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The Legality under International Law of the Arms
Transfers in the Yemen Civil War

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Introduction

After ten years of conflict, the Yemen civil war is still ongoing. Due to its devastating impact on the civilian population, it is said to currently be one of the worst humanitarian crisis in the world. The long duration and atrocity of the war can be explained through the large quantity of weapons present in Yemen.¹ In war zones, arms and their flow, by providing the means to continue fighting, not only amplify violence, but also prolong the conflict by maintaining the power balance between the conflicting parties.² Therefore, the control and regulation of arms trade is essential for achieving conflict resolution.

Yemen is currently the second most heavily armed country in the world after the United States, with 40-60 million weapons just in possession of civilians.³ The arms transfers sustaining the civil war have increasingly been called into question. On the one hand, arms provided to the Saudi-led coalition, which is acting in support of the Yemeni government, have allegedly been used in the commission of various war crimes, violating international humanitarian law. On the other hand, the United Nations Security Council imposed a targeted arms embargo against the Houthi movement since 2015, rendering any arms transfer to the Houthis directly in breach of this ban.

In light of these facts, the aim of this thesis is to assess the legality under international law of the arms transfers in the Yemen civil war. The analysis will be conducted by applying the international legal framework governing arms transfers, and will then go even further to evaluate the effectiveness of this framework and the mechanisms intended to regulate arms flows and ensure compliance. The thesis will be structured as follows: chapter 1 will provide a background to the civil war, presenting an overview of the facts and the legal characterization of the conflict, which will determine the applicable legal framework. Chapter 2 will examine the legality of the arms transfers to the Saudi-led coalition on the basis of the humanitarian consequences of their use, analysing the legal obligations of exporting states under international law and assessing how they are applied in practice. Chapter 3 will assess the legality of the arms transfers to the Houthi movement

¹ Vincenzo Ruggiero, "Yemen: Civil War or Transnational Crime?," *Critical Criminology* 27, no. 3 (September 2019): 503–14, <https://doi.org/10.1007/s10612-019-09472-6>.

² Muhammad Alaraby and Alexander Müller, "COUNTERING ILLICIT ARMS TRANSFERS in the MENA REGION: THE CASE of YEMEN and LIBYA" (Friedrich Ebert Stiftung, October 2020), <https://library.fes.de/pdf-files/iez/16657.pdf>.

³ Alaraby and Müller, op. cit., p.2.

in light of the arms embargo imposed by the Security Council. Furthermore, it will explore the legal ambiguity surrounding enforcement measures and their humanitarian impact.

Chapter 1: Overview of the Yemen Civil War

The purpose of this chapter is to present an overview of the events that have shaped the conflict, providing the basic knowledge needed to comprehend the dynamics and key actors involved in the Yemen civil war. The contextualisation of the war is necessary to understand the applicable legal framework, thereby setting the stage for the legal analysis that will be conducted in the subsequent chapters. This chapter is organised as follows. Section 1.1 will present an historical and political background so to explain the events and circumstances that led to the outbreak of the civil war. Subsequently, section 1.2 will present the factual background and principal actors engaged in the war, with a specific focus on arms transfers. Finally, section 1.3 will legally define the conflict under international humanitarian law.

1.1 Historical and Political Background

The current war isn't the first great internal turmoil Yemen has had to face. Before the Arab republican revolution of 1962, the north of Yemen was governed by a Zaydi imamate regime. An imamate regime is a form of governance led by an imam, a leader that guides the community both spiritually and politically. It is particularly characteristic for Shia Islam; on this note, Zaydism is a specific branch of Shiism that believes that imams must be drawn from Hashimi families as they are the direct descendants of the prophet.⁴ However, after the revolution a new republican state, the *Yemen Arab Republic (YAR)*, was established. Hostilities finally ended in 1967, when a new war also erupted in the south. The United Kingdom, which held the city of Aden as a Crown Colony and controlled other territories in Yemen through to the Aden Protectorate, was forced to relinquish its authority and presence in the country. Thus, the *People's Republic of Yemen (PRY)* which, following a communist coup, became the *People's Democratic Republic of Yemen (PDRY)* was instituted in the south.⁵ During this period, as a consequence of the Cold War, the US provided arms to the *Yemen Arab Republic (YAR)* while the *People's Democratic Republic of Yemen (PDRY)* was supported by the former Soviet Union. Due

⁴ Noel Brehony, "The Current Situation in Yemen: Causes and Consequences" (NOREF, November 4, 2015), <https://www.files.ethz.ch/isn/194725/2f5bf98a4531d31682098dcb67226b44.pdf>.

⁵ Hani Albasoos and Buthaina Al Hinai, "Understanding the Root Causes of the Conflict in Yemen," *Bussecon Review of Social Sciences* 2, no. 2 (December 7, 2020): 14–20, <https://doi.org/10.36096/brss.v2i2.199>.

to the country's division, no effective control was exercised over the arms trade in Yemen. These weapons, which were sold over 50 years ago, are still in circulation today.⁶

In 1990, the *Yemen Arab Republic (YAR)* and the *People's Democratic Republic of Yemen (PDRY)* unified, forming the *Republic of Yemen (ROY)*. Ali Abdullah Saleh, president of the former North Yemen, became president of the Unified Yemen. However, due to the fragile socio-economic conditions that characterized the country, tensions arose, culminating in the 1994 civil war following a failed attempt to secession by militias in the South.⁷ The conflict was promptly suppressed and, in the same year, elections were held resulting in the re-election of Saleh which was re-elected again in 1999, subsequently dominating the country's political scene until 2012.⁸

Nonetheless, Yemen continued to face many challenges, among them the growing opposition of the Houthi movement. The Houthis, also known as Ansar Allah ("supporters of God"), take their name from their leader Hussain Bader Al Deen Al Houthi. They belong to the Zaydi Shia sect of Islam and originate from Saada Governorate in northern Yemen. The movement started in the 90s in opposition to Saleh's government; even though Saleh and his supporters were Zaydi, from a political perspective, a lot of space was given to Salafis, a movement originating from Sunni Islam, whereas Zaydis were being marginalized.⁹ At the beginning of the 21st century, the pre-existing hostilities were augmented by the country's support for the United States in its War on Terror in exchange of economic and military financing. Tensions between the regime and the Houthis escalated into six major armed confrontations which took place from 2004 to 2010.¹⁰ During one of these attacks, Hussain Bader Al Deen Al Houthi was killed by the Yemeni army.¹¹

In 2011, the Arab Spring spread through most of the Arab world, including Yemen. Protests and demonstrations commenced throughout the whole country, resulting in violence. The international community, more specifically the Gulf Cooperation Council

⁶ Ruggiero, op. cit., p.506.

⁷ Albasoos and Al Hinai, op. cit., p. 15.

⁸ Ibid.

⁹ Brehony, op. cit., p.2.

¹⁰ Giulio Blasilli, "Le Cause Sociali Della Guerra Civile in Yemen" (2020), https://www.academia.edu/45026704/Le_cause_sociali_della_guerra_civile_in_Yemen_2015_2019.

¹¹ Albasoos and Al Hinai, op. cit., p. 16.

(GCC) and the UN, initiated negotiations which ultimately led to the resignation of president Saleh. By agreeing to step down in favour of his vice president, Abdrabbuh Mansur Hadi, the former president was granted domestic immunity from prosecution.¹² However, the deal failed to resolve the problems faced by Yemen, leading the country to relapse into yet another civil war.

1.2 The Civil War: factual background and principal actors

This section will present the facts and the principal actors of the conflict, with a specific focus on the aspects relevant to arms transfer.

In September 2014, the Houthis seized control over the capital Sanaa. President Hadi was put in house arrest and forced to resign. Shortly after, he was able to escape to Aden where he withdrew his resignation and declared Aden Yemen's temporary capital. However, as the Houthi movement continued to advance towards the south, taking over more and more territory, Hadi and his government were forced to flee to Riyadh.¹³ As the situation deteriorated, Hadi sought for external support. In fact, two days before his departure from Yemen, Hadi sent a letter to the permanent representative of Yemen in the UN, in which he gave consensus to the Gulf Cooperation Council¹⁴ and the Arab League¹⁵ to take all necessary measures to protect Yemen.¹⁶ Thus, being that president Hadi, representing the internationally recognized government of Yemen, gave his official permission, an intervention shouldn't constitute a violation of article 2(4) of the *UN Charter* which states: "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations"¹⁷. On the matter, under article 20 of the *International Law Commission's Draft Articles on State Responsibility*

¹² Tomi Pulkkinen, "Yemen and the Houthi Rebellion in the Context of the Global War on Terror," *History in the Making* 10, no. 1 (October 11, 2019), <https://scholarworks.lib.csusb.edu/history-in-the-making/vol10/iss1/5/>.

¹³ Brehony, op. cit., p.3.

¹⁴ Regional political and economic organization composed of Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates.

¹⁵ The Arab League, also known as the League of Arab States, is an intergovernmental organisation made up of all the Arab states present in the Middle East and North Africa.

¹⁶ Luca Ferro, "Western Gunrunners, (Middle-)Eastern Casualties: Unlawfully Trading Arms with States Engulfed in Yemeni Civil War?," *Journal of Conflict and Security Law* 24, no. 3 (2019): 503–35, <https://doi.org/10.1093/jcsl/krz021>.

¹⁷ Charter of the United Nations, Art. 2(4). Available at: <https://www.un.org/en/about-us/un-charter/full-text>.

for *International Wrongful Acts*, the wrongfulness of an act is precluded if the injured state has given valid consent to it as long as it remains within the limits of the authorization.¹⁸ Therefore, the Gulf Cooperation Council was able to legally launch *Operation Decisive storm*. The intervention, led by Saudi Arabia, consisted in the provision of military and logistical support to the Hadi government, the execution of airstrikes and the enforcement of a maritime blockade intended to ensure that the arms embargo, imposed by *Resolution 2216*, was respected. Once the operation was declared complete, the Saudi-led coalition launched a new campaign called *Operation Renewal of Hope*. Among its objectives, those specifically related to the topic of arms transfers, focused on “preventing any moves by the Houthi militias and their allies to acquire or use weapons seized from the Yemeni armed forces or abroad”¹⁹ and “building an international coalition to provide maritime security to protect commerce and to prevent the shipments of weapons by sea or air in line with U.N. Resolution 2216, including enhanced monitoring and inspections”.²⁰ By august 2015, the coalition was able to liberate the port city of Aden from Houthi occupation where a provisional government was established. However, Hadi remained in exile, while the humanitarian situation in Yemen continued to worsen drastically. The maritime blockade, originally imposed to prevent the smuggling of weapons, also obstructed and delayed the arrival of essential humanitarian aid.²¹ Furthermore, the aerial attacks and ground operations intended to counter Houthi takeover, resulted in countless civilian casualties and the destruction of infrastructures and services.²² Because of the grave humanitarian consequences of the coalition’s actions, particularly those of Saudi Arabia and the United Arab Emirates as the main members intervening in the conflict, the legality of the intervention has been questioned as both have been accused of committing war crimes and violating international humanitarian

¹⁸ ILC Articles on State Responsibility 2001, Art. 20. Available at:

https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf.

¹⁹ The embassy of the kingdom of Saudi Arabia, “Operation Decisive Storm Ends, Operation Renewal of Hope Begins with Military Objectives Achieved, Focus Shifts to the Political Process,” The embassy of the kingdom of Saudi Arabia, April 21, 2015, <https://www.saudiembassy.net/press-release/operation-decisive-storm-ends-operation-renewal-hope-begins-military-objectives>.

²⁰ Ibid.

²¹ Ruggiero, op. cit., p.505.

²² Éric David et al., “OPINION on the INTERNATIONAL LEGALITY of ARMS TRANSFERS to SAUDI ARABIA, the UNITED ARAB EMIRATES and OTHER MEMBERS of the COALITION MILITARILY INVOLVED in YEMEN,” December 2019, https://ipisresearch.be/wp-content/uploads/2019/12/191209-Yemen-EN_WEB-2.pdf.

law. Given that the magnitude of the devastation was caused by the use of “small arms, light weapons, short-range missiles, artillery and explosive ordnance”²³, these allegations have been extended to the nations supplying arms to them. Notably, western states are the primary exporters of arms to Saudi Arabia and the United Arab Emirates. To put into perspective the scale of some of these states’ involvement in the Yemen civil war, it is significant to note that from 2015 to 2018, 85% of major arms imported by Saudi Arabia were traced back to the United States and the United Kingdom. During the same period, the United States and France were responsible for more than 75% of major arms exports to the United Arab Emirates.²⁴ A detailed legal analysis of all these aspects will be provided in the following chapters.

Concerning arms flows towards the Houthis, evidence suggests that a significant amount of weapons and components originate from Iran. Ties between Iran and the Houthi movement were established long before the start of the civil war, largely due to their shared belief in Shia Islam, despite adhering to different branches, and hostility towards the United States and its supporters.²⁵ As a matter of fact, there have been reports of Iranian exports to Yemen as early as 2009.²⁶ With the start of the war, the Iranian government initially refrained from publicly endorsing the Houthi takeover as it saw its relations with them as a potential liability.²⁷ Nonetheless, its military support increased considerably since the start of the first operation launched by the Saudi-led coalition. Weapons, such as “rifles, grenade launchers, anti-tank missiles and cruise missile systems, some of which have technical characteristics identical to Iranian-made arms”²⁸ have been reported as having been received by the Houthis. Given that the Houthi movement is subject to UN arms embargo, weapons destined for it are being smuggled into the country through clandestine channels and traded on the black market in the areas under Houthi control. In one of its most recent reports, the United Nations Panel of

²³ Ibid.

²⁴ Ferro, op. cit., p.508.

²⁵ Albasoos and Al Hinai, op. cit., p. 17.

²⁶ Pulkkinen, op. cit., p.37.

²⁷ Bayram Sinkaya, “HOUTHI - IRAN RELATIONS: DISTANT RELATIVES TURNS BROTHERS in ARMS,” *Turkish Journal of Iranian Studies* 2, no. 2 (July 2022): 76–93, <https://tiaddegi.com/uploads/manuscripts/e58de42b3a8655d9189248bb01f26a88.pdf>.

²⁸ Ibid.

Experts on Yemen²⁹ noted that stateless dhows and other maritime vessels have been intercepted transporting arms, ammunitions, chemicals, and missile components likely intended for the Houthis.³⁰ Some of the parts recovered over the years have appeared similar to those made in in China, Japan, and the USA.³¹ However, the actual source of these imported pieces remains unknown. Notably, data from SIPRI and the UN panel indicates that although Iran supplies a substantial number of arms, the majority of weapons transferred to the Houthis actually originate from local sources; namely, factions of the Yemeni army favourable to the movement, former pro-Saleh allies, captured weapons, and the locally assembled weaponry.³²

On the 13th of December 2018, after a week of negotiations led by the UN among the parties involved in the conflict, the *Stockholm Agreement* was adopted and later endorsed by the UN under *resolution 2451*. The agreement is composed of three main parts whose general aim is the establishment of a ceasefire.³³ While it helped initiate dialogue among the conflicting parties, its overall impact on the peacebuilding process was marginal. Since 2011, the UN has been actively engaged in efforts to resolve the Yemen civil war through mediation attempts. In this context, the UN Security Council has adopted numerous resolutions in which arms embargoes have been imposed. Nonetheless, the enforcement of such measures remains limited as illicit arms continue to fuel the conflict. The challenges and overall effectiveness of the UN's efforts to regulate arms transfers will also be examined in the next chapters.

²⁹ The United Nations Panel of Experts on Yemen is a group of four specialists established by resolution 2140. It is charged with the task of monitoring, analysing and reporting relevant information with the aim of assisting the Sanctions Committee, responsible for the enforcement of the sanctions adopted by the UN Security Council, and carrying out the measures adopted by resolution 2140.

³⁰ the Panel of Experts on Yemen, "Final Report of the Panel of Experts on Yemen Established pursuant to Security Council Resolution 2140 (2014)," February 21, 2023, <https://docs.un.org/en/S/2023/130>.

³¹ Samuel Perlo-Freeman, "Who Is Arming the Yemen War? An Update," World Peace Foundation, March 19, 2019, <https://worldpeacefoundation.org/blog/who-is-arming-the-yemen-war-an-update/>.

³² Ibid.

³³ Office of the Special Envoy of the Secretary-General for Yemen, "A Year after the Stockholm Agreement: Where Are We Now?," *UN Missions* (United Nations, December 17, 2019), https://osesgy.unmissions.org/sites/default/files/qa_stockholm_one_year_en.pdf.

1.3 Legal characterization of the conflict and the subsequent applicable law

Under international humanitarian law, two different categories of armed conflict are defined: international and non-international armed conflict. Such distinction is essential to determine the law applicable in each specific situation.

According to article 2 common to all four *Geneva Conventions of 1949*, international armed conflicts are defined as “all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them”³⁴. and “all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance”³⁵. In its Tadic Appeal Judgment, the International Criminal Tribunal for the former Yugoslavia clarified that a situation qualifies as an IAC only if there is evidence that armed force is being utilised by an entity representing the state. Additionally, there must be proof that the act is intentionally hostile and not the consequence of a mistake or of an individual acting *ultra vires*. Moreover, the attack can also be unilateral; in this case, “between”, refers the relationship of attacker and recipient established between the parties involved, not mutual use of force.³⁶ Four different categories of IACs were identified.³⁷ Firstly, conflicts taking place among two or more countries. Secondly, when there is “an unconsented-to invasion or deployment of a State’s armed forces on the territory of another State – even if it does not meet with armed resistance”³⁸. Thirdly, “armed conflicts in which peoples are fighting against colonial domination, alien occupation or racist regimes s in the exercise of their right of self-determination”³⁹. Finally, an internal conflict can transform in a IAC if the non-state actors in the dispute act on behalf of another state. This is the case when the other state

³⁴ Geneva Conventions I–IV of 12 August 1949, Common Art. 2. Available at : https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.33_GC-IV-EN.pdf

³⁵ Ibid.

³⁶ International Committee of the Red Cross, “HOW IS the TERM ‘ARMED CONFLICT’ DEFINED in INTERNATIONAL HUMANITARIAN LAW?,” *International Committee of the Red Cross*, April 2024, https://www.icrc.org/sites/default/files/document_new/file_list/armed_conflict_defined_in_ihl.pdf.

³⁷ Christine Byron, “ARMED CONFLICTS: INTERNATIONAL or NONINTERNATIONAL?,” *Journal of Conflict & Security Law* 6, no. 1 (2001): 63–90, <https://doi.org/10.2307/26294359>.

³⁸ International Committee of the Red Cross, “Commentary on the First Geneva Convention,” ICRC IHL Databases, 2016, <https://ihl-databases.icrc.org/en/ihl-treaties/gci-1949/article-2/commentary/2016#44>.

³⁹ Protocol I Additional to the Geneva Conventions, Art. 1(4). Available at: https://www.icrc.org/sites/default/files/external/doc/en/assets/files/other/icrc_002_0321.pdf.

isn't simply providing financial and logistical support to the armed group but also exercises control over it.⁴⁰

Non-international armed conflict occur “whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State”⁴¹. Unlike IACs, two conditions must be met in order for a NIAC to exist; notably, there has to be proof that the non-state actors involved are organised and a minimum level of intensity must be met. Concerning the organisational requirement, the International Criminal Tribunal for the former Yugoslavia (ICTY) provided a list of indicators illustrating whether an armed group can be considered as organised; indicative factors include “the existence of a command structure and disciplinary rules; the existence of a headquarters; the fact that the group controls a certain territory; the ability of the group to gain access to weapons or other military equipment, recruits and military training; the group’s ability to establish a unified military strategy and use military tactics; the group’s ability to plan, coordinate and carry out military operations, including troop movements and logistics; the group’s ability to speak with one voice and negotiate and conclude agreements such as ceasefires or peace accords”⁴². Not all the conditions must be met for the threshold to be reached. Whether or not an armed group is organised is determined on a case-by-case basis.⁴³ Similarly, the determination of intensity also relies on a set of indicators; “the number, duration and intensity of individual confrontations between them; the type of weapons and other military equipment used; the number and calibre of munitions fired; the number of persons and types of forces partaking in the fighting; the number of casualties (including, inter alia, all persons killed, wounded, displaced or missing); the extent of material destruction; the number of civilians fleeing combat zones; the involvement of the UN Security Council, which may also be a reflection of the intensity of a conflict”⁴⁴. Also in

⁴⁰ International Committee of the Red Cross, “HOW IS the TERM ‘ARMED CONFLICT’ DEFINED in INTERNATIONAL HUMANITARIAN LAW?,” cit., p.12.

⁴¹ *Prosecutor v. Dusko Tadic aka "Dule"* (Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction), IT-94-1, International Criminal Tribunal for the former Yugoslavia (ICTY), 2 October, 1995, <https://www.refworld.org/jurisprudence/caselaw/icty/1995/en/61438>.

⁴² *Prosecutor v. Haradinaj et al.*, Trial Judgment, IT-04-84-T, International Criminal Tribunal for the former Yugoslavia (ICTY), 3 April, 2008, <https://www.refworld.org/jurisprudence/caselaw/icty/2008/en/61839>.

⁴³ International Committee of the Red Cross, “HOW IS the TERM ‘ARMED CONFLICT’ DEFINED in INTERNATIONAL HUMANITARIAN LAW?,” cit., p.14.

⁴⁴ *Prosecutor v. Haradinaj et al.*, Trial Judgment, ICTY, 2008, p. 27.

this case, the use of force can be unilateral as long as all parties to the dispute meet the criterion of organization. Furthermore, no baseline duration of an attack has been established for it to be considered a NIAC. Nonetheless, given that duration is used to assess intensity, if the action is limited to a single use of violence, it is improbable that it will meet the requirements to be considered a NIAC.⁴⁵

The Yemen civil war is currently classified as a non-international armed conflict. Firstly, given the destructiveness of the war and the ability of the Houthi movement to expand its control over a large portion of Yemen's territory, both the intensity and organization criteria are fulfilled.⁴⁶ Furthermore, despite the involvement of numerous external actors, it cannot be characterized as an international armed conflict for different legal reasons. Concerning the Saudi-led coalition intervention, its involvement is legally justified by the consent granted by the Hadi government, representing the internationally recognised authority in Yemen, to the use of force in its own territory. Thus, as long as this consent remains valid, the conflict cannot be classified as an international armed conflict between the intervening state and the territorial state.⁴⁷ Additionally, while the UN Panel of Experts on Yemen has reported that Iran has been providing military and logistical support to the Houthis, including arms transfers and the deployment of advisers, it doesn't exert sufficient control over the group to requalify the internal conflict as an IAC.⁴⁸ Therefore, given that the conflict primarily involves a governmental authority, represented by the Hadi government, and an independent organised armed group, the Houthis, the definition provided by the ICTY of NIAC is satisfied.⁴⁹ However, as modern conflicts often involve third parties, such as coalitions of states or supranational organizations supporting parties in an ongoing conflict, the ICRC expanded the classical definition of NIAC by introducing a "support-based approach to third-party operations in pre-existing NIACs"⁵⁰.

⁴⁵ International Committee of the Red Cross, "HOW IS the TERM 'ARMED CONFLICT' DEFINED in INTERNATIONAL HUMANITARIAN LAW?," cit., p.14.

⁴⁶ International Commission of Jurists, "Bearing the Brunt of War in Yemen: International Law Violations and Their Impact on the Civilian Population a Briefing Paper," July 2018, <https://www.icj.org/wp-content/uploads/2018/09/Yemen-War-impact-on-populations-Advocacy-Analysis-Brief-2018-ENG.pdf>.

⁴⁷ Tristan Ferraro, Lindsey Cameron, and International Committee of the Red Cross, "Chapter I - General Provisions," in *Commentary on the First Geneva Convention* (Cambridge University Press, 2016), 68–125, <https://doi.org/10.1017/9781316755709.006>.

⁴⁸ International Commission of Jurists, op. cit., p.6.

⁴⁹ Ibid.

⁵⁰ International Committee of the Red Cross, "HOW IS the TERM 'ARMED CONFLICT' DEFINED in INTERNATIONAL HUMANITARIAN LAW?," cit., p.16.

With this new addition, if it is proven that a third-party's support to a warring party has a direct impact on the magnitude and effects of its actions, the external actor becomes a party to a NIAC without triggering an IAC classification. For this to occur, three conditions must be met: "1. there is a pre-existing NIAC ongoing in the territory where an entity that is a state, an international organization or an organized armed group intervenes; 2. actions related to the conduct of hostilities are undertaken by the entity in the context of that pre-existing conflict; 3. the entity's military operations are objectively carried out in support of a party to that pre-existing conflict, in particular by effectively pooling and mobilizing its military resources with that party".⁵¹ Additionally, concerning international organizations or multinational coalitions, an additional criterion must be met for them to be considered a party to a NIAC; the action taken in support of a party in the conflict must be officially authorized. Thus, actions taken *ultra vires* do not fulfil the conditions under the support-based approach. If all the conditions are met, international humanitarian law also applies to these actors.⁵² Under this framework, Saudi Arabia, meeting all the conditions, is bound by IHL rules on NIACs. On the other hand, while Iran doesn't fully meet the criteria to be considered a party to the NIAC under the support-based approach, its support still has serious legal consequences.

The principal legal sources governing NIACs are set out by the *Common Article 3 of the 1949 Geneva Conventions* and the *Additional Protocol II of 1977*. In the context of the Yemen civil war, both Yemen and all the members in the Saudi-led coalition are bound by these treaties as they are parties to them.⁵³ In addition, as the Houthi movement meets the requirements set out by article 1 of the *Additional Protocol II of 1977*, namely being an organized armed group "under responsible command"⁵⁴ and exercise "such control over a part of its territory as to enable them to carry out sustained"⁵⁵, it is also bound by it.⁵⁶ Furthermore, customary international humanitarian law also applies. On the matter, since many rules found in the *Additional Protocol I*, which mainly regulates IACs, are

⁵¹ Ibid.

⁵² Ibid.

⁵³ International Commission of Jurists, op. cit., p.6.

⁵⁴ Protocol II Additional to the Geneva Conventions, Art.1. Available at: https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.35_AP-II-EN.pdf.

⁵⁵ Ibid.

⁵⁶ International Commission of Jurists, op. cit., p.6.

customary rules, they extend to the Yemen's conflict and binding states who aren't necessarily parties to it.⁵⁷

Conclusion

This chapter has outlined the historical and political factors that have shaped Yemen since the 1960s in order to understand the root causes of the Yemen civil war. It then proceeded to provide a factual background of the conflict, necessary to comprehend its legal characterisation as a non-international armed conflict. As can be observed from the information presented in the chapter, while the conflict is defined as a NIAC, it is complicated by the involvement of third states. Their participation mainly takes the form of indirect assistance through inter-state arms trade, raising legal questions regarding state responsibility and compliance with IHL. Therefore, the following chapters will explore the topic of arms transfers in the Yemen civil war in more depth, examining the international legal framework governing arms trade, the legal implications of foreign involvement, the enforceability of these regulations and the consequences and controversies surrounding them.

⁵⁷ Ibid.

Chapter 2: Arms transfers to the Saudi-Led Coalition

Arms exports are regulated by rules providing standards which are based on international humanitarian law. As mentioned in the previous chapter, since the beginning of the conflict, arms and other military equipment have been exported to members of the Saudi-led coalition. The primary suppliers include the United States, the United Kingdom and France; nonetheless, many other states, especially western ones, are also involved. The use of these weapons has caused many civilian casualties, constituting clear violations of international humanitarian law. In response, some countries have halted their arms exports while others have refused to adopt export bans. This divergence has raised many concerns regarding the legality of these transfers and the responsibility of the exporting states. In some cases, this has resulted in legal challenges and subsequent court proceedings. To address these concerns, this chapter will proceed as follows: section 2.1 will provide data on arms transfers since the beginning of the Yemen civil war and, subsequently, section 2.2 will present the reported impact of their use. Section 2.3 will outline the international legal framework governing arms transfers, analysing its applicability in this context. Finally, section 2.4 will explore two legal challenges that have emerged on the matter, the British and the Italian cases, to assess how these regulations are applied in practice.

2.1 Data on Arms Exports to the Saudi-led Coalition

2.1.1 Arms transfers to Saudi Arabia

This section will present data on arms transfers to the Saudi-led coalition. However, it must be noted that not all countries disclose information on the value or overall figures on their arms exports to the states involved in the Yemen civil war.

Saudi Arabia is one of the main coalition members active in the Yemen civil war. With the onset of the conflict, its military imports increased significantly, increasing by 192% between 2009-2013 and 2014-2018, making it the biggest arms importer in the world in 2014-2018.⁵⁸ By 2018, 8.8% of its GDP was allocated to military spending, clearly demonstrating the country's priority in strengthening its defence and military power.⁵⁹ In the same year, with a military expenditure equivalent to \$67.6 billion, it was ranked the

⁵⁸ Pieter D. Wezeman and Alexandra Kuimova, "MILITARY SPENDING and ARMS IMPORTS by IRAN, SAUDI ARABIA, QATAR and the UAE" (SIPRI, May 2019), https://www.sipri.org/sites/default/files/2019-05/fs_1905_gulf_milex_and_arms_transfers.pdf.

⁵⁹ Ibid.

third-largest military spender globally.⁶⁰ Saudi Arabia's main arms supplier is the United States, which is also the largest overall arms exporter to the entire Saudi-led coalition. During the Obama administration, more specifically between 2009-2016, the United States delivered \$14 billion worth of arms to Saudi Arabia, making Saudi Arabia the biggest US arms importer among any other developing country.⁶¹ Following Trump's election, a new deal was struck in 2017 with the Saudi government amounting to a \$110 billion immediate arms purchase and a \$350 billion long-term agreement over 10 years.⁶² These exports included small arms and light weapons, their ammunitions, tanks, combat ships, vehicles and jets, such as F-15SA combat aircrafts, attack helicopters and fuel. Furthermore, Saudi Arabia's purchases extended to heavy artillery, missiles and their launchers, as well as missile defence systems, radars and cyber security technology.⁶³ On the matter, in 2018, Saudi Arabia further increased its defence capacities by buying THAAD missile defence systems and Patriot PAC-3 from the United States.⁶⁴

The United Kingdom is the second biggest exporter of arms to Saudi Arabia. Since the start of the Saudi-led intervention in the war, it has conducted sales amounting to £5 billion in weapons, comprising 23% of arms imports by Saudi Arabia.⁶⁵ The arms transferred by the United Kingdom include bombs, guided missiles and their launchers, small arms such as sniper rifles and machine guns and combat aircrafts, namely Typhoon combat aircrafts and Tornado fighter aircrafts, which have significantly increased the reach and power of the Saudi-led coalition's airstrikes.⁶⁶

Moreover, a large quantity of French weapons have been sold to Saudi Arabia over the years, amounting to €455 million worth in arms just in 2016. France has exported a wide variety of weapons to Saudi Arabia; ranging from armoured personnel carriers, missile launchers, cannons, artillery, rifles to patrol boats.⁶⁷ Controversies have risen regarding

⁶⁰ Ibid.

⁶¹ Michael Abada Ifeanyichukwu et al., "United States-Saudi Arabia Arms Deal and Humanitarian Crisis in Yemen," *Research Gate*, July 23, 2020, https://www.researchgate.net/publication/343141685_United_States-Saudi_Arabia_Arms_Deal_and_Humanitarian_Crisis_in_Yemen.

⁶² Ruggiero, op. cit., p. 508.

⁶³ David et al., op. cit., p.26.

⁶⁴ Wezeman and Kuimova, op. cit., p. 4.

⁶⁵ Ruggiero, op. cit., p. 507.

⁶⁶ Wezeman and Kuimova, op. cit., p. 4.

⁶⁷ David et al., op. cit., p.26.

their use as documents reporting their deployment against civilians have been leaked.⁶⁸ This issue will be discussed in greater detail in the section addressing the civilian impact of these arms.

As formerly stated, the United States, the United Kingdom and France are the biggest exporters of arms to Saudi Arabia. Nonetheless, many other countries have also been involved in arms transfers to Saudi Arabia since the beginning of the conflict. From 2014 to 2018, Austria, Canada, Georgia, South Africa and Turkey have provided more than 4000 armoured vehicles, contributing significantly to Saudi Arabia's land force advancement.⁶⁹ Furthermore, Italy has approved exports worth €700 million, composed of naval guns and small arms while Spain has supplied munitions, tanker aircrafts and naval vessels such as Avante-2200 frigate.⁷⁰ Additionally, Germany has exported "military helicopters, radar systems and parts/components for fighter jets"⁷¹ as well as "patrol ships, military transporters and parts/components for military aircraft"⁷², approving a transfer of €530 million worth of arms in 2016 and a €148 million one the subsequent year.⁷³ Beyond these countries, also Brazil, the Republic of Korea, Croatia, Bulgaria, Slovakia, Serbia, Poland, Belgium, the region of Wallonia, Switzerland, Norway, Denmark, Finland, Sweden have exported arms to Saudi Arabia.⁷⁴

It must be acknowledged that given that many weapons involve components and technologies sourced from multiple nations, it is challenging to obtain fully transparent global arms trade data. For example, the 72 Eurofighters exported by the United Kingdom to Saudi Arabia between 2009 and 2017 consisted of 30% German components, 20% Italian components and 13% Spanish parts.⁷⁵ Similarly, the Caesar artillery guns purchased by Saudi Arabia from France were composed of Unimog chassis and diesel

⁶⁸ Ruggiero, op. cit., p. 507.

⁶⁹ Wezeman and Kuimova, op. cit., p. 4.

⁷⁰ Perlo-Freeman, op. cit.

⁷¹ Simone Wisotzki, "Arms Exports to Saudi Arabia and the Humanitarian Crisis in Yemen" (Peace Research Institute Frankfurt, 2018), JSTOR, <https://doi.org/10.2307/resrep14282>.

⁷² Ibid.

⁷³ Ibid.

⁷⁴ David et al., op. cit., p.26.

⁷⁵ David et al., op. cit., p.28.

engines manufactured by Germany.⁷⁶ Likewise, the vehicles supplied by Canada came with weapons produced by a Belgian subcontractor.⁷⁷

2.1.2 Arms transfers to the United Arab Emirates

The United Arab Emirates, following Saudi Arabia, is the second-largest military spender in the Middle East. In 2014, its defence budget consisted of 5.6% of its GDP, positioning the United Arab Emirates as the fifth biggest arms importer in the world.⁷⁸ Once again, its biggest supplier of weapons is the United States, transferring bombs, missiles, small arms, combat helicopters, armoured vehicles and missile defence systems, including PAC-3 and THAAD systems.⁷⁹

France is the second largest supplier, exporting substantial amounts of arms, including small arms, munitions, naval equipment and tanks.⁸⁰ Furthermore, Italy has supplied small arms, munitions, aircrafts and naval vessels.⁸¹ Germany has also engaged in arms transfers with the United Arab Emirates, providing small arms, munitions and components for naval and air force equipment linked to supplies sent by Canada and the United Kingdom.⁸² Beyond these parts, both Canada and United Kingdom have supplied a wide variety of additional weapons. South Africa, Poland and Denmark have all exported armoured vehicles, while Russia, Colombia and Spain have delivered a high volumes of munitions, including anti-tank missiles and transport aircrafts.⁸³ Turkey, the Czech Republic and the Republic of Korea have also engaged in arms transfers to the United Arab Emirates.⁸⁴

2.1.3 Arms transfers to other members of the Saudi-led coalition

Arms transfers have also involved other members of the Saudi-led coalition. Bahrain has imported aircrafts, namely F-16V combat aircrafts, combat helicopters, radar systems and

⁷⁶ Ibid.

⁷⁷ Ibid.

⁷⁸ Wezeman and Kuimova, op. cit., p. 6.

⁷⁹ David et al., op. cit., p.27.

⁸⁰ Ibid.

⁸¹ Ibid.

⁸² Ibid.

⁸³ Ibid.

⁸⁴ Ibid.

engines to upgrade F-16V combat aircrafts from the United States.⁸⁵ It has also received equipment from other suppliers.

Egypt has been engaged in arms transfers with the United States, Russia, France Italy and Germany. Notably, it has purchased MEKO frigates and IRIS-T surface-to-air missile systems from Germany, naval guns from Italy and other naval equipment, combat aircrafts and missile systems from France.⁸⁶

Kuwait has been supplied arms from France, Italy and the United States from which it has received FA/18 combat aircrafts, Typhoons and the Patriot anti-ballistic missile system.⁸⁷

Since 2014, Qatar has acquired different types of armaments, ranging from aircrafts to combat vehicles, from the United States, Italy, France, Germany, China, the United Kingdom and Turkey.⁸⁸

2.2 Reported violations of IHL

Aerial and ground attacks conducted by the Saudi-led coalition during the conflict in Yemen have caused serious harm to civilians. Between 2015-2018, the Saudi-led coalition has “conducted over 16,600 air raids with roughly a third of them targeting non-military sites.”⁸⁹ In fact, civilian infrastructures, such as schools, hospitals and residential areas, have been repeatedly hit. On the matter, the United Nations has documented 52 attacks on schools and hospitals during the war, 73% of which are attributable to the coalition.⁹⁰ As a result, as reported by the Office of the United Nations High Commissioner for Human Rights, from 2015 to 2018, at least 7,292 civilians have been killed while 11,630 have been injured.⁹¹ The Yemen Data Project has estimated an even higher number, recording nearly 80,000 civilian losses linked directly to combat, without taking into account those caused by diseases or malnutrition.⁹² Furthermore, it must be noted that because schools have also been targeted, many of the victims are children. Some

⁸⁵ Perlo-Freeman, op. cit.

⁸⁶ David et al., op. cit., p.29.

⁸⁷ Perlo-Freeman, op. cit.

⁸⁸ Wezeman and Kuimova, op. cit., p. 5-6.

⁸⁹ Abada Ifeanyichukwu et al., op. cit., p.130.

⁹⁰ David et al., op. cit., p.40.

⁹¹ David et al., op. cit., p.37.

⁹² David et al., op. cit., p.38.

documented cases are the following: on 8 October 2016, during the funeral of a senior official an airstrike was launched on Al-Kubra Hall in Sana'a, injuring 695 people and killing 137 civilians, with 24 of them being young boys⁹³; on 10 March 2017, an air attack unleashed on a market in Khoukha city killed 22 civilians⁹⁴; on 22 April 2018, an airstrike struck a wedding in Al Raqah village, killing 22 civilians including 8 children⁹⁵; In 2018, 40 children were killed when their school bus was hit by an airstrike and two weeks later, 26 more were killed in another attack.⁹⁶ More generally, in a review of 60 attacks, the UN group of Experts reported that in 2018 alone, 500 civilians had been killed, of which 84 were women and 233 children.⁹⁷ Concerning ground operations carried out by the Yemeni government and the Saudi-led coalition, the UN group of experts on Yemen reported that "small arms, light weapons, artillery, combat vehicles, their ammunition, military transport and communications equipment"⁹⁸ were used against targets without distinguishing between military personnel and civilians. Furthermore, it found that in these operations war crimes such as murder, torture, cruel treatment and the denial of fair trial, were committed.⁹⁹ In many of these attacks, recovered weapon fragments were identified as originating from arms manufactured in the United States, United Kingdom, Italy and other exporting countries.

Given the nature of the locations and individuals harmed in the attacks, the operations set forth by the Saudi-led coalition seemingly breach international humanitarian law. One of the most fundamental principles of Customary international humanitarian law, the principle of distinction, states: "The parties to the conflict must at all times distinguish between civilian objects and military objectives. Attacks may only be directed against military objectives. Attacks must not be directed against civilian objects"¹⁰⁰. Thus, only areas and objects that have a military purpose can be hit while the targeting of civilians and civilian infrastructure renders an act illegal. Furthermore, these attacks are also in

⁹³ David et al., op. cit., p.39.

⁹⁴ Ibid.

⁹⁵ Ibid.

⁹⁶ Ibid.

⁹⁷ David et al., op. cit., p.46.

⁹⁸ David et al., op. cit., p.49.

⁹⁹ David et al., op. cit., p.50.

¹⁰⁰ Jean-Marie Henckaerts and Louise Doswald-Beck, "Distinction between Civilian Objects and Military Objectives (Rules 7–10)," in *Customary International humanitarian law* (Cambridge University Press, 2005), 25–36, <https://doi.org/10.1017/CBO9780511804700>.

violation of Article 3 of the *Geneva Conventions* and of Article 13 of the *Additional Protocol II of 1977*, to which both Saudi Arabia and the United Arab Emirates are parties.¹⁰¹ Article 3 asserts that “Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed 'hors de combat' by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria”¹⁰². Article 13 reinforces the protection of the civilian population against the threats stemming from military operations.¹⁰³ In addition to these provisions, Saudi Arabia, the United Arab Emirates and other members of the coalition have also breached other norms of customary international law to which, as state parties, they are bound to. Given the civilian impact of the attacks, the Saudi-led coalition has clearly violated these rules, making every member-state of the coalition responsible for the atrocities committed. In response to such allegations, the Saudi-led coalition has stated that civilians casualties weren’t the intended targets but collateral victims as the strikes were aimed at nearby military targets. In these cases, the targeting party must show proof of its compliance with two other fundamental principles of customary international law, namely the principle of necessity and of proportionality, and all the rules ensuring civilian protection.¹⁰⁴ The principle of necessity asserts that a tactic adopted by a party to an armed conflict may only be justified if the party is able to demonstrate that such means was necessary in order to achieve a legitimate military objective¹⁰⁵.¹⁰⁶ However, it doesn’t justify breaches in international humanitarian law unless it is explicitly affirmed by the rule in question. The principle of proportionality sets a limit to the incidental civilian harm allowed in an armed conflict, acknowledging that a certain degree of such is unavoidable.¹⁰⁷ Nonetheless, no evidence of adherence to these

¹⁰¹ Wisotzki, op. cit.

¹⁰² Geneva Conventions I–IV of 12 August 1949, Common Art. 3.

¹⁰³ Geneva Conventions I–IV of 12 August 1949, Common Art. 13.

¹⁰⁴ David et al., op. cit., p.42.

¹⁰⁵ “In so far as objects are concerned, military objectives are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.” (Article 52(2) of Additional Protocol I to the Geneva Conventions, 1977).

¹⁰⁶ International Committee of the Red Cross, “THE PRINCIPLES of HUMANITY and NECESSITY,” March 2023, https://www.icrc.org/sites/default/files/wysiwyg/war-and-law/02_humanity_and_necessity-0.pdf.

¹⁰⁷ International Committee of the Red Cross, “THE PRINCIPLE of PROPORTIONALITY,” March 2023, https://www.icrc.org/sites/default/files/wysiwyg/war-and-law/04_proportionality-0.pdf.

norms from the Saudi-led coalition was found. On the contrary, a leaked US intelligence report concerning a specific air operation conducted by the coalition concluded that it had failed to follow the proper protocol to uphold international humanitarian standards even if it had all the tools to do so.¹⁰⁸

As reports and data on the violations of international humanitarian law have been available since the beginning of the conflict, arms exporting states could not have been unaware of these breaches when authorizing, transferring and continuing to supply weapons used in the war, raising serious concerns under international law.¹⁰⁹ In light of this, some states have suspended or overall banned arms transfers to Saudi Arabia and other members of the coalition. For instance, the Netherlands have halted their exports, denying military supplies to the states active in the conflict unless there is absolute proof that the arms won't be used in the war. Similarly, Germany has adopted a temporary moratorium, a prohibition, on new export licences for arms transfers to Saudi Arabia. Also other European states, including Austria, Belgium, Denmark, Finland, Ireland, Norway, Sweden and Switzerland have announced export suspensions to members of the Saudi-led coalition.¹¹⁰ On the contrary, countries like the United Kingdom, Italy, Spain and France have refused to implement these bans, continuing to adopt new export licences for arms exports towards members of the coalition despite the growing evidence that these transfers have contributed to the severe humanitarian impact of the conflict.¹¹¹ Given the different responses of states, the legality of these exports must be analysed not only in view of the humanitarian consequences but also against the international legal framework governing arms transfers. In the following section, these regulations will be presented, assessing their application in this specific case and evaluating whether countries supplying arms to the Saudi-led coalition are complying with the international obligations arising from them.

¹⁰⁸ David et al., op. cit., p.48.

¹⁰⁹ David et al., op. cit., p.51.

¹¹⁰ Ferro, op. cit., p.507.

¹¹¹ Ibid.

2.3 The International Legal Framework Governing Arms Transfers

This section outlines the international legal framework governing arms transfers, specifically focusing on the rules that are relevant and applicable to the arms exports to members of the Saudi-led coalition.

2.3.1 General obligations to respect and ensure respect for IHL

When selling weapons, states must guarantee both their and other states' compliance with international humanitarian law. This customary rule applies both in IACS and NIACs and serves as a baseline for all the rules governing arms transfers that will be subsequently discussed. It stems from Common article 1 to the four *Geneva Conventions 1949*: "The High Contracting Parties undertake to respect and ensure respect for this Convention in all circumstances"¹¹². The object of the High Contracting Parties' duty to "ensure respect" has been recognized by International Committee of the Red Cross as referring to individuals or groups acting on behalf of the state, persons within the state's jurisdiction and any party part of the armed conflict.¹¹³ Additionally, in considering the nature of this duty, the ICRC has identified it as entailing both a negative and a positive obligation. The negative obligation prohibits states from assisting, through financial, material and other means, the parties to the conflict in violating international humanitarian law. In the context of arms transfers, this translates in states refraining "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"¹¹⁴. On the other hand, the positive obligation requires states to take proactive measures to prevent other states from committing violations of international humanitarian law when they are likely to be committed. In light of this, countries must suspend or end their supply of weapons if there is evidence that the importing state could or is using them in a way that breaches international humanitarian law.¹¹⁵ Furthermore, when an importing state is dependent on the exporting state from armaments, the exporting state can use this to pressure it to comply with international humanitarian law. It must be noted that while the negative obligation is

¹¹² Geneva Conventions I–IV of 12 August 1949, Common Art. 1.

¹¹³ Ferro, op. cit., p.514.

¹¹⁴ International Committee of the Red Cross, "2016 Commentary on the First Geneva Convention," *Icrc.org*, 2025, https://ihl-databases.icrc.org/en/ihl-treaties/gci-1949/article-1/commentary/2016#_Toc452378931.

¹¹⁵ Ferro, op. cit., p.515.

broadly accepted, the positive obligation remains contested.¹¹⁶ Opposing views argue that there is insufficient evidence supporting this interpretation, noting that several states have either explicitly or implicitly opposed to this view.¹¹⁷ Furthermore, it is highlighted that the original commentaries on the four Geneva conventions of the International Committee of the Red Cross, published between 1956 and 1960, only reference to the internal efforts, not providing any support for an external obligation.¹¹⁸ Finally, also state practice seems to not support this interpretation as states usually don't take action to stop other states from violating international humanitarian law.¹¹⁹ Nonetheless, despite these criticisms, over time the positive interpretation of Common article 1 has increasingly gained recognition, supported by evolving state practice and ICJ cases^{120, 121}

Specifically concerning the transfer of cluster munitions, article 1 of the *Convention on Cluster Munitions* prohibits the transfer of these weapons when there is evidence of them being used in a way that doesn't comply with international humanitarian law: "Each State Party undertakes never under any circumstances to: (a) Use cluster munitions; (b) Develop, produce, otherwise acquire, stockpile, retain or 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"¹²². The use of cluster munitions in attacks on residential areas during Yemen Civil has been documented by various sources. The main manufacturers of these weapons used in Yemen are the United Kingdom, Brazil and the United States. The United Kingdom banned its exports in 2010, while the United States suspended them in 2016.¹²³ Only the United Kingdom is a party to this convention. Nonetheless, Brazil and the United States can still be held responsible

¹¹⁶ Ibid.

¹¹⁷ Michael N. Schmitt and Sean Watts, "Common Article 1 of the 1949 Geneva Conventions," Lieber Institute West Point, April 12, 2024, <https://lieber.westpoint.edu/common-article-1-1949-geneva-conventions/>.

¹¹⁸ Ibid.

¹¹⁹ Ibid.

¹²⁰ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, International Court of Justice (ICJ), 26 February, 2007, paras. 429–430, <https://www.icj-cij.org/sites/default/files/case-related/91/091-20070226-JUD-01-00-EN.pdf>.

¹²¹ Ferro, op. cit., p.515.

¹²² Convention on Cluster Munitions, Art. 1. Available at : https://www.icrc.org/sites/default/files/external/doc/en/assets/files/other/icrc_002_0961.pdf.

¹²³ International Commission of Jurists, op. cit., p.22.

for the supply of cluster munitions if they are used in a way that violates international humanitarian law.¹²⁴

2.3.2 Responsibility of States for Internationally Wrongful Acts

The *Articles on the Responsibility of States for Internationally Wrongful Acts* codify the principles of state responsibility under international law. Although they have not been adopted in a binding treaty, they are generally considered to reflect customary international law and have been widely applied and referred to by international courts and tribunals. Concerning arms trade, under these articles, arms exporting state may be held responsible for aiding in the commission of internationally wrongful acts if international crimes were committed utilizing the supplied arms. Article 16 of the *Articles on the Responsibility of Internationally Wrongful Acts*, regarded as customary international law¹²⁵, specifically addresses this topic, stating: “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”¹²⁶. In order for a state to be liable for its contribution to another state’s commission of wrongful acts, it must be aware of the consequences of the assistance given. In the case of arms transfers, the threshold of awareness is met if the exporting state either knew or should have known, based on available data documenting violations of international humanitarian law and human rights committed by the importing state, that the arms supplied could or would contribute to such wrongful acts.¹²⁷ On the contrary, if the supplying state was unaware and there was no reasonable way for knowing the purpose for which the arms would be used, its international responsibility isn’t triggered.¹²⁸ Additionally, it must be noted that in order for a country to be held responsible for supporting the commission of an international wrongful act, its assistance doesn’t have to be decisive in causing the violation, the mere fact that it has contributed is enough to make such state liable.¹²⁹ When licensing arms exports states have a

¹²⁴ Ibid.

¹²⁵ *Bosnia and Herzegovina v. Serbia and Montenegro*, Judgment, ICJ, 2007.

¹²⁶ ILC Articles on State Responsibility 2001, Art. 16.

¹²⁷ Ruggiero, op. cit., p. 508.

¹²⁸ David et al., op. cit., p.67.

¹²⁹ Ibid.

procedural obligation to assess the purpose for which the arms might be used and the risk that they may be used in violation of international humanitarian law.¹³⁰ Therefore, if such breaches are then committed by the importing state, it is presumed that the supplying state knew as it was legally bound to derive and possess this knowledge.¹³¹ In the context of the Yemen civil war, specifically regarding the arms transfers to the Saudi-led coalition, as it is evident by the data reported in the previous section, there is abundant evidence and reports documenting how members of the coalition active in the conflict have committed war crimes, violating international humanitarian law. Thus, it is reasonable to conclude that exporting states had, or should have had, prior knowledge of these violations and, accordingly, should have suspended or banned the supply of items similar to those utilized in the commission of such acts.¹³² On the contrary, by continuing to supply arms, they are providing the means to conduct these violations, contributing to their continuation. As a result, they are rendering themselves complicit to these acts, breaching international law. Furthermore, such violation also implies a failure of the fulfilment of the duty to “ensure respect” for international humanitarian law, set out in article 1 of the Geneva Conventions.¹³³ Criminal complaints have been filed against certain states for their alleged breaches of obligations and international responsibility.¹³⁴ The following section will examine in more depth two of these cases.

Another pertinent article to the topic of arms transfers among the *Articles on the Responsibility of States for International Wrongful Acts* is article 41, also considered customary international law¹³⁵, which states: “1. States shall cooperate to bring to an end through lawful means any serious breach within the meaning of article 40. 2. No State shall recognize as lawful a situation created by a serious breach within the meaning of article 40, nor render aid or assistance in maintaining that situation. 3. This article is without prejudice to the other consequences referred to in this part and to such further consequences that a breach to which this chapter applies may entail under international

¹³⁰ Pursuant to Article 7 of the Arms Trade Treaty, a detailed discussion of which follows in the next section.

¹³¹ David et al., op. cit., p.68.

¹³² Ibid.

¹³³ Ferro, op. cit., p.517.

¹³⁴ International Commission of Jurists, op. cit., p.25.

¹³⁵ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, International Court of Justice (ICJ), 9 July, 2004, <https://www.un.org/unispal/document/auto-insert-178825/>.

law”¹³⁶. As defined in article 40(2), a “serious breach”¹³⁷ refers to “a gross or systematic failure by the responsible State to fulfil the obligation”¹³⁸ that is considered *jus cogens*, meaning a peremptory norm that cannot be broken under any circumstances.¹³⁹ Unlike article 16, the awareness threshold mustn’t be met for article 41 to apply; even if a state didn’t or couldn’t have known about the breaches, it may still be held liable for the assistance given.¹⁴⁰ Some of the fundamental principles of international humanitarian law, such as the prohibition of hostilities directed at civilian population, war crimes and torture, are considered *jus cogens* norms.¹⁴¹ As violations of these rules have been reported in Yemen, article 41 applies. Therefore, arms exporting states, by not suspending arms transfers, are not only failing to bring to an end the situation, but are also contributing to its continuation, triggering their international responsibility.¹⁴²

2.3.3 Arms Trade Treaty

The *Arms Trade Treaty* was adopted by the General Assembly of the United Nations on 2 April 2013 and entered into force on 24 December 2014.¹⁴³ This treaty is only binding on its State Parties. However, given that most of the states transferring arms to the Saudi-led coalition are parties to it¹⁴⁴, it remains relevant to this analysis. Its main objective, as established in article 1, is to “Establish the highest possible common international standards for regulating or improving the regulation of the international trade in conventional arms”¹⁴⁵ in order to promote peace, security and stability, reduce human suffering and foster cooperation and transparency so to build trust among nations, especially in relations to the trade of conventional arms. The scope of the treaty, defined in article 2 and 3, includes: “Battle tanks; Armoured combat vehicles; Large-calibre artillery systems; Combat aircraft; Attack helicopters; Warships; missiles and missile

¹³⁶ ILC Articles on State Responsibility 2001, Art. 41.

¹³⁷ Ibid.

¹³⁸ Ibid.

¹³⁹ Ferro, op. cit., p.517.

¹⁴⁰ David et al., op. cit., p.75.

¹⁴¹ International Law Commission, “Draft Conclusions on Identification and Legal Consequences of Peremptory Norms of General International Law (Jus Cogens), with Commentaries,” 2022, https://legal.un.org/ilc/texts/instruments/english/commentaries/1_14_2022.pdf.

¹⁴² Ibid.

¹⁴³ David et al., op. cit., p.80.

¹⁴⁴ See the list of States Parties to the Arms Trade Treaty at: [https://thearmstradetreaty.org/hyper-images/file/List%20of%20ATT%20States%20Parties%20\(alphabetical%20order\)\(17%20October%202024\)/List%20of%20ATT%20States%20Parties%20\(alphabetical%20order\)\(17%20October%202024\).pdf](https://thearmstradetreaty.org/hyper-images/file/List%20of%20ATT%20States%20Parties%20(alphabetical%20order)(17%20October%202024)/List%20of%20ATT%20States%20Parties%20(alphabetical%20order)(17%20October%202024).pdf).

¹⁴⁵ Arms Trade Treaty, Art.1. Available at: <https://ihl-databases.icrc.org/assets/treaties/630-ATT-En.pdf>.

launchers; and Small arms and light weapons”¹⁴⁶ as well as their munitions and ammunitions. The treaty’s central provisions are set out in article 6 and 7.

Article 6 delineates three absolute prohibitions against arms transfers: a state party shall ban arms exports if such transfers would violate its international obligations arising from measures adopted by the Security Council of the United Nations or from relevant treaties to which it is a party or “if it has knowledge at the time of authorization that the arms or items would be used in 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”¹⁴⁷.¹⁴⁸ In article 6(1) and 6(2), the use of the verb “would” rather than “will” implies that state parties must assess both ongoing transfers and those that have yet to occur, considering whether these potential exports could lead to violations of their international obligations.¹⁴⁹ Furthermore, the term “International Agreements”, mentioned in article 6(2), refers to both specific treaties, such as those banning the transfer of a particular weapon or those regulating the conduct of an activity essential for exporting arms, and broader instruments, like the *UN Charter*.¹⁵⁰ In this regard, the previously mentioned article 55 of the *UN charter* imposes a duty on member states to respect and ensure respect of human rights and international humanitarian law. Therefore, if the completion of this obligation is obstructed by arms exports, they must be prohibited.¹⁵¹ In article 6(3), the term “would” indicates that if there is evidence, based on reported data and recurring state practice, that the importing state is likely to use the supplied arms in violation of international humanitarian law, export licences mustn’t be granted.¹⁵² Based on the data reported in the previous section, it is evident that members of the Saudi-led coalition active in the Yemen civil war have used, and continue to use, conventional arms in ways that breach international humanitarian law. In this context, both article 6(2) and 6(3) apply, requiring all exporting states parties to the *Arms Trade Treaty* to halt arms transfers to the coalition. Such prohibition should have been imposed

¹⁴⁶ Arms Trade Treaty, Arts.2-3.

¹⁴⁷ Arms Trade Treaty, Art.6.

¹⁴⁸ Ferro, op. cit., p.518.

¹⁴⁹ David et al., op. cit., p.84.

¹⁵⁰ David et al., op. cit., p.85.

¹⁵¹ Ibid.

¹⁵² David et al., op. cit., p.81.

since 2015. Nonetheless, several states have continued to supply arms despite the violations in international humanitarian law, breaching their obligations stemming under *Arms Trade Treaty*.

If an arms transfer isn't prohibited under article 6, but it is still recognized as potentially causing serious humanitarian consequences, it must be assessed according to a second standard set out in article 7.¹⁵³ Article 7 requires the exporting state to conduct of a risk assessment to determine whether such transfer “would contribute to or undermine peace and security; could be used to: i. commit or facilitate a serious violation of international humanitarian law; ii. commit or facilitate a serious violation of international human rights law; iii. commit or facilitate an act constituting an offence under international conventions or protocols relating to terrorism to which the exporting State is a Party; or iv. commit or facilitate an act constituting an offence under international conventions or protocols relating to transnational organized crime to which the exporting State is a Party”¹⁵⁴. If the risk under article 7 is overriding, then, as established by article 7(3), the transfer must not be authorised.¹⁵⁵ In the case of the arms transfers to the Saudi-led coalition, the prohibitions set out in article 6(2) and 6(3) are already triggered, meaning that article 7 does not apply. However, given the evidence available, if article 7 were to be applicable, the “substantial” risk that the arms would be used in violation of international humanitarian law would clearly be met, prohibiting arms exports under this provision as well.¹⁵⁶

2.3.4 2008 Common Position on Arms Exports

The *Council Common Position 2008/944/CFSP*, as described in its official texts, defines “the common rules governing the control of exports of military technology and equipment”¹⁵⁷. Being adopted by the Council of the European Union, it only applies to member states of the European Union. Since most of the states exporting arms to the Saudi-led coalition are members of the European Union and, considering that the subsequent section will examine the legal actions brought against the United Kingdom

¹⁵³ Peter Woolcott, “THE ARMS TRADE TREATY ,” *United Nations Audiovisual Library of International Law*, 2014, https://legal.un.org/avl/pdf/ha/att/att_e.pdf.

¹⁵⁴ Arms Trade Treaty, Art.7(1)(a)-(b).

¹⁵⁵ Ferro, op. cit., p.520.

¹⁵⁶ David et al., op. cit., p.90.

¹⁵⁷ Council Common Position 2008/944/CFSP. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32008E0944>.

and Italy, respectively a former and a current member of the European Union, it is necessary to address this legal document. Article 2 of the Common Position prescribes eight criteria members states must take into consideration when evaluating whether to authorize the export of arms to a specific country. Pertinent to the data and evidence provided in the previous section, the second criterion focuses on the respect of human rights and international humanitarian law by the prospective importing state, indicating that a member states must “deny an export licence if there is a clear risk that the military technology or equipment to be exported might be used for internal repression”¹⁵⁸.¹⁵⁹ No precise definition of “clear risk” has been provided by the European Union. However, the *User’s Guide to Council Common Position* outlines various aspects to be considered when determining whether a “clear risk” is present: “In assessing whether there is a clear risk that a proposed export might be used for internal repression Member States should consider the current and past record of the proposed end-user with regard to respect for human rights and that of the recipient country in general. The latter includes the policy line of recipient country’s government; recent significant developments, including inter alia impact of “fight against terrorism”; effective protection of human rights in constitution; human rights training among key actors (e.g. law enforcement agencies); impunity for human rights violations; independent monitoring bodies and national institutions for promotion or protection of human rights”¹⁶⁰.¹⁶¹ In addition to carrying out such evaluations, criterion 2 also calls upon member states to be particularly vigilant when deciding whether to approve arms export licences to countries which have a record of grave human rights violations officially recognized by “the competent bodies of the United Nations, by the European Union or by the Council of Europe”¹⁶². In such cases, the decision should be made on a “case to case basis”¹⁶³, taking also into account “the

¹⁵⁸ Ibid.

¹⁵⁹ Carlo Mazzoleni, “COMMERCIO DI ARMI E DIRITTI UMANI in YEMEN: IL PRIMO CASO GIUDIZIARIO ITALIANO,” *ORDINE INTERNAZIONALE E DIRITTI UMANI*, April 2023, https://iris.uniroma1.it/retrieve/b5b33e04-555d-4167-b290-3872744c5f11/Mazzoleni_Commercio_2023.pdf.

¹⁶⁰ Council of the European Union, “User’s Guide to Council Common Position 2008/944/CFSP Defining Common Rules Governing the Control of Exports of Military Technology and Equipment,” July 20, 2015, <https://data.consilium.europa.eu/doc/document/ST-10858-2015-INIT/en/pdf>.

¹⁶¹ Mazzoleni, op. cit., p.1025.

¹⁶² Council Common Position 2008/944/CFSP, Art.2(2,b).

¹⁶³ Ibid.

nature of the military technology or equipment”¹⁶⁴ exported.¹⁶⁵ Furthermore, under criterion 6, member states must also consider a potential importing state’s history in relation to “its compliance with its international commitments, in particular on the non-use of force, and with international humanitarian law”¹⁶⁶.¹⁶⁷ Given the previously reported facts, it is clear that war crimes and other violations of international humanitarian law have been committed by Saudi Arabia and other members of the coalition active in the Yemen civil war. These violations have been repeatedly reported and condemned by the United Nations and other competent bodies. As a result, several countries, including some members of the European Union, have suspended or banned arms exports to members of the coalition, in accordance with, among other legal instruments, the *Council Common Position*. However, others, such as Italy, have continued to sell military supply, fully disregarding this additional normative framework. It must be noted that article 4(2) states: “The decision to transfer or deny the transfer of any military technology or equipment shall remain at the national discretion of each Member State”¹⁶⁸. However, this should not be interpreted as meaning that states can act however they want, but rather that decision on licensing arms exports are taken individually by each country and not by the European Union as a whole.¹⁶⁹

2.4 Legal Challenges on arms transfers to the Saudi-led coalition

Seeing the atrocities committed by members of the Saudi-led coalition in the course of the conflict, several NGOs have filed criminal complaints against states that continue to supply them with arms. This section will examine the legal challenges brought in Italy and the United Kingdom. Through this assessment, this section aims to highlight the discrepancy between the legal regime governing arms transfers and its implementation in practice, raising broader questions concerning the actual effectiveness and applicability of these norms.

¹⁶⁴ Ibid.

¹⁶⁵ Mazzoleni, op. cit., p.1025.

¹⁶⁶ Council Common Position 2008/944/CFSP, Art.2(6,b).

¹⁶⁷ International Commission of Jurists, op. cit., p.24.

¹⁶⁸ Council Common Position 2008/944/CFSP, Art.4(2).

¹⁶⁹ David et al., op. cit., p.91.

2.4.1 The Italian Case

On the 8 October 2016, the Saudi-led coalition launched an air attack on the village of Deir Al-Hajari, resulting in the death of six civilians, including a pregnant woman and four minors. At the location of the airstrike, the remnants of MK-80 bombs and a suspension lug manufactured by RWM Italia were found. On 17 April 2018, on the basis of these facts, the European Centre for Constitutional and Human Rights (ECCHR), Rete Italiana per il Disarmo and Mwatana for Human Rights filed a criminal complaint to the Italian Public Prosecutor's Office in Rome against the directors of Unità per le Autorizzazioni dei Materiali d'Armamento (UAMA), the Italian export licencing authority, and the executives of RWM Italia, an arms manufacturer that is a subsidiary of German Rheinmetall.¹⁷⁰ The complaint centres around the argument that both UAMA, by authorizing the export and RWM Italia by physically transferring the weapons to Saudi Arabia, violated international, regional and national law. This accusation is based on two grounds.¹⁷¹ Firstly, as violations of international humanitarian law committed by the Saudi-led coalition have been documented by the United Nations, the European Union and other competent bodies since 2015, it is evident that the Italian government had knowledge of these repeated and grave violations of international humanitarian law. Consequently, it was also aware that these weapons might or would be used in attacks breaching international humanitarian law.¹⁷² If the allegations were to be confirmed, Italy could be deemed internationally responsible for having breached its obligations under Common Article 1 of the *Geneva Conventions*, articles 6 and 7 of the *Arms Trade Treaty* and the *EU Common Position*.¹⁷³ Secondly, both UAMA and RWM Italia executives are alleged to have committed the offence of abuse of office, regulated by article 323 of the *Italian Criminal Code*, on the grounds that UAMA approved exports guaranteeing an unfair financial benefit to RWM Italia at the expense and harm of others. Furthermore, by proceeding with the arms transfers, even with knowledge of the risk that they could be used against civilians, they are accused of contributing to the commission of the violations

¹⁷⁰ Mazzoleni, op. cit., p.1026.

¹⁷¹ Giovanna Maletta, "Legal Challenges to EU Member States' Arms Exports to Saudi Arabia: Current Status and Potential Implications," www.sipri.org, June 28, 2019, <https://www.sipri.org/commentary/topical-backgrounder/2019/legal-challenges-eu-member-states-arms-exports-saudi-arabia-current-status-and-potential>.

¹⁷² Ibid.

¹⁷³ Mazzoleni, op. cit., p.1027.

of international humanitarian law, namely physical injury and murder, for their gross negligence.¹⁷⁴

Even if the remnants found on the site of the airstrike conducted by the Saudi-led coalition on the 8 October 2016 were identified as having been manufactured by RWM Italia and exported pursuant to a licence given by UAMA, on the 8 October 2019, the Public Prosecutor decided to archive the case.¹⁷⁵ Concerning the crime of abuse of office, as there wasn't enough evidence showing the required subjective element of intent, the necessary elements of the offence were deemed not present. On the contrary, it was held that UAMA officials had acted on the basis of opinions given by the official advisory body, rather than by arbitrary choice.¹⁷⁶ Furthermore, the Public prosecutor concluded that, as RWM Italia was helping the economy by creating and maintaining jobs, by not authorizing the transfer they would have damaged the economy, going against national interest.¹⁷⁷

The decision taken by the Public Prosecutor to dismiss the case wasn't shared by the Judge of Preliminary Investigations. In fact, on 22 February 2021, following objections raised by the complaints against this decision, the Judge of Preliminary Investigations order the continuation of the investigations.¹⁷⁸ Taking into consideration the alleged crime of abuse of office, the Judge disagreed with the conclusion that there wasn't enough evidence of the presence of the subjective element for it to arise. Considering the first justification provided, the Judge held that, given that the opinions given by the official advisory body aren't binding, even if UAMA had authorised the transfer on the basis of its positive opinion, it would still remain responsible for its final decision.¹⁷⁹ Furthermore, the Judge stated that the protection of national interest could not, under any circumstance, be used to justify non-compliance with regulations prohibiting arms transfers to countries that violate international humanitarian law; such statement aligns with article 10 of the *EU Common Position*: "While Member States, where appropriate, may also take into account the effect of proposed exports on their economic, social, commercial and

¹⁷⁴ Ibid.

¹⁷⁵ Ibid.

¹⁷⁶ Ibid.

¹⁷⁷ Ibid.

¹⁷⁸ Ibid.

¹⁷⁹ Ibid.

industrial interests, these factors shall not affect the application of the above criteria”¹⁸⁰.¹⁸¹ On the contrary, the fact that a lot of emphasis was given to the argument that this activity creates jobs, was seen as further proof of the presence of a subjective element.¹⁸² Therefore, the Judge of Preliminary Investigations required the Public Prosecutor to carry out more investigations, particularly focusing on whether, since 2015, a revaluation of the situation was conducted every year to determine whether arms transfers could be authorised. However, the case was again archived in March 2022. This time, the Judge of Preliminary Investigation newly appointed to the case reached a different conclusion, accepting the decision of dismissal.¹⁸³

In the ruling, the Judge of Preliminary Investigation confirmed that UAMA officials, in light of the data provided by competent authorities, were certainly aware that the transferred weapons could be used in violation of international humanitarian law. Consequently, by continuing to issue export licences to RWM Italia, they were breaching article 6 and 7 of the *Arms Trade Treaty*, ratified by Italy through the adoption of law no.118/2013¹⁸⁴, and not complying with criterion 2 of the *EU Common Position*.¹⁸⁵ All these elements were acknowledged by the judge. Nonetheless, utilising a line of reasoning that opposed to that of the previous judge, the Judge of Preliminary Investigation concluded that no grounds for criminal responsibility existed. The judge reversed what was stated in the previous ruling, holding that the subjective element, essential for establishing the offence of abuse of office, wasn’t present.¹⁸⁶ As a matter of fact, the Judge of Preliminary Investigation concluded that since the decision to authorise the transfer arms was taken in accordance with the opinion, even if not binding, of the official advisory body, following proper procedures, and in pursuit of a public interest rather than to guarantee an unfair financial advantage, no crime was deemed to have been committed.¹⁸⁷

¹⁸⁰ Council Common Position 2008/944/CFSP, Art.10.

¹⁸¹ Mazzoleni, op. cit., p.1027.

¹⁸² Ibid.

¹⁸³ Mazzoleni, op. cit., p.1028.

¹⁸⁴ Law No. 118/2013, Art. 1. Available at: <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:2013;118>.

¹⁸⁵ Mazzoleni, op. cit., p.1028.

¹⁸⁶ Ibid.

¹⁸⁷ Ibid.

This conclusion raised a lot of criticism as, through the reasoning adopted by the judge, it seems that breaches of these norms are justifiable by the compliance with procedures and the fulfilment of national priorities.¹⁸⁸ This interpretation not only seems to go against the constitutional principle of primacy of international law over ordinary law, established under article 117 of the *Italian Constitution*¹⁸⁹, but may also be seen as undermining the actual effectiveness of the rules regulating arms transfers. Nonetheless, it must be noted that the action at hand was a criminal proceeding.¹⁹⁰ As a result, even if the judge acknowledged that there may have been violations of international norms regulating arms transfers, as these violations weren't considered as constituting criminal intent, necessary for the offence of abuse of office, no crime under Italian criminal law could be established.¹⁹¹ This further highlights the challenges of enforcing the international legal framework regulating arms transfers.

2.4.2 The British Case

In 2016, the Campaign against Arms Trade (CAAT) filed a complaint against the United Kingdom's Secretary of State for International Trade. The complaint challenged the Secretary of State's conclusion that there was no "clear risk" that the arms transferred to Saudi Arabia might be used to commit violations of international humanitarian law, arguing that, given the result, the assessment method for establishing the level of risk adopted by the British government was evidently flawed.¹⁹² This claim was based on two points: Firstly, CAAT maintained that the British government, in light of the numerous publicly available reports documenting cases in which breaches of international humanitarian law were committed by the Saudi-led coalition, was under obligation to explain how it reached a contrary conclusion. Secondly, the fact that the Ministry of Defence, in many assessed cases, couldn't identify a legitimate military target, further undermined the rationality of the British Government's risk assessment method.¹⁹³ Therefore, CAAT contended that, by reaching this conclusion, the British government failed to comply with criterion 2(c) of the *EU Common Position*: "deny an export licence

¹⁸⁸ Mazzoleni, op. cit., p.1029.

¹⁸⁹ Italian Constitution, Article 117. Available at: https://www.senato.it/documenti/repository/istituzione/costituzione_inglese.pdf

¹⁹⁰ Mazzoleni, op. cit., p.1029.

¹⁹¹ Ibid.

¹⁹² Maletta, op. cit.

¹⁹³ Ibid.

if there is a clear risk that the military technology or equipment to be exported might be used in the commission of serious violations of international humanitarian law”¹⁹⁴.¹⁹⁵ The United Kingdom’s Secretary of State for International Trade rejected these accusations, affirming that the contested outcome was the result of the conduct of a thorough examination. It further explained that, since the government has access to a wider range of sources of information not available to CAAT, even if its conclusion diverged from the one established by CAAT, it was still rationally reached.¹⁹⁶ Additionally, the government argued that even if there are documented violations of international humanitarian law, as there is evidence of Saudi Arabia pursuing mitigation measures, criterion 2(c) doesn’t necessarily apply.¹⁹⁷

In 2017, the High Court dismissed the case brought by CAAT, supporting the Secretary of State’s arguments. More specifically, it rejected the claim that the available data wasn’t properly examined by the British government, asserting that it would be impractical to consider each reported incident singularly.¹⁹⁸ Furthermore, it added that the presence of civilian casualties doesn’t directly amount violations of international humanitarian law; therefore, Criterion 2(c) of *the EU Common Position* can’t be triggered. In its judgement, the High court relied on the qualitative difference between the risk assessment conducted by the government compared to an NGO.¹⁹⁹

In May 2018, CAAT obtained a permission to appeal after challenging the argument.²⁰⁰ On 20 June 2019, the Court of Appeal reversed the judgement reached at first-instance, establishing that the decision-making process adopted by the British government was irrational and unlawful.²⁰¹ As a matter of fact, the Secretary of State, by not verifying whether there was an historic pattern of international humanitarian law violations on the part of the coalition, could have never correctly assessed if there was a “clear risk” for breaches of international humanitarian law to occur.²⁰² Therefore, the judges ordered the

¹⁹⁴ Council Common Position 2008/944/CFSP, Art.2(2,c).

¹⁹⁵ Maletta, op. cit.

¹⁹⁶ Ibid.

¹⁹⁷ Ibid.

¹⁹⁸ Ferro, op. cit., p.525.

¹⁹⁹ Ibid.

²⁰⁰ Maletta, op. cit.

²⁰¹ Ferro, op. cit., p.526.

²⁰² Ibid.

Secretary of State to conduct the assessment again, following the correct legal approach. In the meantime, existing export licenses were suspended and the government was prohibited from granting new ones.²⁰³

On 7 July 2020, after being granted permission to appeal, the Secretary of State for International Trade issued a written statement to parliament declaring that the risk assessment had been lawfully reconducted.²⁰⁴ From this analysis, the government concluded that the reported incidents of potential violations of international humanitarian law did not demonstrate a pattern but were simply isolated incidents. As a result, the British government resumed issuing export licences.²⁰⁵

On 26 October 2020, CAAT challenged the government decision to renew arms export licences. The challenge contested the government's assessment that there had only been a "small number" of "possible violations" not establishing a "pattern" and therefore not giving rise to a "clear risk" of future violations.²⁰⁶ On 20 April 2021, the challenge was granted and the hearing for the second judicial review was held from 31 January 2023 to 2 February 2023. However, in its judgment, the court rejected CAAT's claim on all grounds.²⁰⁷

The British case illustrates a broader judicial tendency to exercise caution when reviewing government decisions on arms transfers.²⁰⁸ For instance, rather than analysing how the evidence was assessed and consequently, if the appropriate decision was made, the court focused on whether the relevant facts were considered.²⁰⁹ As a result, a very high threshold for judicial intervention is established; even when the legal norms may have been misapplied, the court will only intervene if it is clear that the outcome is irrational, based on a manifest error of appreciation or was made arbitrarily.²¹⁰ However, through

²⁰³ Ibid.

²⁰⁴ Campaign against Arms Trade, "CAAT's Legal Challenge," Campaign against Arms Trade, n.d., <https://caat.org.uk/homepage/stop-arming-saudi-arabia/caats-legal-challenge/>.

²⁰⁵ Ibid.

²⁰⁶ Ibid.

²⁰⁷ Ibid.

²⁰⁸ Ferro, op. cit., p.530.

²⁰⁹ Ferro, op. cit., p.531.

²¹⁰ Ibid.

this approach, the enforceability and effectiveness of the international legal framework governing arms transfers may be undermined.

Conclusion

This chapter has provided an overview of the arms transfers to members of the Saudi-led coalition, followed by a presentation of the reported violations of international humanitarian law resulting from their use. It then outlined the international legal framework governing arms transfers, most of which is triggered by the awareness or reasonable knowledge that such violations may occur. As many exporting states continue to authorise arms transfers despite reports of war crimes by the Saudi-led coalition, it may be inferred that the legal norms are not being fully upheld. The chapter concluded by examining two legal challenges brought in the United Kingdom and Italy, which questioned the legality of the continuation of arms exports to Saudi Arabia in light of the documented violations of international humanitarian law. Both cases confirmed the legality of the transfers, raising serious questions over the actual enforceability and effectiveness of the arms transfers regime. The next chapter will shift focus to the illicit flow of arms to the Houthis, examining the effectiveness of United Nations arms embargo and evaluating the legality of enforcement measures in relations to international humanitarian law.

Chapter 3: Arms transfers to the Houthi movement

The continuation of the civil war in Yemen is sustained by the ability of both parties to access to the means, such as arms and other military equipment, to keep on fighting. Since 2015, the Security Council has imposed an arms embargo against the Houthi movement. Despite this measure, the Houthi movement continues to receive arms in violation of international law. As any arms transfer to the Houthis is illegal from the start, this chapter seeks to investigate the effectiveness of the UN arms embargo, assessing the practical and legal challenges and controversies surrounding its implementation. The chapter will be structured as follows: section 3.1 will lay the foundations by defining what constitutes an arms embargo and specifying what the UN arms embargo imposed through *Resolution 2216* establishes. Section 3.2 will explore the networks of illicit arms trade that undermine the embargo. Finally, section 3.3 will examine the enforcement tool adopted by the Saudi-led coalition in attempt to enforce the embargo, focusing on the legal ambiguities surrounding these naval operations and the humanitarian concerns they raise.

3.1 UN arms embargo against the Houthi movement

Sanctions constitute a form of coercive and preventive measures against a state or non-state entity with the aim of safeguarding international peace and security. They do not involve the use of force and, when applied, their extent and severity must be proportionate to the gravity of the threats and breaches they are intended to tackle. Sanctions take different forms, including diplomatic, economic and military measures.²¹¹ Arms embargoes constitute a type of military sanction involving the restriction or overall prohibition of the sale, trade and supply of military equipment to targeted territories and actors.²¹² They are imposed on specific regions and on specific entities, such as states or non-state armed groups, where violations of international law and human rights have been reported, for the purpose of ending conflict or changing wrongful behaviour by limiting the targeted actor's military ability and capacity to use force.²¹³ Importantly, arms embargoes must also comply with international law, ensuring that they respect human

²¹¹ Tarazi Mohammed Sheikh, "The Effectiveness of Sanctions as a Tool for Resolving Armed Conflicts: An Analysis of Syria and Yemen," *Contemporary Challenges: The Global Crime, Justice and Security Journal* 4 (October 8, 2023), <https://doi.org/10.2218/ccj.v4.9113>.

²¹² Ibid.

²¹³ Judith Vorrath, "UN Arms Embargoes under Scrutiny: Obstacles and Options for an Effective Contribution to Conflict Resolution" (Stiftung Wissenschaft und Politik (SWP), German Institute for International and Security Affairs, 2024), https://www.swp-berlin.org/publications/products/research_papers/2024RP12_UNArmsEmbargoes_Web.pdf.

rights and do not negatively affect third parties.²¹⁴ Currently, arms embargoes are the most utilized form of sanction by the United Nations.²¹⁵ Within the United Nations, their implementation is regulated by chapter VII of the *UN Charter*. More specifically, article 41 of the *UN Charter* grants the Security Council the power to implement measures not involving the use of force to enforce its decisions.²¹⁶ Therefore, it has the authority to impose, change and lift binding arms embargoes. Once they enter into force, the compliance of neighbouring and exporting countries is very important.²¹⁷ Nonetheless, the obligation to stop and prevent the sale and trade of arms to the targeted entity extends to all the members of the organization.²¹⁸ The implementation and effectiveness of each embargo established by the Security Council are monitored by a specific sanctions committee. These committees are also created by the Security Council and are chaired by a non-permanent member.²¹⁹

In April 2015, through the adoption of *Resolution 2216*, the Security Council imposed an arms embargo against several listed individuals and their armed organizations active in Yemen, including members of the Houthi leadership and people associated with them.²²⁰ Since February 2022, the measure has been extended to target the Houthis as a group.²²¹ Through its implementation, the Security Council aimed at initiating peace negotiations and to prompt the Houthi movement to recognize the legitimacy of the internationally recognized Yemeni government, thereby also improving the grave humanitarian situation in Yemen.²²² Specifically, the arms embargo is established in paragraphs 14 to 17 of *Resolution 2216*, with paragraph 14 stating that “all Member States shall immediately take the necessary measures to prevent the direct or indirect supply, sale or transfer to, or for the benefit of Ali Abdullah Saleh, Abdullah Yahya Al Hakim, Abd Al-Khaliq Al-Huthi,

²¹⁴ Sheikh, op. cit., p.2.

²¹⁵ Vorrath, op. cit., p.7.

²¹⁶ “The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.” (Article 41 of the Charter of the United Nations, 1945).

²¹⁷ Vorrath, op. cit., p.8.

²¹⁸ Vorrath, op. cit., p.7.

²¹⁹ United Nations, “Sanctions,” United Nations, 2023, <https://main.un.org/securitycouncil/en/sanctions/information>.

²²⁰ David et al., op. cit., p.30.

²²¹ Vorrath, op. cit., p.18.

²²² Sheikh, op. cit., p.7.

and the individuals and entities designated by the Committee established pursuant to paragraph 19 of resolution 2140 (2014)”²²³. The subsequent paragraphs call upon all members states, especially neighbouring countries, to inspect cargo heading to Yemen within their territory if there is reasonable ground to believe that it is transporting items prohibited under the arms embargo.²²⁴ If prohibited items are found, they are authorized and required to seize and dispose of them.²²⁵ If a state performs an inspection, it is obliged to provide a written report stating the reasons, findings and level of cooperation related to the search. Moreover, if prohibited items are found, a follow up report must be submitted within thirty days.²²⁶ Paragraph 20 entrusts the sanctions committee established pursuant to paragraph 19 of *Resolution 2140* with various tasks related to the implementation of the embargo.²²⁷ These include monitoring its enforcement, requesting information on the actions taken by states to implement the measures contained in paragraph 14, assessing and taking the appropriate action in cases of alleged non-compliance with the measures and, if deemed necessary, extending the list of individuals and entities subject to the embargo.²²⁸ As the arms embargo is not subject to a specific time limitation, it remains in force until it is lifted by the Security Council.

However, despite the embargo, data reveals that new arms continue to reach the Houthis, rendering this trade illicit. The subsequent section will present evidence of these violations, specifying the actors involved and the routes through which the arms embargo is circumvented.

3.2 Illicit arms trade to the Houthi movement

Overtime, the Houthis have developed their own small-scale local production of weapons. Nonetheless, given its limited manufacturing capability, the Houthi movement still depends on imported arms and components.²²⁹ These weapons are trafficked into Yemen both by sea and by land. When they are smuggled through the sea route, they can reach

²²³ Security Council Resolution 2216 (14 April 2015) UN Doc S/RES/2216, para 14, available at: <https://documents.un.org/doc/undoc/gen/n15/103/72/pdf/n1510372.pdf>.

²²⁴ Ibid.

²²⁵ Ibid.

²²⁶ Ibid.

²²⁷ Security Council Resolution 2216 (14 April 2015) UN Doc S/RES/2216, para 20.

²²⁸ Ibid.

²²⁹ the Panel of Experts on Yemen, “Final Report of the Panel of Experts on Yemen Prepared in Accordance with Paragraph 3 of Resolution 2675 (2023),” *United Nations*, October 11, 2024, <https://docs.un.org/en/S/2024/731>.

Yemen either through the Arabian sea or the Red sea. In the Arabian sea, illicit arms transfers occur off the coast of Somalia or near the Sawdah Islands in the Gulf of Oman.²³⁰ The shipment usually occurs through stateless dhows which drop the weapons in secluded beaches on the Southern coast of Yemen, where they are then moved across the desert towards territories occupied by the Houthis.²³¹ From 2015 to 2022, sixteen illicit arms shipments were interdicted in the Arabian sea. However, military equipment intended for the Houthi movement continues to be trafficked through these routes. In its latest final report, the Panel of Experts in Yemen documented that, on 11 January 2024, the United States interdicted a stateless dhow off the coast of Somalia carrying various missile components destined for the Houthis.²³² Concerning the illicit arms trade through the Red sea, comparatively less data has been collected over the years on arms smuggling through this route, due to the naval presence of the Saudi-led coalition and the establishment of the United Nations Verification and Inspection Mechanism for Yemen (UNVIM), both of which will be discussed in depth in the subsequent section.²³³ However, evidence has been found of dual-use substances being trafficked through the Red Sea. Dual-use substances and items are materials that are intended for civilian use but that could also have military applications.²³⁴ In 2022, the Panel of Experts reported the seizure of two Jelbut dhows carrying chemical cargo by the US navy. The smuggled substance was labelled as urea, a type of agricultural fertilizer that can also be utilized to produce urea nitrate, a high explosive used in improvised explosive devices. Furthermore, after a more thorough investigation, it was discovered that one-third of the bags didn't contain urea but ammonium perchlorate, a missile fuel component.²³⁵ Dual-use items are also smuggled across Yemen's land border with Oman. These components are first legally imported into Oman and then transferred to Yemen through commercial trucking services. This is possible due to the fact that one of the only two border crossings currently open is accessible to commercial truck traffic.²³⁶ In addition to dual-use items, attempts have been

²³⁰ United Nations Office on Drugs and Crime, "Assessment of the Response to Illicit Weapons Trafficking in the Gulf of Aden and the Red Sea," *United Nations*, n.d., https://www.unodc.org/documents/CRIMJUST/Assessment_of_the_response_to_illicit_weapons_trafficking_in_the_Gulf_of_Aden_and_the_Red_Sea.pdf.

²³¹ Ibid.

²³² the Panel of Experts on Yemen, op. cit., p.21.

²³³ United Nations Office on Drugs and Crime, op. cit., p.11.

²³⁴ Ibid.

²³⁵ Ibid.

²³⁶ United Nations Office on Drugs and Crime, op. cit., p.12.

made to illicitly transfer weapons through the land route. As a matter of fact, since January 2023, various military equipment have been intercepted at the Shihan border post, a crossing point between Yemen and Oman.²³⁷ Once the cargo reaches Yemen, irrespective of whether the maritime or land route has been utilized, the materiel is transported across territories controlled by the internationally recognized government of Yemen to areas under Houthi control. This transfer is conducted by people affiliated with the Houthi movement whose contribution facilitates the overall operation.

Iran continues to be the primary source of illicit arms transfers to the Houthis. Numerous shipments of weapons originating from Iran have been intercepted along both maritime and ground routes. For example, the previously mentioned stateless dhow intercepted by the United States on 11 January 2024 had departed from Iran and its crew members included individuals linked to the Islamic Revolutionary Guard Corps. Moreover, the seized components presented similarities to Iranian-made ones.²³⁸ Reports by the Panel of Experts have consistently documented that many of the intercepted arms bear markings, serial numbers and stickers similar to those found on Iranian-made weapons, suggesting that Iran has been providing such arms to the Houthi movement. Additionally, given that a considerable amount of weapons produced by the Houthis possess characteristics resembling Iranian ones, it is likely that Iran has also been providing them with the technical knowledge required to assemble or replicate such arms locally.²³⁹ Furthermore, Saudi media has claimed that the maritime smuggling of Iranian weapons is conducted with the support of Lebanese Hezbollah. While there is no solid evidence of such accusation, it must be noted that Hezbollah is reported to have provided the Houthi movement training and operational assistance.²⁴⁰ On the matter, the Panel of Experts on Yemen has documented that Houthi combatants have been receiving tactical and technical training in Lebanon, Iran and Iraq.²⁴¹ As the UN arms embargo against the Houthis not only prohibits the direct provision of weapons but also obliges states to take measures to prevent the Houthis from obtaining such arms, the UN panel experts report on Yemen concluded in 2018 that Iran had violated the arms embargo. However, despite this finding,

²³⁷ the Panel of Experts on Yemen, op. cit., p.23.

²³⁸ the Panel of Experts on Yemen, op. cit., p.21.

²³⁹ the Panel of Experts on Yemen, op. cit., p.17.

²⁴⁰ Alaraby and Müller, op. cit., p.4.

²⁴¹ the Panel of Experts on Yemen, op. cit., p.20.

no resolution was adopted by the Security Council pressuring Iran to comply with the embargo due to Russia's veto.²⁴²

Military equipment sent to Saudi Arabia and other members of the Saudi-led coalition is often subsequently airdropped by the coalition itself in Yemen in support of the internationally recognized government of Yemen. However, as the necessary measures to secure the storage and ensure accountability aren't implemented, once in Yemen, the arms often fall in the wrong hands as they are locally captured or diverted.²⁴³ Therefore, by contributing to the spread of arms within the country, the Saudi-led Coalition and the legitimate government of Yemen have inadvertently played a role in the Houthi movement's armament. Furthermore, cases of Yemeni Resistance Forces selling their weapons for money have also been documented.²⁴⁴ For this reason, in the final report published on 16 January 2016, the Panel of Experts on Yemen recommended to the Security Council to mandate, in its next resolution, that the sale and transfer of military equipment to the security forces under the control of the legitimate Government of Yemen is to be authorized only after notification to the sanctions committee.²⁴⁵ However, no such adjustment was ever made.

In addition, it must be noted that a very large illicit market of arms is present in Yemen, further facilitating the flow of weapons towards the Houthi movement. Within Houthi-controlled territories, the illegal sales of arms is controlled and organized by the Houthis themselves; Houthi leaders work with arms dealers and, in some cases, they operate the shop themselves, also generating revenue.²⁴⁶

The existence of the arms embargo against the Houthis renders any type of arms trade with such movement illegal. Therefore, all the data and evidence presented in this section demonstrate that arms are being illegally trafficked to the Houthis, breaching the embargo. The volume and range of military equipment obtained by the Houthis highlight the ease with which the Houthi movement has been able to bypass the arms embargo

²⁴² Alaraby and Müller, op. cit., p.4.

²⁴³ the Panel of Experts on Yemen, "Final Report of the Panel of Experts on Yemen Prepared in Accordance with Paragraph 5 of Resolution 2204 (2015)," *United Nations*, January 16, 2016, <https://docs.un.org/en/S/2018/192>.

²⁴⁴ Ibid.

²⁴⁵ Ibid.

²⁴⁶ the Panel of Experts on Yemen, *Final Report* (2024), p.23.

imposed, undermining its effectiveness. Furthermore, the inability of the Security Council to adopt measures to enforce compliance, despite evidence of these violations, raises further questions on its enforceability.

3.3 Enforcement Tools: the Saudi-led coalition's naval operation

The military operation *Decisive Storm*, commenced by the Saudi-led coalition in March 2015, also included naval operations with the aim of countering the flow of arms to the Houthi movement. These operations consist in the halt and inspection of vessels in a compulsory manner in order to get permission to enter in Yemen.²⁴⁷ After the adoption of *Resolution 2216* by the Security Council, the Saudi-led coalition utilized the arms embargo as an additional legal justification for its maritime measures, framing them as constituting the “necessary measures to prevent the direct or indirect supply” of arms to the Houthi movement.²⁴⁸ However, the delays in shipments of essential supplies, such as food, medicine and fuel, caused by these controls further worsened the already dire humanitarian situation in Yemen. For this reason, its legality must be assessed in relation to international humanitarian law. Before conducting such examination, the legal ambiguity surrounding the maritime operation's legal definition must be addressed in order to determine which legal framework applies to it.

3.3.1 Characterization as a “naval blockade”

The maritime interdiction imposed by the Saudi-led coalition has often been referred to as a “naval blockade”.²⁴⁹ Under international, blockades are regulated by a specific legal regime of laws of naval warfare. Such laws can only apply during International Armed Conflicts. As the Yemen civil war is legally characterized as a Non-International Armed Conflict, the potential definition of the naval operation conducted by the Saudi-led coalition as a blockade is problematic from the start.²⁵⁰ In such scenario, not only does no party to the conflict have the authority to establish or enforce a blockade *stricto sensu*, but even if this were the case, any violation of the law of blockade couldn't lead to legal accountability as, since that such legal regime doesn't formally apply, it cannot be

²⁴⁷ Martin D. Fink, “Naval Blockade and the Humanitarian Crisis in Yemen,” *Netherlands International Law Review* 64, no. 2 (July 2017): 291–307, <https://doi.org/10.1007/s40802-017-0092-3>.

²⁴⁸ Ian Williams and Shaan Shaikh, “The Missile War in Yemen,” *Center for Strategic & International Studies* (Center for Strategic & International Studies, June 9, 2020), <https://www.csis.org/analysis/missile-war-yemen>.

²⁴⁹ Fink, *op. cit.*, p.292.

²⁵⁰ Fink, *op. cit.*, p.296.

breached.²⁵¹ In order to determine whether a blockade *stricto sensu* has been established, it is necessary to first understand what this concept entails.

The body of law regulating blockades is rooted in international customary law. Overtime, attempts have been made to codify these rules, beginning with *the Declaration of London (1909)*, but all ultimately failed. As a result, no official legal definition of blockade exists.²⁵² Nonetheless, it is generally recognized that when a naval blockade is in place, all vessels from whichever nation are prohibited from entering and exiting the blockaded port or coast.²⁵³ Such restriction isn't linked to the cargo transported but to the destination of the vessel. A blockade is only breached if there is intent to deliver cargo to a blockaded area, regardless of the nature of the shipment.²⁵⁴ Furthermore, for a naval operation to be considered a lawful blockade, several conditions must be met. Firstly, it must be established by a competent authority, such as a belligerent state or the Security Council acting under the powers of Article 42 of the *UN Charter*. Secondly, the blockade must be formally declared and notified; in order for such to be done properly the blockading party must announce that a blockade is being enforced, specifying the date it begins, the area under blockade and the timeframe during which neutral vessels are allowed to leave the blockaded territory. Finally, the blockade must be effective and impartially apply to all ships.²⁵⁵ The only two exceptions to this rule are humanitarian aid shipments and neutral warships.

The closure of Yemen's waters was declared on 10 April 2015 by the foreign minister of Yemen Riyadh Yassin. In his statement, he also announced that such decision was to be implemented immediately by the Saudi-led coalition.²⁵⁶ However, no time was given for neutral vessels to come out and the overall duration of the operation was not specified. Furthermore, it must be noted that the minister never referred to such ban as a "blockade".²⁵⁷ On the contrary, in 2016, the coalition spokesman Major General Ahmed

²⁵¹ Fink, *op. cit.*, p.297.

²⁵² Phillip J Drew, "Blockade? A Legal Assessment of the Maritime Interdiction of Yemen's Ports," *Journal of Conflict and Security Law* 24, no. 1 (2019): 35–52, <https://doi.org/10.1093/jcsl/krz001>.

²⁵³ Fink, *op. cit.*, p.298.

²⁵⁴ *Ibid.*

²⁵⁵ London Declaration concerning the Laws of Naval War (adopted 26 February 1909, not entered into force), Arts. 1–10. Available at: <https://ihl-databases.icrc.org/en/ihl-treaties/london-decl-1909>.

²⁵⁶ Drew, *op. cit.*, p.43.

²⁵⁷ *Ibid.*

Assiri stated that the naval operation wasn't blockade, as that would entail denying all entry and exit from the country. Instead, the maritime interdiction conducted by the Saudi-led coalition was more of an inspection procedure aimed at controlling the access in Yemen to prevent arms from reaching the Houthis.²⁵⁸ In addition, no action was taken to fulfil the notification requirement.²⁵⁹ Since none of the necessary conditions for classifying the operation as a blockade *stricto sensu* were met, it can be concluded that the naval enforcement measures implemented by the Saudi-led coalition don't amount to a blockade.

3.3.2 Other possible legal bases

As it was established in the previous sub-section, the naval operation conducted by the Saudi-led coalition isn't governed by the law of naval warfare. Therefore, its compliance with alternative legal bases must be assessed.

The legal framework governing all sea and maritime activities is established by the *United Nations Convention on the Law of the Sea (UNCLOS)*. Under this international treaty, sovereign states have full authority over their territorial waters. Furthermore, article 25(3) of *UNCLOS* establishes that, when there is a threat to national security, sovereign states may also temporarily suspend innocent passage of foreign vessels.²⁶⁰ Therefore, if the law of the sea is applied in this context, the naval operations conducted by the Saudi-led coalition within Yemen's territorial waters and upon the request of the Yemeni government are generally considered to be compliant with its provisions.²⁶¹

Given that *Resolution 2216*, in establishing the arms embargo, calls upon member states to enforce it within their territory, it may be interpreted as providing a possible legal basis for the Saudi-led coalition's naval operations.²⁶² However, the resolution doesn't explicitly call for the establishment of maritime enforcement measures. Even if it were to be read as implicitly allowing such operations, these actions would still have to comply with the international law of the sea. Under this legal framework, inspection measures may be lawfully carried out within a state's territorial waters, but become more legally

²⁵⁸ Fink, op. cit., p.300.

²⁵⁹ Drew, op. cit., p.44.

²⁶⁰ United Nations Convention on the Law of the Sea, Art. 25(3). Available at: https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf.

²⁶¹ Fink, op. cit., p.301.

²⁶² Ibid.

questionable on the high seas, where the authority over a vessel rests upon the flag state. Consequently, other countries aren't entitled stop or search foreign vessels without the flag state's consent.²⁶³ In the case at hand, as long as the naval operations conducted by the Saudi-led coalition as an enforcement tool for the arms embargo remains contained within Yemen's territorial waters, it both supports *Resolution 2216* and complies with the international law of the sea. However, were it to expand on the high sea, this wouldn't be the case anymore.²⁶⁴

3.3.3 Humanitarian Impact

The delay and overall prevention of vessels entering in Yemen, caused by the naval operations conducted by the Saudi-led coalition, have drastically worsen the already grave humanitarian situation faced by the Yemeni population. Even before the eruption of the civil war, Yemen heavily relied on food imports; 80-90% of the food, medicine and fuel needed by the population was imported.²⁶⁵ Now more than ever, the Yemeni population is in need of humanitarian assistance. However, since the establishment of the coalition's naval operations, basic commodities are at shortage as the arrival of humanitarian aid is getting delayed. As a result, many civilians are suffering from famine, with 14.1 million people being food insecure and 7.6 million being severely food insecure. Furthermore, only 1% of the fuel needed in a month is actually shipped to Yemen, not allowing energy and water infrastructures to properly run. Because of this, in 2018 it was estimated that almost 18 million people didn't have access to clean water or adequate sanitation, rendering them more vulnerable to diseases.²⁶⁶ As a result, in the same year, around 500,000 people were suspected of having contracted cholera.²⁶⁷ In addition, as the flow of medicine is also restricted, it is estimated that around 16 million people don't have access to the necessary healthcare.²⁶⁸

²⁶³ Fink, op. cit., p.302.

²⁶⁴ Fink, op. cit., p.303.

²⁶⁵ Human Rights Watch, "Yemen: Coalition Blockade Imperils Civilians," *Human Rights Watch*, December 7, 2017, <https://www.hrw.org/news/2017/12/07/yemen-coalition-blockade-imperils-civilians>.

²⁶⁶ Ruggiero, op. cit., p.505.

²⁶⁷ Ibid.

²⁶⁸ European Centre for Democracy and Human Rights, "The Impact of the Saudi-Led Coalition Blockade on Human Rights in Yemen - ECDHR," *European Centre for Democracy and Human Rights*, November 25, 2024, <https://www.ecdhr.org/the-impact-of-the-saudi-led-coalition-blockade-on-human-rights-in-yemen/>.

Traditionally, the law of blockade only allowed humanitarian assistance when its passing was recognized as not affecting the effectiveness of the blockade.²⁶⁹ However, with the *San Remo Manual*, a development in the protection of civilian populations was made; section 102 sets out that if the sole purpose of a blockade is identified as being the starvation of the population or the denial of access of other necessary things for its survival, the blockade is prohibited.²⁷⁰

The humanitarian consequences of the coalition's naval operations are often discussed in relation to such rules. However, since the enforcement measures adopted by the Saudi-led coalition aren't formally defined as a "blockade", these regulations don't apply. Nevertheless, these operations must still comply with international humanitarian law rules applicable to NIACs. For instance, concerning starvation, article 14 of the *Additional Protocol Two*, to which Yemen is a member state of, affirms that starvation cannot be used as a tool of warfare.²⁷¹ Therefore, it is prohibited "to attack, destroy, remove or render useless, for that purpose, objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works"²⁷². Furthermore, article 18 of the *Additional Protocol Two* establishes that relief societies may provide their services to civilians during armed conflicts. Specifically, if the "civilian population is suffering undue hardship owing to a lack of the supplies essential for its survival, such as foodstuffs and medical supplies, relief actions for the civilian population which are of an exclusively humanitarian and impartial nature and which are conducted without any adverse distinction shall be undertaken"²⁷³. During non-international armed conflicts, customary international law provides that the free passage of relief supplies must be allowed.²⁷⁴ Parties to the conflict must give their consent and can set certain rules for how humanitarian aid is delivered. Nonetheless, arbitrary refusal, delays or unreasonable restrictions on humanitarian action are considered violations of international law.²⁷⁵ The principle of proportionality and distinction, mentioned in the

²⁶⁹ Fink, op. cit., p.304.

²⁷⁰ Ibid.

²⁷¹ Drew, op. cit., p.50.

²⁷² Protocol II Additional to the Geneva Conventions, Art. 14.

²⁷³ Protocol II Additional to the Geneva Conventions, Art. 18.

²⁷⁴ ICRC Customary IHL Database, rule 55. Available at: <https://ihl-databases.icrc.org/en/customary-ihl>.

²⁷⁵ International Commission of Jurists, op. cit., p.18.

previous chapter, must also be complied with in this scenario by the party enforcing the naval measures. Given that the harm suffered by the Yemeni population exceeds any apparent military benefit, the naval operations enforced by the Saudi-led coalition are unlawfully disproportionate.²⁷⁶ Moreover, between 4 and 22 November 2017, all entry points into Yemen were closed without distinguishing between civilians and combatants, thereby also breaching the principle of distinction.²⁷⁷ In addition, under human rights law, the right to food, health and water must be respected by all parties to the conflict. Preventing the delivery of such supplies to the civilian population constitutes a violation of such rights.²⁷⁸ Finally, *Resolution 2216*, which serves as one of the legal bases for the implementation of the naval measures, also establishes that all parties must “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”²⁷⁹. Therefore, even if the naval operations enforce the arms embargo set up by the resolution, by obstructing the delivery of humanitarian assistance, they are simultaneously in breach of it.²⁸⁰

To address the situation, the United Nations Secretariat, upon request of the Yemeni government, created the United Nations Verification and Inspection Mission for Yemen (UNVIM).²⁸¹ The purpose of this mechanism was to ameliorate the humanitarian situation in Yemen by facilitating the free-flow of commercial items through a clearance service provided for vessels conducting shipments outside of the Yemeni government’s control. In order to take advantage of such service, vessels must notify UNVIM which then either clears or flags the ships for inspection. This mechanism seems to have slightly improved the humanitarian situation caused by the naval operation conducted by the Saudi-led

²⁷⁶ Human Rights Watch, op. cit.

²⁷⁷ International Commission of Jurists, op. cit., p.19.

²⁷⁸ Ibid.

²⁷⁹ Security Council Resolution 2216 (14 April 2015) UN Doc S/RES/2216, para 9.

²⁸⁰ International Commission of Jurists, op. cit., p.18.

²⁸¹ Security Council Report, “In Hindsight: The Story of the UN Verification and Inspection Mechanism in Yemen,” *Security Council Report*, September 1, 2016, https://www.securitycouncilreport.org/monthly-forecast/2016-09/the_story_of_the_un_verification_and_inspection_mechanism_in_yemen.php.

coalition as more food is actually delivered to Yemen.²⁸² However, its effectiveness in regards to the enforcement of the embargo comes less.²⁸³

Nonetheless, due to the lack of accountability, which in turn is caused by the absence of accountability mechanisms to monitor and address such violations, clear violations of international humanitarian law and human rights still persist²⁸⁴

Conclusion

As an arms embargo has been imposed against the Houthis, any arms transfer directed towards them is inherently illegal. This chapter, by examining the routes and actors through which persistent breaches of the arms embargo against the Houthi movement are made, sheds light on the inability of the Security Council to effectively respond to such violations and, consequently, on the embargo's limited effectiveness, raising further concerns on this tool's ability to concretely restrict arms trade and bring to the resolution of armed conflict. The chapter also analysed the Saudi-led coalition's naval operations, carried out as an enforcement mechanism to prevent illicit arms transfers to the Houthis. While the aim of these measures is to enforce the arms embargo and prevent arms from reaching the Houthis, they have resulted in severe humanitarian consequences in violation of international humanitarian law, worsening the already grave humanitarian situation faced by the Yemeni population. The legal ambiguity surrounding the characterization of these operations, combined with their humanitarian impact and lack of accountability, expose broader limitations and legal controversies surrounding such enforcement tools.

²⁸² Ibid.

²⁸³ Patrick Wintour, "US Seeks Stronger UN Powers to Intercept Red Sea Shipments to Yemen's Houthis," *The Guardian*, December 16, 2024, <https://www.theguardian.com/world/2024/dec/16/red-sea-shipments-yemen-houthis-us-un-powers>.

²⁸⁴ European Centre for Democracy and Human Rights, op. cit.

Conclusion

Provided that the duration and intensity of the Yemen civil war have been sustained by the large quantity of arms present in the country and that continue to be transferred to the warring parties, this thesis set out to analyse the legality of arms transfers in this context. The analysis focused on both arms transfers to the Saudi-led coalition and to the Houthi movement. In the case of the arms transfers to the Saudi-led coalition, it considered the violations of international humanitarian law committed with the use of transferred arms, in the case of the Houthi movement, the assessment centred on the legal implications of the United Nations arms embargo in place. Through this examination the thesis went even further, assessing the enforceability and effectiveness of the international legal framework governing arms transfers. As most of the norms governing arms transfers are triggered by the awareness or reasonable knowledge that the receiving state is or could be committing violations of international humanitarian law, the ongoing arms transfers to the Saudi-led coalition, in light of the documented violations of international humanitarian law, appear to disregard such rules. On the other hand, the continued flow of arms to the Houthis, despite the existence of an arms embargo, highlight the ineffectiveness of this enforcement tool. Furthermore, the naval operations conducted by the Saudi-led coalition to implement the embargo have also raised legal and humanitarian concerns given their humanitarian impact. Through this analysis, the thesis has demonstrated that there are some clear legal gaps and enforcement challenges surrounding the international legal framework governing arms transfers, undermining the overall effectiveness of international arms control in ongoing conflicts. Addressing these issues is essential to ensure that the international legal framework governing arms transfers is effective in controlling arms flow, contributing to the resolution of conflicts rather than their continuation.

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