



Questions and Answers

The Conflict in Yemen and International Law

April 2015

Beginning early on March 26, 2015, a Saudi Arabia-led coalition used warplanes to attack the forces of Ansar Allah, known as the Houthis, in several locations in Yemen. The coalition members include: Bahrain, Egypt, Jordan, Kuwait, Morocco, Qatar, Sudan, and United Arab Emirates. Gulf Cooperation Council members stated that the operations were in response to a request from President Abdu Rabu Mansour Hadi of Yemen. The Houthis effectively ousted Hadi in January, and he fled to Saudi Arabia in March, but most countries still recognize his government.

The airstrikes have continued, while the Houthis have conducted ground operations, particularly against pro-Hadi forces, including units of the Yemeni military and the so-called popular committees, in the southern port city of Aden.

The United States announced on March 25 that it was providing “logistical and intelligence support” to the coalition’s military operations. Agence France-Presse reported on April 2 that a senior US military official said that the US would provide refueling tankers to assist Saudi warplanes. The US would also provide intelligence to “help[] the Saudis understand what’s happening on their border,” such as evidence of Houthi ground incursions, but “not provid[e] them with targeting information,” the official said.

The Houthis, a Zaidi Shia group from northern Yemen, have had forces in the capital, Sanaa, since September 2014. Currently, their forces control or are present in much of the western half of the country. The government of Iran has provided political backing, military advice and some financial support to the Houthis, based on media reports [OR WHAT?] but the Houthis have in the past operated as an independent force.

Since the airstrikes began the Islamist armed group Al-Qaeda in the Arabian Peninsula (AQAP) has made territorial gains by seizing key military and civilian installations in the coastal town of al-Mukalla, in Hadramawt governorate.

This question-and-answer document focuses on existing and emerging international law issues in the Yemen conflict. In accordance with Human Rights Watch’s institutional mandate, the organization maintains a position of neutrality on issues concerning the legitimacy of resorting to armed force, believing that the group’s most useful role is to encourage all sides in armed conflicts to abide by the laws of war.

1. How does international law categorize the armed conflict in Yemen?

International humanitarian law, or the laws of war, distinguishes between “international” and “non-international” armed conflicts. Under the Geneva Conventions of 1949, the laws concerning international armed conflicts apply to all cases of armed conflict between two or more states. While international humanitarian law provides no guidance on whether an entity such as the Houthis represents the Yemeni state, as a matter of general international law, the Houthi authority does not appear to meet the requirements of statehood.

For a non-international armed conflict, the parties to the conflict can be between government forces and one or more non-state armed groups, or between two or more non-state armed groups. For the purposes of international law, the armed groups must exhibit sufficient organization and control to be capable of sustaining military operations and adhering to international humanitarian law, so they can be considered “parties” to the conflict. To constitute an armed conflict, there also needs to be a sufficient degree of intensity in hostilities between the parties, measured by the weapons employed, duration and other factors.

Even though many countries are involved in the conflict in Yemen, the fighting does not involve one state engaged in armed conflict with another state, so it is not an international armed conflict. Instead the legal regime for a non-international armed conflict applies. As a practical matter, international humanitarian law on the means and methods of warfare is largely the same whether an international or non-international armed conflict. A key difference is that during an international armed conflict, captured soldiers from national armed forces and associated militias must be given the full protections afforded prisoners-of-war.

2. What law is applicable to the fighting in Yemen and who is bound by it?

The non-international armed conflict between coalition forces with its Yemeni allies and the Houthi forces and their Yemeni allies is governed by international humanitarian law set out in treaties and in the rules of customary international law. The most important treaty law is Common Article 3 to the Geneva Conventions of 1949, to which all members of the coalition are party. Common Article 3, as discussed below, sets forth minimum standards for all parties to a non-international armed conflict. Yemen and some states participating in the armed conflict are also party to Protocol II to the Geneva Conventions, which provides further protections for combatants and civilians during non-international armed conflicts.

All parties to Yemen's armed conflict—including non-state armed groups—are responsible for complying with the requirements of international humanitarian law. That is, each party must respect and ensure respect for the laws of war. This obligation does not depend on reciprocity. Parties to a conflict must respect the requirements whether or not the opposing side abides by them. It also does not depend on the reason underlying the conflict or why any party has resorted to using force, whether government forces or non-state armed groups. And all parties to an armed conflict are held to the same standards, regardless of any disparity in the harm caused by alleged violations.

3. Is the United States a party to the conflict in Yemen?

Whether the US is a party to the armed conflict in Yemen depends on the nature of its involvement in the fighting, which is currently unclear.

International law sets forth no specific criteria for determining when one state assisting another state in a non-international armed conflict itself becomes a party to that conflict. Human Rights Watch believes this would include when a state's military forces participate in combat operations, when the state provides a direct role in organizing, coordinating or planning military operations, or when the state acknowledges that it is a party to the conflict. A state's indirect involvement by its general provision of military aid, financial assistance or political support would not make it a party to a conflict.

The facts of US involvement in operations in Yemen are unclear. Refueling planes on a bombing mission or providing intelligence used to strike targets would, Human Rights Watch believes, make the US a party to the conflict.

The distinction is significant. As a party to the conflict in Yemen, the US would be fully bound by applicable international humanitarian law. US participation in specific military operations, such as bombing raids, could make US forces jointly responsible for laws-of-

war violations by allied forces. And the US would be obligated to assist in investigations where there are credible allegations of war crimes and hold those responsible to account.

4. Does US support for the coalition affect the legality of its “drone war” against AQAP?

Since 2009, the US has conducted dozens of drone and other aerial attacks in Yemen against alleged members of Al-Qaeda in the Arabian Peninsula. Human Rights Watch has found that at least some of these airstrikes violated the laws of war and possibly international human rights law, whose more stringent standards may be applicable. However, US participation in the armed conflict against the Houthis would not change the existing legal regime applicable to any future US use of force against alleged AQAP members.

5. What are the basic principles of the laws of war?

International humanitarian law provides protections to civilians and other noncombatants from the hazards of armed conflict. It addresses the conduct of hostilities—the means and methods of warfare—by all sides to a conflict. Foremost are the principles of “civilian immunity” and “distinction”—the requirements that civilians may never be the deliberate target of attacks and that parties to a conflict must distinguish at all times between combatants and civilians. As discussed below, parties to the conflict are required to take all feasible precautions to minimize harm to civilians and civilian objects and to not carry out attacks that fail to discriminate between combatants and civilians, or would cause disproportionate harm to the civilian population.

Common Article 3 provides a number of fundamental protections for civilians and people who are no longer taking part in hostilities, such as captured combatants and those who have surrendered or are unable to fight because of wounds or illness. It prohibits violence against them—particularly murder, cruel treatment, and torture—as well as outrages against their personal dignity and degrading or humiliating treatment.

6. Does international human rights law still apply in Yemen?

Even during armed conflict situations, in which the laws of war apply, international human rights law remains in effect. Yemen and the other countries involved in the fighting are all party to a number of human rights treaties, including, the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. These treaties outline guarantees for fundamental rights, many of which correspond to the rights to which combatants and civilians are

entitled under international humanitarian law (e.g. the prohibition on torture and inhuman and degrading treatment, the requirements for nondiscrimination, right to a fair trial).

While the ICCPR permits some restrictions on certain rights during wartime or an officially proclaimed public emergency “threatening the life of the nation,” any reduction in rights during a public emergency must be of an exceptional and temporary nature, and limited “to the extent strictly required by the exigencies of the situation.” Certain fundamental rights—such as the right to life and the right to be secure from torture and other ill-treatment, the prohibition on unacknowledged detention, the duty to ensure judicial review of the lawfulness of detention, and rights to a fair trial—must always be respected, even during a public emergency.

7. What are legitimate targets for military attacks?

The laws of war limit attacks to “military objectives.” Military objectives are personnel and objects that are making an effective contribution to military action and whose destruction, capture, or neutralization offers a definite military advantage. This would include enemy fighters, weapons and ammunition, and objects being used for military purposes. While humanitarian law recognizes that some civilian casualties are inevitable during armed conflict, it imposes a duty on parties to the conflict at all times to distinguish between combatants and civilians, and to target only combatants and other military objectives.

Combatants include members of a country’s armed forces and commanders and fighters in non-state armed groups. They are subject to attack at all times during hostilities unless they are captured or incapacitated. Civilians lose their immunity from attack when and only for such time as they are “directly participating in hostilities.” The International Committee of the Red Cross says that the laws of war distinguish members of the organized fighting forces of a non-state party, who may be targeted when there is fighting, from those who assume exclusively political, administrative or other non-combat functions, who may not be targeted even when there is fighting. An individual recruited, trained and equipped by a non-state armed group is considered integrated into that group even before carrying out a hostile act at a time of fighting.

The laws of war also protect “civilian objects,” which are defined as anything not considered a military objective. Direct attacks against civilian objects—such as homes, apartments and businesses, places of worship, hospitals, schools, and cultural monuments—are prohibited unless they are being used for military purposes and thus become military objectives. This would be the case if military forces are deployed

against what are normally civilian objects. Where there is doubt about the nature of an object, the warring party must presume it to be civilian.

8. What kinds of attacks are prohibited?

Direct attacks on civilians and civilian objects, as discussed above, are prohibited. The laws of war also prohibit indiscriminate attacks, which strike military objectives and civilians or civilian objects without distinction. Examples are attacks that are not directed at a specific military objective or that use weapons that cannot be directed at a specific military objective.

Prohibited indiscriminate attacks include area bombardment -- attacks by artillery or other means that treat as a single military objective a number of clearly separated and distinct military objectives in an area containing a concentration of civilians and civilian objects. Military commanders must choose a means of attack that can be directed at military targets and will minimize incidental harm to civilians. If the weapons used are so inaccurate that they cannot be directed at military targets without imposing a substantial risk of civilian harm, then they should not be deployed.

Attacks that violate the principle of proportionality are also prohibited. An attack is disproportionate if it may be expected to cause incidental loss of civilian life or damage to civilian objects that would be excessive in relation to the concrete and direct military advantage anticipated from the attack.

9. What are the obligations of parties to the conflict regarding fighting in populated areas?

The laws of war do not prohibit fighting in urban areas, although the presence of many civilians places greater obligations on parties to the conflict to take steps to minimize harm to civilians. Parties to a conflict are required to take constant care during military operations to spare the civilian population and to “take all feasible precautions” to avoid or minimize the incidental loss of civilian life and damage to civilian objects. These precautions include doing everything feasible to verify that the objects of attack are military objectives and not civilians or civilian objects, and giving “effective advance warning” of attacks when circumstances permit.

Forces deployed in populated areas must avoid locating military objectives near densely populated areas and endeavor to remove civilians from the vicinity of military activities. Belligerents are prohibited from using civilians to shield military objectives or

operations from attack. "Shielding" refers to purposefully using the presence of civilians to protect military forces or areas, making them immune from attack.

The attacking party is not relieved of its obligation to take into account the risk to civilians simply because it considers the defending party responsible for locating legitimate military targets within or near populated areas. The use of heavy artillery (weapons with a wide blast radius) and other indirect-fire artillery without adequate spotting (weapons for which the target is wholly unseen) against military objectives in populated areas heightens concerns of unlawful indiscriminate and disproportionate attacks.

10. Should belligerent parties warn civilians of attacks? What constitutes an "effective" warning?

The laws of war require warring parties to give "effective advance warning" of attacks that may affect the civilian population so long as circumstances permit. What constitutes an "effective" warning depends on the circumstances. Such an assessment would take into account the timing of the warning and the ability of the civilians to leave the area. A warning that does not give civilians adequate time to leave for a safer area would not be considered "effective."

Civilians who do not evacuate following warnings are still fully protected by international law. Otherwise, warring parties could use warnings to cause forced displacement, threatening civilians with deliberate harm if they did not heed the warnings. Moreover, some civilians are unable to heed a warning to evacuate, for reasons of health, fear, or lack of anyplace else to go. So, even after warnings have been given, attacking forces must still take all feasible precautions to avoid loss of civilian life and property. This includes canceling an attack when it becomes apparent that the target is civilian or that the civilian loss would be disproportionate to the expected military gain.

11. What are the legal protections for hospitals, medical personnel and ambulances?

Medical units are civilian objects that have special protections under the laws of war. They include hospitals, clinics, medical centers and similar facilities, whether military or civilian. While other presumptively civilian structures become military objectives if they are being used for a military purpose, hospitals lose their protection from attack only if they are being used, outside their humanitarian function, to commit "acts harmful to the enemy."

Several types of acts do not constitute "acts harmful to the enemy," such as the presence of armed guards, or when small arms from the wounded are found in the hospital. Even if

military forces misuse a hospital to store weapons or shelter able-bodied combatants, the attacking force must issue a warning to cease this misuse, setting a reasonable time limit for it to end, and attacking only after such a warning has gone unheeded.

Under the laws of war, doctors, nurses and other medical personnel must be permitted to do their work and be protected in all circumstances. They lose their protection only if they commit, outside their humanitarian function, acts harmful to the enemy.

Likewise, ambulances and other medical transportation must be allowed to function and be protected in all circumstances. They lose their protection only if they are being used to commit acts harmful to the enemy, such as transporting ammunition or healthy fighters.

12. Are parties to the conflict permitted to target infrastructure such as airports, roads, and bridges?

Civil airports, roads, and bridges are civilian objects that become military objectives subject to attack if they are actually used for military purposes or military objectives are located on or within them. Even then, the rule of proportionality applies, requiring the parties to the conflict to weigh the short- and long-term harm for civilians against the military advantage served. The party to the conflict must consider all ways of minimizing the impact on civilians; and they should not attack if the expected civilian harm outweighs the definite military advantage.

13. Do radio and television stations have special protection from attack?

Attacks on broadcast facilities used for military communications are legitimate under the laws of war. Civilian television and radio stations are legitimate targets only if they meet the criteria for a legitimate military objective: that is, if they are used in a way that makes an “effective contribution to military action” and their destruction in the circumstances ruling at the time offers “a definite military advantage.”

For example, broadcast facilities could become military targets if they are used to send military orders or otherwise concretely to advance military operations. However, civilian broadcasting facilities do not become legitimate military targets simply because they broadcast pro-government or pro-opposition propaganda. It is unlawful to attack facilities that solely shape civilian opinion—these facilities do not directly contribute to military operations.

Should broadcast facilities become legitimate military objectives because of their use to transmit military communications, the principle of proportionality in attack must still be respected. This means that attacking forces should verify at all times that the risks to the civilian population in undertaking any such attack do not outweigh the anticipated military benefit. They should take special precautions with buildings in urban areas, including giving advance warning of an attack whenever possible.

International law does not prohibit opposition forces from occupying broadcast facilities (or other civilian structures except hospitals) and making use of them. However, the presence of opposition fighters or the use of the broadcast facilities for military purposes makes the facilities military objectives subject to attack.

14. Do journalists have special protection from attack?

Journalists are civilians and, as discussed above, may never be targets of an attack, unless they are taking direct part in hostilities. Journalists may be subject to any legitimate limitations on rights, such as freedom of expression or freedom of movement, imposed in accordance with law and to the extent strictly required by the exigencies of the situation. But they may not be targeted for arrest, detention, or other forms of punishment or retaliation simply for doing their work as journalists.

15. Are cluster munitions and landmines lawful weapons?

There is credible evidence that in November 2009 Saudi Arabia dropped cluster bombs in Yemen's northern Saada governorate during fighting between the Houthis and the Yemeni and Saudi militaries. The US had provided Saudi Arabia with significant exports of cluster bombs and Saudi Arabia possesses attack aircraft of US and Western/NATO origin capable of dropping US-made cluster bombs.

Dropped by aircraft or fired by artillery and rocket systems, cluster munitions typically explode in the air and send dozens, even hundreds, of tiny submunitions or bomblets over an area the size of a football field. These cluster submunitions often fail to explode on initial impact, leaving duds that act like landmines.

Cluster munitions have been banned under the 2008 Convention on Cluster Munitions because of their widespread indiscriminate effect at the time of use, and the long-lasting danger they pose to civilians. A total of 91 countries have ratified and 25 have signed the Convention on Cluster Munitions, which prohibits the use, production, transfer, and stockpiling of cluster munitions, and requires the clearance of cluster munition remnants

within 10 years as well as assistance for victims of the weapons. No members of the coalition are party to the Convention on Cluster Munitions, but Human Rights Watch believes that cluster munitions should never be used by any armed force under any circumstance. States that are party to the convention are obligated to discourage any use of cluster munitions.

Yemen is a party to the 1997 Mine Ban Treaty as are coalition members Jordan, Kuwait, Qatar, and Sudan. As such they have made a commitment to never use antipersonnel landmines. No parties to the conflict in Yemen should use antipersonnel mines, including victim-activated improvised explosive devices, because they are inherently indiscriminate weapons.

16. What does international law say about child soldiers?

Human Rights Watch has since 2009 reported on the use of child soldiers by Houthi forces. The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, to which Yemen is a party, provides that non-state armed groups “should not, under any circumstances, recruit or use in hostilities persons under the age of eighteen.” In addition, the protocol sets 18 as the minimum age for any participation in armed conflict by national armed forces.

Under the laws of war, the recruitment or use of children under 15 by parties to a conflict is a war crime, for which commanders can be held criminally responsible.

17. What rights do people in custody have during an armed conflict?

Common Article 3 to the four Geneva Conventions of 1949, applicable during non-international armed conflicts, requires protecting anyone in custody, including captured combatants and civilians, against “violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture” and “outrages upon personal dignity, in particular humiliating and degrading treatment.” No sentences may be handed down except by a “regularly constituted court” that meets international fair trial standards.

The ban against torture and other ill-treatment is one of the most fundamental prohibitions in international human rights and humanitarian law. No exceptional circumstances may justify torture. Yemen’s and other countries’ human rights treaty obligations, discussed above, underline that torture is banned under all circumstances, even during recognized states of emergency, and requires investigation and prosecution of those responsible for

torture. When committed as part of a widespread and systematic attack against the civilian population, torture constitutes a crime against humanity under customary international law and the Rome Statute, the treaty that established the International Criminal Court (ICC). Anyone deprived of liberty must be provided with adequate food, water, clothing, shelter, and medical attention. Detained women must be held in quarters separate from those for men. Children deprived of their liberty, unless with their families, must have quarters separate from adults.

Under fundamental human rights law, which applies even during a publicly declared emergency, detainees are entitled to judicial review of the legality of their detention, and all the rights to a fair trial, including the right to be tried and convicted for a criminal offense only by a court of law. Unacknowledged detention is prohibited at all times.

18. What obligations do parties to the conflict have to populations in need?

Under international humanitarian law, parties to a conflict must allow and facilitate the rapid and unimpeded passage of impartially distributed humanitarian aid to the population in need. The parties must consent to allow relief operations and may not refuse such consent on arbitrary grounds. They may take steps to control the content and delivery of humanitarian aid, such as to ensure that consignments do not include weapons. However, deliberately impeding relief supplies is prohibited.

In addition, international humanitarian law requires belligerent parties to ensure the freedom of movement of humanitarian relief personnel essential to the exercise of their functions. This movement may be restricted only temporarily for reasons of imperative military necessity.

19. Who can be held responsible for violations of international humanitarian law?

Serious violations of international humanitarian law committed with criminal intent—that is, deliberately or recklessly—are war crimes. War crimes, listed in the “grave breaches” provisions of the Geneva Conventions and as customary law in the International Criminal Court statute and other sources, include a wide array of offenses for which individuals may be held criminally liable—deliberate, indiscriminate, and disproportionate attacks harming civilians; hostage taking; using human shields; and imposing collective punishment, among others. Individuals also may be held criminally liable for attempting to commit a war crime, as well as assisting in, facilitating, aiding, or abetting a war crime.

Responsibility also may fall on people planning or instigating a war crime. Commanders and civilian leaders may be prosecuted for war crimes as a matter of command responsibility when they knew or should have known about the commission of war crimes and took insufficient measures to prevent them or punish those responsible.

20. Who is primarily responsible for ensuring accountability for serious violations of international law?

Ensuring justice for serious violations is, in the first instance, the responsibility of the country whose nationals are implicated in the violations. Governments have an obligation to investigate serious violations that implicate their officials or other people under their jurisdiction. The government must ensure that military or domestic courts or other institutions impartially investigate whether serious violations occurred, identifying and prosecuting the individuals responsible for those violations in accordance with international fair-trial standards, and imposing punishments on individuals found guilty that are commensurate with their deeds. While non-state armed groups do not have the same legal obligation to prosecute violators of the laws of war within their ranks, they are nonetheless responsible for ensuring compliance with the laws of war and have a responsibility when they do conduct trials to do so in accordance with international fair trial standards.

21. Can any war crimes or crimes against humanity committed in Yemen be tried before the International Criminal Court?

The International Criminal Court (ICC) is a permanent international court with a mandate to investigate, charge, and try people suspected of genocide, crimes against humanity, and war crimes committed after July 1, 2002. However, it can only exercise jurisdiction over these crimes if:

- The crimes occurred in the territory of a country that is a member of the court;
- The person suspected of the crimes is a citizen of a country that is an ICC member;
- A country that is not a party to the ICC treaty accepts the court's authority for the crimes in question by submitting a formal declaration to the court; or
- The United Nations Security Council refers the situation to the ICC prosecutor.

Yemen is not a state party to the Rome Statute, the ICC treaty. Therefore, in the absence of the Yemeni government ratifying the statute, or accepting the jurisdiction of the court through a declaration, the ICC could only obtain jurisdiction over crimes in Yemen if the Security Council refers the situation there to the court. Jordan, a member of the Saudi-led Coalition, is a state party to the ICC, so it is possible that Jordanian citizens implicated in serious crimes could come under ICC scrutiny.

22. Can other countries prosecute international crimes committed in Yemen?

Certain categories of grave crimes in violation of international law, such as war crimes and torture, are subject to “universal jurisdiction,” which refers to the ability of a country’s domestic judicial system to investigate and prosecute certain crimes, even if they were not committed on its territory, by one of its nationals, or against one of its nationals. Certain treaties, such as the 1949 Geneva Conventions and the Convention against Torture, obligate states parties to extradite or prosecute suspected offenders who are within that country’s territory or otherwise under its jurisdiction. Under customary international law, it is also generally agreed that countries are allowed to prosecute those responsible for other crimes, such as genocide or crimes against humanity, wherever these crimes took place.