, the utilisation of power by the Saudi alliance, with the authorisation of the Hadi government against the Houthis, is genuine. While the Houthis aggression against Yemen and Saudi Arabia is viewed as impermissible as per international laws. Likewise, the utilisation of power by the U.S. against suspected terrorists in the sovereign region of Yemen has no legal basis in international law in light of the fact that the Yemeni government has genuinely refused the U.S. to utilise power in its sovereign territory.

The idea of the Saudi Coalition's intercession in Yemen, notwithstanding, is non-international since it is not firmly established that the Houthis (non-state entertainers) are upheld and forced by some other state, or by Iran. It has been surmised, in this manner, that the missile technology utilised by the Houthis against the sovereign territory of Saudi Arabia has to be made certain in terms of either it was fabricated in Iran, or at any degree, comparable to Iranian revolutions, or if the weapons and arms utilised by the Houthis are basically made by the U.S. Yet, Iran claimed it completely presents any sort of support from getting to the Houthi rebels. Consequently, both human rights laws and international humanitarian laws are applicable to this Saudi-Houthi or Yemen conflict.

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