

**INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES**

[ISSN 2581-5369]

Volume 4 | Issue 2

2021

© 2021 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com>)

This Article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in International Journal of Law Management & Humanities after due review.

In case of **any suggestion or complaint**, please contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication at **International Journal of Law Management & Humanities**, kindly email your Manuscript at submission@ijlmh.com.

Critical Legal Analysis of Actions of Saudi Led- Coalition in Yemen under International Law

ADHIRAI DEVI. S¹

ABSTRACT

This paper attempts to critically analyse the legality of use of force undertaken by the Saudi led Coalition in Yemen who were invited by the President Mr.Hadi in order to constrain the actions of Houthis. In pursuance of restoring peace in Yemen, the Saudi led Coalition used certain methods of warfare which, though alleged to be valid and legal under International law, the usage of such methods brought a cobra effect wherein it contributed more than any other force used by Non-State armed groups costing many lives of Yemeni civilians and the worst humanitarian crisis. The paper thus focuses on evaluating the legality of actions undertaken by the Saudi led Coalition under International Humanitarian Law and International Human Rights Law.

Keywords: Aggression, legality, peace, distinction, proportionality, air-strike, blockade, military objective, military advantage, violence.

I. INTRODUCTION

“A Kingdom is that which continues to be free from excessive Starvation, irremediable epidemics and destructive foes”²

As the Kural sets the criteria for a good kingdom to be called as, Yemen does not fulfil any of the requirements. As Yemen’s economy is highly depended on imports and humanitarian assistance, any attempt to hinder could lead a devastating consequence on the Yemeni people. When such is the case, the native tribesmen of Yemen (Houthis) and the alleged legal Yemeni government under Mr.Hadi and the Saudi led Coalition had fallen deaf ears to the cry of the Yemeni people. Adding fuel to the fire, the so called process of restoration of peace under the auspices of United Nations which authorised Saudi led Coalition, caused a devastating effects on Yemeni Civilians and the consequent world’s worst humanitarian crisis. These means and measures of warfare undertaken by Saudi led Coalition, whether they are severely violating the principles of Humanitarian Law such as principle of distinction, proportionality and

¹ Author is a LL.M student at Department of International Law, School of Excellence in Law, TNDALU, Chennai, India.

² Couplet 734 of Thirukural.

unnecessary suffering is dealt under this paper. Recently the Saudi led Coalition kept calling for peace talk with Houthis and other Non-State armed groups. Does this change in policy strategy of Saudi led Coalition would wash off its past liability, if any, for war crimes? This will remain as a question till the question for equality of sovereign states is answered.

II. LEGALITY OF ACTIONS OF SAUDI – LED COALITION IN YEMEN UNDER INTERNATIONAL LAW

The Arab Spring and The Failure of Un-Sponsored Transition:

When the ‘Arab Spring’³ spilled over the Middle East by 2011, Yemen was no exception. The then President Ali Abdullah Saleh was forced to hand over power to his deputy Abdrabbuh Mansour Hadi to be the interim President in **exchange for immunity from prosecution**, under Gulf Co-operation Council Brokered Agreement for a two year period and to look after drafting of a new Constitution.⁴ This Agreement on which the President Hadi’s power initially based was not in line with General Principle “*nulla poena sine lege*”⁵ and *contra bonos mores*⁶ neither Saleh was prosecuted by International Criminal Court⁷. The subsequent single candidate election in 2012 on which Hadi’s power as a president was based was also unconstitutional⁸. Meanwhile, UN sponsored National Dialogue Conference convened delegates from all factions of Yemen⁹ for power sharing, which ended fruitless¹⁰. The government under President Hadi which had not represented the immediate requirements¹¹ of Yemen, proved to be a failure. On the other side, The Houthis (Shiite Rebels- Tribesmen) and the supporters of former President Saleh organised together to revolt against Mr. Hadi’s Government¹² and thereby capturing

³ Alasdair McKay & Clive Jones, *The Arab Spring of Discontent, Yemen and the Arab Spring Moving Beyond the Tribal Order*, 2011, pp18-24.

⁴ BBC News, ‘Yemen’s President Ali Abdullah Saleh cedes power, 27th February, 2012. See also, United Nations Department Of Political Affairs (2011), United Nations Peacekeeper, ‘Agreement on the implementation Mechanism for the transition process in Yemen in accordance with the initiative of the GCC.

⁵ Shahram Dana, *Beyond Retroactivity to Realizing Justice: A Theory On The Principle Of Legality In International Criminal Law Sentencing*, *The Journal of Criminal Law & Criminology*, Vol 99, 2009.

⁶ Treaties contrary to the morals or ethics of the international community are invalid- “Verdross”, Omar M. Dajani, *Contractualism in the Law of Treaties*, *Michigan Journal of International Law*, Vol 34, Issue 1, 2012, p32.

⁷ Brandon Gatto, *Nobel peace laureate urges ICC investigation into former Yemen regime*, *JURIST*, November 29, 2011.

⁸ Article 106 (d) of the, Chapter II, The First Branch, The Presidency of The Republic, The Constitution of the Republic of Yemen, Feb 20, 2001.

⁹ The Houthis in North East(excluded from power sharing), Mr. Saleh’s supporters (The GPC & JMP), The North-South Division with US and Saudi Backing North and the USSR backing South (*Al-Hirak*), The terrorists organisation Al-Qaeda in the Arabian Peninsula in the South and east(Excluded from power sharing), , The Ahmars, Ali Mohsen.

¹⁰ Kali Robinson, *Yemen’s Tragedy: War, Stalemate, and Suffering*, Council on Foreign Relations.

¹¹ Unemployment soared, Shortages of food, water and basic goods, the secessionist sentiment in the South Yemen, cut in fuel subsidies; *Britannica*, ‘Transfer of power to Hadi’; www.britannica.com

¹² Yemen’s Saleh Keeps Friends and foe guessing after skirmish with Houthi allies, September 6, 2017, reuters.com

Capital Sana in 2015, which forced President Hadi to resign¹³. President Hadi then reached Aden and self-proclaimed him to be the legitimate President of Yemen¹⁴. He then exiled to Oman and then to Saudi Arabia.

The capture of Capital Sana by Houthis was illegitimate on one hand and the base of Hadi's presidential power lacked legitimacy on the other¹⁵. The UNSC Resolution¹⁶ provided for continuing of reforms by Armed forces and Mr. Hadi's period of presidency till a new President was elected under the Draft New Constitution. Also, The UNSC Resolution¹⁷ against the Houthis' actions called for a New Constitution and a new electoral system for Yemen which implied the mandate of the speedy transition in order to end the authority of President Hadi after the fixed transitional period¹⁸ and called for Non-Interference by the external forces for peaceful transition process initiated by GCC to establish a stable Government.

The Saudi-Led Coalition

The Legitimacy of the Use of force and its extent: A coalition led by Saudi Arabia¹⁹ had launched air strikes²⁰ against (*Zaydi Shiites*) Houthi rebels in Yemen, saying 'it is defending the legitimate government'. Article 2(4) of the United Nations Charter provides, "All Members of the Organisation shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State". However, The Charter is not clear in its words regarding the complete prohibition of the use of force, as it is allowed in certain cases such as to prevent Aggression^{21,22} and in case of Right to Self-Defence²³. The alleged legal authority of the actions (use of force), of Saudi led Coalition came from the Invitation Agreement given by The President Hadi to Co-operate and act in self-defence in constraining the Houthis and other opposition militias²⁴ In the absence of such an agreement

¹³ How Yemen's Capital Sanaa was Seized by Houthi rebels, 27th September, 2014, BBC NEWS.

¹⁴ Yemen conflict: Exiled President Hadi Returns to Aden, 17th November, 2015, BBC NEWS.

¹⁵ OECD, "The State's Legitimacy in Fragile Situations, Unpacking Complexity", Series: Conflict and fragility, ISSN 2074-3637, para 2, p9.

¹⁶ UNSC Res 2140 (2014), United Nations Security Council, 26th Feb, 2014.

¹⁷ UNSC Res 2201 (2015), United Nations, Meetings Coverage and Press Release, 15th Feb, 2015.

¹⁸ 'However, his period was extended by one year, not by the mandate of GCC, but by the internal political factions' which Houthis denied; Mohamed Ghobari, Yemeni President's term extended, Shi'ite Muslim leader killed, REUTERS, January 21, 2014.

¹⁹ The coalition includes Bahrain, Egypt, Jordan, Kuwait, Morocco, Qatar(till 2017), Sudan and the United Arab Emirates.

²⁰ "Operation Storm of Resolve" was launched by the Coalition. BBC, 'Saudi Arabia launches Air Strikes in Yemen', 26th March, 2015.

²¹ Article 39 of The UN Charter provides, Security Council to determine whether threat of peace or breach of peace or Aggression and to take (collective) measures appropriately.

²² GA Res. 3314 (XXIX), Dec. 14, 1974 29th Sess. Supp.31, p147.

²³ Article 51 of the UN charter, "individual or collective self-defence of a State". But this right is subject to Article 39 of the UN charter.

²⁴ The letter dated 24th March, 2015 from the Permanent Representative of Yemen to the United Nations; UNSC Resolution 2216 (2015).

or acting in contravention of that agreement, the use of force by the Saudi led Coalition on Yemen would amount to Aggression²⁵. The terms “to protect Yemen people from Houthis Aggression” in the agreement serves as the limitation for the measures to be undertaken by the Saudi led coalition. Attacking schools, hospitals and other civilian institutions are acts in clear contravention of the Agreements’ significant limitation provision²⁶ which amounts to violation of *Pacta sunt servanda*²⁷ and Acts of Aggression directed towards civilians is in violation of jus cogen norm under International Humanitarian Law²⁸.

According to the definition of Aggression, only a ‘state’ is prohibited from committing aggressive acts²⁹. However, The Security Council has the overriding power to determine a particular action as Aggression³⁰. The Amendment to the definition of the crime of Aggression in 2010 missed out the opportunity to include Non-State Actors to hold accountable for their use of force³¹. On this basis whether the acts committed by Houthis(NSA) could be construed as Aggression as stated in the invitation Agreement to the Saudi led Coalition, provided no such mention in UNSC Res 2216/2015 except for acceptance of the invitation agreement, to be answered. If Iran’s backing of Houthis³², as alleged by the Saudi-led Coalition, is established, then the acts committed by Houthis would amount to Aggression³³. The Terms “in accordance with the right to self-defence” denotes for the actions to be taken in Collective Self-Defence³⁴ in the agreement. The actions taken in self-defence should be evaluated by the test of ‘Necessity and Proportionality’³⁵. Whether actions of ‘self-defence’ could also be undertaken against the Non-State Actors such as Houthis and other terrorists organisations? The UNSC Res 1368³⁶

²⁵ Article 3(e) of the GA Res 3314 (XXIX).S

²⁶ World Report, 2019, ‘Yemen Events of 2019’.

²⁷ Article 26 of the VCLT, 1969.

²⁸ The Prohibition of Hostilities directed at civilian population in an armed conflict is a jus cogen norm, Report of the Study Group on Fragmentation of International Law, Peremptory norms of General International Law, Chapter V, ILC.

²⁹ Article 1 of the Definition of Aggression, GA Res 3314 (XXIX), 1974.

³⁰ Article 4 of the Definition of Aggression, GA Res 3314 (XXIX), 1974.

³¹ Rome Statute Amendment, Article 8(1), 2010; Steve Beytenbrod, ‘Defining Aggression: An Opportunity to Curtail the Criminal Activities of Non-State Actors’, Brooklyn Journal of International Law, Vol 36, Issue 2, Article 6, 2011.

³² UN Report, Panel of Experts tasked with monitoring an Arms Embargo on Yemen, 1st Feb, 2020.

³³ Article 3(g) of the Definition of Aggression, GA Res 3314 (1974); See also Nicaragua Case.

³⁴ Article 51 of the UN Charter; ‘Monroe Doctrine’ of Latin America, 1823 and the subsequent Declaration 1940, which states “any act of an non-American State directed against the political independence, sovereignty of an American State to be considered as an act of aggression against all the signatories”. Here in the Hadi’s invitation agreement “The Charter of the League of Arab States and The Treaty on Joint Defence” was invoked to do Collective Self-Defence.

³⁵ ‘Caroline Doctrine’, Timothy Kearley, “Sinking the Caroline: Why the Caroline Doctrine’s Restrictions on Self-Defence Should Not be Regarded as Customary International Law”, San Diego International Law Journal, p 484.

³⁶ September 12, 2001.

and the UNSC Res 1373³⁷ which were adopted under Chapter VII of the UN Charter and the subsequent State Practice³⁸ gives authority to act under Collective self-defence against Non-State Armed groups. On this basis, the undertaking of the Saudi led coalition to collectively defence against the acts of the Houthis and terrorist groups like Al-Qaeda was in line with International Law. However, the proportionality of those acts and the time period in which it could be undertaken lacked legitimacy³⁹.

Article 51 of the UN Charter could only be invoked in case of “Armed Conflict”. Based upon the nature of confrontation and the parties involved, the armed conflict between Houthis and the Saudi led Coalition is in the nature of “Non-International Armed Conflict”⁴⁰ or “Internationalized Armed Conflict”⁴¹, albeit the Houthi rebels conducted extraterritorial incursions on the territory of Saudi Arabia⁴².

Methods and Means of Warfare:

There are no means and methods of warfare expressly stated in the current treaty IHL⁴³ which governs Non –International Armed Conflicts. This is because the intentional avoidance of the Drafters not to provide any level of legitimacy on the part of the insurgents or other non-state armed groups⁴⁴. On the basis of *the principle of equality of belligerents* which governs any Armed conflict⁴⁵, it is equally binding on the State Actors who are parties to the Non-International Armed Conflict irrespective of the rationale behind their usage of force⁴⁶.

Therefore, the application of warfare methods and means by State Actors in Non-International Armed Conflict cannot be afforded any legitimacy. What if the State Actors resort to such warfare methods in Non-International Armed Conflict? The Principles of International

³⁷ September 28, 2001.

³⁸ US began ‘Operation Enduring Freedom’ against Al-Qaeda based in Afghanistan as a means of Self-Defence, October 7, 2001

³⁹ Right to collective self-defence is unaffected until the Security Council has taken the effective action. When the measures taken by Security Council prove inadequate, the Right under Article 51 will continue for unlimited duration, S.K Verma, “An Introduction to Public International Law”. 3rd Edition, Sathyam Law International, p 543.

⁴⁰ “Protracted armed confrontations occurring between the Governmental armed forces and the forces of one or more armed groups, or between such groups arising on the territory of a High Contracting Party. The Armed confrontation must reach a minimum level of intensity and the parties involved in the conflict must show a minimum of organisation”, ICRC, How is the Term “Armed Conflict” defined in International Humanitarian Law, Opinion Paper, March, 2008.

⁴¹ Armed Conflicts subject to foreign intervention are a special form of conflict less accurately called as “Internationalised Armed Conflict”. Nils Melzer, International Humanitarian Law A Comprehensive Introduction, ICRC, 2016, pp112-113.

⁴² Aljazeera, “Houthi ballistic missiles target Saudi Arabia”, 16th March, 2021.

⁴³ Common Article 3 of Geneva Convention I-IV, 1949 and the Additional Protocol II, 1977.

⁴⁴ Nils Melzer coordinated by Etienne Kuster, International Humanitarian Law A Comprehensive Introduction, ICRC, 2016, p 125.

⁴⁵ *Ebid.*, p 17

⁴⁶ Principle of Non-Reciprocity, Geneva Convention I-IV, Common Article 1.

Humanitarian Law and the International Human Rights Law applies irrespective of whether the means and methods of force used by the parties are legitimate or not⁴⁷⁴⁸. In the present scenario, Saudi led Coalition had applied ‘Aerial Strikes’ and ‘Naval Blockade’ as means and methods against Houthis and Al-Qaeda on the Arabian Peninsula (AQAP) on the territory of Yemen.

The Aerial Warfare conducted by Saudi led Coalition: Any method of warfare would be subject to the Principle of Distinction⁴⁹, the Principle of Proportionality⁵⁰ and the Principle of Unnecessary suffering⁵¹⁵². There are no proper binding⁵³ regulations with specific reference to air warfare⁵⁴ as such in promotion of these principles⁵⁵. On the face of its introduction as ‘Aerial Balloons’, the Hague Peace Conference, 1899 prohibited the usage of such Balloons on the basis that it caused indiscriminate damages and suffering⁵⁶. The Resolution XXVI of the XXIst International Conference of the Red Cross, The General Assembly Res 2444(XXIII), 1968, the Report of the Secretary-General of UN, 1969 and the General Assembly Res 2675,1970 in addition to the Treaty IHL and the Customary IHL reiterates that “Civilian populations⁵⁷ as such should not be the object of military operations⁵⁸” and calls for “prohibition of ‘imprecise’, ‘non-directed’, ‘mass destruction’ weapons”.

The aerial bombardment was considered as indiscriminate and causing heavy collateral damage⁵⁹ with the boost of ‘No regulation’. However with the development of technology, several strategies developed in the area of the Aerial warfare such as “precision bombing⁶⁰”, “squirrel hunting⁶¹” etc., wherein it assist the belligerents in pre-selecting the air targets. But,

⁴⁷ International Humanitarian Law, Geneva Academy, RULAC, 26th September, 2017.

⁴⁸ The Marten Clause, “populations and belligerents remain under the protection and empire of the principles of international law, as they result from the usages established between civilised nations, from the laws of humanity and the requirements of the public conscience”, Convention (II) with Respect to the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land, 1899, Hague Regulations, GCI, Art.63; GC II, Art.62; GC III, Art.142; GC IV, Art. 158; AP I, Art. 1(2); AP II (Preamble).

⁴⁹ St. Petersburg Declaration, 11th December, 1868; AP II Art. 1(1) and AP II Art. 13(1)

⁵⁰ St. Petersburg Declaration, 11th December, 1868; AP I Art. 51(5)(b) and Art. 57 (a) (iii) and (b).

⁵¹ St. Petersburg Declaration, 11th December, 1868; AP I Art. 35 (2).

⁵² Nils Melzer coordinated by Etienne Kuster, International Humanitarian Law A Comprehensive Introduction, ICRC, Chapter 3, p128.

⁵³ The Hague Rules of Air Warfare, 1923 was a failure draft as the parties who framed the rules were themselves not signed it.

⁵⁴ Colonel DeSaussure, The Laws of Air Warfare, Are there Any?, International Lawyer, Vol 5, No.3.

⁵⁵ Report of the Secretary-General, Respect for Human Rights in Armed Conflicts, A/7720,1969, para 185,p59.

⁵⁶ *Ebid.*,50

⁵⁷ Article 50 of the Additional Protocol I, 1977 of the Geneva Conventions, 1949.

⁵⁸ Article 52(2) of the Additional Protocol I, 1977.

⁵⁹ Eldridge Colby, “Laws of Aerial Warfare”, Minnesota Law Review, 1926.

⁶⁰ Kosovo Campaign, The NATO launched Operation Allied Force, on March 24,1999, in what would prove to be a successful effort to halt Serbia’s ethnic Cleansing of the Kosovo province.

⁶¹ “This is using the aircraft for the same purpose that the infantryman uses his gun, and the pilot ought to be held to the same standards of distinguishing combatants and the non-combatants”, Colonel Hamilton DeSaussure, The Laws of Air Warfare Are there Any?, International Lawyer, Vol.5, No.3, p545.

what if the Belligerents chose to target the civilians? The Saudi led Coalition had conducted more than 20,100 airstrikes on Yemen since the armed conflict began, an average of 12 attacks a day. The coalition had bombed hospitals, school buses, markets, mosques, farms, bridges, factories, and detention centres⁶². They caused more number of civilian fatalities when compared to Houthis and other rebels, by directly targeting the civilians⁶³, which is prohibited and is disproportionate to its alleged military advantage⁶⁴. When the Security Council Resolutions⁶⁵ with respect to Yemen seems quiet in its terms regarding any accountability for war crimes⁶⁶ on the part of Saudi led Coalition⁶⁷, The UNSC Res/2417/2018 and The UNSC Res 2564/2021 on Yemen which stressed the fight against impunity and to ensure accountability for genocide, crime against humanity, war crimes and the other egregious crimes, appeared a drop in the ocean.

The Naval Blockade by the Saudi led Coalition:

Blockade is a kind of economic warfare wherein the blockading State prevents the ingress and egress of vessels or aircrafts of all Nations⁶⁸. This kind of warfare primarily aimed at making the blockaded party to surrender to their knees by preventing the supply of arms and munitions required for waging war and consequently suffocating the economy of the State⁶⁹ which stands as a backbone for waging war⁷⁰. This traditional method of blockade⁷¹, however is required to give off itself with evolutionary character⁷² of the International Humanitarian Law. For a valid

⁶² World Report 2020, Yemen Events of 2019 till September 3, 2019.

⁶³ Samy Magdy, Database says 91,600 killed in Yemen fighting since 2015, AP News, June 20,2019.

⁶⁴ Article 51 (5)(b) of the Additional Protocol I, 1977.

⁶⁵ UNSC Res 2402/2018; UNSC Res 2451/2018; UNSC Res 2452/2019; UNSC Res 2456/2019; UNSC Res 2481/2019; UNSC Res 2505/2020; UNSC Res 2511/2020; UNSC Res 2534/2020; UNSC Res 2564/2021.

⁶⁶ UNSC Res 2140/2014; UNSC Res 2204/2015; UNSC Res 2216/2015; UNSC Res 2564/2021(Annex) “Resolutions imposing travel ban, asset freeze and arms embargo on the side of Houthi rebels and others”.

⁶⁷ The UNSC Res 2451/2018 was only agreed after it was stripped of much the language on guaranteeing humanitarian deliveries and the need for accountability for war crimes. The edits were on the insistence of the US Mission, reflecting the views from the Saudi and Emirati coalition, which has resisted any UN constraints on its operations in Yemen”, Julian Borger, UN agrees Yemen ceasefire resolution after fraught talks and US veto threat, The Guardian, 21st December, 2018, theguardian.com.

⁶⁸ S.K. Verma, An Introduction to Public International Law, Sathyam Law International, 3rd Edition, 2019, pp564-566.

⁶⁹ Phillip Jeffrey Drew, An Analysis of the Legality of Maritime Blockade in the Context of Twenty-First Century Humanitarian Law, Queen’s University Kingston, Ontario, Canada, 2012.

⁷⁰ United States supported the military objective, “could include such things as a country’s taxation system, natural resources, energy sources and food supplies and ultimately the entire economy.

⁷¹ Codified by the Declaration of Paris, 1856 and the Declaration of London,1909 elevating it the Status of Customary International Law, to be valid five requirements, “ i) Blockade must be physically established; ii) it must be properly declared and notified. A declaration of Blockade is made either by the blockading Power or by the naval authorities acting in its name. It should specify a) The date when the Blockade begins b) the geographical limits of the coastline under blockade, c) the period within which neutral vessels may come out; iii) A blockade must respect the rights of the neutral vessels; iv) A blockade must be effective.

⁷² Additional Protocol I, Article 1(2).

Blockade to be called as such, Declaration and Notification⁷³, Impartiality⁷⁴, Effectiveness⁷⁵, and continuous maintenance⁷⁶ are required to be fulfilled by the blockading party. Five days after the ‘Operation Decisive Storm’⁷⁷ started by the Saudi led Coalition, Major General Ahmed Al-Asiri, said in a press conference that nobody is allowed to leave Yemeni Ports without being stopped and searched⁷⁸. This press release had not fulfilled any of the requirements for a valid blockade to be called. It had not stated the commencement of the blockaded area, the period of such blockade and the period within which neutral vessels may leave the port. The terms of the statement clearly indicates that it is only a ‘stop and search procedure’ in order to curtail the import of armaments required for the Houthis to wage war⁷⁹. However, there was a total *de facto* blockade for a period of 18-20 days (November 4, 2017 November 22, 2017) where even humanitarian flights and shipments were not allowed⁸⁰. It was not just a period of twenty days but the lives of Yemeni civilians each second⁸¹.

Whenever The Security Council acts under Chapter VII, there would be only two parties to the conflict, i) the party using the force ii) The Security Council and all the other States to act under the direction of Security Council⁸². Based upon this, The UNSC Res 2216/2015 (para 14) clearly authorises all States to implement ‘arms embargo’ against Houthis. For this purpose ‘stop, search and seizure’ of vessels was employed and it had not authorised for ‘total blockade’ to be conducted by any State. It is also to be remembered that Right to Self-Defence of a State exist until the UNSC is notified and adequate measures taken by UNSC⁸³⁸⁴.

Article 42 of the United Nations Charter provides for express recognition of the Blockade as a method of Warfare to be undertaken only on the pursuance of International peace and security.

⁷³ Article 9 and Article 16 of the London Declaration, 1909 and Article 94 of the SRM, 1994, “the geographical range of the blockaded area, the grace period for the ships of the neutral ships to leave the port should be specified. In the absence of mentioning such period the neutral ships should be allowed to go freely”.

⁷⁴ Article 5 of the London Declaration, 1909, “The blockade should be universal and it should be applied impartiality to the vessels of all nations”

⁷⁵ Article 3 of the Declaration of Paris, 1856, “ Blockade should not be a paper blockade. It is effective if it is maintained by force sufficient to prevent access to the coast”.

⁷⁶ Article 4 of the London Declaration, 1909, “Blockade should continuously be maintained; otherwise it will be deemed that the blockade has ended”.

⁷⁷ First Airstrike conducted by the Saudi led Coalition against Houthis on March 26, 2015.

⁷⁸ ‘Decisive Storm’ spreads to Naval blockade, MIDDLE EAST MONITOR, March 31, 2015.

⁷⁹ Oliver Daum, War in Yemen (2): Why the Saudi-led Coalition has not obeyed the Law of naval blockade and violated IHL, 2018.

⁸⁰ Under the Law of Blockade warfare, allowing humanitarian aid ships does not reduce the effectiveness of blockade, albeit this exception is debated on the basis of impartiality.

⁸¹ Human Rights Watch, Yemen: Coalition Blockade Imperils Civilians, UN should Sanction Senior Saudi Leaders, December 7, 2017.

⁸² Article 48 and Article 49 of the United Nations Charter.

⁸³ S.K Verma, An Introduction to Public International Law, Sathyam Law International, 3rd Edition, p543.

⁸⁴ The Arms Embargo authorised by The Security Council was a measure taken under Article 41 of the United Nations Charter and not a measure under Article 42 which the Saudi led Coalition had taken powers.

This means the method of blockade is subject to the purposes and the principles of United Nations Charter which calls for “respect for human rights and for fundamental freedoms for all”⁸⁵. Therefore the question of application of human rights during armed conflict arises which could be construed as ‘International Humanitarian Law is the path towards the goal of International Human Rights Law whose application does not preclude the application of the International Human Rights Law and only facilitates in achieving the International Human Rights even during Armed Conflict’⁸⁶. Therefore, in the method of Blockade as a warfare, both International Humanitarian Law as *lex specialis* and the International Human Rights Law as *Lex generalis* applies simultaneously⁸⁷.

Article 49(1)⁸⁸ read with Article 49(3)⁸⁹ of the Additional Protocol, 1977 upholds the validity of the traditional rule of warfare by air and sea subject to protection of the civilian population. Thus the term “attack” which is defined in terms of “violence”⁹⁰ not only means “actions which are violent in nature” but also includes “violent consequences of non-violent acts”.⁹¹⁹². The San Remo Manual, 1994 provides for the principle of proportionality⁹³ and provision of humanitarian assistance to the civilian population during the blockade⁹⁴. On this legal basis, the ‘total de facto blockade’ undertaken by Saudi led Coalition which resulted in the “worst humanitarian crisis of the world”⁹⁵ is against International Law of Armed conflicts and should be accounted for.

The blockade, naval enforcement measures and the consequent humanitarian crisis:

The naval enforcement measures which stands short of the method of ‘blockade’ undertaken

⁸⁵ Article 1(3) of the United Nations Charter.

⁸⁶ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, ICJ Advisory Opinion.

⁸⁷ UNSC Res 2342(2017), “Reaffirms the need for all parties to comply with their obligations under International Law, including IHL and IHRL as applicable”.

⁸⁸ “Attacks” means acts of violence against the adversary, whether in offence or in defence.

⁸⁹ ‘The provisions of this Section apply to any land, air, or sea warfare which may affect the civilian population, individual civilians or civilian objects. They further extend apply to all attacks from the sea or from the air against objectives on land but do not otherwise affect the rules of international law applicable in armed conflict at sea or in the air’.

⁹⁰ Article 49(1) of the Additional Protocol I, 1977.

⁹¹ The Blockade established by The Great Britain against Germany in North Sea (1914-1919) and the Blockade of Gaza by Israel, 2010; Phillip Jeffrey Drew, “An Analysis of the Legality of Maritime Blockade in the context of Twenty-First Century Humanitarian Law”, Queen’s University, Kingston, March 2012.

⁹² “Consequence-based approach”, Andrew C. Foltz, “Stuxnet, Schmitt Analysis, and the Cyber “Use of Force” Debate, International Telecommunications Union and UN institute for Training and Research confer on cyber security, JFQ, Issue 67, 4th quarter, 2012.

⁹³ Article 102 of the SRM, 1994 provides that the declaration or establishment of a blockade is prohibited if: (a) it has the sole purpose of starving the civilian population or denying it other objects essential for its survivor, (b) the damage to the civilian population is, or may be expected to be, excessive in relation to the concrete and direct military advantage anticipated from the blockade.

⁹⁴ Article 103 of the San Remo Manual, 1994.

⁹⁵ OCHA, Yemen Situation Report, 9th March, 2021.

by the Saudi led coalition however stands on a legal basis of the UNSC Res 2216(2015), wherein it authorises arms embargo against Houthis and the stop, search and seizure power in the territorial waters of the respective States, under which Yemen is also bound by. Based on the legitimacy assumed by the International Actors of Mr. Hadi's government in Yemen, the acts of the Saudi led Coalition as naval enforcement measures on Yemen's territorial waters^{96,97} provides a possible legal basis⁹⁸.

This, however, caused the gradual and slow process of movement of humanitarian aid ships or sometimes the denial of reaching the ports of Yemen, in pursuance of Stop, Search and Seizure procedure by the Saudi led Coalition which seemed disproportionate to the needs of the Yemeni civilians whose livelihood depends upon imports and humanitarian assistance⁹⁹. Article 14 of the Additional Protocol II, 1977 prohibits Starvation of civilians as a method of combat. When a situation in which 'a second' delay of humanitarian assistance could cost many Yemeni lives¹⁰⁰, this procedure of Stop and inspect, though not violent by positive actions, results in consequential violence against the Yemeni Civilians. Article 18 of the Additional Protocol II, 1977 provides that a Contracting High Party may allow for **the smooth functioning** of Relief societies and relief actions, which should be considered by the Coalition that the distribution of humanitarian supplies may be conducted under the auspices of impartial body¹⁰¹ rather than the State themselves which causes delay in distribution of the humanitarian supplies¹⁰², thereby upholding the principle of balance of military necessity and humanity.

Two-third of Yemenis need humanitarian assistance to survive while more than 16 million people will face hunger and almost half of the Yemen's children under the age of 5 suffer from acute malnutrition, including 4,00,000 who could die without urgent treatment. Among the causes for such a massive humanitarian crisis the armed conflict constitutes the major part¹⁰³. The armed conflict especially caused adverse effect on children. Article 6, Article 24 read with Article 38 of the Convention on the Rights of the Child, 1989 provides for protection of the Children's right to life and health during armed conflicts which were severely violated by the

⁹⁶ Saudi led Coalition acts on the invitation agreement by the Yemeni President Mr. Hadi.

⁹⁷ Under Article 25 of the United Nations Convention on the Law of Seas, 1982, The right to innocent passage could be cancelled by the coastal state.

⁹⁸ Martin D. Fink, *Naval Blockade and the Humanitarian Crisis in Yemen*, Amsterdam Centre for International Law, 2017.

⁹⁹ *Ebid.*

¹⁰⁰ Yemen is the largest humanitarian crisis in the world- and children are being robbed of their futures, Yemen Crisis, UNICEF.

¹⁰¹ International Committee of the Red Cross, 1920

¹⁰² Article 103(b) of the San Remo Manual, 1994.

¹⁰³ United Nations Secretary-General, OCHA, Yemen Situation Report, 9th March, 2021.

Yemeni Government and the Saudi led Coalition's methods of warfare¹⁰⁴.

The UNSC Res 2342(2017) recognised the humanitarian catastrophe faced by the Yemeni civilians, which forgot to look into the cause of such humanitarian crisis¹⁰⁵. Later, The conclusion of The Stockholm Agreement¹⁰⁶¹⁰⁷ between the Saudi led Coalition and the Houthis was a positive step forward to cease-fire and mutual redeployment of forces in and around the Hodeidah Port¹⁰⁸, Salif and Ras Issa, which in fact was controlled by the Houthis¹⁰⁹. This however, was a failure agreement and it was not complied with respect to the cease-fire, but was a great step for clearing the path of Humanitarian assistance, albeit huge delays.

III. THE RECENT DEVELOPMENTS

The point where the Saudi led Coalition lost all its legal attributes was when United Arab Emirates backfired the peace measures taken by United Nations by aiding the Southern Transition Council (STC)¹¹⁰ in Yemen against Mr. Hadi's Government. Saudi Arabia in August, 2019 aided in resolving the disputes between these new rivals by facilitating to sign a peace agreement whose contents dealt about political **power-sharing in Yemen**¹¹¹. However, this agreement was also a failure¹¹².

It could not be complete without mentioning the role of United States in this Armed Conflict. United States initially supported for Saudi led Coalition as there were varied political reasons¹¹³, but legally to be mentioned that its role to aid United Nations Transition Process in Yemen¹¹⁴. It aided by providing arms to the Saudi led Coalition and influencing decisions in

¹⁰⁴ Bethan Mckernan, Saudi-Led Coalition forces in Yemen taken off UN rights blacklist, The Gaurdian, 16th June, 2020.

¹⁰⁵ "Gravely distressed by the continued deterioration of the devastating humanitarian situation in Yemen, expressing serious concern at all instances of hindrances to the effective delivery of humanitarian assistance, including limitations on the delivery of vital goods to the civilian population of Yemen", UNSC Res 2342(2017)

¹⁰⁶ Haydee Dijkstal, Yemen and the Stockholm Agreement: Background, Context, and the Significance of the Agreement, American Society of International Journal, Vol 23, Issue 5, May 31st, 2019.

¹⁰⁷ UNSC Res 2451 on 21st December, 2018.

¹⁰⁸ Hodeidah port is the important port in which major imports of Yemen comes into.

¹⁰⁹ "Parties shall facilitate the freedom of movement of civilians and goods from and to the city of Hodeidah and the ports of Hodeidah, Salif and Ras Issa and the delivery of humanitarian aid through the ports of Hodeidah, Salif and Ras Issa", Hodeidah Agreement part of Stockholm Agreement, 2018.

¹¹⁰ Southern Transitional Council (STC) traces its history from 1990, when the United Yemen was formed. The Southern Yemen previously backed by Russia, always wanted to have a separate State. This led to the forming of STC in 2017 revolution for separate and independent State from the North Yemen, Kim Salmutter, Why did the transition process in Yemen fail?, Sciences Po Kuwait Program, 2017.

¹¹¹ Yemen: What is the Southern Transitional Council?, Aljazeera.com, 26th April, 2020.

¹¹² *Ebid.*

¹¹³ The alleged backing of Houthis by Iran who is the common rival of Saudi Arabia and US, The oil from the Saudi Arabia, the need of control of red sea as it is path of exporting of oil from Saudi Arabia to US, negotiation of nuclear deal with Iran, and the investigation reports of Kashoggi's murder.

¹¹⁴ Under UNSC Res 2216/2015.

the UNSC which could result against Saudi led Coalition¹¹⁵. Recently, the New Administration in US decided to hold back its offensive arms support for the Saudi led Coalition. It, on the other hand, withdrew Houthis from the terrorists list¹¹⁶, which would not bring any major improvement in Yemen's situation, albeit its soothing effect on Houthis to bring them to the table.

India condoles for the humanitarian crisis that the Yemeni civilians are facing and also provides medical and other humanitarian assistance to the Yemeni people¹¹⁷. It insists for the peaceful transition and condemns the attack on Saudi Arabia¹¹⁸, but had not made any statement regarding the actions of Saudi led Coalition and its consequences.

IV. CONCLUSION:

“It is not the javelin that gives victory, but the king’s Sceptre, If it do no injustice”¹¹⁹

All the parties to the Yemen Conflict are aiming for achieving more political power rather than establishing peace in Yemen and protect Yemeni people from the Humanitarian Crisis which ultimately failed the transition measures undertaken by the United Nations which was pushed to a situation of considering ‘power-sharing’ as a path towards peace in Yemen. The Houthis who are indigenous Tribesmen of Yemen, initially protested against the Yemen Government for it was corrupt and for committing injustice towards Yemenis¹²⁰. When this rights group became power mongering at the cost of Yemeni civilians for whose rights they fought initially? Saudi-led Coalition which claimed legality¹²¹ of its attack on Yemen had severely violated the principle of distinction, proportionality and caused unnecessary suffering among Yemeni civilians. The Coalition lost its moral backing and legal backing completely when it split among itself¹²² and supported for another separatist group.

“When there is rain, the living creation thrives; and so when the king rules justly, his subject

¹¹⁵ Waleed Alhariri and Nickolas Ask, Five Years of the UNSC Toeing the Saudi Line, April 9, 2020; “The Assymmetric conflicts (technological military superiority of Saudi led Coalition over Houthis) pushes Non-State armed groups to resort to means and methods which are prohibited by the IHL, which makes States also to not obey IHL standing as challenges to non –reciprocity”, Nils Melzer coordinated by Etienne Kustar, International Humanitarian Law A Comprehensive Introduction, ICRC,p39.

¹¹⁶ US ending aid to Saudi-led forces in Yemen, but question persists, 7th Feb, 2021, Aljazeera.com

¹¹⁷ India’s Permanent Representative to the UN T.S. Tirumurthi, Children sufferin in Yemen should move world’s conscience says India at UNSC, Jan 15, 2021, zeenews.india.com

¹¹⁸ India’s Permanent Representative to the UN T. S. Tirumurthi, Economic Times, February 19, 2021.

¹¹⁹ **Couplet 546 of Thirukural.**

¹²⁰ Bruce Reidel, Who are Houthis, and why are we at war with them?, BROOKINGS, December 18, 2017.

¹²¹ The Invitation Agreement by Mr. Hadi and the UNSC Res 2216(2015).

¹²² The United Arab Emirates backed Southern Transitional Council, UAE use humanitarian front to serve its political agenda in Yemen, TRTWORLD, 15th Dec, 2020.

*thrives*¹²³

This couplet of Thirukural explains the Yemeni Civilians situation that ‘When the Yemeni people were struggling and looked up for help, all Parties (Houthis, Mr. Hadi (President) and the Saudi led-Coalition, Southern Transitional Council and such other groups) where and are busy power-sharing’. Thus the Saudi led Coalition’s actions against Houthis had a ‘cobra effect’ of affecting the Yemeni Civilians than curbing the Houthis and their accountability is a question mark (?).

¹²³ Couplet 542 of the Thirukural.