UNIVERSITÀ DEGLI STUDI DI PADOVA

DEPARTMENT OF POLITICAL SCIENCE, LAW,
AND INTERNATIONAL STUDIES

Master's degree in
Human Rights and Multi-level Governance

VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW IN THE YEMENI CONFLICT: SIEGE AS A WAR CRIME

Supervisor: Prof. PAOLO DE STEFANI

Candidate: ALICE CIVITELLA

Matriculation No. 1192894

A.Y. 2019/2020

TABLE OF CONTENTS

LIST OF ABBREVIATIONS

AI	Amnesty International
AMN	Almasirah Media Network
AQAP	Al-Qaeda in the Arabian Peninsula
CAT	Convention against Torture and Other Inhuman, or Degrading Treatment or Punishment
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CRC	Convention on the Right of the Child
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EU	European Union
GPC	General People's Congress
GRC	Global Rights Compliance
HRW	Human Rights Watch
IAC	International Armed Conflict
ICC	International Criminal Tribunal
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
ICL	International Criminal Law
ICRC	International Committee of the Red Cross
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IDPs	Internally Displaced Persons
IEDs	Improvised Explosive Devices
IHL	International Humanitarian Law
IHRL	International Human Rights Law
ILC	International Law Commission

ISIL	Islamic State of Iraq and Levant
MSF	Médicines Sans Frontières (Doctors Without Borders)
NGOs	Non-Governmental Organisations
NIAC	Non-International Armed Conflict
R2P	Responsibility to Protect
RULAC	The Rule of Law in Armed Conflict Project
UN	United Nations
UNGA	United Nations General Assembly
UNHRC	United Nations Human Rights Council
UNODA	United Nations Office for Disarmament Affairs
UNOHCA	United Nations Office for the Coordination of Humanitarian Affairs
UNOHCHR	United Nations Office of the High Commissioner for Human Rights
UNSC	United Nations Security Council
UXOs	Unexploded Ordnances
WPF	World Peace Foundation
YEMAC	Yemen Executive Mine Action Centre

LIST OF FIGURES

INTRODUCTION

The civil conflict that escalated in Yemen in 2014 is still deeply affecting the people, economy, and well-being of the country. The conflict originated from the contraposition between the Ansar Allah movement, allied with the forces of the former President Saleh[1], and the official government of President Hadi. The Ansar Allah movement, commonly known as the Houthi movement, is a Zaidi group[2], which has its roots in the Sa'dah Governorate, situated in the northern part of Yemen. Since the early 2000s, the Houthi movement has led a low-level insurgency against the government. In 2011, the contrast intensified because of the influence of the Arab Springs. The clashes reached the tipping point in 2014 when the protests against the Hadi administration[3] spread in many other governorates of the country. This political opposition soon turned into a fully-fledged armed conflict between these two factions[4], which led to the intervention of a pro-government Saudi-led coalition in 2015. The military intervention, requested by President Hadi, has the aim of restoring the internationally recognized government of Hadi to power, helping the government forces against the rebels. However, the concerns for the self-defence of the coalition states and for further instabilities in the region have played a major role in the coalition's decision to intervene[5]. The Yemeni government is aided also by the United States, Canada and the United Kingdom and by some European Countries -such as France- that are providing, on different levels, arms, intelligence, and logistic support to the Yemeni state forces and to other states of the

[1]Forces loyal to the former president Saleh. Saleh governed Yemen from 1990 till 2012, and allied with the Houthi movement during the conflict. He was killed by Houthi forces on 4th December 2017 following the rupture if this alliance because of clashes between the Saleh and the Houthi supporters.
[2]Moderate faction of the Shii Islam and the closest to the Sunni Islam. The Zaidi group established a state in northern Yemen in 893, which last till 1962, when the North Yemen Civil War started.
[3]President Hadi succeeded President Saleh after the latter resigned.
[4]Both of them claimed to be the legitimate governing power in Yemen
[5]The majority of the states of the coalition are Gulf-Cooperation Council countries, with the exceptions of Oman (which did not intervene) and Qatar, which has been part of the coalition till June 2017. In addition to these states, also Egypt and Sudan intervened with the coalition.

coalition[6]. On the other side, a similar role is played by the Islamic Republic of Iran with the Houthis and their proxy forces.

This scenario gives rise to one of the most violent conflicts of our time, especially if we consider the great impact on the civilians. The UN has defined the Yemeni conflict as the world's largest humanitarian crisis[7], with almost 80% of the population in need of assistance and protection. For these reasons, different international institutions, NGOs and states have expressed many times their deep concern for the Yemeni people, pushing for a quick cessation of the hostilities. Indeed, the persistent hostilities have driven the entire country to the brink of famine, leaving millions of people under continuous danger and without any protection for their basic rights[8]. The stringency of the need is directly related to the intensity of the conflict, as the people living in the areas most affected by the fighting are those in the most need: according to the Humanitarian Needs Overview of 2019, the 60% of the population living in those areas[9] is in a situation of acute need of humanitarian assistance.

The conflict has also led to the collapse of the economy that has contracted by nearly 50% in the last 3 years. As a result, there has been a considerable increase of poverty, with 81% of Yemenis currently living below the poverty line[10]. The situation has been worsened by the breakdown of the basic services and institutions, with critical limitations for people to safely access essential services such as education, sanitation, health care, clean water, and agriculture. For example, according to Doctors Without Borders, the health system is failing across the whole country[11], while the Humanitarian

[6]NEBEHAY S.,(2019), "U.S., France, Britain, may be complicit in Yemen war crimes, UN report says", *REUTERS*, Geneva. Available at: https://www.reuters.com/article/us-yemen-security-un/u-s-france-britain-may-be-complicit-in-yemen-war-crimes-u-n-report-says-idUSKCN1VO11B

[7]UN (2019) ,"Humanitarian Crisis in Yemen remains the worst of the world, warns the UN", *UN news*. Available at: https://news.un.org/en/story/2019/02/1032811. Accessed:15/10/19

[8]UN Country Team in Yemen (2019) "Humanitarian needs overview- Yemen 2019", *UN Office for the Coordination of Humanitarian Affairs*, p.4. Available at: https://reliefweb.int/sites/reliefweb.int/files/resources/2019_Yemen_HNO_FINAL.pdf. Accessed: 15/10/2019

[9]Especially Taizz, Al Hudaydah and Sa'ada governorates

[10]Data taken from "Humaniarian Needs Overview- Yemen 2019" UNOCHA, p.08

[11]MSF "How we are Helping in Yemen. The war in Yemen is fueling massive humanitarian crisis", *Doctors Without Borders website*. Available at: https://www.doctorswithoutborders.org/what-we-do/countries/yemen Accessed: 08/11/2019

Needs Overview reports that only 51% of the health facilities are fully functional, even if with very few possibilities to safely access them. The deep concern for the conditions of Yemeni people is even more acute in relation to some vulnerable groups, namely children, IDPs (Internally Displaced Persons), religious and social minorities, women, refugees, asylum-seekers and migrants. These groups, in addition to the already existing social and cultural discriminations, are heavily affected by the ongoing fighting and by their consequences, being the object of different abuses and deprivations[12].

The situation in Yemen is becoming more and more devastating. To this humanitarian catastrophe, it is necessary to add the direct impact that the conflict and the conduct of hostilities are having on the civilians. Indeed, the civilians are paying a very high price for the violations of International Humanitarian Law that have become the common theme of the Yemeni conflict. From March 2015 to June 2019, more than 7,292 civilians were killed and 11,630 injured. However, the true extent of the casualties is believed to be even higher[13]. The same source[14] estimates that because of the conflict, 4.3 millions of people have been displaced in the last three years, especially from the areas mainly hit by the fighting. Several of the violations of International Humanitarian Law and International Human Rights Law committed by the Saudi-led coalition, Yemeni Government and

[12]For example, there is the violation of the children's right to education, right to life and prohibition of family separation but there are also several cases of children deaths for preventable diseases, as well as episodes of child recruitment, forced marriages, child labour and trafficking. Women and girls are more and more the objects of gender-based violence, they are disproportionately affected by poverty, and often find themselves in charge of providing for their families, but without the necessary education and training for the labour market. Finally, despite the protracted conflict and the high risks of migration, more and more individuals are arriving in Yemen, mainly from Ethiopia and Somalia. Migrants, asylum seekers and refugees are facing different security risks, such as human trafficking, abuses, arbitrary detentions, in addition to the already existing problems associated to discriminations, language and cultural barriers that prevent them from accessing the humanitarian and health services.

[13] HRC (2019) "Situation of Human Rights in Yemen, including violations and Abuses since September 2014. Report of the Group of Eminent International and Regional Experts as submitted to the UNHCHR", A/HRC/42/17, *Human Rights Council*, p.05.; The Guardian "Human cost of Yemen war laid bare as the deaths toll nears 100,000. Report outlines the war's impact on civilians as well as fighters as the researchers call for the call for the resolution to conflict" *The Guardian Website*. Available at: https://www.theguardian.com/global-development/2019/jun/20/human-cost-of-yemen-war-laid-bare-as-civilian-death-toll-put-at-100000. Accessed: 10/01/2020

[14]HRC (2019) "Situation of Human Rights in Yemen, including violations and Abuses since September 2014. Report of the Group of Eminent International and Regional Experts as submitted to the UNHCHR, op. cit.

the Houthi movement could amount to war crimes. These violations are many and very different in nature. Indiscriminate attacks, attacks targeting the civilian population and civilian buildings and the use of indiscriminate or illegal weapons have been reported. Several cases of torture, illegal detentions, enforced disappearances and sexual violence perpetrated by the members of the armed forces against men, women, and children have also been reported. In addition to that, the armed forces have intentionally killed, tortured and kidnapped specific categories of individuals, such as human rights defenders, journalists, and medical personnel, despite the special role of these groups under International Humanitarian and International Human Rights Law. Children have been systematically recruited and used in the hostilities. Finally, starvation, denial of humanitarian access and destruction of objects necessary for the survival of the civilians intensified the dire humanitarian crisis of the Yemeni population.[15]

This thesis deals with the analysis of the conduct of the hostilities in Yemen, focusing on the commission of violations that amount to war crimes by all the actors involved in the conflict, discussing, in particular, the case of siege warfare. This conflict, indeed, is characterized by the use of the siege warfare by both the pro-government coalition and the Houthis. Sieges have been laid on the city of Ta'izz and on the districts of Hajour and al-Durayhimi, leading to huge deprivations and to the suffering of the civilians therein. These sieges have been conducted in complete disregard of the norms of International Humanitarian Law, International Human Rights Law and International Criminal Law, so that their legality is put into question in this dissertation. The identification of the sieges of Ta'izz, Hajour and al-Durayhimi as examples of "unlawful" sieges is the starting point to answer main question of this work: can sieges in Yemen be considered as war crimes?

[15] HRW (2019), "World Report 2019: Yemen. Events of 2018", *Human Rights Watch website*. Available at: https://www.hrw.org/world-report/2019/country-chapters/yemen#c43786. Accessed: 18/10/19

For this aim, reference will be made to the norms of International Humanitarian Law applicable to non-international armed conflicts, to the different reports of the UN dealing with this conflict and to NGOs and media information.

The first Chapter will focus on the definition of the Yemeni conflict under International Humanitarian Law and on the treaty-based and customary based norms of International Humanitarian Law, International Criminal Law and International Human Rights Law that are applicable to this type of conflict. The second Chapter will give a general description of the war crimes committed in Yemen, focusing on different categories of crimes and giving, when possible, an analysis of specific attacks that may amount to war crimes. The third Chapter will deal with the distinct case of the siege warfare and its use in the Yemeni conflict, presenting the analysis of the possible categorisation of the particular model of siege used in Yemen as a war crime. Finally, the fourth and last Chapter will describe the obligations under international law of the different actors of the conflict on the investigation and accountability for war crimes, drawing the attention to the lack of engagement in this regard and to the possible strategies to be employed to overcome this impasse. For each strategy, the feasibility for the specific case of the siege warfare will be assessed.

Chapter I – The Yemeni conflict and the applicable International Law

1.1 Definition of the conflict

Since its beginning, the Yemeni conflict has been characterized by a great fragmentation of the fighting factions, in a continually evolving situation. The division of the fighting parties between the Houthi/Saleh forces on one side, and the pro-government forces on the other is a very reductive one: the previous alliances have partially changed, and there are several other armed groups, terrorist forces, militias and proxy forces involved in the hostilities all over the territory. The result of this situation is the co-existence of different armed conflicts along with the main one[16]. Some of the armed groups affiliated with the parties to the main conflict are fighting among themselves. At the same time, the Government armed groups on one side and the third-state parties -such as the US- on the other are involved into two distinct conflicts against the terrorist groups operating in the country, namely Al-Qaeda and the Islamic State of Iraq and Levant.[17]

The focus of this work will be on the analysis of the "main" conflict between the Houthi forces and its allies on one side, and the pro-government ones on the other. The Office of the High Commissioner for Human Rights has officially considered this conflict as a non-international armed conflict (NIAC). [18]

The identification of a conflict as a non-international armed conflict has several implications for the applicable legislation to the conflict. This is true

[16]Meaning the conflict between the Houthi and Saleh forces (till December 2017) on the one side, and the pro-government forces on the other.

[17]Each of these different conflicts can be considered as NIACs under the IHL. HRC (2019) "Situation of Human Rights in Yemen, including violations and Abuses since September 2014. Report of the Group of Eminent International and Regional Experts as submitted to the UNHCHR" op. cit., p.03

[18] HRC (2018) "Situation on Human Rights in Yemen, including violations and Abuses since September 2014. Report of the United Nations High commissioner for Human Rights containing the findings of the Group of Independent Eminent International and Regional Experts and summary of technical assistance provided by the Office of the High Commissioner to the National Commission of Inquiry", A/HRC/39/43, *Human Rights Council*, p.4; Loc. cit.

especially in relation to the limitations to the conduct of the hostilities that International Humanitarian Law (IHL) poses on all parties to the conflict. The limitations posed are valid both for those parties that are directly taking part in the hostilities and for those who are supporting the fighting factions.

However, the conclusion that the Yemeni conflict is a non-international armed conflict is not self-evident. The identification of this conflict as a non-international armed conflict is subjected to the determination of the existence of two important requirements. Indeed, on the one hand, the conflict has to fulfil some preconditions established by the International Humanitarian Law; on the other, it is necessary to determine if the involvement of other states in the conflict does not transform its nature from a non-international armed conflict to an international one.

For this aim, the following two issues will be addressed. Firstly, the identification of the Yemeni Conflict as a non-international armed conflict according to IHL, meaning Common Article 3 and the Additional Protocol II. Secondly, the demonstration that the Yemeni conflict, despite the intervention of other states in the hostilities, can be still considered as a conflict not of an international character.

NIAC under Common Article 3

The first treaty-based reference to non-international armed conflicts can be found in Common Article 3 to the Four Geneva Conventions of 1949. This article specifically deals with cases of non-international armed conflicts, providing a very broad definition of what is a non-international armed conflict and subjecting its applicability to some limitations.

The first limitation posed in the article confines its scope of application to those armed conflicts defined, in general terms, as not of an international character. The definition provided in this article is a negative one, identifying a non-international armed conflict by what it is not. Negative or vague definitions are widely used in the IHL instruments, as they represent often a compromise among different opinions. This is valid also for the definition of NIACs. The positive aspect of this broad definition is, therefore, the low

threshold for the application of the article, meaning that a wide range of conflicts can be included under this definition.

The second limitation enshrined under Article 3 is a geographical one; according to this article, its scope of action is limited to the conflicts occurring on the territory of one of the High Contracting parties of the Conventions. However, this limitation is deeply constrained nowadays by the fact that the Geneva Conventions have almost a universal acceptance, so their application is granted nearly in every state of the world.

In the article, there is no explanation of who is considered as "parties to the conflict". Despite that, it is widely considered that the application of the provisions under Article 3 binds both state and non-state armed forces; however, the general opinion at the moment of the drafting of the Geneva Conventions considered necessary that the non-state armed groups have reached a certain level of organization, in order to be bound by this Article. Consequently, all the cases of internal tensions and disturbances are excluded from the application of this instrument[19]. Furthermore, an essential note has to be made in relation to the evolution of the concept of non-international armed conflict itself. At the moment of the drafting of the Geneva Conventions, the main interpretation given to conflicts of not an international character was of civil conflict [20]; however, following the evolution of International Humanitarian Law and of the nature of the conflicts, this interpretation has evolved. In this way, through time different categories of internal conflict were identified and included under this definition, bringing down the reductive identification of internal conflict with the cases of civil war.

To summarise this brief analysis of the definition of non-international armed conflict under the common Article 3 it is possible to state that a conflict, in order to bring to the application of this article has to take place on the

[19]MOIR L., (2002), *The Law of Internal Armed Conflict*, Cambridge Studies in International and Comparative Law, Cambridge (UK), Cambridge University Press, pp.36-37.

[20] CULLEN, A., (2010), *The Concept of Non-International Armed Conflicts in International Humanitarian Law*, Lauterpacht Centre for International Law, New York (US), Cambridge University Press, p. 49.

territory of a State party of the Conventions; it should not have the traits of an international conflict; it should not be a case of internal disturbances.
On that note, it is possible to conclude that Yemen is a NIAC under the definition given by Article 3. Firstly, Yemen is part of the Geneva Conventions, having ratified them in 1970. Secondly, the conflict has not the characteristic of an international armed conflict since it is not a conflict *between* states, as it sees the contraposition of state and non-state armed groups inside the same country. Thirdly, as it will be more deeply discussed later, the level of the hostilities has reached a threshold that is undoubtedly above one of internal disturbances.

NIAC under the Additional Protocol II

Since 1945, we have witnessed an increase in the number of non-international armed conflicts, often characterized by greater cruelty in respect to the international ones. For this reason, the existing provision needed to be improved, namely Article 3 of the Four Geneva Conventions, in order to expand the humanitarian protection in non-international armed conflicts. To this aim, in 1977 an Additional Protocol to the Geneva Conventions on NIACs was created, along with the one on IACs.
Enshrined in Article 1 of the Additional Protocol II, we can find a definition of non-international armed conflict. As already noted for Common Article 3, also in the case of the Additional Protocol II, there are some characteristics that a conflict has to meet, in order to be considered as a NIAC.
Firstly, we should consider as non-international armed conflict all the conflicts not included under article 1 of the Additional Protocol I of the Geneva Conventions of 1949[21], and that takes place in the territory of a state party. Secondly, the conflict has to be carried out between the armed forces of the State and the dissident armed forces, or other organized armed groups that are under the responsibility of a command. Thirdly, the non-state armed groups have to exercise control over a part of the territory, so

[21] At Article 1(4) the conflicts in which the protocol can apply are listed: fights against colonial dominations and alien occupation and fights against racist regimes in the exercise of the right of self-determination.

that to be able to carry out sustained and concerted military operations and to allow them to implement the provisions of the Protocol. Finally, it is indicated that the Protocol should not apply to situations of internal disturbances and sporadic acts of violence[22].

Two things can be noticed about this definition of NIAC under Protocol II: firstly, Article 1 of the Protocol II specifies in much more detail the respect of the necessary requirements to the common Article 3; secondly, it raises the threshold for the recognition of a conflict as a non-international one. In this regard, it is necessary to evaluate if the Yemeni conflict fulfils the necessary requirements to be considered as a NIAC under Protocol II.

It is possible to assess this with a brief overview of the characteristics of the Yemeni conflict.

To begin with, the conflict is carried out on the territory of a State party, as the Yemeni government ratified the Additional Protocol II in 1990. Secondly, the conflict involves both government forces and organized armed groups, meaning the Houthi/Saleh forces[23]. In addition, the armed groups reach a substantial level of organization under a responsible command, and they are, incontestably, exercising control over part of the Yemeni territory that enables them to carry out sustained and concerted military operations. In particular, since the beginning of the conflict, the Houthi movement showed a well-organized structure, under the authority of the leader of the movement, Abdulmalik al-Houthi. This group has developed both a political and a military structure, enabling them to appoint commanders to five of the seven military districts of Yemen. The Houthi forces furthermore, are controlling the most powerful intelligence service in Yemen, the national security bureau[24], and have consolidated their hold over both governmental and non-governmental institutions, including the General People's Congress[25]. In addition to that, the Houthi movement exercises control over different governorates of the northern part of the Yemeni territory, including

[22]Article 1 Additional Protocol II 1977 to the Four Geneva Conventions 1949.
[23]After December 2017 only the Houthi forces.
[24]UNSC (2017) "Letter dated 27 January 2017 from the Panel of Experts on Yemen addressed to the President of the Security Council" S/2017/81, UN Security Council, pp. 20-22.
[25]Party established by the former President Saleh.

the city of Sana'a, with a corresponding progressive erosion of the authority of the Government[26]. Finally, in 2017 the Houthi established their own diplomatic representation in the Syrian Arab Republic and the Islamic Republic of Iran[27].

With respect to the last requirement, meaning the intensity of the conflict, the nature of the Yemeni conflict, the level and the extent of the hostilities are certainly above the threshold of internal disturbances. This can be assessed not only in relation to the number of victims in the conflict or its duration but also for the involvement of other states to the conflict, as well as the methods of warfare employed: airstrikes by the pro-government coalition, shelling, sieges, attacks towards civilian targets are only a few examples. These elements lead to the conclusion that the main conflict between the Government forces and the Houthi forces can be considered a NIAC under the definition of the Additional Protocol II.

In order to assess if the Yemeni conflict reaches the necessary threshold to be identified as a non-international armed conflict, furthermore, it is possible to refer to the development of international law. A significant source is, from this perspective, the case-law of International Criminal Tribunals. In particular, in the *Tadić* Judgment, the International Criminal Tribunal for the Former Yugoslavia (ICTY) defined non-international armed conflict as «protracted armed violence between government authorities and organized armed groups or between such groups within a state»[28]. This is a crucial element for the different conflicts taking place on the Yemeni territory, as some of them are fought between only non-state armed groups. As a consequence, they cannot be defined as NIACs under Protocol II, but, on the contrary, they can be considered as such under the *Tadić* judgment definition. In addition to that, the ICTY listed a series of aspects to take into consideration in order to assess the intensity required for the categorisation

[26]UNSC (2019) "Letter dated 25 January 2019 from the Panel of Experts on Yemen addressed to the President of the Security Council" S/2019/83, UN Security Council, p.11-13.
[27]UNSC (2017) "Letter dated 27 January 2017 from the Panel of Experts on Yemen addressed to the President of the Security Council", op. cit., p.11.
[28]ICTY, *The Prosecutor v. Dusko Tadić*, Appeals Chamber, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995.

of a conflict as a NIAC[29]. For example, the presence of spread clashes over the territory and over a certain period of time; the distribution of weapons among both parties in the conflict, and the type of weapons used; blocking or besieging of towns; the number of casualties by shelling and fighting; the way the State uses armed forces; the intervention of international organizations in order to enforce ceasefire agreements, etc. These requirements are not determinative and have to be considered only as an indication[30]. However, as it will be further elucidated in the next Chapters[31], if we take into consideration these indications, the Yemeni conflict reaches, without doubt, the necessary intensity threshold.

At this point, a final note should be made on the existing relationship between the common Article 3 to the Four Geneva Conventions and the Additional Protocol II. Indeed, as it is enshrined at Art.1 Protocol II, the Additional Protocol II develops and supplements common Article 3. This means that there is a development of the provisions of Article 3, as it specifies and improves the protections granted by the applicable International Humanitarian Law. In this way, Article 3 does not lose its autonomous field of application, as the Additional Protocol applies only to those conflicts that reach its higher level of requirements[32]. The corollary of this situation is that in some conflicts, there will be the application of Article 3 alone and of the norms that amount to International Customary Law, while in other conflicts there will be the application of both Article 3 and the Additional Protocol II. As it has been demonstrated, the latter is the case with the Yemeni conflict.

[29]ICTY, *The Prosecutor v. Ljube Boškoski and Johan Tarčulovski*, Trial Chamber, Judgment, 10 July 2008, Case No. IT-04-82, paragraphs 177-178, pp. 79-80.
[30] RULAC (2017) "Classification: Non-International Armed Conflict", *RULAC*. Accessible at: http://www.rulac.org/classification/non-international-armed-conflicts#collapse1accord. Accessed at: 23/10/2019
[31]Especially in relation to the impact of the attacks carried out on civilian population, the siege of Tai'zz, the blockade of humanitarian assistance, the use of illegal weapons and the attacks carried out by the pro-government coalition.
[32]MOIR L., (2002), op. cit., pp. 100-101.

Yemen as a NIAC: external intervention

As already noted, the Yemeni conflict saw, since its rapid outbreak in 2015, the intervention of a Saudi-led coalition in support of the government forces. The military intervention and support of other states in a situation of NIAC is a phenomenon that has increased in the late years, characterising different conflicts all over the world[33]. The creation of these hybrid conflicts has led to numerous discussions on the necessity to create a distinct category of armed conflicts, which could not be anymore defined as only NIACs or IACs. However, as things currently stand, under International Humanitarian Law there is reference only to two categories of armed conflicts: the international and the non-international ones[34]. For this reason, it is necessary to understand under which of these two categories the hybrid conflicts, including the Yemeni one, have to be ascribed. The question of the internationalization of conflicts, mixed conflicts, and external intervention is very complex and at the moment there is no complete legal clarity on the matter. Despite that, it is generally accepted that in cases on foreign military intervention to support a government fighting against armed groups and on request of this government, the conflict is still considered as a NIAC[35] [36]. In this way, the third states involved in the conflict assume the status of "co-belligerents" to the pre-existing armed conflict. From this perspective, it is, thus, of vital importance to determine if the government of the State on which the hostilities take place, in this case the Yemeni Government, has given its authorization for the military intervention of other states.

The government of President Hadi is the official government of Yemen, recognized as such by the international community. When the hostilities inside Yemen escalated in 2015, the government requested the Gulf

[33]US intervention in Afghanistan and Iraq, after the establishment of their new governments, against Al-Qaida and the Talibans is considered as an example of NIAC.
[34]RULAC (2017) "Classification: Contemporary Challenges for Classification", *RULAC.* Available at: http://www.rulac.org/classification/contemporary-challenges-for-classification.Accessed: 23/10/2019
[35]MILANOVIC M., HADZI-VIDANOVIC V., (2012), "A Taxonomy of Armed Conflict", in White Nigel, Henderson Christian, *Research Handbook on International Conflict and Security Law*, Cheltenham(UK) and Northampton (US), Elgar Eds., pp. 34-36
[36]This position is also supported by the ICRC

Cooperation Council and the Arab League, on different occasions, to intervene,[37] in order to re-establish its authority over the territory. This request has been accompanied by the notification to the United Nations Security Council, requesting a resolution under Chapter VII of the UN Charter. Therefore, in the Yemeni case, the military intervention of third-states has been under the request and authorization of the official government[38].

In conclusion, this overall analysis of the definitions under International Humanitarian Law and of the application of these to the particular case of Yemen shows that the Yemeni conflict is a non-international armed conflict under International Humanitarian Law. The outcomes of this conclusion will be analysed in the next section.

1.2. The legal background

The characterisation of the Yemeni conflict as a non-international armed conflict is very important, as it has remarkable consequences for the applicability of the International Humanitarian Law. Indeed, only if a conflict is recognized as a NIAC under Common Art.3 to the Four Geneva Conventions and Additional Protocol II it is possible to have the application of these international instruments to this conflict.

Before the elaboration of the four Geneva Conventions of 1949, there was no provision under the International Humanitarian Law that could be applied in cases of non-international armed conflicts. The conduct of the hostilities inside a state was considered to be an internal matter of the state, not to be regulated by international law. The only provision that could be applied, theoretically, to situations of internal conflict was the so-called Marten's clause, which was part of the preamble of the 1907 Hague Regulations. This clause has been introduced by the Russian delegate to the Hague

[37] BBC (2015), "Yemen's President Hadi UN to back intervention", *BBC NEWS*. Available at: https://www.bbc.com/news/world-middle-east-32045984. Accessed 24/10/2019

[38] This conclusion holds true for the Gulf Cooperation Council countries, which have been directly requested by the President Hadi; however, the legality of intervention countries not parties of this organization is more debated.

Conference, following the impossibility to reach an agreement on the status of the civilians that took arms against an occupying force, and states that:

> Until a more complete code of laws of war is issued, the High Contracting Parties think it right to declare that in cases not included in the Regulations adopted by them, populations and belligerents remain under the protection and empire of the principles of international laws, as they result from the usages established between civilized nations, from the laws of humanity and the requirements of the public conscience. (Preamble of the IV Hague Convention respecting the Laws and Costumes of war on Land) [39]

From the formulation of this clause, it is possible to assume that its applicability is valid also in internal conflicts. However, since it is written in very general terms with no specific reference to internal conflicts, this clause has often been interpreted as only referring to international conflicts. Despite that, it represents one of the most important bases of IHL, and it is still considered as part of the modern IHL.

It is for this reason that Common Article 3 to the Four Geneva Conventions represents a turning point, followed by the improvements brought with the adoption of Additional Protocol II. This evolution has led to the current environment of international law, in which not only it is explicitly accepted that norms of International Humanitarian Law can apply to a non-international armed conflict, but also there are specific treaty-based instruments and customary norms that apply to NIACs.

This has important consequences for the Yemeni conflict: all the different parties in the conflict, meaning both state forces and non-state armed groups, are bound to respect the obligations of International Humanitarian Law enshrined under the Common Article 3 and the Additional Protocol II, with the addition of International Human Rights Law and Customary International Law. This obligation includes also the third-state parties to the conflict, meaning the pro-government coalition forces and the states

[39] Preamble of the IV Hague Convention respecting the Laws and Costumes of War on Land and its annex, 18 October 1907. Available at: https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=BD48EA8AD56596A3C12563CD0051653F

providing support to both government forces and Houthi forces, such as the US, the UK, and the Republic of Iran[40], as it will be further explained in Chapter IV.

Concurrent applicability

In relation to the applicable laws to the conflict, it is important to underline that the International Human Rights Law (IHRL) and the International Humanitarian Law have concurrent or dual applicability, that is they both apply in an armed conflict. The concurrent applicability is valid in both international and non-international conflicts, in which the Human Rights Law and the International Humanitarian Law complement and re-enforce each other. These two distinct bodies of international law have different origins and scope. However, they share an important aim: the preservation of life, dignity, and humanity of all people.

The concurrent applicability is the result of a change in the interpretation of the spheres of application of these two bodies of laws by the international community. According to the former view, the International Human Rights Law could only be applied in times of peace, while in times of war the International Humanitarian Law took over. The change of interpretation is the result of increasing cruelty and massive inclusion of civilians that characterized post-WWII conflicts, urging the necessity of continuous protection of the human rights in these circumstances[41]. This trend is reflected not only by the stance of different bodies of the UN, like the General Assembly, the Human Rights Commission and then the Human Rights Council, but also by different Regional and International Courts, Treaty Bodies and specialized procedures. Indeed, they have stated on different occasions the legally binding obligation on all the parties of a conflict to respect both IHRL and IHL, as they offer comprehensive protection for the people involved in an armed conflict, notwithstanding their

[40] HRC (2019) "Situation of Human Rights In Yemen, including violations and abuses since September 2014. Report of the detailed findings of the Group of Eminent International and Regional Experts on Yemen", A/HRC/42/CRP.1*, Human Rights Council, p.14.

[41] OHCHR (2011) "International legal protection of Human Rights in armed conflict", *United Nations Office of the High Commissioner for Human Rights*, New York and Geneva, p. 06

status of civilians or combatants[42]. The applicability of the IHRL in conflicts is nowadays widely accepted both by the international institutions[43] and by the recent practice of States[44]; in addition, we can state that nothing within the different Human Rights Conventions prohibits the applicability of the Human Rights Law during times of war[45].

Most times, there is a pacific complementarity between these two bodies of law, as many provisions of IHRL and IHL do overlap. However, it is possible that during armed conflicts contrasts between them arise, making it necessary to determine which body of law prevails. There are different opinions on this issue. The dominant one is the application of the *lex specialis*: this is a general principle of law, according to which the specific rule applies over the more general one.

In cases of contrasts in the application of the International Human Rights Law or the International Humanitarian Law in times of conflict, it is difficult to establish a clear and univocal application of this principle. In general terms, the provision of the humanitarian law is considered as the *lex specialis*, but this conclusion cannot be applied in every situation. For this reason, it is necessary to proceed on a case-to-case basis: in some cases, the humanitarian law provision will prevail over the IHRL one, and vice versa.

This is particularly important in a situation of non-international armed conflict. Indeed, as it will be explained later, there are fewer treaty-based humanitarian law provisions that can be applied to NIACs, if compared to those that can be applied in international armed conflicts. The concurrent

[42]OHCHR (2011) "International legal protection of Human Rights in armed conflict", op. cit., p.01

[43]For example, the International Court of Justice in its case-law is more and more referring to the application of Human Rights Law during armed conflicts. In addition to that, some Treaty Bodies have explicitly declared the application of the Convention during armed conflicts, such as the Human Rights Committee in the General Comments n. 29 (2001) and 31 (2004), as well as UN Bodies, as the Human Rights Council in the Resolution) 9/9.

[44]SIATITSA, I., TITBERIDZE, M., (2011) "Human Rights in armed conflict from the perspective of the contemporary state practice in the United Nations: factual answers to certain hypothetical challenges", Geneva Academy of International Humanitarian law, p.04. Available at: http://www.rulac.org/legal-framework/international-human-rights-law. Accessed at: 25/10/2019

[45]OHCHR (2011) "International legal protection of Human Rights in armed conflict", op. cit., p.06

application of human rights law, thus, allows filling the gaps left by IHL, providing greater safeguards for the civilian population.[46]

On the basis of the concurrent applicability of IHL and IHRL, in the next sections, a brief description of the different bodies of law that can be applied in the specific case of the Yemeni conflict will be given. These are: International Human Rights Law, International Humanitarian Law, and International Customary Law.

International Human Rights Law

International Human Rights Law protects rights and freedoms of all human beings, without any kind of discrimination. There are five different categories of rights: civil, political, cultural, social and economic rights. The protection of these rights is guaranteed by different International Human Rights treaties and by their Treaty Bodies; by different soft-law instruments of the UN; by the Customary International Law; and by other international and regional sources. The result is an imposition on States to respect, protect and fulfil human rights on a multi-level basis.

The respect of human rights involves mainly negative obligations, as states are required not to interfere and not to prevent the enjoyment of these rights by individuals. The protection of rights, on the contrary, imposes positive obligations on States, which are required to prevent, investigate, punish and redress violations of human rights committed by the State or by third parties. The obligation to fulfil human rights, finally, requires states to take legislative, administrative, budgetary, judicial and all the other necessary actions aiming at a full realization of these rights.

Both states and non-state actors are bound by International Human Rights Law and by the treaties to which the state is part, imposing both negative and positive obligations. As already noted, this is true both in time of peace and in time of war.

[46]KOLB, R., (2014), *Advanced Introduction to International Humanitarian Law*, Cheltenham (UK) and Northampton (US), Elgar Publications, pp. 46-47.

In relation to the specific case of Yemen, this state is part of a system of protection of human rights that develops on a multi-level structure, including the international, the regional and the domestic level. At international level, Yemen is part of seven of the nine core human rights conventions[47]. Therefore, the Yemeni armed forces have to respect the rights covered by these conventions, and this respect is scrutinized by the different Treaty Bodies established by the treaties, according to the different protection systems guaranteed by them. In addition to the treaty-based law, there is the applicability of Human Rights based on the Customary International Law, that is all those human rights principles that are considered as having acquired the status of customary law and *ius cogens*. The latter refers to all those principles of Customary International Law that are judged so important by the international community that they cannot be derogated in any circumstance and, thus, prevail over other international laws.

Secondly, on the regional level, Yemen is part of the League of Arab States and has to respect the regional standards imposed by this body, despite the great limitations of this Regional Instrument in relation to the protection of human rights[48]. In particular, Yemen has ratified the Arab Charter on Human Rights: on the one hand, it is bound to respect the Charter and, on the other, it has to answer to the Arab Human Rights Committee, whose role is to oversee the implementation of the Arab Charter.

Finally, the protection of Human Rights in Yemen is safeguarded also at a domestic level: the Yemeni Constitution of 1991, which is presumably still

[47]Meaning: International Covenant on Civil and Political Rights; International Covenant on Economic, Social and Cultural Rights; Convention of the Elimination of All Forms of Racial Discrimination; Convention on the Elimination of Discrimination Against Women; Convention on the Rights of the Child; Convention against Torture, and other Inhuman, Degrading Treatment or Punishment; Convention on the Rights of Persons with Disabilities.
Yemen is also part of: First Optional Protocol CRC; Second Optional Protocol CRC; Optional Protocol to the Convention on the Rights of Persons with Disabilities.
Yemen is not part of: Convention on the Protection of all Persons from Enforced Disappearance; International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families; First Optional Protocol ICCPR; Second Optional protocol ICCPR, aiming at the abolition of death penalty; Optional Protocol CEDAW; Optional Protocol CAT; Third Optional Protocol CRC.

[48]The Arab Charter of Human Rights has often been criticized for granting a lower standard of human rights with respect to the international ones. In addition to that, the Commission cannot receive individual complaints, but receives and reviews periodic reports by the States. Despite shadow reports are admitted, the procedure has been criticized for not disseminating information and for not collaborating with NGOs and civil society organizations.

in force[49], states the adherence of Yemen to the UN Declaration of Human Rights and, among others, to the generally recognized principles of International Law.[50]

These norms, despite states are still the main target of international Human Rights law do not put obligations only on them. Indeed, especially in situations of armed conflicts, it is considered of crucial importance for these obligations to bind also non-state armed groups, in order to widen the protection of human rights. This is also affirmed in different resolutions of the Security Council, which refer to the duty of non-state armed groups to respect International Human Rights Law, either by addressing non-armed groups in a specific way or by referring generally to the parties in the conflict[51]. However, the responsibility of non-state armed groups in relation to the respect, protection, promotion, and fulfilment of human rights is still very much debated. This issue will be analysed in details in Chapter IV.

International Humanitarian Law

International Humanitarian Law is a branch of International Law that regulates the *ius in bello*[52], meaning the conduct of hostilities during armed conflicts. IHL applies only in a situation of armed conflict, during which it cannot be suspended or limited. There are some core principles that constitute the cornerstones of this body of law, namely the principles of humanity, military necessity, distinction, proportionality, and precaution.

The principle of humanity and unnecessary suffering guarantees to all persons that have fallen under the power of the enemy to be treated humanely, regardless of their status. Furthermore, it asserts the prohibition of the use of weapons and methods of warfare that cause unnecessary injury or suffering. Under the principle of military necessity, only those actions aimed at the end of the war are admitted, but only by weakening the

[49]In 2015, there has been the appointment of a Constitutional Drafting Committee in order to draft a new Constitution. However, because of the President resignation and the escalation of the conflict, the process has been interrupted.

[50]The Constitution of the Republic of Yemen, as amended by public referendum held on February 20, 2001, Article 6.

[51]SIATISTA I., TITBERIDZE, M., (2011), op. cit., pp.10-11.

[52]Meaning the methods and means of warfare inside a conflict, not considering the legality of the conflict, meaning the *ius ad bellum*.

armed forces of the enemy. The principle of distinction imposes to the parties in the conflict to always distinguish between civilians and combatants as well as between civilian objects and military ones, considering the attacks on civilians/civilian objects as unlawful. The principle of proportionality states that the expected deaths and injuries of civilians and the expected damage of civilian objects must never exceed the expected advantage. Lastly, the principle of precaution aims at assuring the precaution of the attack as well as of the effect of the attack and at taking all the necessary measures to minimize potential harm to civilians and to civilian objects. These principles are reflected in the treaties that have been created for the regulation of IHL. There are, in particular, some conventions that are considered as the basis of the IHL: The Hague Conventions, the Four Geneva Conventions of 1949 and the two Additional Protocols of 1977 to the Geneva Conventions[53]. In addition to those instruments, through time there has been the development of different international treaties regulating specific aspects of the armed conflicts. As a result, there has been the development of an overall regulation of different aspects of the warfare, methods, and means of warfare, completed and supplemented by the Customary International Law.

International Humanitarian Law applies automatically if there is the occurrence of a certain fact, an armed conflict, be that an international armed conflict or a non-international one. This means that the "armed conflict" is configured not as a legal act, but as a legal fact; this has important legal consequences, as the application of the International Humanitarian Law occurs *as a consequence* of a concrete situation, and not for an act of will of the parties. In this way, there is an assurance of the application of

[53]The Hague Law: "the Petersburg Declaration" (1868); "Hague Regulations" of 1899 and 1907; The Gas Protocol (1925); "Non-proliferation of nuclear Weapons" (1968); "Biological Weapons" (1972); "ENMOD Convention"(1977); "Convention on Inhuman Weapons"(1980); "Chemical Weapons" (1993); "Anti-Personnel Mines"(1997); "Cluster Munitions" (2008).
The Geneva Law: First Convention on wounded and sick soldiers on Land; Second Convention on Wounded and sick soldiers on sea; Third Convention on Prisoners of War; Fourth Convention on protection of Civilians and Occupation.
Additional Protocols: First Additional Protocol on Additional means and protection in International Armed Conflicts; Second Additional Protocol on Additional means and protection in non-international armed conflicts.

International Humanitarian Law when the situation reaches some necessary requirements, and so, it is independent of the, often partial, will of the States parties in the conflict to respect and to be constrained by the rules of IHL.

International Humanitarian Law in NIACs

International Humanitarian law covers all those situations that can be classified as international armed conflicts (IACs) or non-international armed conflicts (NIACs). This typological differentiation is reflected also in the legal instruments that can be applied in the conflicts. Even if the majority of the treaty-based norms of the IHL are referred to the category of international armed conflicts, there are some specific, fewer provisions that can be applied to the case of non-international armed conflicts.

First of all, Common Article 3 to the Four Geneva Conventions establishes a minimum impartial standard of humanity that has to be applied in a situation of non-international armed conflict. In particular, Article 3(1) states the protection of all the persons not taking direct participation to the hostilities – including members of the armed forces that have laid down their arms and *hors the combat* because of sickness, wounds, detention, and any other cause- to which is granted a human treatment without any kind of discrimination. Then, are listed different acts that are prohibited in every circumstance for the safeguard of the persons under the scope of this article: deprivation of life and murder, torture and other inhuman treatments; taking of hostages; degrading and humiliating treatments; sentences and judgments carried out without the judgment of a regularly constituted court and without the broadly-defined indispensable judicial guarantees. Article 3(2) grants protection to the wounded and sick, who should be collected and treated. Furthermore, it is established the possible intervention of impartial humanitarian bodies (for example the International Committee of the Red Cross), that can offer services to the Parties of the conflict. The Article concludes with two important pronouncements. The first provides the possibility for the application of the whole Geneva Conventions to the conflict, on the condition that there is an agreement between the Parties in the conflict; if this agreement is not reached only Article 3 is considered

applicable. The second establishes that the preceding provisions shall not affect the legal status of the Parties to the conflict. This is a guarantee for the State not to lose its legal status when there is the application of Article 3, as states are reluctant to recognise the internal hostilities as NIACs and, consequently, to have the application of this article[54]. This reluctance originates from the fact that, even if this article has a humanitarian purpose, this clause is often interpreted as a recognition of a particular status to the non-state armed forces and as the proof of the inability of the state to deal with the situation. At the same time, also the insurgents are not very akin to agree on the recognition of the conflict as a NIAC, as very few advantages would come to them. First of all, this would not give them any particular status under international law as they are not considered as belligerents to the conflict; secondly, the applicability of the article would mean that the infringements could be used against them by both domestic and international criminal tribunals.[55]

Over the years, there have been two major developments in the IHL applicable to non-international armed conflicts that are particularly relevant: the creation of a specific protocol for NIACs and the flow of provisions of International Human Rights Law into International Humanitarian Law[56]. In this way, it has been possible to expand the legal protections to the people involved in this type of conflict. The Additional Protocol II is divided into five parts dealing with: the scope of application of the Protocol, discussed under paragraph 1.1.; the provisions on the humane treatment; wounded sick and shipwrecked; civilian population and, finally, the final provisions.

In particular, Article 4 lists the fundamental guarantees for all the persons not taking direct part in the conflict or that have ceased to participate in it. Article 5 ensures protection for those who have been deprived of freedom for reasons concerning the conflict, granting them the minimum standards enlisted in the article; Article 6, on the other hand, deals with the prosecution

[54]CULLEN, A., (2010), op. cit., pp. 55-56.
[55]MOIR ,L., (2002), op. cit., pp. 65-67.
[56]KOLB, R., (2014), op. cit., pp. 15-16.

and punishment of criminal offences related to the armed conflict, imposing the respect of the standards usually requested for a fair trial[57].

Article 7 ensures protection and care for all the wounded, sick and shipwrecked independently from the fact that they have taken participation in the hostilities or not, while Article 8 imposes an obligation to search for wounded, sick, shipwrecked and to look for the dead without delay, if the circumstances allow it. Article 9 grants protection to religious and medical personnel that should be helped in any circumstance. Articles 10, 11 and 12 extend the focus on the medical personnel, especially for general protection of medical duties, for the protection of medical units and transports and for the use of distinctive emblems. As regards the protection of the civilian population, Article 13 focuses on the protection of civilians, to whom the general protections from military operations shall be granted. In other words, civilians should never be the object of an attack, unless they are taking part in the hostilities at that moment, or are continuously taking direct part in the hostilities. Article 14 prohibits starvation as a method of warfare, including the prohibition of all the attacks directed toward facilities necessary for the survival of civilians, while article 15 ensures the protection from the attacks of works and installations containing dangerous forces. Article 16 deals with the protection of cultural objects and places of worship, while article 17 prohibits the forced movement of civilians, unless the security of the civilians in relation to the conflict so demands. Article 18, finally, guarantees the possible intervention of relief societies, such as the Red Cross, that are authorized to intervene to help the civilian population, as well as other relief actions taken by the civilians. In addition to that, in cases of lack of supplies essential for the survival of the civilian population, it is allowed to take impartial and exclusively humanitarian relief actions, prior the authorization of the State.

[57] Meaning the principle according to which accused must be informed in details of the alleged offence; principle according to which conviction must be on the basis of individual responsibility; principle of *nullum crimen sine lege*; principle of the non retroactivity of the penalty; principle of the presumption of innocence and the one of the right to be present at the trial with no obligation to testify.

Under many aspects, the provisions contained in the Protocol develop and improve the more general Article 3 of the Four Geneva Conventions.

Nevertheless, the regulation of International Humanitarian Law in NIACs is far from perfect. Indeed, it has been defined as unbalanced, chaotic and minimal.[58] The "minimality" of IHL in relation to NIACs originates mainly from the reluctance of states to regulate their internal matters under international law. This because they would not only be bound to respect international provisions, but the international community would also be able to scrutinize their behaviour. The assertion of the respect of the principle of State sovereignty to defend the national unity of the State was included precisely for this reason.[59] The problem of the "unbalancedness" is related to the inequality of belligerents in NIACs, in opposition to the basic principle of the equality of belligerents in international armed conflict granted by IHL. This principle states that the same rules apply to all the parties of the conflict; however, this is not true for NIACs[60]. Despite both the non-State armed groups and the State forces are obliged to apply the rules of International Humanitarian Law[61], legally, only the State forces are legitimated to use force. Non-state armed groups are not granted this legitimacy, as they are, from this perspective, not protected by the International Humanitarian Law. Members of non-state armed groups are, indeed, considered as civilians, to which it is not granted the status of combatants and, therefore, can be in any case prosecuted by municipal law. The only differentiation that is done is between the civilians that are participating in the conflict, those who take part in the conflict only temporarily, and those who are not taking part in the conflict. The result of this legal framework is that non-state armed groups are deprived of the immunity of combatants usually granted under International Humanitarian Law as well as of the status of prisoners of war if captured by the enemy. The main problem is that this could incentivize the non-respect of International Humanitarian Law by the non-state actors,

[58]KOLB, R., (2014), op. cit., p. 28.
[59]Art.3 II Additional Protocol 1977.
[60]KOLB, R., (2014), op. cit., pp. 30-31.
[61]Meaning those that can be applied in NIACs.

since no advantage would derive to them from its respect, being always under the possible prosecution of municipal law.[62]In relation to the third deficiency of International Humanitarian Law in NIACs, it has been underlined that the regulations concerning these types of conflict are very skinny and have many gaps. For this reason, the law regulating the warfare in NIACs has developed mainly through Customary International Law, based on unwritten laws largely fostered through the practice and the jurisprudence of the International Courts.

Despite these drawbacks, in the last 20 years, several attempts have been made to widen the extent of the IHL in NIACs, in order to bring it closer to the situation of IACs[63]. The result of this progressive evolution has been the expansion of the reach of the IHL protection in NIACs, demonstrated, for example, by the development of other different International Humanitarian Law conventions applicable in any circumstances, or specifically extending their application to cases of non-international armed conflicts. This is true, for example, in relation to the treaties on the bans on specific types of weapons, or for the protection of cultural objects.[64]

Maybe the most important development, from this perspective, has been the recognition of the commission of war crimes also in non-international armed conflicts. The Appeal Chamber of the ICTY in the *Tadić* judgment stated that war crimes could be committed also during NIACs, leading to the individual criminal responsibility of the perpetrators. This judgment paved the way for the development of a rudimentary law on war crimes in non-international armed conflict, based on the existing provisions for the international armed conflicts. Further development has been reached with the creation of the International Criminal Court (ICC). In particular, the Rome Statute explicitly recognises the possible commission of war crimes in NIACs, enlisting these crimes in a special category of war crimes. Thanks to this progressive evolution, the perpetuation of war crimes and their

[62]KOLB, R., (2014), op. cit., p. 31.
[63]KOLB, R., (2014), op. cit., pp.34-35. According to one view, the rules of the additional Protocols of 1977 can be applied in both NIACs and IACs, even if their concrete application will differ in the details according to the specific situations.
[64]KOLB, R., (2014), op. cit., pp.40-41.

prosecution are nowadays widely accepted by the international community[65].

Customary International Law

International Customary Law, according to the definition given by the International Court of Justice (ICJ)[66], consists of unwritten international laws that bind all states independently from the treaties they have ratified. The norms of Customary International Law cover all the different sectors of international law, including Human Rights law and International Humanitarian Law, creating, thus, minimum standards applicable at a universal level. This is particularly important especially if we consider the relatively low level of IHL treaty-based provisions that we can find in relation to non-international armed conflicts. Despite initial contrasts on the idea of the applicability of Customary International Law to non-international armed conflicts, nowadays it is widely accepted that customary law can be applied to NIACs, thanks also to the work of the different international criminal tribunals, and in particular of the ICTY with the Tadić judgment[67]. Customary International Law can be considered as a subsidiary of International Humanitarian Law, filling the gaps left by this body of law, including the different rules of International Humanitarian Law applicable to NIACs. Customary International Law can, thus, improve and complete the treaty-based law for NIACs, which, at this stage, provides a very rudimental regulation. Indeed, it has been argued that, thanks also to the study done by the International Committee of Red Cross, nowadays the majority of the rules that apply to IACs have acquired the status of Customary Law and, therefore, can be applied also to NIACs.[68]

---

[65] STAHAN, C., (2019), *A Critical Introduction to International Criminal Law,* Cambridge (UK), Cambridge University Press ,pp. 77-78.

[66] Art. 38(1) ICJ states that there should be both a state practice and an *opinio juris* in order to establish the existence of a customary law.

[67] MOIR, L., (2002), op. cit., p. 134.
In the Tadić judgment for the first time it has been stated the applicability of customary law to internal armed conflicts, including norms regarding the individual criminal responsibility.

[68] HRC (2019) "Situation of Human Rights in Yemen, including violations and abuses since September 2014. Report of the detailed findings of the Group of Eminent International and Regional Experts on Yemen", p. 13. Reference to the study of the ICRC: HENCKAERS J-M., DOSWALD-BECK, L., (2009), *Customary International Humanitarian Law. Volume I: Rules,* International Committee of the Red Cross, New York (US), Cambridge University Press.

However, this does not mean that there is a complete distinction between treaty-based norms and customary norms. Different norms of Customary Law have been crystallized into international treaties and domestic constitutions, or, vice versa, norms that have been firstly enshrined in treaties or Statutes have acquired, with time, the status of Customary Law. This entails also that if a state poses or has posed reservations on norms of a treaty that are considered to be part of Customary Law, these reservations lose their efficacy, since the norm of Customary Law will, in any case, be applicable also in its case.

Furthermore, norms of Customary Law are considered to bind also non-state forces, meaning international organizations and non-state parties of a conflict. For example, the blue helmets of the UN, in their operations, have to respect the norms of Customary Law; the same is valid for the non-state armed forces or similar entities in NIACs, independently from the fact that a state has ratified or not a specific treaty.[69]

This is valid also in the Yemeni case. In addition to the Article 3 of the Geneva Conventions and to the Additional Protocol II, both the State-armed forces with its allies and the Houthi/Saleh forces, as well as all the different armed groups operating in the conflict, are obliged to respect the norms of Customary International Law.

The knowledge of the norms of Customary International Law is, therefore, of vital importance in order to understand which laws and which provisions, maybe not included in the treaty-based law, are anyway applicable in any context and typology of conflict. As already noted, the identification of one norm as part of the Customary International Law is a relative long and complex process, in which different contrasts and different opinions may arise, provided that the specific norm meets the necessary requirements of *opinio juris* and state practice. However, there are some norms in relation to NIACs that generally are accepted as part of the Customary Law. For example, the protection of civilians and the principle of distinction in NIACs are widely accepted as a customary norm. In addition to that, it is important

[69]KOLB, R., (2014) , op. cit., pp. 66-67.

to underline that, according to the ICTY, there has been a development of the regulations of the methods and means of warfare in NIACs as part of Customary Law. This is true, for example, for the ban on the use of weapons generally prohibited in international armed conflicts.[70]

The Rome Statute is, from this perspective, of vital importance, since it is considered the affirmation of the customary status of different norms that can be applied in internal armed conflicts, including crimes against humanity, war crimes, and individual criminal responsibility.

1.3. War Crimes

At the present time, there is no universally agreed definition of war crimes or a complete list of all the possible war crimes, since it is not possible to foresee all the possible violations that can be committed in the future[71]. As a consequence, there are different definitions of war crimes, under various international and domestic instruments[72]. Generally, war crimes can be defined as serious violations of International Humanitarian Law and costumes of war applicable in international and non-international armed conflicts. Making reference to this general definition, a violation is considered as serious if it endangers protected persons or objects or if it violates important values. An important clarification of this element has been given by the International Criminal Court, according to which in both the cases illustrated above, in order to have a war crime, it is not necessary to have physical injuries or deaths. For example, an attack directed to civilians can be considered as a war crime even if it does not cause any casualty. At the same time, we can have a violation of important values that amount to war crime even if there is no direct endangerment of persons or objects; for example, the violation of the right of a fair trial can be considered as a war crime, but there should be grave consequences for the victim.

[70]MOIR, L., (2002), op. cit., pp. 144-146.
[71]SOLIS, G. D., (2016), *The Law of Armed Conflict. International Humanitarian Law in War*, Second Edition, Padstow (UK), Cambridge University Press, p. 330.
[72]HENCKAERS J-M., DOSWALD-BECK, L., (2009), *Customary International Humanitarian Law. Volume I: Rules,* International Committee of the Red Cross, New York (US), Cambridge University Press, Rule 156.

Not all the violations of IHL are necessarily war crimes. There are four requirements that an act must have, in order to be considered as a war crime. Firstly, there should be an armed conflict, international or non-international, in progress at the time in which the crime is committed. Secondly, the alleged violation should be a violation of the norms or customs of war, enshrined under treaty-based or customary law[73]. Thirdly, there should be a connection between the crime itself and the armed conflict. This requirement delineates the border between a domestic crime and a war crime: if there is a nexus with the conflict, it can be considered as a violation of IHL; on the other hand, if this nexus lacks, there will be a crime, but only under the domestic jurisdiction. The interpretation of the third requirement has been subjected to a recent revision by the ICTY in the context of NIACs. Indeed, the tribunal provided some indicators to test if the nexus requirement is met. According to these indicators, the perpetrator should be a combatant while the victim should be a non-combatant; the victim should be a member of the opposite party; the act consisting in the crime should be carried out to serve the ultimate goal of a military campaign; finally, the crime is committed as a part/in the context of the perpetrator's official duties. These indicators can serve as helpful guidelines for the existence of the so-called *belligerent nexus*, but each case has to be analysed in its specific context[74]. In the ICTY case *Prosecutor v. Tadić*, the Tribunal added that for a charged act to constitute a war crime, it is enough that the act is "closely related" to the hostilities occurring on a territory controlled by parties to the conflict, even if there are no substantial clashes at the moment of the commission. In this way, it is not necessary for an act to constitute war crime to occur in the exact moment of combat, as it just has to be related to the conflict as a whole.[75]

The fourth and last requirement states that the conduct has to be included under a criminal code at the national or international level in order to allow

[73]SOLIS G. D., (2016), op. cit., pp. 335-336.
[74]SOLIS G. D., (2016), op. cit., p.337.
[75]SOLIS G. D., (2016), op. cit., pp. 363-364.

individual criminal prosecution. In this way, states are compelled to take active steps to implement the norms of IHL at the domestic level.

War crimes can be either acts or omissions of the Customary International Law or of the treaty law provision applicable in a specific conflict, provided that the norm unquestionably binds the parties of the conflict and that was into force at the time in which the violation occurred[76]. In addition to those elements, in order to assess the commission of a war crime, it is necessary to focus also on the mental element of the perpetrators, in other words, their intention[77]. The consideration of the mental element is fundamental for the accountability of the perpetrators. Indeed, only if the crimes are committed wilfully, that is either intentionally or recklessly, they can bring to an eventual criminal responsibility.

However, as already noted, the idea of the application of the war crimes in conflicts not of an international character is quite a recent one. For this reason, the majority of the existing international instruments indicate such crimes only when referring to international conflicts. However, thanks to the development of the International Humanitarian Law and mainly to the practice of international tribunals, it is possible to enlist the war crimes in the context of non-international armed conflicts. We are giving here an overview of the different existing categories of war crimes in non-international armed conflicts, which is based on the list of war crimes developed by the International Committee of the Red Cross (ICRC) by combining different sources at the national and international levels.

The first category includes war crimes that result from grave violations of Article 3 of the Geneva Conventions committed towards persons not taking active participation in the hostilities, and members of the armed forces that have laid down their arms and *hors de combat.* These crimes include: violence to life and person, in particular murder of all kinds, mutilation, cruel

[76]ICTY, *Prosecutor vs. Dusko Tadic a/k/a "DULE"*, *Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction*, Appeals Chamber Decision, 2 October 1995, paragraphs 94 and 143.

[77]All offences under international criminal law are constituted of two elements: *actus reo* (the criminal act) and the *mens rea* (the criminal intent). The degree of *mens rea* required in war crimes is not always the same: in some cases a crime can be committed for gross negligence, while in others there is a clear intention.

treatment, and torture; committing outrages upon personal dignity, in particular humiliating and degrading treatment; taking of hostages; passing of sentences and carrying out executions without previous judgement pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognised as indispensable.[78]

Article 3 of the Geneva Conventions is recognised as part of the Customary International Law, and the identification of its violations as war crimes is widely accepted by the international community, especially thanks to the development of the jurisprudence under the different international criminal tribunals[79].

The second category refers to all the other serious violations of International Humanitarian Law that can be committed in a NIAC. The following crimes are included under this category: making the civilians either as population or individuals, that are not taking part directly in the hostilities, the object of attack; pillage; committing sexual violence, in particular, rape, sexual slavery, enforced prostitution, enforced sterilisation and enforced pregnancy; ordering the displacement of the civilian population for reasons related to the conflict and not required for the security of the civilians involved or imperative military necessity; subjecting persons in the power of the adversary to medical or scientific experiments of any kind not necessary for the health of the persons concerned and seriously endangering their health; declaring that no quarter will be given; making medical or religious personnel or items the object of attack; conscripting or enlisting children under the age of 15 into the armed forces or groups, or using them to participate actively in hostilities; making religious or cultural objects the target of attack, provided that they are not military objectives; making civilian objects the object of attack; seizing property of the adverse party not required by military necessity; making persons or objects involved in a humanitarian assistance or peace keeping mission in accordance with the

[78]HENCKAERS J-M., DOSWALD-BECK, L., (2009), op. cit., Rule 156, p. 590

[79]Statute of the International Criminal Tribunal for Rwanda; Statute of the Special Court of Sierra Leone; Statute of the International Criminal Court; Statute of the International Criminal Tribunal for the Former Yugoslavia.

Charter of the United Nations the object of attack, as long as they are entitled to the protection given to civilians or civilian objects under international humanitarian law; killing or wounding an adversary by resort to perfidy.[80]

It is possible to draw a distinction within this category. The first three crimes (attacks on the civilian population not directly involved in the hostilities, pillage and sexual violence with the other related crimes) are considered as war crimes under the International Customary Law[81]. The other crimes, that are considered violations of the Additional Protocol II and of Customary International law, have been enlisted as war crimes in the Statute of the International Criminal Court. They may be described in other words, but the principle protected is considered the same. It is important to underline that according to some authors, the crimes enlisted in the Rome Statute reflect Customary Law. This entails that following the amendment of the Rome Statute, also the use of some types of weapons is prohibited under Customary Law.[82]

The third category corresponds to the violations of International Humanitarian Law not listed in the ICC Statute. These are: using prohibited weapons; launching an indiscriminate attack resulting in death or injury to civilians, or an attack in the knowledge that it will cause excessive incidental civilian loss, injury or damage; making non-defended localities and demilitarised zones the object of attack; using human shields; slavery; collective punishments; using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including by impeding relief supplies.

These crimes are not listed under the Statute of the International Criminal Court; however, they are commonly recognized as grave violations by the state practice and by other international and domestic instruments[83].

[80]Loc. cit.
[81]HENCKAERS J-M., DOSWALD-BECK, L., (2009), op. cit., Rule 156, p. 591.
[82]SIVUKUMARAN S., (2012), *The Law of Non-International Armed Conflict*, Croydon (UK), Oxford University Press, p. 106.
[83]HENCKAERS J-M., DOSWALD-BECK, L., (2009), op. cit., Rule 156, pp. 599-600.

Finally, there are the so-called composite war crimes. This category of crimes includes war crimes such as ethnic cleansing or enforced disappearances that amount to war crimes, as they are a combination of different violations already considered as such.

The analysis carried out in this chapter is just an overview of the international norms that can be applied in a situation of armed conflict and, in particular, of non-international armed conflicts. However, the description and analysis of the legal background of the applicable norms are of great importance in order to be able to undertake an analysis of the different violations of International Humanitarian Law committed in a conflict.

In every conflict and for every specific crime it is necessary to carry out a detailed investigation in order to assess the possible criminal responsibility of the parties in the conflict for war crimes. For this aim, the nature of the crime, the eventual recognition of a crime as such under national and International Criminal Law, and the instruments to which a particular state is part are all elements that have to be taken into consideration. This will be addressed in the next Chapters, in relation to the Yemeni conflict.

Chapter II – War crimes in the Yemeni conflict

Since its beginning, the Yemeni conflict has been characterised by several violations of International Humanitarian Law and International Human Rights Law, many of which could amount to war crimes.

The Yemeni conflict is still going on at the moment of writing this dissertation. For this reason, it is often difficult to access all the necessary information to thoroughly analyse the different violations of IHL.

The aim of this Chapter is to give an overview of the violations of International Humanitarian Law that are occurring in Yemen, focusing, in particular, on their possible amount to war crimes.

Since the gravity of the alleged crimes, the impossibility to have first-hand information, as well as the impossibility to access confidential information, the analyses and assessments carried out in this Chapter on the possible commission of war crimes, in order to be as precise as possible, will combine the information and reports of different and reliable sources, such as NGOs -Amnesty International, Human Rights Watch, Doctors Without Borders, Mwatana for Human Rights among others- and of the different bodies of the UN[84]. Important and distinctive sources are the reports of the Group of Eminent International and Regional Experts and of the Panel of Experts, mandated respectively by the OHCHR and by the Security

[84]HRC (2016) "Situation of Human Rights in Yemen. Report of the High Commissioner for Human Rights" op. cit.; HRC (2017) "Situation of Human Rights in Yemen including violations and Abuses since September 2014. Report of the United Nations High Commissioner on Human Rights" op. cit.; HRC (2018) "Situation on Human Rights in Yemen, including violations and Abuses since September 2014. Report of the United Nations High commissioner for Human Rights containing the findings of the Group of Independent Eminent International and Regional Experts and summary of technical assistance provided by the Office of the High Commissioner to the National Commission of Inquiry" op. cit.; HRC (2019) "Situation of Human Rights in Yemen, including violations and Abuses since September 2014. Report of the Group of Eminent International and Regional Experts as submitted to the UNHCHR" op. cit.; UNSC (2017) "Letter dated 27 January 2017 from the Panel of Experts on Yemen addressed to the President of the Security Council" op. cit.; UNSC (2018) "Letter dated 26 January 2018 from the Panel of Experts on Yemen mandated by Security Council Resolution 2342 (2017) addressed to the President of the Security Council" op. cit.; UNSC (2019) "Letter dated 25 January 2019 from the Panel of Experts on Yemen addressed to the President of the Security Council" op. cit.; HRC (2019) "Situation of Human Rights In Yemen, including violations and abuses since September 2014. Report of the detailed findings of the Group of Eminent International and Regional Experts on Yemen" op. cit.

Council[85]. These reports have identified and analysed different violations of IHL that may amount to war crimes, by using the well-established best practices and methodologies for Human Rights facts finding, including interviews with witnesses and victims and other information gathered by direct sources.

The nature of these alleged violations is very different; some of them refer to the methods and means of warfare, while others, such as torture, inhuman treatment, and sexual violence, are directly related to the individuals. The number of possible criminal acts in the Yemeni conflict is impressive and raises several concerns with respect to the adherence to IHL and IHRL by all the parties involved in the conflict.

The analysis of the general categories of crimes will be addressed in the following sections, providing, when possible, the examination of selected cases, as examples of these major categories. Each category and each case is followed by a legal analysis to demonstrate their possible amount to war crimes, according to the international instruments applicable to the conflict[86].

2.1. Attacks to the civilian population

Numerous attacks to the civilian population, led by both the pro-government coalition and the Houthi forces, have occurred during the Yemeni conflict since its very beginning. These attacks targeted civilians and civilian buildings such as residential areas, farms, and markets, including protected facilities like hospitals and schools. These attacks have had inevitable and dire consequences on the civilian population: thousands of people died or

[85]The Group has been created by the High Commissioner on Human Rights, under the Human Rights Council Resolution 36/31, in order to investigate the continuous violations and abuses of International Humanitarian Law and International Human Rights Law committed by all parties in the Yemeni conflict since September 2014, and, when possible, to find those responsible of the violations.[85] The Panel, on the other hand, has been mandated by the Security Council to gather information on the situation in Yemen and to monitor the implementation of the sanctions imposed.

[86]For a full and complete account of the different types of attacks and violations occurring in the Yemeni conflict, reference can be made to the instruments mentioned above.

have been injured during these offensives and many civilian objects and buildings have been severely damaged or destroyed.

At this point, it is necessary to make a clarification. The death and injury of civilians are unavoidable during armed conflicts. This fact is recognized under IHL, by tolerating the unintended loss of civilian lives and destruction of civilian objects, the so-called “collateral damage”. The collateral damage does not justify all the civilian casualties or destructions caused by armed conflicts. More precisely, it must not violate the principles of proportionality and precaution, and must not exceed the anticipated military advantage.

As already noted in the previous Chapter, the principle of distinction is one of the milestones of International Humanitarian Law; it is part of International Customary Law and it binds all parties in the conflict. In particular, in relation to NIACs, it is enshrined under Art. 13(2) of the Additional Protocol II as well as under Common Article 3 to the Geneva Conventions. However, unlike the cases of IACs, in non-international armed conflicts, the distinction between civilians and combatants is more complicated. This is due to the fact that in NIACs the members of the non-state armed forces are not considered as lawful combatants, but as civilians who take direct and/or continuous part in the hostilities. For this reason, in NIACs the civilians that have a continuous combatant function or that, at the moment of the attack, are taking direct part to the hostilities, can be considered as legitimate targets, losing, therefore, their civilian status[87].

However, the collateral damage, as well as the difficulty of distinction between civilians and combatants is not a justification for the violations of this principle and for indiscriminate attacks against the civilian population. An assessment has to be made on a case-to-case basis in order to avoid the target of civilians and, in any case, all the necessary precautionary measures have to be taken to avoid civilian casualties.

Several of the attacks carried out in the Yemeni conflict violate the principle of distinction and the principles of precaution, proportionality and military necessity. The cases described below are explanatory of the violations of

[87]SOLIS,G., (2016), op. cit., p. 579.

these principles. The loss of civilian lives in those attacks cannot be justified as a collateral damage: civilians, civilian buildings and protected facilities have been directly targeted and neither precautionary measures nor proportionality assessments have been taken, in complete disregard of the principles mentioned above; this could lead to the criminal responsibility of the parties involved in the conflict.

Pro-government coalition airstrikes

The intervention of the pro-government coalition in March 2015 marked the start of numerous airstrikes that are considered to violate the International Humanitarian Law. According to the office of the High Commissioner for Human Rights, the conflict-related casualties between March 2015 and June 2019 was of 7,292 civilians killed and of 11,630 injured[88], even if the real numbers are believed to be much higher: according to the ACLED, the conflict killed 60,223 persons up to December 2018[89]. The majority of these victims were civilians killed or injured by the coalition airstrikes, while a distinct consideration should be made on the destruction of civilian buildings, houses, hospitals, and other facilities necessary for the survival of the civilian population derived from these attacks. In its World Report 2019, Human Rights Watch identified 90 apparently unlawful airstrikes between March 2015 and November 2018, even if other sources report different figures. For example, the number of incidents taken into consideration by the Group of Experts is higher and concentrates mainly in the first nine months of the coalition air operations, estimated as the period in which the majority of unlawful attacks occurred. The violations perpetrated by the Saudi-led coalition are so serious that they could amount to war crimes and raised serious concerns in the international community not only with respect to the observation of IHL but also to the targeting methods of the pro-government coalition. As a consequence of international

[88] HRC (2019) "Situation of Human Rights in Yemen, including violations and Abuses since September 2014. Report of the Group of Eminent International and Regional Experts as submitted to the UNHCHR", op. cit., p. 5.
[89] KEARNEY J., (2019), "An Examination of Saudi Arabia's airstrikes rules of engagement and its protection of civilians", *Relief Web.* Available at: https://reliefweb.int/report/yemen/examination-saudi-arabia-s-airstrike-rules-engagement-and-its-protection-civilians. Accessed: 21/11/2019.

pressure, Saudi Arabia assured to "revise" its targeting methods; despite that, the attacks directed towards the civilian population did not stop[90] and are still going on at the moment of writing[91].

Al Kubra Hall, Sana'a, 8 October 2016

This airstrike hit the Al Kubra Hall during the funeral of the father of Minister of Interior appointed by the Houthi/Saleh forces. According to the testimony of some people who survived the attack, the Hall was full of people attending the funeral. Most of them were civilians, but some military leaders affiliated to the Houthi forces and to the former president Saleh were also present. The airstrike killed at least 137 men, injured 671, and 24 boys[92]. According to Human Rights Watch, the airstrike was carried out around 3:30 pm, when two air-dropped munitions penetrated the roof of the building, detonating few minutes apart[93]. The place, date and hour of the funeral were publicly known, as they had been announced the day before on the Facebook page of Jalal al-Rawishan, the son of the deceased. Some witnesses reported that they heard the sound of a plane and then the first munition hit; after some minutes, when other people reached the Hall to help the victims and those who survived the first attack were still inside the building, the second munition exploded. According to the UN findings, the points of impact of the two strikes were 15 to 20 metres apart. The analysis of the remnants of the munitions used in the attack showed that the munitions had been fitted with precision guidance units, meaning that the attack was done deliberately targeting the Hall[94].

[90] Loc. cit.

[91] ACLED (2019) "Regional Overview: Middle East 9-15 February 2020" *ACLED website.* Available at: https://www.acleddata.com/2020/02/20/regional-overview-middle-east-9-15-february-2020/. Accessed: 21/02/2020.

[92] HRC (2018) "Situation on Human Rights in Yemen, including violations and Abuses since September 2014. Report of the United Nations High commissioner for Human Rights containing the findings of the Group of Independent Eminent International and Regional Experts and summary of technical assistance provided by the Office of the High Commissioner to the National Commission of Inquiry", op. cit., p. 39.

[93] HRW, (2016), "Yemen: Saudi-led funeral Attack apparent War Crime", *Human Rights Watch*. Available at: https://www.hrw.org/news/2016/10/13/yemen-saudi-led-funeral-attack-apparent-war-crime. Accessed: 21/11/2019.

[94] HRC (2017) "Situation of Human Rights in Yemen including violations and Abuses since September 2014. Report pf the United Nations High Commissioner on Human Rights", op. cit., p. 7.

Figure 2.1. Destruction of the Al-Kubra Hall, 9 October 2016[95]

Several sources have expressed concerns for the respect of the International Humanitarian Law by the pro-government coalition and the Kubra-Hall Attack is only one of many examples of these violations. There are, indeed, different reasons why this attack should be considered as unlawful. Firstly, the attack was directed towards civilians. The place of the attack, knowing that there would have been a funeral celebration at that time when the Hall was full of civilians, and the type of weapon used, are all elements that indicate the voluntary targeting of the Hall. This is in violation of the principle of distinction and, in particular, of the provisions of the Additional Protocol II (Art.13) and of Article 3 to the Four Geneva Conventions and of Customary International Law that explicitly protects civilians from indiscriminate attacks. Moreover, the second munition exploded eight minutes after the first one, causing further casualties and injuries in those civilians that rushed to help the victims of the first strike. This violates the protection of those *hors the combat* and of the wounded. The "double strikes" of the Al- Kubra Hall can be considered as a "double-tap", a tactic used by the pilots to ensure the destruction of the target[96]. This particular military tactic has been used by the coalition also in other cases

[95]Fig. 2.1, photograph taken at the Al Kubra Hall 9 October 2016 by the OHCHR staff, image taken from HRC (2017), "Situation of Human Rights in Yemen including violations and Abuses since September 2014. Report pf the United Nations High Commissioner on Human Rights". Op. cit., p. 21.

[96]UNSC (2017) "Letter dated 27 January 2017 from the Panel of Experts on Yemen addressed to the President of the Security Council", op. cit., p. 51.

and raises the concern on the precaution and proportionality assessments done by the coalition for the second strike.[97]

Secondly, it is possible to state that this attack was carried out in violation of both the principles of military necessity and precaution. There were no reasons to believe that this attack would have brought any military advantage to the coalition and there are no proofs that any military targets were near the Hall. In addition, even if the coalition had considered the funeral as a legitimate target for the presence of some military leaders, the attack was still in violation of the principles of proportionality and precaution. Indeed, the huge number of civilians that were not involved in any type of hostilities at the moment of the attack could constitute neither a legitimate target nor could the loss of so many lives be estimated proportional to the presumed military advantage, if any.

The states of the pro-government coalition are bound to respect the provisions of International Humanitarian Law that apply to the Yemeni conflict. In conclusion, based on the definition of war crimes and on categories of war crimes described in Chapter I, the Al-Kubra Hall airstrike could be considered a war crime.

Abs Hospital, Hajjah Governorate, 15 August 2016

On 15th August at 3:40 pm, an airstrike hit the space outside the ER warn of the Abs Hospital, killing 19 people and injuring 24 others, including also a staff member of MSF (Doctors without Borders). According to the investigation done by MSF, at the moment of the airstrike, the hospital was functional, and there were people being treated, including new-borns. The attack did not hit the hospital directly, but a car that, as it has been reported, was full of civilians already injured in other three airstrikes that had been carried out in the previous hours. The MSF staff member killed was one of the three that approached the car to help the injured civilians; the other

[97] HRC (2018) "Situation on Human Rights in Yemen, including violations and Abuses since September 2014. Report of the United Nations High commissioner for Human Rights containing the findings of the Group of Independent Eminent International and Regional Experts and summary of technical assistance provided by the Office of the High Commissioner to the National Commission of Inquiry", op. cit., pp.38-39.

victims were the civilians in the car, including a child, and patients of the Abs Hospital hit by shrapnel. In response to the airstrike, the hospital was evacuated, and the patients taken to near private clinics or other hospitals, with severe risks for their health; a new-born died during the travel[98].

Figure 2.2. Abs Hospital after the aircraft attack, 15 August 2016 [99]

According to the investigation of MSF and of the Panel of Experts, the hospital had not changed its activities and no episode had happened that could have induced the coalition to presume that it was involved in military functions. Indeed, as a rule of MSF, only civilian vehicles were allowed to enter the hospital area, after being checked at the entrance. No weapons were allowed, while military vehicles could enter the area only when carrying injured persons and, then, had to leave immediately. It is reported that the military activities in the areas surrounding the city intensified in the previous weeks due to the failure of the agreement in Kuwait[100], but no military activity was present in the city of Abs. In addition to that, MSF underlines that the logo of MSF was visible both on the entrance and on the roof of several buildings and that the position of the hospital had been communicated to

[98]MSF (2016), "Report MSF internal investigation of the 15 August attack on the Abs Hospital Yemen, summary of Findings", *MSF*, pp. 7-8

[99]Fig. 2.2., photograph taken by OHCHR. staff on 15 August 2016, HRC (2016), "Situation of Human Rights in Yemen. Report of the High Commissioner for Human Rights" op. cit., p. 23.

[100]The talks in Kuwait have been an attempt promoted by the UN to find a peaceful solution to end the hostilities in Yemen. These talks, after more than 90 days of negotiations, have been suspended for the impossibility to find an agreement.

the parties of the conflict on different occasions.[101] The investigation of MSF and of the Panel of Experts attribute the responsibility of this attack to the Saudi-led coalition, since it is the only party to the conflict in possession of that type of weaponry. Even if in the first moment the coalition denied its responsibility of the attack, it then changed its position, reporting that the target of the coalition airstrike had not been the Hospital but the car, considered a legitimate target. This version has been confirmed also by the investigations of MSF and of the Panel of Experts, as the analysis of the remnants of the bomb revealed that the device used had a guidance unit[102], meaning that the car had been deliberately targeted. However, since it was inside the hospital area, the attack was carried out within a protected facility. According to the analysis of the Panel of Experts, the car could not have been considered as a legitimate target, as, at the moment of the attack, there was no evidence that it was involved in any military activity. In addition to that, even if it had been transporting soldiers, this would not have transformed it into a legitimate target and, in any case, the principles of proportionality, precaution, protection of soldiers *hors de combat* and of medical facilities would have been violated[103]. Furthermore, the attack was carried out without a previous warning, which is in violation of the laws of war[104].

The medical facilities and personnel enjoy, in the name of their role, special protections under IHL. During the Yemeni conflict, there have been several attacks that destroyed or damaged medical and health facilities, limiting increasingly the possibilities for the Yemeni people to access health care and receive the necessary treatment. These special protections are granted under Additional Protocol II (articles 9, 10 and 11) and Customary International Law. According to these protections, in any case, neither medical personnel nor medical facilities and transports should be made the

[101]MSF (2016), op. cit., pp.10-11. The latest communication of the GPS coordinate of the hospital has been on the 10 August.
[102]UNSC (2017) "Letter dated 27 January 2017 from the Panel of Experts on Yemen addressed to the President of the Security Council", op. cit., pp.211-213
[103]UNSC (2017) "Letter dated 27 January 2017 from the Panel of Experts on Yemen addressed to the President of the Security Council", op. cit., pp. 214-215
[104]Article 11(2) Additional Protocol II.

object of an attack. The protection of the hospital zones from military attacks is also enshrined under the General Assembly Resolution 2675, which is considered nowadays part of customary law.[105]

The analysis of the attack showed that there were no legitimate military targets in the surrounding area; that there has been a violation of the principles of precaution and proportionality, and, finally, that the attack was directed towards a protected object and towards medical personnel, in violation of the respect of the wounded and sick and of those *hors de combat*.[106] For this reason, it is possible to conclude that the attack to the Abs Hospital may amount to a war crime.

Shelling and sniper attacks by the Houthi forces

The Houthi/Saleh forces are considered responsible for different attacks that violate IHL and could amount to war crimes.

These attacks have targeted the civilian population, civilian buildings and objects under special protection. As noted in the first Chapter, also the armed groups and the non-government armed forces are bound to respect the norms of International Humanitarian Law and could be criminally persecuted if these violations amount to war crimes. Since the beginning of the conflict, there have been several sniper attacks and shelling attributed to the Houthi/Saleh forces. These attacks, generally, violate the principles of distinction, precaution, military necessity, proportionality, also for the use of indirect weapons in widely populated areas [107], becoming thus indiscriminate attacks[108]. The frequency and intensity of shelling and of sniper attacks have deeply affected the lives of people[109], especially in the areas of Aden, Al-Hudaydah and around the city of Ta'izz, although several other areas have suffered those attacks.

[105]SIVAKUMARAN S., (2012), op. cit., p. 383.
[106]UNSC (2017) "Letter dated 27 January 2017 from the Panel of Experts on Yemen addressed to the President of the Security Council", op. cit., pp. 50-52.
[107]Use of artillery, rockets and mortars.
[108]SIVUKAMARAN, S., (2014), op. cit., p.347.
[109] HRC (2019) "Situation of Human Rights in Yemen, including violations and Abuses since September 2014. Report of the Group of Eminent International and Regional Experts as submitted to the UNHCHR", op. cit., p. 6.

Marketplace near Adhban Mosque, Ma'rib, 22 May 2018

Several attacks have been directed towards civilians, who were not taking direct part to the hostilities or had not a continuous combatant function, including children. The attacks have been carried out in widely populated areas. In some cases, no military targets could be identified in the proximity of the attacks, thus violating the principles of military necessity, precaution, distinction, and proportionality. In many cases, the Panel of Experts could not receive any information to assess the presence of a legitimate military object near the affected area by the Houthi forces. In other cases, the attacks have been carried out during fighting or while, supposedly, targeting military object near civilian areas, which were hit instead. Also in these cases, the violations of the principle of precaution and proportionality represent a violation of the IHL and could amount to war crimes.[110]

This particular attack is attributed to the Houthi forces, which were located approximately 21 km away, in the Gabal Hilan area. According to the investigations and the information of the Panel of Experts, the Houthi launched a Katyusha type rocket that hit the marketplace at 01:23 pm, killing 6 civilians and injuring 22 others, including three children. This commercial road is always densely populated, especially at the timing of the attack, and, according to the information gathered, it was not the first time that the area had been targeted. The Panel did not receive any information by the Houthi forces, and had to rely only on its findings in assessing that there were no military objects in the area that could have been considered as a legitimate military target. The attack violates the principle of distinction, since it deliberately targeted civilians and damaged civilian buildings, as well as the principles of precaution, military necessity, and proportionality, since there were no military objects, no military advantage could be gained by the attack and has been used this particular type of indiscriminate weapon. The violation of these principles corresponds to a violation of the Customary Law, of the Common Article 3 and of the Additional Protocol II (Article 13),

[110]See the already mentioned OHCHR Reports of 2016, 2017, 2018 and 2019.

which enshrines the protection of civilians. The direct targeting of civilians and the use of indiscriminate weapons can be considered grave violations of International Humanitarian Law, and, considering also the repetition of attacks of this type, could amount to a war crime[111].

Sniper attack, al Maftach, Osifrah (northern part of Ta'izz), 5 June 2019

The same can be said for the sniper attacks directed towards civilians. Since the beginning of the conflict, the OHCHR and different other sources have reported and denounced several cases of sniper attacks targeting civilians, including girls and children, in violation of IHL and that could lead to the criminal responsibility of the perpetrators. This created in many cases a situation of terror among civilians, whose life has been affected even in their basic activities such as crossing roads or water collection[112].

In the case of the sniper attack of al Maftach, in the early morning of 5 June 2019, a Houthi sniper shot a 13-years-old boy while he was fetching water. According to the investigation of the Group of Experts, the sniper, located approximately one kilometre away, had a clear visual and, therefore, directly targeted the boy. Other two children were shot by a sniper during the same week, proving the deliberate and voluntary nature of these attacks.

The direct targeting of civilians must be always avoided by the parties during a conflict, especially the direct targeting of children, who enjoy special protections under IHL and IHRL. For this reason, the arbitrary deprivation of life and the direct targeting of civilians not participating in the hostilities carried out by the snipers of the Houthi forces are grave violations of IHL and could amount to war crimes. [113]

[111]UNSC (2019) "Letter dated 25 January 2019 from the Panel of Experts on Yemen addressed to the President of the Security Council" op. cit., pp. 204-205.
[112]See the OHCHR reports on the situation of Human Rights in Yemen, the Letters of the Panel of Eminent Experts.
[113] HRC (2019) "Situation of Human Rights in Yemen, including violations and abuses since September 2014. Report of the detailed findings of the Group of Eminent International and Regional Experts on Yemen", op. cit., pp. 78-79.

2.2. Use of Weapons

This section deals with the means of combat, that is to say, the weapons that are used during a conflict. IHL poses some restrictions both on the use of weapons and on the type of weapons that can be used. Some weapons are permitted and their use is legitimate, although with some restrictions to their employment. On the contrary, others are considered unlawful for their particular characteristics. The restrictions in the means of combat originate in the Hague Regulations and have evolved through time, in order to face the development and innovations of weapons and their use, even if with late and often limited results[114].

There are three main general principles that regulate the use of means of combat under IHL:

- The only legitimate object that the parties in a conflict should accomplish is to weaken the military forces of the enemy.
- Weapons should not cause unnecessary suffering or superfluous injury. The aim is to strike a balance between military necessity and humanity, even if it has been proven very difficult to define these elements in clear terms.
- Weapons should not be indiscriminate: the weapons that cannot be specifically directed toward military targets and objects or that have uncontrollable effects on civilians and civilian objects are prohibited.

These principles are applicable in all conflicts, that is both in international and non-international armed conflicts.[115]

The Yemeni conflict is exemplary of the employment of weapons unlawful under the International Humanitarian Law, or that can be considered as such for the use done. The different reports of the Group of Eminent Experts and of the Panel of Experts[116] and the information gathered by international NGOs denounced the use of anti-personnel and anti-vehicle landmines,

[114]SIVAKUMARAN, S., (2014) , op. cit., pp. 386-387.
[115]SIVAKUMARAN, S., (2014) , op. cit., pp. 387-392.

cluster munitions, improvised explosive devices, as well as the presence of unexploded ordnances that are causing and have caused several victims and injured among the civilian population. The lawfulness of these weapons varies, but most importantly is their use that that can be considered unlawful and, eventually, as a war crime. Indeed, the use of indiscriminate weapons, meaning weapons that do not distinguish between civilians and military targets, in widely populated areas or against civilian objects is to be considered, as analysed in the previous section, a violation of IHL and can amount to war crimes. Different parties involved in the conflict are responsible for the use of illegal weapons, including the different militias and terrorist groups operating in the conflict.

The next sections deal with the different types of weapons used in this conflict, focusing on their legality under IHL and on the possible commission of war crimes.

Anti-personnel and Anti-vehicle Landmines

The use of anti-personnel and anti-vehicles landmines by the Houthi forces is deeply affecting the life of men, women, and children in different parts of Yemen. Indeed, the use of landmines by the Houthi forces has been reported in Abyan, al-Dhale'e, Al-Bayda, Al-Jawf, Hajjah, Ibb, Ma'rib, Sana'a, Sa'dah and Shabwah governorates, but it is not excluded that their employment is spread in other areas, too.

Landmines are subjected both to treaty law and to Customary Law; indeed, even if they are not banned by a specific country, their use is subjected to strict limitations and precautions. In 1999, the "Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction" (Ottawa Convention) entered into force. This convention was ratified by Yemen in 1998. As a consequence, the Yemeni Government and the non-State armed forces operating in the conflict are bound to respect the convention.

Figure 2.3. Anti-personnel landmines cleared in Aden and its suburbs by YEMAC[117]

The Houthi/Saleh forces have acknowledged the respect of the norms of IHL and of the Ottawa Convention, but, despite that, the use of landmines is still remarkably spread[118]. This convention deals specifically with the use of anti-personnel landmines, while the use of anti-vehicle landmines is covered only by Customary Law[119], imposing, also in this case, limitations to the employment of these devices. According to the norms of Customary International Humanitarian Law, the emplacement of landmines has always to be recorded by the parties, precautions have to be taken to avoid in every possible way to hit civilians, and the mined area should have warning signs. However, according to the different investigations and testimonies gathered by the Group of Expert and by international NGOs,[120] the use of this type of weapons done by the Houthi/Saleh did not respect these general obligations. Different information confirmed that the landmines have been placed in unmarked areas crossed and used by civilians, with no landmines warning signs. Several civilians have been hit by landmines located near

[117]Fig. 2.3.,GYATA-64 antipersonnel mines cleared by YEMAC from Aden city and its suburbs since Houthi-Saleh forces withdrew from the city in July 2015, March 16, 2017.
© Private. Taken by the Human Rights Watch website, "Yemen: Houthi-Saleh forces Using Landmines. Cease use of Banned Weapons; Ensure Clearance, Victim Assistance", April, 20, 2017
[118] HRC (2019) "Situation of Human Rights in Yemen, including violations and abuses since September 2014. Report of the detailed findings of the Group of Eminent International and Regional Experts on Yemen", op. cit., pp. 49-50.
[119]HENCKAERS J-M., DOSWALD-BECK, L., (2009), op. cit., Rules 81-82.
[120]For example, MSF (2019), "Trapped by Mines", *MSF*. Available at: https://www.msf.org/trapped-mines-yemen. Accessed 12/12/2019.

villages and cities, as well as in farmlands, gardens, and houses of persons who resisted the Houthi presence[121], affecting the life of men, women, and children and of all these people living in these areas or who wanted to return home after the end of the hostilities. In May 2019, the Houthi forces have recognised the use of anti-vehicle landmines but denied the use of the anti-personnel ones; however, the investigation of the OHCHR contradicts this statement, as there are reasons to believe that the Houthi forces are responsible for the spread use of anti-personnel landmines. For these reasons, the use of landmines by the Houthi/Saleh forces is indiscriminate, in violation of the above-cited convention and of the Customary Law, and could amount to war crimes. [122]

Cluster Munitions and unexploded ordnances

The Saudi-led coalition "Decisive Storm" aerial campaign started in 2015. Since then, the coalition has been responsible for the use of cluster munitions, that is weapons containing multiple explosive sub-munitions. Usually, cluster munitions can be launched from ground or sea or can be dropped by aircrafts opening in the mid-air and releasing hundreds of sub-munitions that cover a very wide area. Every person in the strike area of a cluster munition has several possibilities of being killed or injured[123]. This type of weapon is considered highly indiscriminate as it is not possible to distinguish between military and civilian targets, and, especially in civilian or populated areas, there is a concrete risk of killing and injuring civilians. In addition to that, often sub-munitions fail to explode when they hit the ground, turning subsequently into dangerous unexploded bombs that can go off at any moment, increasing the possibility to hit civilians, especially children.

[121] HRC (2019) "Situation of Human Rights in Yemen, including violations and abuses since September 2014. Report of the detailed findings of the Group of Eminent International and Regional Experts on Yemen", op. cit., p.79.
[122] HRC (2019) "Situation of Human Rights in Yemen, including violations and abuses since September 2014. Report of the detailed findings of the Group of Eminent International and Regional Experts on Yemen", op. cit., p.50.
[123] Cluster Munitions Coalition, "What is a cluster bomb?" *Cluster Munitions Coalition* website. Available at:http://www.stopclustermunitions.org/en-gb/cluster-bombs/what-is-a-cluster-bomb.aspx. Accessed: 04/12/2019.

Because of the highly indiscriminate nature of these weapons, in 2008 the "Convention on Cluster Munitions" was drafted, aiming to prohibit the use, production, transfer and stockpiling of cluster munitions. Neither Yemen nor any state part of the pro-government coalition has ratified the convention; however, the use of this type of weapons in civilian areas amounts in any case to a violation of the principle of distinction, precaution, and proportionality, as well of Customary Law [124], given the indiscriminate nature of the cluster munitions. According to the UN, Amnesty International, Human Rights Watch and Mwatana for Human Rights, there have been several airstrikes carried out by the Saudi-led coalition on civilian areas in which cluster munitions have been used, resulting in the death of many civilians. These violations of IHL could, in some cases, amount to war crimes.

According to the Landmine & Cluster Munition Monitor, between 2015 and 2017, the Saudi-led coalition has used at least seven types of cluster munitions, launched both by ground and aerial attacks. The cluster munitions analysed originated from the UK, US[125], and Brazil, leading to the possible criminal responsibility of these states. On 19 December 2016, Saudi Arabia recognised the use of UK cluster munitions and declared its intention to stop the employment of these weapons. Neither UK nor Saudi Arabia are part of the Convention on Cluster Munitions, and this type of weapons is not *per se* prohibited under IHL [126]; however, their use is considered illegal by the 106 countries that have ratified the Convention on Cluster Munitions, and their indiscriminate nature is considered, in any case, in contrast to IHL.

[124] HENCKAERS J-M., DOSWALD-BECK, L., (2009), op. cit., Rule 71.

[125] Other sources, both official reports, NGOs and media report the use by the coalition of US-made cluster bombs. For example, see: ELBAGIR N., ABDELAZIZ S., SMITH-SPARK L., (2018) "Exclusive Report: Made in America. Shrapnel found in Yemen ties US bombs to string of civilian deaths over course of bloody civil war" *CNN website*. Available at: https://edition.cnn.com/interactive/2018/09/world/yemen-airstrikes-intl/. Accessed, 04/12/2019.

[126] AI (2017), "Yemen: Saudi-Arabia-led coalition uses banned Brazilian cluster munitions on residential areas", *Amnesty International* website. Available at: https://www.amnesty.org/en/latest/news/2017/03/yemen-saudi-arabia-led-coalition-uses-banned-brazilian-cluster-munitions-on-residential-areas/. Accessed: 04/12/2019.

In addition to the casualties caused by the explosion of cluster munitions, we have to add those provoked by the unexploded sub-munitions and by other unexploded ordnances (UXOs), present on the territory. Civilians are not aware of the presence of these bombs and of the risk that they pose, especially when they are located in areas where there is no apparent reason for them to be[127]. According to Amnesty International, civilians and children, in particular, are facing high risks to be hit by unexploded ordnances especially after the end of the fighting. Indeed, civilians are often forced to leave their homes due to the intense fighting; however, UXOs represent high risks for the people returning to their homes, who can unwarily activate them. This is particularly evident in the case of children: the small dimensions and the shape of these bombs often mislead children, who use them as toys[128]. As a consequence, many children have been injured or killed by these weapons. It has been reported that, in addition to those already recorded, between July 2015 and April 2016 there have been at least ten cases of casualties by unexploded ordnances that occurred weeks or months after the airstrike or bomb drops. Because of these explosions, sixteen civilians were injured, including nine children, two of whom died.[129]
In conclusion, the use of cluster munitions, due to their indiscriminate nature, represents a clear violation of customary IHL. Under IHL treaty law, furthermore, their use is a violation of the Additional Protocol II and of the Common Article 3, since it is a violation of the principle of distinction, precaution, and proportionality.

Improvised explosive devices: victim-activated IEDs

Improvised explosive devices (IEDs) are unconventional explosive weapons that can take any form, can be activated in different ways and can be used against both civilian and military targets. This is a very broad definition, under which are included a wide range of devices, such as

[127]Indeed, the explosion of a cluster munition spread the sub-munitions for a wide area, even very far from the point of explosion. It is not unusual, thus, that sub-munitions are found in areas far from the battlefield or from possible military targets.
[128]Some of them resemble drink cans, while other balls.
[129]AI (2019) “Airstrikes and Cluster Munitions. Amnesty International Documentation of Coalition attacks in Yemen, 2015-present”, London (UK), *Amnesty International*, pp. 22-26.

improvised rockets and mortars, improvised anti-personnel landmines, improvised remotely controlled explosive devices and many others.

The unlawful use of IEDs is becoming more and more frequent and problematic especially among non-state armed forces and terrorist groups during NIACs[130]. The creation of IEDs, indeed, is relatively cheap and convenient especially for non-state armed groups and terrorist forces, as for them it is more difficult to get conventional weapons, especially if a ban on their imports has been imposed. The use of these weapons is not, for the moment, prohibited under IHL; however, it has to be limited and subjected to regulations due to the indiscriminate nature of some types of IEDs, the use of which amounts to war crimes.

IEDs are widely employed also in the case of the Yemeni conflict, mainly by the Houthi forces and the terrorist groups operating in the country. The available information on the use of IEDs in Yemen mainly regards the widespread use and production of these weapons and their destructive effect on the civilian population, but very few details are available on specific cases in which they have been used. For this reason, based on the information available at the moment of writing, the assessment of specific cases that can amount to war crimes is very difficult. It is possible to argue, however, that the indiscriminate use of these weapons against civilian targets is unlawful. The possible amount to war crimes of specific cases should be assessed when more information is available.

Among the different types of IEDs, a distinct analysis has to be made in relation to the victim-activated IEDs. Their specificity is that they blow up only on contact by a person, and, for these reasons, are considered the same as anti-personnel landmines. Accordingly, the use of victim-activated IEDs is banned by the Ottawa Convention[131]. Victim-activated IEDs have been employed also in the Yemeni conflict, particularly by the terrorist

[130] UNODA "IEDs- a growing threat" *United Nation Office for Disarmament Affairs.* Available at: https://www.un.org/disarmament/convarms/ieds-a-growing-threat/. Accessed: 06/12/2019.

[131] Under the Art.2 (1) and (2) of the "Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction", are considered to be anti-personnel mines all those munitions that designed to explode by the presence, proximity or contact of a person and that has the capacity to kill or injure one or more persons. In addition to that, the munition have to be placed under, on or near the ground or other surface areas.

groups (AQAP and ISIL), and the Houthi forces, according to the reports of the Office of the High Commissioner for Human Rights. The use of victim-activated IEDs is unlawful under the IHL, especially since Yemen is part of the Ottawa Convention.

There is knowledge of different cases in which civilians have been injured or killed by this type of IEDs. Indeed, as in the case of anti-personnel landmines, these weapons have been placed in different areas, without any warnings, as well as in many civilian areas. In conclusion, it is possible to state that the use of the victim-activated IEDs could amount to war crimes, bringing to the criminal responsibility of different members of the Houthis.

2.3. Torture, sexual violence, arbitrary detention, enforced disappearances, hostage-taking

Since the outbreak of the Yemeni conflict, there have been several episodes of arbitrary deprivation of liberty, torture, inhumane treatment and sexual violence performed by the different parties operating in the conflict, namely the pro-government forces, the forces of the Government of Yemen, the non-states armed groups, and their militias and proxy forces. The prohibitions of these acts are well-established norms of both International Human Rights Law and International Humanitarian Law. State forces and non-state armed groups are, thus, obliged to respect the provisions outlawing those acts by the International Human Rights and International Humanitarian treaty law, backed and complemented by the Customary International Law. These prohibitions are valid in times of peace and of war and both in international and non-international armed conflicts.

The following sections will give an overview of the episodes of illegal or arbitrary detention, torture, sexual violence, inhuman treatment and deprivation of liberty in the Yemeni conflict. In addition, a legal analysis of the related violations of IHRL and IHL that could bring to the criminal responsibility for war crimes of the perpetrators will be carried out. This analysis will be based on the information of different reliable sources such as the Reports of the OHCHR, the Letters of the Panel of Experts and the

findings of the Group of Eminent Experts, as well as information published by different NGOs working in Yemen.

Torture, arbitrary detention and sexual violence by the de-facto authorities

The Houthi forces are considered responsible for several of the reported cases of arbitrary detentions. The targets of these acts have been political opponents, devotees of Baha'i faith[132], members of the Muhamasheen community[133], affiliated to the Al-Islah party[134], migrants[135], affiliated to the General People Congress and journalists, despite their special protection under IHL[136]. Arbitrary detentions have been used as a tool to spread fear among the civilian population, to exchange detainees between the different parties or to force the payment of ransoms, becoming, in this way, cases of hostage-taking[137]. Children and migrants detained under the charge of political opposition are often arrested as a preventive measure, in order to prevent them from becoming future combatants. The concept of "political opposition" is widely interpreted, as also men, women, and boys involved in human rights-related activities, or simply expressing criticisms on social media have been arrested as political opponents. Violations associated with the more general right to a fair trial can be added to these categories of crimes. Many persons have been detained without charge, or have been deprived of the right of legal representation, many detainees have had summary trials or no notification of the trial has been given. Several death sentences have been pronounced in this way.

[132]The Baha faith is a religion founded in Iran in the mid- 19th century, which have been living under a consistent pattern of persecutions by the Houthi forces since the beginning of the conflict.
[133]The Muhamasheen ("The marginalized") community is a minority, presumably of African origin, which have suffered cast-based discriminations. See HRC (2019) "Situation of Human Rights in Yemen, including violations and abuses since September 2014. Report of the detailed findings of the Group of Eminent International and Regional Experts on Yemen", op. cit., pp. 198-200 for the conditions of the Muhamasheen community and the discriminations they are subjected to.
[134]Islamist political party founded in 1990 with the support of the former president Saleh.
[135] HRC (2019) "Situation of Human Rights in Yemen, including violations and abuses since September 2014. Report of the detailed findings of the Group of Eminent International and Regional Experts on Yemen", op. cit., pp. 200-202 for a detailed analysis of the situation of migrants.
[136]HRC (2016) "Situation of Human Rights in Yemen. Report of the High Commissioner for Human Rights", op. cit., pp.16-17.
[137]HRW (2019), "World Report 2019: Yemen. Events of 2018", op. cit.

There is information of many detainees tortured during their detention period; witnesses and survivors report cases of punching, kicking, beating with metal bars, sticks, and guns, whipping with electric cables, electric shocks, nail removal and hanging from the ceiling for hours[138]. In addition to that, the Group of Experts has also verified cases of sexual violence, sexual harassment, rape, and other sexual crimes as well as the threat of these by the members of the Houthis against male and female detainees and children. These analyses focus in particular on the different detention facilities in Sana'a and Ibb, the Political Security Organisation and the National Security Bureau between 2016 and 2019.

Based on the available information, it is possible to conclude that the de-facto authorities have committed different violations of IHL and IHRL, including enforced disappearances, torture, sexual violence, arbitrary detention, violation of the right of fair trial and hostage-taking. All these violations happened in a conflict-related situation, and, thus, may amount to war crimes.

Torture, arbitrary detention and sexual violence by the pro-government coalition

Similar episodes have been reported in the areas under the control of pro-government forces, where the existing criminal justice system has been almost entirely abolished. Those areas are now under the control of militias backed by the coalition forces, which, as a consequence, are responsible for several cases of arbitrary detentions of civilians, including children, perceived as opposed to the Yemeni government or to the United Arab Emirates (UAE)[139]. Mainly in the detention centres of Bir Ahmed I, Bir Ahmed Prison II, Al-Bureiqa, Al-Rayyan and in other unofficial sites of

[138] HRC (2019) "Situation of Human Rights in Yemen, including violations and Abuses since September 2014. Report of the Group of Eminent International and Regional Experts as submitted to the UNHCHR", op. cit., p.10.

[139] HRC (2018) "Situation on Human Rights in Yemen, including violations and Abuses since September 2014. Report of the United Nations High commissioner for Human Rights containing the findings of the Group of Independent Eminent International and Regional Experts and summary of technical assistance provided by the Office of the High Commissioner to the National Commission of Inquiry", op. cit., pp. 9-10.

detention of the Security Belt Forces, of the Shabawah Elite and other Elite Forces, the UAE units and affiliated groups are responsible for arbitrary detentions often resulting in enforced disappearances[140], torture (including electrocutions, hanging by harms, forced nudity and long periods of solitary confinements) and sexual violence (including gang rape, rape with objects, penile and oral rape). Those types of violence have been inflicted in order to obtain information, as a form of punishment or humiliation, leaving detainees without the necessary medical treatments, with serious consequences for their health. In addition, other detention-related violations and similar cases happened in the detention facilities under the control of the Yemeni forces, such as the Al-Mounawara Central Prison and in the unofficial Al-Tin detention facility, controlled jointly also by the Saudi Arabian forces[141].

The UAE deny that these detention facilities are under their control, even if different sources indicate that some facilities are under the exclusive control of the UAE forces and of their Yemeni proxy forces; in contrast, Yemeni official sources affirm that the Yemeni forces do not have any control over these facilities. In this way, the UAE Government tries to avoid any form of liability and responsibility for the violations related to the detention perpetrated by its forces. At the same time, the Government of Yemen tries to distance itself from the violations committed by the Saudi-led coalition, including those occurring in the detention centres, even if the Yemeni forces involved in these alleged crimes operate under the Ministry of Interior[142].

[140] AI (2018) "Disappearances and torture in southern Yemen detention facilities must be investigated as war crimes" *Amnesty international* website. Available at: https://www.amnesty.org/en/latest/news/2018/07/disappearances-and-torture-in-southern-yemen-detention-facilities-must-be-investigated-as-war-crimes/. Accessed: 30/11/2019.

[141] HRC (2019) "Situation of Human Rights in Yemen, including violations and Abuses since September 2014. Report of the Group of Eminent International and Regional Experts as submitted to the UNHCHR", op. cit., p.12.

[142] UNSC (2018) "Letter dated 26 January 2018 from the Panel of Experts on Yemen mandated by Security Council Resolution 2342 (2017) addressed to the President of the Security Council", op. cit., pp. 304-308.

Torture, Inhuman Degrading Treatment, Sexual Violence, Enforced Disappearances and hostage-taking as war crimes

The violations described above are perpetrated by members of the armed forces in a context of war, against civilians and with the purpose to punish, obtain information or to weaken the opposite parties by preventing the recruitment of future combatants[143]. These acts could amount to war crimes, as they are allegedly related to the conflict. However, the assessment of the presence of a nexus between the specific violation and the armed conflict is very complex. There are, indeed, different variables to take into consideration and every assessment has to be made on a case-to-case basis. Besides, cruel and inhuman treatments, sexual violence, torture, enforced disappearances are considered violations of both International Human Rights and International Humanitarian Law, and, in the case of the Yemeni conflict, are part of a widespread practice. Under International Human Rights Law, those acts are prohibited under treaty law and, in some cases, also under Customary Law. In particular, torture is prohibited under Art.7 of the ICCPR (International Covenant on Civil and Political Rights), and cannot be derogated even in times of emergency (Art.4 ICCPR). In addition, Yemen is a party of the CAT (Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment), which prohibits in every circumstance, also during war, the use of torture (Art.2) and of other cruel, inhuman and degrading treatments under the jurisdiction of the state (Art.16). As already noted in Chapter I, these instruments can apply also in situations of armed conflicts, complementing the instruments of International Humanitarian Law and International Criminal Law. An important difference in prohibiting torture under IHL is that it is not necessary that the acts of torture are perpetrated by an official or by someone acting in their official capacity, as required under the CAT. In this way, the prohibition extends also to the non-state armed forces operating in the conflict[144]. Cruel treatment and torture are prohibited under Common Article

[143]For the requirements of a war crime, see Chapter I.
[144]SIVAKUMARAN,S., (2014), op. cit., p. 261.

3 to the Four Geneva Conventions and under the Additional Protocol II (Art.4). In addition to that, torture and inhuman treatment are prohibited under the Customary Law and are also listed as war crime under the ICC Statute (Art. 8(2)) and under the Statutes of the International Criminal Tribunal for the Former Yugoslavia (Art.4) and of the Special Court for Sierra Leone (Art.3).

Sexual violence is also prohibited both under IHRL[145] and under IHL. Under IHL, sexual violence is prohibited under the Additional Protocol II (Art.4) and is considered as a war crime under the ICC Statute (Art.8 (2)) as well as under Customary International Law[146]. Special protection to the vulnerable condition of women in situations of armed conflicts is then granted under the Security Council Resolution 1325. Sexual violence can be considered as part of the more general prohibition of violence on life, person and personal dignity, even if there is no specific reference to the acts of sexual violence under the Common Article 3 to the Four Geneva Conventions. Sexual and gender-based violence against women and girls in Yemen is not something limited to the detention facilities, but is a widespread practice by the member of the armed forces, detention guard and law enforcement personnel[147]. These acts are perpetrated especially against IDPs, refugees and members of minorities[148]. In several cases, victims were threatened to be killed if they had reported the violence and many of those who actually did it ended up been re-victimized. Furthermore, members of the armed forces broke in civilian homes in the middle of the night, took women out in the streets and raped them in front of their families. These attacks included

[145]Under IHRL there are no specific prohibitions against sexual violence, with the exception of the CRC; however, sexual violence is usually interpreted to be part of cruel, inhuman and degrading treatments and, in some cases, to torture. For this reason, the prohibition of sexual violence under IHRL can be considered as equated to these prohibitions. In addition to that, there are different Regional Instruments that grant a protection of women from sexual violence, such as the Istanbul Convention, the Maputo Protocol and the Inter-American Convention on the Prevention, Eradication and Punishment of Violence Against Women.

[146]HENCKAERS J-M., DOSWALD-BECK, L., (2009), op. cit., Rule 93.

[147]Different cases of rapes perpetuated by the Security Belt forces have been reported in Aden. Other cases were denounced in the Ta'izz Governorate, where rapes and sexual violence were committed by the 35th Armoured Brigade Forces, which is part of the military forces of the Yemeni Government.

[148] HRC (2019) "Situation of Human Rights In Yemen, including violations and abuses since September 2014. Report of the detailed findings of the Group of Eminent International and Regional Experts on Yemen", op. cit., pp. 52-54.

gang rapes, rapes with objects and acts of torture, in many cases with the aim of humiliating the members of specific communities.

Rape and sexual violence are considered war crimes also under the Statutes of the Special Court of Sierra Leone and the Criminal Tribunal for Rwanda. Therefore, these attacks can lead to the criminal responsibility for war crimes of the perpetrators. Moreover, it is argued that rapes against members of specific communities and of certain nationalities could be perpetrated as part of a designed political plan, even if more investigations need to be taken[149]. If this is the case, the perpetrators could also be considered responsible for crimes against humanity[150].

Enforced disappearances, as well, can amount to war crimes. Different sources report the continual transfer of detainees, including to detentions facilities located outside the Yemeni territory[151]. These transfers and the conditions of the detainees, many of which have been arrested without charge[152] and with no judicial nor legal protection, have not been recorded or communicated to the families of the detainees. These repeated transfers from one detention facility to another have been used as a tactic to make it impossible for families and NGOs to track down these persons. These acts amount to enforced disappearances, which are prohibited under IHL, especially as they are considered a violation cumulative of other violations of International Humanitarian Law and Customary Law, such as the prohibition of the deprivation of liberty, torture, arbitrary deprivation of life and right to a fair trial[153]. Enforced disappearances are considered, also, a violation of IHRL, and, in particular, of the International Convention for the Protection of All Persons from Enforced Disappearances, that applies both in times of peace and in times of war (Art. 1); however, Yemen has not ratified the convention.

[149]Loc. cit.; GAGGIOLI,G., (2014) "Sexual Violence in Armed Conflicts: a violation of international humanitarian law and human rights law" in *International Review of the Red Cross*, International Committee of the Red Cross, pp. 517-519.

[150]According to the definition of Crimes against humanity given under the ICC Statute Art.7 and under the explanatory part of the Elements of Crime, are considered as cries against humanity those enlisted at the Art.7, as part of systematic or widespread attacks, and as part of a political plan.

[151]For example to the Assab Detention Facility, Assab, Eritrea.

[152]OHCHR Reports, Amnesty International, Human Rights Watch among others.

[153]HENCKAERS J-M., DOSWALD-BECK, L., (2009), op. cit., Rule 98.

The prohibition of hostage-taking is a norm that, as in the previous cases, is common to both IHL and IHRL. Under IHRL, hostage-taking is prohibited by the International Convention Against the Taking of Hostages accessed by Yemen in 2000. It is included in the more general prohibition of the arbitrary deprivation of liberty. Hostage-taking is considered a violation of IHL and can amount to war crimes. In particular, it is a violation of Common Article 3, of the Additional Protocol II (Art. 4) and of Customary International Law[154]. Moreover, it is considered a war crime under Article 8(2) of the ICC Statute, under the Statute of the International Criminal Tribunals for the Former Yugoslavia, and Rwanda, and under the Statute of the Special Court for Sierra Leone.

In conclusion of this brief analysis, it is possible to state that in relation to the crimes of arbitrary detention, torture, enforced disappearances, sexual violence, and hostage-taking, the different parties involved in the conflict, i.e. the Houthi forces, the Yemeni forces and the Government militias, the UAE forces and their proxy forces may be responsible of war crimes.

2.4. Child recruitment

The ongoing conflict is having a devastating effect on children. Children are suffering not only in relation to the continuous danger for their lives or the risk of being injured by airstrikes, shelling, landmines, UXOs, and IEDs, but also for the humanitarian crisis, famine and diseases widely spread during this conflict. Children are prevented from a safe access to health care and health facilities, as well as from access to education and school. They are subjected to different types of abuses, such as sexual violence, arbitrary detentions and increasing rates of child marriages[155].

In addition to this unsafe situation, children during armed conflicts, and especially in non-international ones, are often the victims of a spread use of

[154]HENCKAERS J-M., DOSWALD-BECK, L., (2009), op. cit., Rule 96.

[155]Mwatana for Human Rights (2019) "Report Withering Life: Human Rights Situation in Yemen 2018" *Mwatana for Human Rights* website. Available at: https://mwatana.org/en/withering-life/. Accessed 10/12/2019.

child recruitment and of direct participation in the hostilities. Sadly, the Yemeni conflict is no exception. Indeed, the Government forces, the different militias operating in several parts of the territory, the Houthi forces, the pro-government coalition forces, and their proxy forces, as well as the different terrorist groups, are recruiting and exploiting child soldiers. Children between 11 and 17 years old are recruited to be directly involved in the hostilities. Children of about 10 years old[156], or even younger, are instead used at checkpoints and also to plant explosive devices.

The recruitment of children and their participation in the fights occur mainly among the Houthi forces and has started since the beginning of the conflict, and increasingly across all the governorates[157]. This practice, however, is more and more increasing and troublesome also among the pro-government coalition forces the Security Belt Forces and Elite Forces: according to the Group of Experts, more than 3,000 children have been recruited since the beginning of the conflict, 64% of whom by the Houthi forces. However, it is very difficult for international organisations and NGOs to obtain reliable information on this phenomenon. Indeed, there is scarce collaboration with military forces, families, and children on this issue, especially because of the threat of possible repercussions on the children themselves. In 2017, for the first time since the beginning of the conflict, the Houthi forces have started to recruit also girls, with the principal tasks of persuading the families to send their children to join the battlefield, persuading women and girls themselves to join the military forces or to support the Houthi forces with money or prayers.

There are several reasons to this widespread practice. In the first place, the different forces and armed groups involved in the conflict have established, in time, their control over different parts of the Yemeni territory, extending this and other abuses on the civilian population to other parts of the territory. Secondly, the increasing poverty, the very limited possibilities to access

[156] HRC (2017) "Situation of Human Rights in Yemen including violations and Abuses since September 2014. Report of the United Nations High Commissioner on Human Rights" op. cit., p.12.
[157] UNSC (2019), "Children and armed conflict in Yemen. Report of the Secretary General" S/2019/453, UN Security Council, p.6.

education, vocational training and the need to provide financial support to the families are becoming more and more decisive factors for the recruitment of children. Finally, this scenario is worsened by a general social acceptance of child recruitment that, in some cases, is supported by the public institutions. For example, in 2017 the Minister for Youth and Sport based in Sana'a, called for the closure of the schools in order to lead students to be free for the recruitment, even if he partially changed his affirmations later on[158].

Child recruitment and direct participation in the hostilities as violations of IHL, IHRL and War Crimes

The recruitment of children and their direct participation in the hostilities is a violation of both International Human Rights Law and International Humanitarian Law, even if there are differences and contrastive opinions on the limits of age and on what constitute direct participation to the hostilities. Yemen is a party to the CRC (Convention on the Right of the Child) and of its Optional Protocol on the Involvement of Children in the Armed conflicts. The recruitment of children under the age of 18 and their direct involvement in the conflict are prohibited under the Optional Protocol, Art.2 and Art.1 respectively. These obligations are extended also to the non-state armed groups (Art.4). In addition, the same prohibition is found in the Convention on the Worst Forms of Child Labour (Art.3), ratified by Yemen in 2000.

The use of children under the age of 18 in the hostilities is also prohibited under the Yemeni national law (Law no. 45 of 2002 on Child's rights), even if this practice and the recruitment of children are not criminalised under the Yemeni Military Code.

In relation to the violations of IHL, child recruitment and their direct involvement under the age of 15 in the hostilities are prohibited under Art.4 (3) of the Additional Protocol II, and it is considered as a war crime under the Statutes of the ICC (Art. 8(2)) and of the Special Court of Sierra Leone.

[158]UNSC (2018) "Letter dated 26 January 2018 from the Panel of Experts on Yemen mandated by Security Council Resolution 2342 (2017) addressed to the President of the Security Council" op. cit., p.315.

In addition to these instruments, child recruitment and the involvement of children in the hostilities are considered as war crimes also under International Customary Law[159]. The use of children and the recruitment of children in armed conflicts are grave violations of IHL. The different parties involved in this conflict that have used and are still using children in the direct participation to the hostilities or/and have recruited children are acting in violation of the International Human Rights Law, national law, IHL, and Customary law, and, thus, can be considered responsible for war crimes.

[159]HENCKAERS J-M., DOSWALD-BECK, L., (2009), op. cit., Rule 136.

Chapter III – The case of siege warfare in Yemen: "unlawful" siege as a war crime

The Yemeni conflict is marked by the employment of different means and methods of warfare, including siege warfare. Sieges have been imposed on the city of Ta'izz, on the district of Hajour and on the city of al-Durayhimi, in the Hudaydah governorate[160]. The restrictions and blockades part of these sieges, the heavy fighting and the continuous attacks against civilians led to a real humanitarian catastrophe that is still affecting the thousands of Yemenis living in the besieged areas, exacerbated by the blockades imposed by the pro-government coalition since the beginning of the conflict. The next pages will deal with the situation of urban siege in Yemen, illustrating not only the devastating impact of this method of warfare on the civilian population, but also the persistent violations of IHL and IHRL resulting from them. The main question addressed in this dissertation is: can siege as such be considered as a war crime? The aim of Chapter III is to answer this question. Therefore, it will be argued that siege should be considered as a war crime not only due to its consequences on the civilian population, but also because a particular model of siege, referred as "unlawful" siege, had emerged through time that it is in complete opposition to the IHL norms. In order to demonstrate that, reference will be made to the Yemeni case and other cases of sieges in recent conflicts, to the existing international laws and instruments dealing with siege as well as to the more recent soft-law instruments.

3.1. Definition of siege

Sieges have been widely employed during wars since ancient times and their use has not been abandoned either in the modern nor contemporary

[160] HRC (2019) "Situation of Human Rights in Yemen, including violations and abuses since September 2014. Report of the detailed findings of the Group of Eminent International and Regional Experts on Yemen", op. cit., p.10.

conflicts. Nevertheless, it has never been defined under International Humanitarian Law or under other fields of public international law, even if it is partially regulated by it. The existence of very broad definitions or even the lack of definitions is not uncommon under International Humanitarian Law; however, there are some consequences to it. This is valid also for the case of siege. Firstly, there is no threshold of necessary requirements to meet under customary or treaty law for a particular situation to be considered as a siege and, thus, to bring to the application of the existing regulations on this tactic[161]. Secondly, the lack of a definition makes it difficult to determine what siege is, creating confusion and contradictions and, most importantly, paving the way to the elaboration of several definitions given by scholars, practitioners and military experts. Some of these definitions are very general and related to a traditional idea of the siege warfare. Others, on the contrary, include several and innovative aspects of sieges. A brief overview of the main definitions of siege will be given in this Chapter, in order to have an idea of the constitutive elements of this method of warfare. According to the OHCHR, a siege can be defined as a military encirclement of an area, with the imposition of restrictions to the movement of essential goods in order to force the sieged party to surrender[162]. This is a very basic and general definition, to which some authors add other elements, such as the complete isolation of the urban area or part of it, so that people in the besieged area are physically, psychologically and electronically isolated[163]. In other cases, the focus is not exclusively on the encirclement and isolation components of sieges, but widen these more general definitions including the attacks, bombardments and shelling to the sieged area[164]. However, the concept of encirclement does not necessarily involve the total encirclement of the city by the sieging

[161]GILLARD E.C., (2019), "Sieges, the Law and Protecting Civilians" International Law Program, *Chatham House*, p. 2.
[162] OHCHR (2017) "International Humanitarian Law and Human Rights Law relevant to Siege Warfare", *United Nations Office of the High Commissioner for Human Rights*, p. 2.
[163] BEEHNER, L.M., BERTI, B., JACKSON M.T., (2017) "The Strategic logic of sieges in counterinsurgencies" Innovations in Warfare & Strategy*, The US Army War College Quarterly Parameters*, Contemporary Strategy and Landpower, VOL.47 NO.2, Edited by Dr. Antulio L. Echevarria II, p. 77.
[164]GILLARD E.C., (2019), op. cit. , p. 1.

forces as happened in the past centuries. Indeed, as it has been clarified by the International Criminal Tribunal for the Former Yugoslavia in the case *Prosecutor v. Milosĕvić*[165], in contemporary conflicts the element of the encirclement develops in the broader concept of "total control" as a sufficient threshold for the existence of a siege. These are only some of the different existing definitions of siege. It is possible to conclude that, by looking at these definitions, a siege is a method of warfare involving specific elements, even if each case will have its own particular characteristics. Firstly, a siege presupposes the encirclement of an area or its total control, which aims at the complete isolation of the besieged area. Secondly, the control on the access to the besieged area is carried out by the sieging forces, which have imposed the siege on the adversary forces, closing them in a defined area. Finally, the imposition of siege may lead to bombardments and attacks against the besieged area in order to weaken the besieged forces and force their surrender.

If it is true that some characteristics of sieges have not changed in time, contemporary cases are very different and employ different means in respect to the ones of the past centuries. However, the use of this method of warfare has never been abandoned. The widespread use of this tactic can be explained by looking at the military advantage that usually sieges have. Surely, sieges are a convenient method of warfare as they avoid the undertaking of urban warfare and they can be imposed for different aims. To begin with, it is less costly for the sieging forces to lay a siege rather than to engage street-to-street fighting. In addition, the imposition of a siege is a practical solution when it is impossible to access a city or when an urban area is well defended: the isolation and deprivation of supplies and reinforcements can compel the enemy forces to surrender. Furthermore, the siege is a useful tool to impede the movement of enemy forces, especially

[165]"[…]This was not a siege in the classical sense of a city being surrounded, it was certainly a siege in the sense that it was a military operation, characterised by a persistent attack or campaign over a period of fourteen months, during which the civilian population was denied regular access to food, water, medicine and other essential supplies, and deprived of its right to leave the city freely at its own will and pace. The purpose of the siege of Sarajevo was to compel the BiH Government to capitulate." ICTY, Trial Chamber III, *Prosecutor v. Dragomir Milosĕ*vić Case No. IT-98-29/1-T, 12 December 2007, pp.250-251.

if the sieged forces have a relative advantage in manpower[166], preserving, at the same time, the military forces for other operations. However, the temporal dimension of a siege deeply counterbalances these advantages. If sieges last for a long time, they can become financially and military demanding for the sieging party and can cause excessive suffering and casualties among the civilian population therein.

As IHL does not define sieges, it does not outlaw them either. This means that this method of warfare is not *per se* in violation of IHL, but, on the contrary, it is accepted and regulated by it. As for all the methods of warfare, the use of siege has at its basis the necessity to find a balance between the principles of humanity and military necessity. However, a balance is particularly difficult to find in the case of this tactic because of its peculiar characteristics. Indeed, when sieges are laid on urban areas, populated by civilians, their conduct has to be carefully planned and implemented in order to spare the civilian population and avoid the violation of the IHL norms. Unfortunately, the examples of sieges conducted in such a way are very rare, if not illusory. This is true also for sieges in Yemen. The sieges of Ta'izz, Hajour and Al-Durayhimi are urban sieges, in which the sieging party gained control of the points of entry/exit and isolated the sieged area by imposing a physical, psychological and electronic isolation of civilians and combatants. In addition to these elements, both the sieging and sieged forces carried out and, in some cases, are still carrying out heavy shelling and continuous attacks on the affected area and towards the civilian population. As it will be further described in the next sections, this forced isolation brought to the starvation of the civilians living in the besieged area, with, furthermore, denial of access and strict restrictions to humanitarian relief operations and to the freedom of movement.

The sieges in Yemen are not isolated or exceptional cases: there have been different cases of sieges conducted in this way. What links these cases is the complete disregard of the existing norms of IHL on siege warfare. The

[166] WATTS, S.,(2014), "Counterterrorism and Humanitarian Engagement Project. Under Siege: International Humanitarian Law and Security Council practice concerning Urban Siege Operations", Project on Law and Security, *Harvard Law School*, p.3.

next section is dedicated to the analysis of these norms regulating sieges under the different bodies of international law.

3.2. Existing regulations on siege under IHL, ICL and IHRL

As already noted, siege is not *per se* prohibited under International Humanitarian Law, provided that it is exclusively laid against military targets and does not violate IHL.

In this section, it will be given an overview of the existing regulations on siege and its components under international Humanitarian Law, International Human Rights Law, and International Criminal Law, with a particular focus on the specific case of non-international armed conflicts.

Siege under IHL

The armed forces involved in a siege -the sieging forces and the sieged forces- are bound to respect the general principles of IHL, namely distinction, proportionality, military necessity, precaution, and humanity. To these general principles, it should be added the treaty law and Customary Law that regulate the two main dimensions of siege: the law of targeting and the treatment of the civilian population under siege.

The siege warfare has been firstly regulated under the Hague Law, which, given its customary status, covers both international and non-international armed conflicts. In particular, the Art.27 [167] of the Hague Regulations establishes the obligation for the parties to a siege to adhere to the principle of distinction and, more precisely, to spare the buildings dedicated to religious functions, medical facilities, and historical/cultural buildings, provided that they have been properly signalled and that they are not used for military functions. Siege warfare is further regulated under the Geneva Conventions; however, since they are referred to international armed conflicts, the focus here is on the applicable provisions in cases of siege in NIACs, meaning the Common Article 3 to the Four Geneva Conventions.

[167] Article 27 of the "Laws and Customs of War on Land (Hague IV) Convention" signed at the Hague on 18 October 1907.

This article, as already noted in Chapter I, enshrines the principle of distinction and the different protections granted to those *hors de combat* and to the civilian population and buildings, as well as the intervention of humanitarian bodies. Nothing states that the obligations of this Article do not apply also in cases of sieges. Further regulations of this military tactic are enshrined, even if not explicitly referring to sieges, in the Additional Protocol II: Art. 14 prohibits the use of starvation as a method of warfare as well as the destructions of objects necessary for the survival of the civilian population, Art.13 grants general protections to the civilian population and prohibits acts aimed at terrorizing the civilians; finally, there are the provisions regarding the prohibition of collective punishment and pillage (Art.4). As already noted, there is no mention of the siege warfare in these articles; nevertheless, they are considered to derive from the more specific regulations on siege that are enshrined in the Geneva Conventions and in the Additional Protocol I[168], many of which amount nowadays to Customary International Law. [169] Among those, the norms on the humanitarian assistance and the evacuation of the civilian population under siege are worthy of mention, which are still now object of different interpretations and criticisms[170]. Indeed, on the one hand, the evacuation of civilians is explicitly foreseen in the cases of sieges in order to alleviate the suffering of the civilian population; on the other, a previous agreement on the evacuation between the parties is required, leading to different problems of interpretation of this requirement. In addition to that, there is the risk, as in the cases of sieges in Syria, that the parties involved in the conflict use evacuation as a tool to cover the enforced displacement of the civilian

[168]In relation to the applicable law to siege in international armed conflict there are: Art. 51-54-70 (Additional Protocol I); Art. 17-23 GC IV.
[169]VAN DEN BOOGARD J.C., VERMEER A., (2017), "Precaution in Attack and Urban and Siege Warfare" in *Yearbook of International Humanitarian Law 2017*, Volume 20, Asser Press, Springer, The Hague (Netherlands), p.168.
[170]See, for example: WATTS, (2019) "Humanitarian Logic and the Law of Siege: a study of the Oxford Guidance on Relief Actions", in *International Law Studies*, Vol.95, Stockton Centre for International Law, US Naval War College; BLANK, L. (2019), "Joint Blog Series: Sieges, Evacuations and Urban Warfare: Thoughts from the Transatlantic Workshop on International Law and Armed Conflict" Ejil Talk! Blog of the European Journal of International Law. Available at: https://www.ejiltalk.org/joint-blog-series-sieges-evacuations-and-urban-warfare-thoughts-from-the-transatlantic-workshop-on-international-law-and-armed-conflict/.

population, prohibited, for example, under Art.49 of the Fourth Geneva Convention and Art.17 Additional Protocol II. The provisions relating the humanitarian assistance under siege are, as well, the object of discussion and of difficult interpretation. Under the Fourth Geneva Convention, the delivery of humanitarian assistance is subjected to an agreement between the parties, even if the degree of the necessity of this agreement and the possibility for a party to withhold its consent to the delivery of humanitarian assistance are under discussion[171]. Generally, the parties involved in the conflict have the primary responsibility in meeting the needs of the population; if this is not possible, they must allow the passage of humanitarian relief and, eventually, dispose for an evacuation of the civilians, in order to alleviate the suffering of the population. Even if an agreement between the parties is required, the arbitrary impediment for the humanitarian relief operation or for the evacuation of civilians it is not allowed. However, in the case of NIACs, the situation is furthermore complicated by the different interpretations of the authority in charge of giving the consent for the humanitarian relief access and civilians' evacuation, namely the state party or the armed group having effective control on the area at stake[172]. There are different opinions on the matter; however, it is generally accepted that both parties should know and agree on the passage of humanitarian relief, as the parties to a siege are not entitled to refuse the passage of humanitarian aid and relief. Indeed, it is a widespread opinion that the aid cannot be withheld on the discretionary

[171]WATTS, S., (2019) "Humanitarian Logic and the Law of Siege: a study of the Oxford Guidance on Relief Actions", in *International Law Studies*, Vol.95, Stockton Centre for International Law, US Naval War College, pp. 20-21.

[172]If the area at stake in under the control of non-state armed groups, only their consent is needed and not he consent of the State, provided that the humanitarian operation do not cross the territory under the control of the state armed forces. However, this view is much discussed as under Art. 18(2) of the Additional Protocol II, it is required the consent of the High Contracting Party, meaning the state; for this reason, it may be necessary in any case the consent of the state in order to not violate the principle of sovereignty. " Oxford Guidance on the Law Relating to Humanitarian Relief Operations in Situations of Armed Conflict Commissioned by the United Nations Office for the Coordination of Humanitarian Affairs", OCHA; Oxford Institute for Ethics, Law and Armed Conflict; Human Rights for future Generations, University of Oxford, 2016, pp.16-17.

decision of a party and any type of restriction has to be temporary and justified by imperative military necessity.[173]

Violations of IHRL under siege

Since the regulation of conflicts is outside the scope of the human rights law, there are no rules under IHRL dealing with sieges. However, International Human Rights Law is applicable alongside International Humanitarian Law in situations of armed conflicts and it is always applicable, even in cases in which IHL is not. For this reason, IHRL will always apply for the protection of people in sieged areas, particularly in relation to the consequences and the impact that this tactic has on the civilian population. Sieges that involve civilians have deep and distressing consequences on the population that lives in the besieged area, as they are the ones most affected both by the restrictions of food, water, and medical aid as well as by the shelling and attacks carried out. There are some general but fundamental human rights that are violated in cases of sieges, including economic, social, cultural, civil and political rights. First of all, many persons living in these areas face deprivation of their right to life, violation of the prohibition of inhuman and degrading treatment, and heavy restrictions or impediments to their freedom of movement. Indeed, the continuous shelling and sniper attacks, as well as the arbitrary restrictions imposed by the sieged and sieging parties violate these fundamental principles. In addition to that, the establishment of checkpoints summed to the restrictions on the humanitarian aid led, as in the Yemeni and Syrian case, to real humanitarian crises, in which the right to food, adequate water, housing, and clothing are violated.[174] Many of the violations of human rights reflect and specify the provisions of International Humanitarian Law; however, in some cases, they protect rights that do not fall under the realm

[173]Just Security "The UN Yemen Report and Siege Warfare" *Just Security website.* Available at: https://www.justsecurity.org/66137/the-un-yemen-report-and-siege-warfare/. Accessed: 28/12/2019.
[174]International Covenant on Civil and Political Rights, adopted by the General Assembly Resolution 2200A(XXI) of 16 December 1966, 999-I-14668, (entered into force 23 March 1976), Articles 4,5,6,7,9,12; International Covenant on Economic, Social and Cultural Rights, Adopted by the General Assembly Resolution 2200A(XXI) of 16 December 1966, 999-I- 14531, (entered into force 3 January 1976), Articles 5,9,10,11,12.

of the law of armed conflicts. This is true as people under siege live in a situation of day-to-day violence, in which the possibilities to work or to have an education are deeply restricted, as well as the freedom of expression and of a fair trial. As a consequence, the possibility to enjoy the relative rights is strictly limited. The general framework of violence hit particularly the rights of some categories that are at risk during armed conflicts, such as women and children, who are generally more subjected to discriminations and violence and that, in virtue of their more insecure conditions, are recognised special protections under IHRL.

In conclusion of this brief analysis, it is necessary to remind that, since IHRL and IHL are both applicable to sieges, individuals can be considered responsible not only for the violation of the above-mentioned norms of IHL, but also for the violations of human rights that occurred in these situations, as it will be further analysed in Chapter IV.

Regulation of siege under ICL

In relation to the violations of International Criminal Law, siege is not a war crime. Indeed, siege is a lawful method of warfare if it is laid on military targets and if it respects the norms of IHL. However, if reference is made to those cases that, as in the Yemeni case, involve both civilians and combatants and violate the basic principles of IHL for the protection of civilians during armed conflicts, it results that some of the components of sieges are already criminalized under ICL. For example, the direct shelling of civilian buildings and population, as well as the use of indiscriminate weapons in densely populated areas, can amount to war crimes. The disregard of the necessary precautionary measures in targeting a urban area, in which it is very difficult to distinguish between military and civilian targets, and the violation of the principles of proportionality and distinction can lead to the criminal responsibility of the perpetrators, as illustrated in Chapter II. Furthermore starvation of civilians as a method of warfare and other deprivations of that type are, more often than not, a means of the siege warfare. In the case of starvation, there are different interpretations of the necessary criminal intent of the perpetrator in order to establish if starvation

amounts to a war crime in a particular case. Under the Rome Statute[175], Additional Protocol I (Art.54) and the Additional Protocol II (Art.14), only the intentional starvation as a method of warfare is considered as a war crime, excluding, thus, the cases of incidental starvation or starvation that does not violate the principle of proportionality, as it does not exceed the anticipated military advantage[176]. As a consequence, only the sieges imposed with the aim of starving the civilians are considered to violate ICL. However, it is very difficult to assess if the starvation was or was not the primary aim of a siege as a method of warfare[177].

At this point, it is important to make a fundamental clarification on the bearers of these obligations in cases of sieges. The provisions of IHL, IHRL, and ICL described above, bind all the parties in a siege, namely the sieging and the sieged forces. On the one hand, the sieged forces, since are those in direct contact with the civilian population, have to take all the necessary measures to provide adequate food, shelter, to sign the civilian buildings and to protect the civilian population from the attacks. On the other hand, the sieging forces have to make greater efforts in respecting the principles of distinction, precaution, proportionality and military necessity. This is of crucial importance, since the attacks are conducted against urban areas, in which civilians are present. In addition to that, the obligations concerning the delivery of humanitarian aid bind also the sieging forces that have to make every effort to allow their passage.

The legal framework described refers to the general situation of sieges independently from the specific conflicts or cases, and, as a consequence,

[175] Under the Statute of the ICC the starvation of civilians is considered a war crimes both in international armed conflict both in non-international ones (with the amendment to the ICC Statute of the 6th December 2019 starvation becomes a war crime also in NIACs). GRC (2019) "Vital Amendment to the Rome Statute Unanimously Passes" *Global Rights Compliance Press Release*. Available at: https://starvationaccountability.org/news-and-events/vital-amendment-to-the-rome-statute-unanimously-passes. Accessed: 12/12/2019.

[176] WATTS, (2019), op. cit., pp. 10-11.

[177] See the discussion in: GRC "The Crime of Starvation and the methods of Prosecutions and Accountability. Accountability for Mass Starvation: Testing the Limits of the Law" *Global Rights Compliance*, *World Peace Foundation.* Available at: https://www.globalrightscompliance.com/en/projects/accounting-for-mass-starvation-testing-the-limits-of-the-law ; LATTIMER M., (2019), "Can Incidental Starvation of Civilians be Lawful under IHL?" Ejiltalk! Blog of the European Journal of International Law, p.1,3 Available at: https://www.ejiltalk.org/can-incidental-starvation-of-civilians-be-lawful-under-ihl/.

it is applicable also to sieges conducted in the Yemeni conflict. A more detailed and focused analysis of the particular case of sieges in Yemen is carried out in the next sections in order to, firstly, give an overview of the situation of their conduct and, secondly, to develop the argument of the criminalization of siege.

3.3. Siege in the Yemeni conflict

Sieges have been employed on different occasions during the Yemeni conflict. The available information indicates that sieges have been laid on the city of Ta'izz since 2015, in the Hajour district since the end of 2018 and on the Al-Durayhimi district, since the summer of 2018. These are all densely populated urban areas and, therefore, the restrictions imposed involve both civilians and combatants, with terrible consequences for the life and living conditions of the population therein.

The following sections are dedicated to the description of the siege warfare in Yemen, giving a general overview of both the tactics used and the situation of the civilian population under siege.

Siege of Ta'izz

Ta'izz is the capital of the Ta'izz Governorate and the third-largest city in Yemen. The siege of the city of Ta'izz started in August 2015 when, during the fighting between the forces loyal to the president Hadi on the one side and Houthi/Saleh forces on the other, the latter took control of the two main supply roads in the city, at east and at west. The impossibility to conquer the centre of the city brought the Houthi/Saleh forces to gradually impose an almost total blockade on different parts of the city, especially on the districts of al-Mudhafer, al-Saleh, and al-Qahira. The aim of the siege was to defeat the pro-Hadi armed groups present in the city, known as the Resistance, supported by part of the citizens and by some Brigades loyal to

Hadi.[178] This siege has been characterised by the imposition of several restrictions to the circulation of persons and goods, including food, medical supplies, oxygen tanks, gas cylinders and other items necessary for the survival of the population, for the running of activities and for the functionality of the hospitals. As a consequence of these limitations, the civilian population has been experiencing a progressive status of distress, worsened by the presence of anti-personnel and anti-vehicle landmines planted by the Houthi forces around the city. Even when humanitarian aid groups succeeded in entering the city, the aid rarely reached the population, as it was often confiscated by the military groups and distributed among the combatants. In addition to these impositions, it is necessary to add the cruel treatment of the civilians by the sieging forces, including shelling on residential and protected facilities, sniper attacks in the streets and arbitrary killing of civilians. Indeed, it is reported the use of indiscriminate weapons hitting civilians and civilian objects, as well as, the targeting of civilians, with the addition of aircraft attacks by the pro-government coalition.[179] The Houthi forces established different checkpoints for the control of the access/exit of the city. These checkpoints changed different times, were randomly closed or remained open for few hours during the day, imposing arbitrary and always changing disposition for the exit/entry of civilians and commodities. Different abuses and violations were perpetrated at the checkpoints: civilians were often prohibited to pass even if they needed to leave the city for medical treatments or to buy food, and, at the same time, food, water, and fuel supply were confiscated by the military forces. Other reported abuses consisted of episodes of abduction, killing or torture of civilians. Many of the cases described may amount to war crimes. Even if in the first period different groups of civilians succeeded in leaving the area, before the city had been completely closed, it is reported that approximately

[178] HRC (2019) "Situation of Human Rights in Yemen, including violations and abuses since September 2014. Report of the detailed findings of the Group of Eminent International and Regional Experts on Yemen", op. cit. p.70.
[179] Loc. cit.

200,000 civilians remained sieged in the city, suffering from the increasing limitations and restrictions on food and other essential commodities[180].

The siege lasted until March 2016, when the pro-government forces gained control of a third entry point to the city, the al-Dahi passage. However, civilians continue to live under siege and in a dire humanitarian crisis, even if with less harsh impositions than the first months[181]. The siege of Ta'izz has created a real humanitarian crisis for the population, leading to starvation of civilians, impossible or insufficient medical treatments, the impossibility of movement not only to reach or leave the city, but also to move about in the city itself for the continuous attacks of snipers, shelling and fighting. In addition to that, the siege of Ta'izz is believed to have been laid as a form of collective punishment[182], because of the support given by the population to the Resistance and other Government-affiliated groups.

Siege of Hajour district

Hajour, Kasher directorate, is one of the districts of the Hajjah Governorate, in the north-west of Yemen. This district is located in a strategic place, as it connects Sa'dah to Sana'a and these two cities to the western coast. The fights between the Hajouri tribes and the Houthi forces escalated in March 2019, in part because of the re-emerging of ancient contrasts[183] after the end of the allegiance between the Houthi and the Saleh forces, and in part because the Houthi accused the tribes to support the Al-Islah party and the General People's Congress (GPC) forces[184]. Toward the end of 2018, some months before the outbreak of the fighting, different information referred to the imposition of a siege by the Houthi forces on the district. The Houthis, indeed, gained control of the points of access and, more precisely, established 45 checkpoints to regulate the entry/exit from the district, similarly to the case of Ta'izz. The Group of Experts of the UN, NGOs, and

[180] HRC (2019) "Situation of Human Rights in Yemen, including violations and abuses since September 2014. Report of the detailed findings of the Group of Eminent International and Regional Experts on Yemen", op. cit., p.83.
[181] HRC (2019), op. cit., p.76.
[182] HRC (2019), op. cit., p. 85.
[183] The contrasts between the Houthis and the Hajouri tribes emerged in 2012-13, but then they reached an agreement to end the hostilities.
[184] HRC (2019), op. cit., pp.111-112.

media have not been able to gather information, both for security reasons and for limited media coverage[185]. For these reasons, very little is known on the siege of Hajour. Nevertheless, the available information indicates a dire situation for the civilians living in the area, perpetuations of illegal shelling and different types of attacks against civilians, high levels of IDPs, restrictions to the access of food, water, and humanitarian relief, worsened by the outbreak of the cholera epidemic that hit heavily this region[186]. In addition, it is reported that the Houthis conducted, almost daily, different abuses on the population, including killing, cutting of internet and telephone networks, enforced disappearances, enforced displacements, abduction, and destruction of property, as well as attacks to hospitals and other protected facilities[187]. In addition to that, cars were prevented from entering, controls on IDs and on goods were done at the checkpoints, often food and water tracks were stopped, and there have been strict limitations to the freedom of movement of civilians. Several restrictions have been imposed also to humanitarian actors and aids, including harassment and arrest of the staff of NGOs working in the area and impediments to the access to UN agencies, worsening the conditions of the population living under the siege. The siege formally stopped when the Houthi forces gained control of the district in March 2019, even if humanitarian organizations are still prevented from accessing the district.

Siege of al-Durayhimi

The siege of Al-Durayhimi is the sole known siege in Yemen conducted by the pro-government forces. Al-Durayhimi is a district of the Al-Hudaydah governorate, located on the western coast of the Yemeni territory. The conflict in the district escalated in the summer of 2018, when the Houthis, after some time, regained the majority of the district, including the centre.

[185]HRC (2019), op. cit., p. 113; BARAA S., (2019), "Yemen's Startegic Hajour District: A forgotten battlefront" *Al-Arabiya English website.* Available at: http://english.alarabiya.net/en/features/2019/03/07/Yemen-s-strategic-Hajour-district-A-forgotten-battlefront.html Accessed: 29/12/2019.
[186]ACAPS (2019) "Conflict escalation in Hajjah, Yemen" Anticipatory Briefing Note in Yemen Analysis Hub, *ACAPS.*
[187]Rights Radar (2019) "Yemen: Hajour, brutality of abuses. A Human Rights Report on the Abuses in Hajour District" *Rights Radar Website*, p.4.

The Yemeni forces, backed by the UAE affiliated groups, settled their control on the points of access to the district, as it proved to be impossible for them to enter the city, also because of the presence of landmines planted by the Houthis around the area. In June 2018, the pro-government forces imposed a de-facto siege on the district in order to force the Houthis to surrender. This led to tragic consequences for the civilians, who were suffering already for the on-going fighting, shelling and aircraft attacks. As in the case of the siege of Hajour, also in the case of al-Durayhimi, there is very little information on the siege, due to the impediments imposed on humanitarian organizations to enter the district by the military forces and for safety reasons. The harsh limitations imposed by the pro-government forces included the denial of humanitarian aid, which was allowed only on two occasions: in January 2019 and then during the spring of the same year. Despite these two interventions, the district is still blocked. The Group of Experts of the UN reports the destruction of medical facilities in the district, including the only existing maternity and neonatal centre; as a consequence, many civilians are forced to try to leave in order to receive health care. Since there are no possibilities to access the area, very little is known on the situation of civilians living in the district[188]. However, given the lack of medical treatments, the restrictions imposed on food and other basic goods necessary for their survival, as well as the destruction of facilities essential for the survival of civilians,[189] it is possible to assume that the situation of these civilians is similar to the one of the civilians in Ta'izz or Hajour. According to the media, the Saudi-led coalition is indiscriminately bombing the district, leaving no humanitarian corridors for the civilians; the internet has been cut so that it is impossible for the people living in the district to contact the outside world. The spread of diseases and epidemics, as well as the lack of food, have already created, according to the Yemeni

[188] HRC (2019) "Situation of Human Rights in Yemen, including violations and abuses since September 2014. Report of the detailed findings of the Group of Eminent International and Regional Experts on Yemen", op. cit., pp.123-124.

[189] For example, one episode has been the prohibition of access to the Red Sea Mills, a wheat storage and processing site in al-Hudaydah, whose access has been denied by the Houthi between March and May 2019.

Ministry of Public Health and Population, a real humanitarian crisis in al-Durayhimi[190].

According to the information available at the moment of writing, the siege of Al-Durayhimi is still going on.[191]

Violations of IHL related to the sieges in Yemen

Both the Houthi and the pro-government forces continued to employ these tactics during the sieges despite knowing all the consequences on the survival of the civilian population, demonstrating, thus, the intentionality of the abuses committed. The intentional causation of starvation, the indiscriminate shelling and targeted attacks by the snipers as well as the denial of humanitarian aid are violations of well-established norms of IHL.

In the first place, the direct targeting of civilians is considered a violation of the principle of distinction granted under Customary Law, Article 3 Common to the Four Geneva Conventions and Additional Protocol II. The several reported cases of sniper attacks towards the civilians, including women and children engaged in their daily activities and in collecting water or food, violate these principles. In addition to the direct targeting of civilians, it is necessary to add the use of indiscriminate weapons and indiscriminate attacks by the sieging forces; likewise, in this case, these alleged crimes are violations of Customary Law, Additional Protocol II and Common Article 3.

The continuous fighting, shelling, aircraft and sniper attacks, have created a widespread feeling of insecurity and terror among the civilians, as it has become impossible to find safe shelters or places. IHL prohibits and criminalises the acts aimed at spreading terror among the civilian population, as well as those acts that form a collective punishment, as in the case of the siege of Ta'izz.[192]

---

[190]ABDULKAREEM A., (2019), "Saudi siege of Yemen's Al-Durayhimi as devastating as WII Siege of Leningrad" *MPN News website*. Available at: https://www.mintpressnews.com/saudi-siege-of-yemen-al-durayhimi-as-devastating-as-wwii-siege-of-leningrad/256820/. Accessed: 30/12/2019

[191]AMN (2019) "Protests in Hodeydah denouncing Siege on Al-Durayhimi city", *Almasirah Media Network*. Accessed: 30/12/2019. Available at: https://english.almasirah.net/details.php?es_id=10359&cat_id=1. Accessed: 30/12/2019.

[192]Article 14 Additional Protocol II; HENCKAERS J-M., DOSWALD-BECK, L., (2009), op. cit., Rules 2 and 103.

During the sieges in Yemen, information reported the destruction of hospitals and other protected facilities, leading to the almost complete collapse of the health system in these areas. The shelling and aircraft attacks on the cities have led to the destruction of civilian objects and protected facilities such as houses, schools, hospitals, and other facilities necessary for the survival of the population. The prices skyrocketed and many shops have been destroyed, preventing people from the possibility to access food and other basic supplies.

The destruction of medical facilities and of other objects necessary for the survival of the civilian population are considered violations of IHL, Customary law and amount to war crimes under the ICC Statute (Art.8). The use of starvation is also considered a war crime under the Statute of the ICC; the starvation, as already noted, is prohibited also under Customary Law an Additional Protocol II, even if there are different views among scholars and practitioners on the meaning of the intentionality[193]. In the cases of the Yemeni conflict, and in particular in the cases of this type of sieges, starvation is an inevitable consequence of the imposition of siege, especially since, as Yoram Distein noted, it is a means of siege[194]. Indeed, the establishment of checkpoints, impediments to the humanitarian aids, limitation on freedom of movement as well as the seizure of goods necessary for the survival of the civilians, are all elements that indicate the intentionality of the starvation. Furthermore, at the moment of writing, there is no information on possible agreements for the evacuation of civilians by the parties of the conflict from the besieged areas, leading to the conclusion that there have been no efforts in the relief of the condition for the population. As described above, despite some people succeeded in escaping at their own risk, the freedom of movement has been highly restricted and, in some cases, impeded by the sieging forces with no apparent military necessity for that. The alleged violations referring to the

[193]According to a view also the incidental starvation is considered a crime, but according to the majority only the starvation intentionally imposed on civilians is a war crime

[194]DINSTEIN Y., "Siege Warfare and the Starvation of Civilians", in *Humanitarian Law of Armed Conflict: Challenges Ahead*, edited by Astrid J.M. Delissen, Gerard J. Tanja, T.M.C Asser Instituut, Martinus Nijhoff Publishers, 1991, p.151.

cases of torture, enforced disappearances and inhuman and degrading treatment widely employed in the above-described sieges should be added to this list of crimes. The legal analysis of these violations has already been done in Chapter II; however, it is worthy to remind that these are violations of both IHL and criminalised under ICL, and, thus, could amount to war crimes.

3.4. Siege as a war crime

The analysis carried out in the previous sections outlined the numerous violations of IHL and abuses of human rights committed in the sieges of the cities of Ta'izz, Hajour, and al-Durayhimi. Unfortunately, these violations are typical of sieges conducted in disregard of the obligations of the sieged and sieging forces.

However, apart from some general statements on the recognition of siege as a method of warfare, IHL, and ICL had never considered these violations as part of the pattern of the siege warfare. This means that, even when there is a criminal responsibility for the crimes of starvation or indiscriminate shelling, these crimes are assessed and analysed on their own, in other words, not as related to the siege warfare. This happened also in the *Prosecutor v. Galić* case, as the International Criminal Tribunal for the former Yugoslavia in its judgment did not touch the legality of the siege of Sarajevo as a whole, but focused on the condemnation of particular actions committed during this siege[195].

This work argues that also the legality of sieges as a whole should be considered under IHL and ICL, not only the legality of its single components. This requires a shift in the consideration of siege warfare: sieges have to be looked in their entirety, namely as methods of warfare that include a particular pattern of actions, and no more as divided into the different measures employed during their conduct. This shift is a key step in order to

[195] International Criminal Tribunal for the Former Yugoslavia, Trial Chamber I Judgment of the 5 December 2003 "Prosecutor v. Stanislav Galić" IT-98-29-T

demonstrate that sieges in Yemen should be considered as war crimes, which is the aim of this Chapter.

The argumentation is developed in three points: the first focuses on the definition of unlawful sieges and on the identification of a particular pattern that repeated in different cases. The second step starts from the identification of siege as a method of warfare and developing, then, towards the recognition of "unlawful" siege as an inherently indiscriminate method of warfare. The third step, finally, discusses the consideration of this type of "unlawful" siege as a war crime.

Unlawful sieges

Sieges have been largely employed during conflicts in the course of history. Nevertheless, the use of this military tactic had particularly re-emerged in different conflicts starting from the last two decades of the 20th century. Every siege is different and has particular characteristics. However, also a general analysis of these sieges illustrates that in their conduct there are some elements repeating themselves and that constitute a real pattern of this method of warfare. This dissertation focuses on this particular type of siege that it is possible to define as "unlawful" siege. "Unlawful" sieges involve both civilians and combatants and are conducted according to a particular pattern that violates the above-described norms of IHL.

The existence of a pattern, a model of "unlawful" sieges, can be assumed by analysing different cases of sieges, including those in the Yemeni conflict. Indeed, even if this argumentation is specifically related to the cases of Yemeni sieges, these "unlawful" sieges are not exceptional cases, as very similar patterns can be found in different other examples. A first and illustrative example is the recent Syrian conflict and, in particular, the sieges of the towns of Ghouta, Homs, eastern neighbourhoods of Aleppo, as well as Madaya and Zabadani (Rif Damascus). In some cases, the sieges have been imposed by the Governmental forces, while in others by terrorist groups. The Syrian sieges, like the Yemeni ones, have been protracted for months or even years, thus leading to the same distressing consequences on the inhabitants. Civilians under siege have been prevented from leaving

the city, or, in some cases, enforcedly displaced; use of indiscriminate bombardments and direct targeting of civilians has been widely done; humanitarian aid has been blocked, leading to the starvation of the population[196], and, finally, the destruction of hospitals, in addition to the impediments imposed to leave the cities, have led to a deterioration of the humanitarian conditions of the Syrian people[197]. A similar pattern of siege took place in other parts of the world. For example, the siege of Sarajevo (1992-1996) was characterised by heavy and indiscriminate shelling, sniper attacks, targeting of objects essential for the survival of the population, a general blockade of the city and establishment of checkpoints, including impediments and limitations to humanitarian access, leaving the civilians in distressful conditions[198]. Another example is the siege of Fallujah (2003) led by the US forces in Iraq to defeat the insurgents, imposing physical isolation of the city and, especially in the final assault, denying the access of humanitarian aid and media with the destruction of infrastructures, artillery and aircraft attacks. Finally, the siege of west Beirut in 1982 by the Israeli forces presented similar characteristics. Indeed, also in this case, the siege started with a physical isolation and electricity blockade, the impediment to humanitarian relief operations and supplies including food, water and fuel. In addition, later on, the civilians were directly targeted and attacked by heavy air, naval and artillery bombardments.[199] [200]

This brief description demonstrates not only that these sieges are unlawful as they violate the principles of IHL and the laws regulating sieges, but it can also be argued that they include some particular elements that constitute a particular model of siege. The first element is the indiscriminate

[196]POWER,S., (2016), "Siege Warfare in Syria: Prosecuting the Starvation of Civilians" *Amsterdam Law Forum*, VU University Amsterdam, pp.2-3.
[197]Syrian International Commission of Inquiry (2018) "Sieges as a Weapon of War: Encircle, Starve, Surrender, Evacuate" *Independent International Commission of Inquiry on the Syrian Arab Republic*, pp. 3-5.
[198]UNSC (1994)"Final Report of the United Nations Commission of Experts established pursuant to Security Council resolution 780 (1992)",S/1994/974, *UN Security Council*, Annex VI- part I Study of the Battle and Siege of Sarajevo.
[199]For example the so-called "Black Thursday" when a refugee camp had been directly targeted.
[200]GAWRYCH G.W., "The Siege of Beirut", in *Robertson W.G, Yates L.A. Block by Block: the Challenges of Urban Operations*, Kansas (US),U.S. Army Command and General Staff College Press Fort Leavenworth, pp.218-225.

inclusion of civilians under siege, by laying the siege on an urban area. The second element is the violation of the principles of IHL regulating the conduct of sieges in relation to the passage of humanitarian relief operations and evacuations to help the population. Indeed, in all these cases there is a complete or almost complete isolation of the besieged area, which leads to the physical, psychological and electronic isolation. In this way, all humanitarian aid is deeply restricted or completely impeded, causing the deterioration of the living conditions, leading also to the starvation of the civilian population. Another feature that emerges in the conduct of "unlawful" sieges is the use of indiscriminate shelling, aircraft attacks and specific targeting of civilians, having as a consequence not only the death or injury of thousands of civilians, but also the destruction of civilian buildings, hospitals, schools and other facilities necessary for their survival.

This pattern links all the different sieges described and others as well. The new siege of Fallujah (2016), the siege of Grozny in the Second Chechen war (1999-2000)[201] and the more recent sieges in Ukraine are all examples of the pattern described above.

A siege conducted according to this pattern involves for its own nature numerous violations of IHL. There will be, of course, different situations, actors and means used. However, both in international and non-international armed conflicts this type of siege is bringing unbearable repercussions on the civilian population and can no longer be ignored or underestimated. Often the military advantage is used to shadow the implications of such a method of warfare for the civilians trapped in the city; nonetheless, the humanitarian consequences that are following the sieges in the Yemeni conflict are too severe to be justified by the military advantage. For this reason, the identification of a particular model of "unlawful" siege is extremely important, especially, as it will be described in the next section, in order to establish its incompatibility with IHL.

[201]WATTS, S., (2019), op. cit., pp. 8-9.

Siege as an indiscriminate method of warfare

Sieges are not defined or prohibited under IHL; indeed, they are well-established and accepted methods of warfare[202].

The different military tactics and the ways in which the weapons (means of warfare) are used are included under the more general definition of methods of warfare. Methods of warfare are bound to respect treaty norms, the Customary International Humanitarian Law norms, and, in general, the principles of proportionality, distinction, military necessity, precaution, and humanity[203]. In particular, it is a well-established principle of IHL that the means and methods of warfare that are inherently indiscriminate and that cause excessive suffering or superfluous injury are prohibited[204]. Even if the siege is not explicitly prohibited under treaty-based or customary law, it is possible to argue that a siege that is conducted in urban areas and thus with civilians involved, and that violates the principles of IHL, is an unlawful method of warfare. We can reach this conclusion based on the fact that IHL prohibitions on means and methods of warfare can derive from the general principles as well, even if there are no specific rules prohibiting them.

The aim of this argument is to demonstrate that if a siege shows the pattern of "unlawful" siege is in violation of the fundamental principles of IHL and therefore should be considered as an indiscriminate method of warfare. The indiscriminate nature of siege is easy to understand. First of all, when sieges are laid over urban areas, as in the Yemeni conflict, every measure taken during the siege will hit indiscriminately both civilians and combatants, violating the principle of distinction[205]. There have been attempts to mitigate the indiscriminate nature of sieges by limiting their possible effects, in order to grant more protection to the civilian population, as illustrated under paragraph 3.2. However, as the examples reported demonstrated, these

[202]VAN DEN BOOGARD J.C., VERMEER A., (2017), op. cit., p. 165.
[203]GAGGIOLI, G., (2019) "Joint Blog Series on International Law and Armed Conflict: Are Sieges prohibited under Contemporary IHL?" *Ejiltalk! Blog of the European Journal of International Law*, p.4. Available at: https://www.ejiltalk.org/joint-blog-series-on-international-law-and-armed-conflict-are-sieges-prohibited-under-contemporary-ihl/.
[204]SASSÓLI M., (2019), *International Humanitarian Law. Rules, Controversies and Solutions to Problems arising in Warfare,* Cheltenham, Elgar Publications, pp.380-381.
[205]LATTIMER M., (2019), op. cit., p.3.

rules are often disregarded in their conduct. These examples illustrate that there is a recurrent pattern in the conduct of sieges in the different cases examined and that is also present in the Yemeni conflict. This particular model of siege is an indiscriminate method of warfare, as no distinction is done between civilians and combatants, and, furthermore, civilians are those mostly hit in these situations; the isolation of urban areas under sieges and all the related consequences will inevitably involve civilians. The blockade of the city, the impediments to the humanitarian aids and operations are heavily felt by civilians, who will be prevented from accessing the basic needs for their survival. Firstly, it is very doubtful that starvation imposed also on civilians, with no or very few possibilities of receiving humanitarian aid, respects the principles of distinction, proportionality, and precaution. Secondly, the same can be said in relation to the use of indiscriminate weapons and attacks. As a matter of fact, even if military buildings are targeted, it is very difficult for the sieging forces to plan an attack that respects the principles of precaution, distinction, and proportionality: the proximity of military and civilian targets and the difficulty in distinguishing between these two categories in an urban context would need high precision in the preparation of every attack, which is often lacking[206].

Thirdly, the respect of the principle of proportionality is often impossible during sieges. This principle states that attacks are unlawful if the loss of civilian life, civilian injury, damage or destruction of civilian buildings exceed the anticipated military advantage. However, when “unlawful” sieges are laid, it is doubtful that the huge amount of destruction and deaths among civilians does not violate this principle. This is even more valid if we look at the temporal dimension of sieges: the different cases analysed describe sieges that protracted for months or even years. In these cases, the violence and the deprivations suffered by the civilian population continued for a very long time, making it even more difficult to respect the proportionality

[206]VAN DEN BOOGARD J.C., VERMEER A., (2017), op. cit. , p. 165.

principle[207]. This is especially true as it is very difficult to foresee the temporal limitation of sieges, and often the predictions done are proven to be too optimistic. Nevertheless, during a conflict, it is necessary to take into account the principle of military necessity. The assessment of the violation of the principle of military necessity is very complex, and there are several variables to consider. However, the sufferings of the civilians, the huge number of casualties and the destruction of civilian buildings that are recurrent features of the sieges under analysis are, without doubt, above the tolerated threshold of the military necessity.

In conclusion, looking at all the arguments brought, we can state that "unlawful" sieges are inherently indiscriminate methods of warfare. This does not mean that sieges are *per se* indiscriminate methods of warfare; however, if they occur in the pattern described as typical of "unlawful" sieges, they should be considered as such. This is, by analogy, the same reasoning that it is usually applied to the use of indiscriminate weapons: even if a weapon is not unlawful *per se*, its use can be considered as unlawful.[208]

Labelling siege as a war crime

The conclusions drawn in the previous two sections are of fundamental importance for the final step of this analysis: if we identify a specific model of "unlawful" sieges and recognize it as indiscriminate method of warfare, it is possible to consider this type of siege as a war crime.

As already noted in Chapter I, there is no internationally agreed definition of war crimes. In general terms, they are defined as serious violations of customary or treaty-based IHL.[209] More precisely, according to the definition of war crimes given in the Study of Customary International Humanitarian Law of the ICRC, war crimes are the grave breaches of the laws and customs of war and, in particular, those conducts that endanger protected persons or objects and/or that breach important values. At this point, it is

[207]GAGGIOLI, G., (2019) op. cit., p.5.
[208]Loc. cit.
[209]CASSESE A., (2013), *Cassese's International Criminal Law, Revised by A.Cassese, P.Gaeta, L.Baig, M. Fan, G. Gosnell and A. Whiting* , Third Edition, Gosport (UK), Oxford Publications, p.65.

possible to argue that the “unlawful” siege should be considered as a war crime based on two principal rationales. The first is related to the qualification of the “unlawful” siege as an indiscriminate method of warfare. Indeed, indiscriminate methods of warfare are prohibited under IHL and their use amounts to war crimes[210]. The second argumentation focuses on the already existing categorization of the different components of sieges as war crimes. Indiscriminate bombardments, blockade and intentional starvation are already established violations of IHL and may amount to war crimes. As a consequence, if these elements are recognised as inevitable components of the model of “unlawful” siege, it is possible to conclude that also siege as a whole should be considered as a war crime.

We do not argue that every siege should be considered as a war crime; this would go too far. If a siege is conducted exclusively against combatants and military objects alone are targeted, there is no violation of IHL. The same can be said if the siege is carried out in complete adherence to the norms of IHL; indeed, it is allowed to have civilian casualties or to damage civilian objects, but always in the respect of the norms of IHL. However, taking into consideration those sieges that are indiscriminate methods of warfare and that involve components already criminalised under ICL, it is possible to conclude that an “unlawful” siege, like those of Ta’izz, Hajour and al-Durayhimi could amount to war crimes.

In order to demonstrate that an “unlawful” siege, as defined above, should be considered a war crime, it is necessary to determine if it satisfies the requirements of war crimes described in Chapter I. As stated by the ICTY in *Tadić (Interlocutory Appeal)*, not all the violations of IHL amount to war crimes. Indeed, there are four conditions that an alleged violation has to satisfy to be considered as such.

The first condition requires the presence of an armed conflict going on at the moment in which the alleged violation was committed, both IACs and NIACs. The second requirement states that the alleged violation has to be included, at national or international level, in a treaty or be part of customary

[210]CASSESE A., (2013), op. cit., p. 73.

law. The third requirement is the so-called *belligerent nexus*, meaning the necessity for the alleged violation to have a connection with the on-going conflict. Finally, the last requirement needs that the alleged violation entails the individual criminal responsibility of the perpetrator. In other words, a grave violation of IHL has to be already criminalized and to lead to the individual criminal responsibility of the perpetrators, in order to be considered a war crime.

In the specific case of "unlawful" sieges, the fulfilment of the first and third requirement is quite easy to demonstrate. As far as the first requirement is concerned, as already demonstrated in Chapter I, Yemen is unquestionably characterized by the presence of an armed conflict, and, in particular, by a non-international armed conflict.

The assessment of the *belligerent nexus* is, in the case of sieges, relatively unproblematic. The presence of a *belligerent nexus*, indeed, means that the criminal conduct has to be closely related to the hostilities so that it is possible to discern between war crimes and those criminal conducts that are crimes under the national legislation of the particular State. However, the existence of this *nexus* is self-evident in the cases of means and methods of warfare that are employed during armed conflicts. Since siege is a method of warfare and, in the case of the Yemeni conflict, is employed in a NIAC, the requirement of the *belligerent nexus* is satisfied.

The assessments of the second and of the fourth requirements are more complex and closely related to each other. Siege is not considered a violation of IHL and, for this reason, it does not *per se* violate the norms of IHL. However, "unlawful" siege is an indiscriminate method of warfare and, thus, violates treaty-based and customary principles and norms of IHL. This is valid even if there is no explicit rule prohibiting siege; indeed, prohibitions for specific conducts, method or means of warfare may derive not only from specific rules, but also from an interpretation of the principles of IHL.[211] In addition to that, the single components of "unlawful" sieges already violate the norms of IHL, elements that constitute the essence of this type of siege.

[211]SASSÓLI M., (2019), op. cit., p.381.

In conclusion, it is possible to argue that “unlawful” sieges satisfy also the second requirement both because they are an indiscriminate method of warfare and because their different components are already considered as violations of established norms of IHL.

The assessment of the fourth requirement is the most challenging and problematic. The siege has never been considered a war crime. It is not enlisted as such under the Statute of any international court or military code, and there are no precedent cases that criminalise this method of warfare. Nonetheless, a siege can be conducted in a way that violate different treaty-based or customary IHL norms, which can bring to the individual criminal responsibility of the perpetrators.

In this regard, it is important to underline that, apart from few exceptions[212], the norms of IHL do not explicitly provide for their criminalisation, as it is an assessment carried out by criminal or military tribunals during their work. However, there is no information/evidence that an explicit criminalisation of a siege has ever been done by a criminal or a military tribunal. For this reason, as things stand, “unlawful” sieges fail to satisfy this requirement. This does not necessarily mean that if an alleged violation had never been criminalised before, it could never be criminalized in the future. Indeed, according to Antonio Cassese, if an alleged violation had never been considered as a war crime before, there are two possible solutions. According to the first one, the alleged breach should be listed as a war crime under the statute of an international criminal tribunal. According to the second one, if there is no statute listing this crime, it is possible, in order to find the bases for its criminalisation, to look and interpret the existing case law, military manuals, general principles of criminal justice as principal tools[213].

In this regard, two elements should be considered. Even if an “unlawful” siege is not enlisted as a war crime, it is an indiscriminate method of warfare, and, as already noted, the use of indiscriminate methods of warfare can

[212]Only the grave branches enlisted under the Four Geneva Conventions and the Additional Protocol I require for the criminal responsibility of the perpetuator.
[213]CASSESE A., (2013), op. cit., p.68.

amount to war crimes.[214] Since "unlawful" sieges are intentionally conducted and planned, the organization and coordination necessary for planning this type of tactic can be ascribed to specific individuals in the military chain and, thus, bring to the individual criminal responsibility of the military commanders.

Secondly, as already noted, some of the different components of this siege are already enlisted as war crimes and can bring to individual criminal responsibility. In relation to this second point, the criminal nature of the starvation as a method of warfare, which has been a specific tool used in the sieges in Yemen, has already been underlined. Another example is the ICTY Trial Chamber in 2003 judgment in the *Prosecutor v. Galić* case. In this case, the ICTY determined the criminal responsibility of General Galić during the siege of Sarajevo for spreading terror among the civilian population through the use of continuous and indiscriminate attacks, even if, before that judgment, there had never been a criminalization of this act[215]. These are just examples and are important to demonstrate that consequences of an "unlawful" siege are already considered as war crimes and criminalised as such. Here we argue that, if we consider all these elements together, the criminalisation of siege as a war crime is possible.

This is only a starting point. Indeed, in any case, a change of perspective will be needed. This is true not only for the necessity to abandon the traditional way of considering sieges in their single components and not as a whole, but also in the future developments of IHL, especially in relation to the sieges in the Yemeni conflict. Indeed, the eventual creation of an *ad hoc* tribunal establishing the criminalization of the "unlawful" siege or a progressive recognition of the criminalization of this type of siege under other tools of IHL or customary law will be necessary to have a concrete shift and start considering this particular method of warfare as a war crime. For the moment, we can argue that there are the basic elements for a future

[214]CASSESE A., (2013), op. cit., p. 73; SOLIS, G. D., (2016), *The Law of Armed Conflict. International Humanitarian Law in War*, Second Edition, Padstow (UK), Cambridge University Press, p. 524.
[215]CASSESE A., (2013), op. cit., p.154.

criminalisation of the “unlawful” siege. This possibility becomes a necessity when we look at the consequences of “unlawful” sieges on the civilians.
However, at this point, it is necessary to make a final clarification. The criminalisation of “unlawful” sieges *per se* will be additional to the already existing criminalization of the different components of sieges. Indeed, the aim is not to underestimate the gravity of these crimes or to deny that these crimes can occur in isolation. The prosecution of these crimes when they are committed is of fundamental importance. However, especially because of their gravity, it is compelling to recognise that they became the essence of a particular model of siege. It is only when a siege follows this pattern that it should be considered a war crime, not to weaken but to strengthen the condemnation of these abuses.

3.5. Siege: lawful or militarily effective?

Many scholars argue that it is not possible, under the contemporary regulation of the conduct of hostilities, to have a siege that is both lawful and militarily effective[216]. Every rule in IHL and every method or means of warfare is subjected to the limits imposed by the balance between military necessity and humanity principles. However, in the particular case of siege warfare, these two principles are deeply in conflict. Indeed, in order to lead to a surrender of the besieged party, the besieging party has to impose a total or almost total physical, psychological and electronic isolation of the enemy armed forces. These three types of isolations are very important at the aim of a successful siege. The physical isolation impedes the logistic supplies and the reinforcement of the sieged forces, leading to their progressive weakening. The psychological isolation aims at the decrease of the will to resist by creating a complete separation from the outside world. Finally, the electronic isolation has a great military advantage on the sieged forces, limiting considerably their capacity of coordination and organization

[216]For example: Sean Watts in WATTS, (2019) op. cit., p.47; GILLARD E.C., (2019),op. cit., p.11; VAN DEN BOOGARD J.C., VERMEER A., (2017), op. cit., p. 79-80.

and, as a consequence, the possibility of attacks or counter-attacks by the enemy forces[217].

This is completely legitimate if a siege is directed exclusively towards military targets and when civilians are not involved. However, in the case of Yemen and other sieges described above, the involvement of civilians is a constant element that inevitably changes the game. The presence of civilians involves the respect of the IHL principles that grant them protection during armed conflicts and under siege. Despite the very few existing norms on the regulation of sieges, which are often in contradiction with one another, the respect of these provisions and of the more general principles of IHL deeply limits the possibilities of action during a siege for all the forces involved. The inevitable consequence of these limitations is a decline in the military effectiveness of siege as a method of warfare. Indeed, the impact of the protection of civilians in a siege preventing, for example, the use of starvation because of possible involvement of civilians, giving them possibility to leave the sieged area, may allow also combatants to flee the besieged area. Moreover, the obligation to forewarn an attack is benefitting also the sieged party, as they will have the possibility of regaining the necessary forces and supplies. According to different scholars[218], this is exactly the reason why a siege can never be both military effective and lawful. This argument has been illustrated also by looking at the cases of sieges during conflicts from 1990s onwards. The failure in completely isolating a urban area during a siege has led to the failure of the attempted sieges and, in most cases, to a change in the tactic, opting for an “unlawful” siege to defeat the enemy part. For example, the first attempt to siege Grozny in the First Chechen War (1994-1995) by the Russian forces failed also because of the inability to completely isolate the city. This tactic, as known, was revised in the Second Chechen War, when the city was completely isolated with the addition of heavy and indiscriminate bombardments: this led to the success of the siege. The same can be said

[217]Sean Watts in WATTS, (2019) op. cit., p. 8; VAN DEN BOOGARD J.C., VERMEER A., (2017), op. cit., p.79.
[218]CASSESE A., (2013), op. cit., p.68.

for the first attempted siege of Fallujah or for the siege of Sarajevo. The latter had a devastating impact not only for its duration, but also for the inability to make the sieged forces surrender, as it was impossible to completely isolate physically and psychologically the city. In this way, it was possible for the Bosnian troops to re-supply, thanks also to the international intervention in support of the population.[219]

The failure of these attempts demonstrates not only that in order to succeed a siege should be based on the complete isolation of the military forces (and of the population) inside the sieged area, but also that the initial failure may turn, in some cases, into a new attempt, in which an "unlawful" siege is conducted. It is not difficult to understand, thus, that "unlawful" sieges have been widely employed in the following conflicts, also thanks to the existence of few and contrasting rules governing them and the non-definition of this method of warfare.

If it is impossible to conduct a siege that is both legal and effective, what should we expect for the future? Firstly, it is foreseen that in the future conflicts sieges will be more and more employed as a method of warfare[220]. Indeed, the evolution of warfare is moving from the contest between parties over territory to contest over the population and human capital. In addition to that, the increasing patterns of urbanization lead to the increasing use of sieges and urban warfare especially as counterinsurgencies strategies. The possibility of gaining control of strategic cities or urban areas[221] and the increasing number of NIACs, actually, are becoming more and more compelling in contemporary conflicts, in particular, if we look at the conflicts in the Middle East[222].

The conduct of hostilities is changing and the impact that sieges have on civilians is becoming more and more evident. Moreover, the employment of sieges is increasing and it is now evident the impossibility to have a lawful and military effective siege. For these reasons, it becomes even more

[219]WATTS, S., (2019), op. cit., pp. 9-14.
[220]GAGGIOLI, G., (2019), op. cit., p.1.
[221]WATTS,S.,(2014), op. cit., p. 2.
[222]Sean Watts in WATTS, (2019), op. cit., p. 7; VAN DEN BOOGARD J.C., VERMEER A., (2017), op. cit., p. 78.

urgent to take action towards the criminalization of “unlawful” sieges. The recognition of “unlawful” sieges as war crimes could be a great step towards the protection of civilians in these situations and promote the respect of the norms of IHL by the parties, that is to say, both the sieging and the sieged forces.

However, even if the recognition of siege as a crime under IHL and ICL is not foreseeable in the short period, there have been some recent and encouraging developments. Indeed, the employment of sieges in the recent conflict of Syria and their great media attention, as well as the dire humanitarian crisis of Yemen have increased the awareness of the international community on this issue. The dramatic conditions of the civilian population in the sieges and the huge gaps in the respect of the norms of IHL had a great impact on the public all over the world, leading the UN to take some steps. On the one hand, this brought to the condemnation of particular aspects that are part of sieges, on the other to request greater legal clarity on the matter. The first step was taken in 2013, when the Secretary General of the UN charged the Office for Coordination of Humanitarian Affairs with the task of commissioning the Institute for Ethics, Law and Armed Conflict and the Martin Programme on Human Rights for Future Generations at Oxford University to create a report on the existing regulations on the humanitarian relief operations during armed conflicts. Despite the Oxford Guidance is a non-legally binding instrument, its aim was to provide legal clarity on the, often contrasting, existing regulations on the matter. Other steps have been taken in order to condemn specific actions and to compel the parties in armed conflicts to raise the precautions taken against them. Three resolutions of the Security Council were particularly important: SC Resolution 2139 (2014)[223], SC Resolution 2286 (2016)[224] and the SC Resolution 2417 (2018)[225]. The Resolution 2139 addresses the

[223]UNSC “Resolution 2139 (2014) adopted by the Security Council at its 7116th meeting, on 22 February 2014” S/RES/2139 (2014), UN Security Council. Available at: https://documents-dds-ny.un.org/doc/UNDOC/GEN/N14/243/39/PDF/N1424339.pdf?OpenElement

[224]UNSC “Resolution 2286 (2016) adopted by the Security Council at its 7685th meeting, on 3 May 2016” S/RES/2286(2016), UN Security Council. Available at: http://unscr.com/en/resolutions/2286

[225]UNSC “Resolution 2417 (2018) adopted by the Security Council at its 8267th meeting, on 24 May 2018” S/RES/2417(2018), UN Security Council. Available at: http://unscr.com/en/resolutions/2417

specific situation of sieges in Syria demanding the parties involved in the conflict to facilitate the passage of humanitarian relief operations in the besieged areas, calling upon the parties to lift the sieges from those areas and to agree on the evacuation of the civilians. The Resolution 2286, on the other hand, focuses on the prohibition and condemnation of the attacks to medical facilities and personnel, blaming, in addition to that, the impediment of humanitarian relief by the parties involved in the conflict. Finally, the Resolution 2417 re-affirms the prohibition of starvation as a method of warfare, condemning the denial of passage of humanitarian relief operation and humanitarian assistance, stressing the necessity for the parties to a conflict to protect civilians and civilian objects and to respect the existing norms of IHL for the protection of civilians and of the objects necessary for their survival.

These are just little steps, but show greater attention and distress on the causes of sieges and their impact on the civilian population. Indeed, in these resolutions, the Security Council expressed its concern for the consequences of sieges and for the violations committed during them, and asked the states to take the necessary steps not only to protect civilians, but also not to leave the committed crimes unpunished.

The consequences and the evidence on the impact on the civilians and on the violation of the laws of IHL and IHRL that this method of war entails can no more be ignored or underestimated.

The existence of a few provisions regulating siege, the gaps and different interpretations that derive from these regulations have left a great space for legal uncertainty on sieges. The well-known consequences, the widespread use and the expectation of the increasing use of “unlawful” siege compel to take further steps in the condemnation of this type of siege. The starting point should be a clarification of the concept of siege as a method of warfare and of the indiscriminate nature of “unlawful” sieges. Secondly, the legal gaps and controversies of the norms regulating sieges should be resolved; in this respect, stricter and clearer rules are needed in order to better regulate the possible actions of both the sieging and sieged parties. Finally,

it is essential to arrive at the condemnation of the use of “unlawful” sieges and to identify this method of warfare as a war crime. The necessity to criminalize the conduct of “unlawful” sieges is even more compelling in the case of the Yemeni conflict, in order to bring those responsible for the “unlawful” sieges to justice.

Chapter IV – Responsibility and accountability for war crimes in Yemen: problems and possible solutions

4.1. Lack of accountability for violations of IHL and war crimes

The previous Chapters have underlined the huge amount of violations of IHL committed in the Yemeni conflict. These violations are very different in nature, involve all the parties taking part in the conflict and, as it will be explained later, may lead to the responsibility of the individual perpetrators and of the States. Despite that, this conflict is characterised by equally high levels of impunity and lack of accountability for the alleged violations.

The following sections will deal with the bland attempts taken to investigate and assess the violations of IHL and IHRL in the Yemeni conflict, focusing, in particular, on the efforts taken by the Government of Yemen, by the coalition forces and by the de-facto authorities to determine the eventual responsibility of the forces under their control for the abuses committed since the beginning of the conflict.

The National Commission of Inquiry

Both in times of peace and during armed conflicts, the State has the primary responsibility to prevent, promote, protect and fulfil human rights, including the duty to investigate, punish and provide reparations for those held responsible for the violations. The obligations to respect, investigate, punish and provide reparation have to be respected also in the application of the International Humanitarian Law: these responsibilities are always attributed to the State in the first place. This is also true in the case of the Yemeni conflict. However, the breakdown of the judicial system as a consequence of the conflict and the loss by the Government of Yemen of different parts of the territory have severely hampered the accomplishment of this task, which has resulted to be almost impossible. For this reason, the Yemeni

Government established the National Commission to Investigate the Alleged Violations to Human Rights in Yemen, with the task of independently and reliably investigate the violations of human rights and humanitarian law in all the Yemeni territory, ensure justice and provide reparations for the victims. The Commission had been established before the beginning of the conflict under the Presidential Decree No.140 of 2012, with the aim of investigating the human rights violations occurred during the first internal tensions between the Government and the rebels, whose mandate had been successively renovated two times more in 2016. Despite the laudable intent of the Yemeni Government, the establishment of the Commission of Inquiry resulted mostly as a consequence of the pressures of international bodies, such as the Human Rights Council and the Security Council. For example, the latter urged in its Resolutions to establish an independent mechanism to investigate the violations of human rights in Yemen[226]. At the moment of writing, the Commission has published seven reports on its findings and investigations on its website. They used as reference the rights established in different national and international instruments: the Yemeni Constitution; the laws and provisions of the Yemeni national law[227]; the international HR treaties to which Yemen is part; the provisions of IHL applicable to NIACs and the Security Council and Human Rights Council Resolutions applicable to the Yemeni Conflict, considered by the Commission of Inquiry as legally-binding instruments[228].

Over the years, the Commission of Inquiry took into consideration an impressive number of cases, focusing on a wide range of violations committed by the different parties involved in the conflict, investigating both the abuses of human rights and of International Humanitarian Law. However, as underlined by the OHCHR and the Group of Experts, the work

[226]National Commission to investigate the Alleged Violations to Human Rights in Yemen website. Accessible at: https://www.nciye.org/who-are-we-ar/?lang=en. Accessed: 17/01/2020.

[227]"The Penal Code No. 12 of 1994, the Military Penal Code No. 21 of 1998, the Penal Procedures Code No. 13 of 1994, the Military Penal Procedures Code No. 7 of 1996 and the Police Authority Law No. 15 of 2000. This is in addition to provisions related to punishments and penalties provided for in other special laws such as the Child Rights Law No. 45 of 2002, the Press and Publications Law No. 25 of 1990 and other laws" First Report of the NCIYE, p.10.

[228] First Report of the NCIYE, pp.10-11. Available at: https://www.nciye.org/periodic-reports-ar/?lang=en.

of the Commission of Inquiry is undermined by several shortcomings and gaps. Indeed, despite the improvements that have been assessed through time in its work, there are deep concerns on the impartiality, transparency, and independence of the Commission[229]. To begin with, there is a lack of clarity and information on the criteria employed for the appointment of the members of the Commission, who report directly to the President of Yemen. Similar problems can be found for the criteria used for the selection of the cases to be investigated since they have been indicated in very vague terms or even disguised to the public knowledge. These elements raise several concerns on the independence of the Commission of Inquiry. Different concerns, on the other hand, are related to the impartiality of this instrument. As a matter of fact, it has been noted that there are several doubts on its effective impartiality in relation to the violations committed by the Yemeni forces; often, some categories of violations, which different sources assessed have been committed by both Houthi and government forces, are attributed only to the former, leaving the State forces free from any responsibility. Further problems have been found in the legal analysis of the cases taken into consideration by the Commission, especially with regard to the lack of elements and information necessary for the attribution of responsibility. There are many examples in which the evidences, information and specific facts employed by the Commission to reach its conclusions were insufficient or, in other cases, key evidentiary elements were disregarded in the attribution of the responsibility[230]. This becomes even more evident, since the Houthi forces refused to provide information or to collaborate with the Commission, which, as a consequence, not only lacks the access to several information but also has a great impartiality in

[229] HRC (2019) "Situation of Human Rights in Yemen, including violations and abuses since September 2014. Report of the detailed findings of the Group of Eminent International and Regional Experts on Yemen", op. cit., pp. 210-211; (2017) "Situation of Human Rights in Yemen including violations and Abuses since September 2014. Report pf the United Nations High Commissioner on Human Rights" op. cit., p.16.

[230] HRC (2018) "Situation on Human Rights in Yemen, including violations and Abuses since September 2014. Report of the United Nations High commissioner for Human Rights containing the findings of the Group of Independent Eminent International and Regional Experts and summary of technical assistance provided by the Office of the High Commissioner to the National Commission of Inquiry", op. cit., p. 14.

the selection of cases, as it is not accessible for the denounce of violations perpetrated in the areas under the control of the Houthis.[231]The presence of an independent mechanism to investigate and analyse the violations of IHRL and IHL aimed at the assessment of the responsibility of the perpetrators and at the redress for the victims is of fundamental importance. Such an instrument, therefore, has the primary authority in bringing clarity and accountability for the crimes committed during the conflict, which is at the basis of every possible future process of peace. However, since the shortcomings of the Commission of Inquiry, it is doubtful that, unless major improvements and reforms are taken, this could be made under the current mechanism.

JIAT

Even if the primary responsibility in the investigation of violations of IHL on the Yemeni territory resides on the Government, all the parties involved in the conflict have, as well, the duty to investigate and prosecute these violations and the possible war crimes committed by their forces. It is in this respect, and as a response to the international pressures, that the pro-government coalition established in 2016 the Joint Assessment Team (JIAT), an investigative mechanism aimed at the examination of the violations carried out in the attacks of the coalition in the Yemeni conflict. The establishment of the JIAT is, without doubt, a praiseworthy effort of the coalition to investigate the many violations of IHL committed by its forces. Nonetheless, as in the case of the Commission of Inquiry, there are several shortcomings in its work, as well as concerns in the effective capacity and willingness of the JIAT to bring the pro-government armed forces to accountability. More in detail, there are several perplexities on the transparency, impartiality, and reliability in the analysis and assessment of the cases considered by the JIAT. The first element of concern is the lack of information and the impartiality of the case-selection process adopted. As

[231] HRC (2019) “Situation of Human Rights in Yemen, including violations and abuses since September 2014. Report of the detailed findings of the Group of Eminent International and Regional Experts on Yemen”, op. cit., pp. 210-211.

a matter of fact, the cases taken into consideration by the JIAT usually are those, which resulted in few casualties, in few damages to civilian buildings, or those in which the attacks were carried out in the proximity of a military target, and thus, that are more easily justifiable as errors[232]. Secondly, the JIAT has been established with a Royal Decree of the King of Saudi Arabia, with the support of the UK and US, and reports directly to the Saudi Minister of Defence. This raises several concerns on its independence and transparency, as it is believed that the results of the findings have been altered by the Ministry of Defence himself[233]. Other problems regarding the work of the JIAT rely on the legal analysis carried out in the cases investigated. Indeed, despite the JIAT is composed by experts and professionals having a legal or a military background and coming from different coalition states[234], the assessment of the reasoning and legal analysis of this instrument had proven to be particularly complicated, since there is no detailed public archive of the findings, processes, and instruments used by these experts to draw their conclusions. Furthermore, the JIAT shows a lack of collaboration with the international investigative bodies, since no information has been provided by the JIAT even when requested, making it impossible to determine if the work and standards employed meet the international standards for the investigation[235]. Several concerns arose also on the credibility of the results of the JIAT's findings, some of which are in complete contrast with the results on the same cases, assessed by the UN or by reliable international NGOs, such as Amnesty International, Doctors without Borders and Human Rights Watch. Despite the huge amount of violations attributed to the pro-government coalition

[232] HRC (2018) "Situation on Human Rights in Yemen, including violations and Abuses since September 2014. Report of the United Nations High commissioner for Human Rights containing the findings of the Group of Independent Eminent International and Regional Experts and summary of technical assistance provided by the Office of the High Commissioner to the National Commission of Inquiry", op. cit., p. 34.
[233] Loc. cit.
[234] Saudi Press Agency (2016) "Joint assessment Team (JIAT) on Yemen responds to Claims on coalition forces' violations in Decisive Storm Operation" *Saudi Press Agency*. Available at: https://www.spa.gov.sa/1524799.
[235] GA (2005) "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law" 60/147(2005) General Assembly.

forces, in almost none of the cases analysed by the JIAT, the coalition resulted responsible for violations of IHL and, at the same time, the role of specific members of the coalition had been not specified or concealed[236]. The attacks, even when resulting in several civilian casualties -a detail always omitted in the findings of the JIAT- have been justified in terms of: human or technical error (for example false intelligence); the coalition was not responsible for the attack; and, finally, the targeted object was a military object, without considering the violations of the principles of the proportionality and precaution. In addition to that, it is worth noting that the JIAT envisioned also a vaguely-defined system of voluntary assistance to the victim. These voluntary reparations are not necessarily linked to the reparation for wrongs, since, as noted, the coalition is hardly considered responsible for them. On this basis, there are reasons to believe that the real aim of this assistance is to silence the witnesses and the victims of specific attacks.[237] Further problems are related to the possible effective accountability and prosecution of those eventually considered responsible. Indeed, in the remote possibility that the responsibility of the coalition will be assessed in a specific case, on July 10th 2018, the King of Saudi Arabia, Salaman bin Abdulaziz al Saud proclaimed the royal amnesty for the military forces involved in the "Operation Restoring Hope" in Yemen, for all the military and disciplinary penalties, making reference to some and not specified rules. [238]

Taking into consideration the shortcomings of the JIAT and the lack of commitment of this instrument in the attribution of the responsibility, it is possible to conclude that the possibilities to have accountability for the war crimes committed by the pro-government coalition in Yemen are hugely restricted. However, a positive development occurred in the last weeks, as

[236]HRW (2018) "Hiding behind the Coalition. Failure to Credibly Investigate and Provide Redress for Unlawful Attacks in Yemen" *Human Rights Watch*, US, p. 19.
[237] HRC (2019) "Situation of Human Rights in Yemen, including violations and abuses since September 2014. Report of the detailed findings of the Group of Eminent International and Regional Experts on Yemen", op. cit., p. 214.
[238]Saudi Press Agency (2018) "Custodian of the Two Holy Mosques Pardons all Military Men, Taking Part in Restoring Hope Operation, of Military, Disciplinary Penalties" *Saudi Press Agency*. Available at: https://www.spa.gov.sa/viewfullstory.php?lang=en&newsid=1783696

Saudi-Arabia announced the trial under the martial court of the air crews in relation to the violations of International Humanitarian Law for three air strikes, including the unlawful attack to the Abs Hospital analysed in Chapter II. Despite the announcement of this encouraging improvement, in order to have a real evaluation of the commitment of the JIAT and of Saudi Arabia, it will be necessary to wait for the analyses, investigations and judgment of the court.[239]

Investigations by the de-facto authorities

As outlined in the previous Chapters, the Houthi forces have been responsible for several violations of human rights and of International Humanitarian Law. The responsibilities and obligations of the de-facto authorities in the prevention and investigation of these violations will be analysed later. For the moment, suffice it to know that for the information available at the moment of writing, there is no evidence that the Houthi forces have engaged any effort in finding or investigating violations committed by their forces.[240] Indeed, despite the assurance by the Houthi forces on their engagement for the investigation and accountability of the violations of IHL and IHRL according to the Yemeni military penal code and the law of military criminal procedures and administrative sanctions, no member of the Houthi forces has been held responsible for any type of violation. This raises different concerns on the effective conduct of investigations or prosecutions or on their reliability.[241]

The investigation, accountability, prosecution of violations and the remedy to the victim is not only a duty, but also a fundamental necessity in order to build a process of peace. However, as this analysis has demonstrated, in

[239]The Guardian (2020) "Saudi-led coalition starts court martial against Yemen strikes air crews. Proceedings over breaches of International Law are first such cases of their kind" *The Guardian Website*. Available at: https://www.theguardian.com/world/2020/feb/12/saudi-led-coalition-starts-courts-martial-against-yemen-strikes-air-crew. Accessed: 26/02/2020

[240] HRC (2019) "Situation of Human Rights in Yemen, including violations and Abuses since September 2014. Report of the Group of Eminent International and Regional Experts as submitted to the UNHCHR", op. cit., p. 16.

[241] HRC (2019) "Situation of Human Rights in Yemen, including violations and abuses since September 2014. Report of the detailed findings of the Group of Eminent International and Regional Experts on Yemen", op. cit., p. 215.

Yemen, the mechanisms for the accountability and investigation for the abuses of IHL and IHRL are inexistent or are lacking of credibility, independence, transparency, and impartiality. The lack of adequate instruments and will by the parties of the Yemeni conflict in this respect is in contrast to the international standards established with the General Assembly Resolution 60/147(2005)[242].

4.2. Responsibility for the violations of IHL and IHRL

Common Article 1 to the Four Geneva Conventions requests the state parties to the Conventions to respect the provisions of IHL, even if they are not directly involved in an armed conflict. This obligation becomes even more binding when States take part in the hostilities. In the cases of NIACs, when civilians are often directly involved in the fighting, the obligations and responsibilities in cases of violations of IHL and war crimes are of fundamental importance, even if still controversial.

The aim of the next sections is to give an overview of the legal responsibilities of the States, armed groups and third states involved in a non-international armed conflict and, in particular, of the obligations of Yemen, Houthi forces and third states, including in this last category both the pro-government coalition and other states supporting the parties involved in the conflict.

Yemeni government

Under IHL, a state is held responsible for the violations, either acts or omissions that can be attributed to it. This includes:

- Violations committed by the organs of the state, including the armed forces;
- Violations committed by persons or entities empowered by the states to exercise elements of governmental authority;

[242]GA (2005) "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law" 60/147, General Assembly.

- Violations committed by persons or groups acting on the instructions of the state or under its control;
- Violations committed by private persons or groups that the State recognise as its own conduct.[243]

The direct consequence of this obligation is that a state, in this case, Yemen, can be considered responsible for the violations of IHL committed not only by its armed force, but also by the para-military forces under its control. The State's responsibility for the violations committed by its armed forces is a well-established norm of international law that originates in the Hague Regulations, and that it is now considered to be part of Customary Law, applicable, therefore, also in the cases of non-international armed conflicts. More in detail, this provision is enshrined in the Second Protocol to the Hague Convention for the protection of Cultural Properties, under Article 3 of Hague Convention IV, in the Four Geneva Conventions and in the military manuals of several states[244]. The responsibility of a State involved in a conflict, however, should not be considered in contrast to the individual criminal responsibility of single individuals during the conflict: these are two distinct systems of attribution of responsibility, which complement each other. For example, if a member of the armed forces is proved to be responsible for the commission of war crimes, this will not preclude the responsibility of the State for the commission of the same war crimes, as the perpetrator is a member of the State's armed forces. Indeed, the criminal responsibility of the single individual does not fulfil the duty of the State to make reparation for the commission of the crime and it is, therefore, in addition to the responsibility of the State.[245]

As underlined by the International Law Commission (ILC), the international legal responsibility of a state -consequence of a wrongful act- entails legal consequences for this act[246]. Generally, the obligations of a state impose

[243]HENCKAERS J-M., DOSWALD-BECK, L., (2009), op. cit., Rule 149.
[244]Loc. cit.
[245]WYLER e., CASTELLANOS-JANKIEWICZ L.A., (2011), "State Responsibility and International Crimes" in *Routledge Handbook of International Criminal Law, Edited by William A. Shabas and Nadia Bernaz,* London (UK) and New York (US), Routledge Handbooks, p.400.
[246]Art.28, Chapter I, International Law Commission Report A/56/10, August 2001.

the cessation of the wrongful act, the assurance of non-repetition and the provision of reparation[247] for the wrongs committed. These obligations imposed on a State responsible for a wrongful act cannot be avoided by invoking the internal laws: the internal legal system cannot be invoked as a justification.[248]

As can be understood from this brief legal analysis, the Yemeni state is responsible for the commission of war crimes by the members of its armed forces as well by those committed by other State's organs. However, even if war crimes are the primary focus of this work, the crimes committed by the state are not limited to war crimes. States can be considered responsible for the violation of peremptory norms and *erga omnes* obligations. It is generally recognised that the basic principles of IHL amount to peremptory norms and have an *erga omnes* character[249]. As in the case of war crimes, therefore, also the other violations of IHL committed by the members of the Yemeni armed forces can bring to the international responsibility of the State.

The overall picture of the Yemeni conflict is further complicated by the presence of different militias, para-military forces and armed groups, which, on different degrees, are acting under the orders of the Yemeni government. The assessment of the State's responsibility for the crimes committed by these groups is very complex and blurred by the absence of legal clarity on the matter. In this regard, it is of fundamental importance to establish the nature of the existing link between these forces and the State, in order to understand the degree of control that the State exercises on these groups. In the Yemeni case, even if some military groups such as the Security Belt Forces and the Elite Forces officially refer to the Ministry of Interior, it is reported that President Hadi has no control over these troops, especially since they are trained, equipped and paid by the United Arab Emirates[250].

[247]The reparations can take the form of restitution, compensation or satisfaction.
[248]Art.30-31-32 Chapter I, International Law Commission Report A/56/10, August 2001.
[249]SASSÓLI M., (2019), op. cit., pp. 89-90.
[250]UNSC (2018) "Letter dated 26 January 2018 from the Panel of Experts on Yemen mandated by Security Council Resolution 2342 (2017) addressed to the President of the Security Council" S/2018/594, UN Security Council, pp.18-19.

At the same time, the United Arab Emirates try to avoid the responsibility of the control of these troops, which have been responsible for many violations of IHL and IHRL. This is a very complex situation, in which it is difficult to clearly understand which state is to be considered responsible for the violations committed by these forces, namely Yemen or UAE.

Non-state armed groups

The attribution of the responsibility for the violations of IHL and IHRL committed by non-states armed groups is very controversial as well. In relation to the violations of IHL, it is possible to conclude that the particular nature of the relation between the State and the armed group entails the responsibility of the latter for the violations of IHL committed. Indeed, when the state armed forces and the non-state armed forces are involved in a conflict, they are considered as equal parties. The main consequence of this situation is that the armed group is not a part of the state, but it is outside its control and, thus, outside from the framework of the responsibility of the state itself.[251] For this reason, non-state armed groups have, on one hand, to respect and implement these norms, on the other, are considered responsible for their violations by the members of their armed forces. The obligation to respect the norms of IHL by the non-state armed forces derives from the Article 3 Common to the Four Geneva Conventions and from the Additional Protocol II. There are also different IHL treaties that explicitly impose obligations and prohibitions on all the parties involved in a conflict, including, thus, the state and non-state armed groups. As a consequence, the Houthi forces must be held responsible for the war crimes they have committed during the Yemeni conflict and for the different acts that violate the rules of customary and treaty-based IHL. This is even more compelling if we consider that the Houthi forces exercise control of different parts of the Yemeni territory[252], in contraposition to the areas under the control of the

[251] ZEGVELD L., (2002) *The Accountability of Armed Opposition Groups in International Law*, Cambridge Studies in International and Comparative Law, Cambridge (UK), Cambridge University Press, p.176.

[252] Up to June 2019, the Houthis held under their control several governorates on the west coast, including central points like Tai'zz, Al-Hudaydah, Sa'dah, Al-Bayda and Ibb. Information taken from

State. In those areas, indeed, the Houthi forces have established a well-organized structure not only from the military point of view, but also from the political one, giving origin to an organization very similar to the one of a state. Furthermore, even if for the time being it is not an established requirement under IHL, there is an increasing convergence under IHL scholars on the duty of non-state armed groups to provide reparations for the crimes committed.

Unlike state armed groups, non-state armed groups are not only responsible for the violations of IHL they commit, but also for the violations under the domestic law. This difference, as already noted in Chapter I, derives from the consideration of the members of non-state armed groups as unlawful combatants under IHL, depriving them of the immunity granted to members of state armed forces. This entails the possible prosecution under the domestic legal system for crimes such as murder or treason, even if, in order to have an effective peace-building process, it is generally advised to give amnesties for those crimes.[253] [254]

Pro-government coalition States

The states of the pro-government coalition are bound to respect the rules of IHL. However, as illustrated in the previous Chapters, the forces and affiliated groups of the coalition have often perpetuated different violations of both IHRL and IHL, many of which may amount to war crimes. For this reason, it is necessary to clarify which are the responsibilities of these states directly involved in the conflict under IHL and the consequences derived. Under Article 1 of the Geneva Conventions, it is enshrined the obligation for the State parties not only to comply with, but also to ensure the respect of

---

"Mapping the Yemeni Conflict", European Council on Foreign Relations Website. Available at: https://www.ecfr.eu/mena/yemen. Accessed: 23/01/2020.

[253]Additional Protocol II encourages the provision of amnesties for those who have participated to the armed conflict and who have been arrested and detained for reasons in relation to the armed conflict; however, this should not be interpreted as aimed at giving amnesties for those responsible for human rights violations or war crimes. On the contrary, the aim of this provision is to grant amnesties for those arrested for the fact of having taken part to the hostilities, and, thus, considered as criminals under the national law.

[254]PEJIC J. (2002) "Accountability for International Crimes: from conjecture to reality" *International Committee of the Red Cross*, p. 30.

the Conventions[255]. Even if the coalition's States intervened in favour and on the request of the Yemeni government, they are bound to the respect of the treaties they have ratified and of the norms of IHL applicable to the conflict. Therefore, they can be held responsible for the violations they have committed and still are committing during the conflict, leading to the responsibility of both single states and individuals. This is valid for both armed forces and proxy forces[256] that these states employ on the Yemeni territory. The extension of these obligations to the third-states is not surprising; indeed, under International Humanitarian Law, the intervention of third states in a pre-existing NIAC makes these states acquire the status of "co-belligerents", becoming, thus, parties to the conflict.

Despite these international obligations for the states of the coalition, not only they are believed to be responsible for different violations of IHRL and IHL, many of which could amount to war crimes, but also for the attempt of the single states to hide behind the coalition in order to avoid their responsibility. The coalition has not provided clear information on the military leaders in charge of the targeting process or the command chain, which could be held responsible for different war crimes.[257] This is especially true for the leading states of the coalition, meaning Saudi Arabia and the United Arab Emirates, but not limited to them; indeed, also all the other states of the coalition, even if less involved in the direction of the hostilities, are responsible for the violations they have helped to commit.

Third-States

The above-mentioned obligation enshrined under Article 1 of the Four Geneva Conventions is valid also for the third States that are providing arms and logistical support to the parties of the conflict. Since the beginning of the conflict, as already described, different states -among which United

[255]Art.1 First Geneva Convention, common to the Four Geneva Conventions; See Commentary to the Article 1 ICRC. Available at: https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=72239588AFA66200C1257F7D00367DBD#_Toc452378931

[256]Indeed these proxy forces are trained, controlled and financed by the pro-government coalition states.

[257]HRW (2018) "Report Hiding Behind the Coalition. Failure to Credibly Investigate and Provide Redress for Unlawful Attacks in Yemen" op. cit., p. 52

States, United Kingdom, France, Germany, Australia, and Canada- have provided help, training, arms and financial support to the pro-government coalition and, consequently, to the Yemeni Government. On the other side, Iran has provided similar help to the Houthi forces. The detailed description of the trades and specific support given by those states is not the aim of this section. The focus is, instead, on the possible criminal responsibility of those states. Under international law, indeed, these states can be considered complicit in the violations perpetuated thanks to their support and help.[258]This is true not only in reference to the Common Art.1, but also in relation to Chapter IV of the ILC articles and commentary attached. More precisely, if a state financing or aiding another state, which commits wrongful acts thanks to this aid, is unaware of the use or of the intention to commit wrongful acts, the aiding state cannot be considered internationally responsible for those acts (Article 16). However, if the aid persists also after the commission of a wrongful act by the aided state, the responsibility can fall also on the state that keeps on aiding the state, as its responsibility will arise pursuant to Art. 11.[259] [260] In this respect there have been evolutions also under treaty-based IHL. For example, the Arms Trade Treaty of 2013 prohibits the selling of conventional weapons to states, if there is knowledge or suspect that these arms will be used to commit grave violations of the Geneva Conventions, genocide, crimes against humanity, attacks against the civilian population or war crimes.[261]Some of the states selling arms to the pro-government coalition, such as France, the UK, and Canada, are parties to the treaty and, therefore, are responsible for its violation, as well. The knowledge of the war crimes and of the violations of IHL perpetrated by the pro-government coalition forces resulted in increasing international pressure on the Third-States parties in order to stop their support to the

[258]Global R2P (2020) "Population at Risk: Yemen" *Global Centre for the Responsibility to Protect website*. Available at: http://www.globalr2p.org/regions/yemen. Accessed: 22/01/2020.
[259]Article 11 refers to the cases in which a State adopts a specific conduct as its own, even if not attributable to it at the time of commission.
[260] ILC "Draft Articles on the Responsibility of States for Internationally Wrongful Acts, with commentaries" A/56/10, Chapter IV, International Law Commission fifty-third session 2001, *United Nations website*, pp. 64-67. Available at: https://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf
[261]Art. 6(3) Arms Trade Treaty.

coalition. On the 25th October 2015 the EU Parliament passed a resolution on the arms embargo to Saudi Arabia[262], while the UK Court of Appeal in London in June 2019 required the UK Government to reconsider the selling of arms to Saudi Arabia, since the Government's refusal to take into consideration the violations committed by Saudi Arabia was judged as unlawful. However, the UK Government is appealing to the Court decision[263]. Furthermore, some attempts in this regard have been made also by the US Congress during 2019, even if President Trump vetoed them.[264]

Individual Criminal Responsibility

The responsibility for the violations of IHL and war crimes is not only imputable to states, but also to individuals. Civilians, members of the armed forces and military commanders can be held responsible for the commission of war crimes. Under ICL, indeed, specific behaviours of individuals have to be criminalised by the single states and states are obliged to criminally repress them. This obligation is not always met by the necessary actions of the states: many, in point of fact, have not created the required implementing legislation. Furthermore, in many cases, and Yemen is an example, the crimes committed by the members of the armed forces are left in complete impunity. Despite these limitations, states are anyway obliged by the IHL to investigate and prosecute and punish the perpetrators of war crimes; this can be done under the national courts of the state, by another state[265] or by international criminal tribunals. This system is very important in order to avoid the impunity of those responsible for the commission of war crimes. Consequently, all the individuals, both civilians and combatants, responsible for war crimes in Yemen have to be prosecuted by an

[262]EU Parliament (2018) "MEPs demand end to EU arms exports to Saudi Arabia" *News European Parliament, press room*. Available at: https://www.europarl.europa.eu/news/en/press-room/20181018IPR16536/meps-demand-end-to-eu-arms-exports-to-saudi-arabia. Accessed: 22/01/2020.
[263]HRW (2020) "World Report 2020: Yemen, events of 2019" *Human Rights Watch website*. Available at: https://www.hrw.org/world-report/2020/country-chapters/yemen. Accessed: 23/01/2020.
[264]Global R2P (2020) "Population at Risk: Yemen" op. cit.
[265]The States are bound by the obligation *aut dedere aut judicare*, which requires states or to bring the individuals responsible for war crimes in front of their national courts, or to extradite them to another states in order to be prosecuted there.

independent court and, if judged responsible, punished. This is a clear obligation for the Yemeni state and for the different states of the pro-government coalition involved in the conflict. The prosecution and punishment for criminal responsibility, furthermore, it is considered a norm of customary law, valid, thus, for both international and non-international armed conflicts. It is interesting to note, moreover, that the individual criminal responsibility is not limited to the commission of a crime. Indeed, all the individuals who have assisted, planned, instigated, facilitated, aided or abetted the commission of a crime are to be considered criminally responsible, as well. [266] The recognition of the individual criminal responsibility for war crimes on NIACs is of more recent development. In fact, as already noted, till the *Tadić* judgment of 1995 only the violations of IHL committed in international armed conflicts were considered as war crimes. Both civilians and the military can be prosecuted for their criminal responsibility in the commission of war crimes. The responsible civilian, thus, is not only punished, but the international practice and jurisprudence more and more require also civilians to give compensation or reparation for the victims.[267] As a consequence, even if the members of the non-state armed groups are considered as civilians by a court, they can be prosecuted and punished for the commission of war crimes in the Yemeni conflict.

The responsibility of single members of the military forces and military commanders is much more complex. The individual criminal responsibility for war crimes of the members of both state armed forces and non-state armed forces[268] as well as for the commanders ordering the commission of these crimes is a well-established norm of customary international law. However, this norm has considerably evolved over time and there are many different possible scenarios to consider. Firstly, it is necessary to distinguish between the two legal concepts of command responsibility and *respondeat superior*. The first refers to the criminal responsibility of a commander for

[266]HENCKAERS J-M., DOSWALD-BECK, L., (2009), op. cit., Rule 102.
[267]HENCKAERS J-M., DOSWALD-BECK, L., (2009), op. cit., Rule 151.
[268]ZEGVELD L., (2002), op. cit., p.97.

their given order; on the other hand, the *respondeat superior* refers to the criminal responsibility of the commanders when they did not order the wrongful act perpetrated by the subordinates. [269] Starting from this distinction, it is possible to identify different causes for the criminal liability of a military commander. Firstly, a commander is liable for the violations of IHL and war crimes that they personally commit. Secondly, a commander is responsible for the IHL violations and war crimes that they have ordered their subordinates to commit. Thirdly, a commander is liable for not considering IHL violations and war crimes committed by their subordinates, in the case the commander is aware of these violations or should be aware of them and, again, for knowing those, without taking actions to stop or punish those involved in the violation. Related to the previous one is the fourth case, as the commander is liable for the violations of IHL and war crimes that they incite. The fifth case for the criminal responsibility of the commander consists of the IHL violations and war crimes committed by the subordinates, when the commander failed to control them. Sixth, a commander is liable when the subordinates commit violations of IHL or war crimes, with the permission or acquiescence of the commander. Finally, a commander could be responsible for the violations committed by the subordinates as a consequence of orders manifestly unlawful given by the commander. [270] However, especially in relation to the last case, the subordinates can also be considered liable for the violations of IHL and war crimes that they commit. For a long time, the subordinate was not considered responsible for the crimes committed under the order of the commander; however, the doctrine has now evolved towards the responsibility of the subordinate. This evolution is based on the assumption that every individual, including members of the military forces have a direct responsibility under IHL. Under the ICC Statute,[271] it is stated that superior orders do not justify and relieve from the criminal responsibility of the

[269]SOLIS, G. D., (2016), op. cit., p. 417.
[270]SOLIS, G. D., (2016), op. cit., pp.427-431.
[271]Art.33, (1998) "Rome Statute of the International Criminal Court", United Nations Treaty Series, vol. 2187, No. 38544, Depository of the Secretary General of the United Nations.

subordinates, unless there are three particular circumstances. Firstly, the person was under the legal obligation to obey; secondly, the person did not know that the order was unlawful; thirdly, the order was not manifestly unlawful. With the exception of these three cases, thus, a subordinate has the obligation to disobey an order if its implementation results in the commission of a violation of IHL and war crimes.

This general analysis of the responsibilities for the violations of International Humanitarian Law outlines that the attribution of criminal responsibility for war crimes is very complex. For this reason, the assessment of the individual or state responsibility for the commission of war crime should not be underestimated and needs deep investigations and analysis by courts and tribunals. This is valid also for the case of Yemen.

Accountability for human rights violations

At this point, it is necessary to briefly address the responsibilities of the different actors in relation to International Human Rights Law. Under international law, states are responsible for the violations of human rights committed on their territory and can be held accountable for those violations. As already seen, International Human Rights Law and Humanitarian Law have concurrent applicability in the cases of armed conflicts, governed by the principle of *lex specialis*. As a consequence, also the violations of human rights in the context of the Yemeni conflict have to be investigated in order to hold those responsible accountable. As for the violations of IHL, states can be held responsible for the violations of IHRL committed by state's organs and members of their armed forces; by persons or entity entitled to exercise elements of governmental authority; by persons or groups acting under the instruction, direction or control of the state; and, finally, by private persons or groups whose conduct is acknowledged or adopted by the State as its own. States, furthermore, in accordance with their due diligence obligations, have the duty to prevent and punish the violations of human rights committed by private actors. Specifically, the Yemeni government can be held responsible for all the violations of human rights committed by the members of the armed forces and by or with the

acquiescence of its organs and, as well, for the lack of due diligence if those acts are not investigated and punished. However, as noted in the previous Chapters, also the de-facto authorities and the members of the pro-government coalition forces have perpetuated different violations and abuses of human rights. The assessment of the human rights obligations of non-state armed groups and of third-states is much more complicated as, at the moment, there is no legal clarity on the matter. In relation to the first category, there is an emerging theory and practice slowly affirming according to which also the non-state armed groups should be considered responsible for the violations of human rights, especially when they are de-facto authorities having the control over parts of the territory and of the population therein. However, the issue is still highly contested under international law[272]. In relation to the second category, on the other hand, the issue of the extraterritoriality of human rights is even more uncertain. If the jurisprudence of the ECtHR[273] has affirmed more than once the validity of the extraterritoriality of the ECHR, this does not stand for all the existing human rights treaties, depending on the specific convention and on the general interpretation given by the international community. Indeed, different interpretations are given to the concept of "jurisdiction". Apparently, this means the practice of considering under the concept of states' extraterritorial jurisdiction, not only the territorial aspect but also the control over persons, including, thus, the control exercised over those detained by state's agents is affirming.[274] This interpretation is particularly important in relation to the human rights abuses committed in Yemen by the UAE forces in the detention centres.

As already noted in the first Chapter, Yemen is bound to respect human rights at national, regional and international levels. Consequently, Yemen should investigate and punish those responsible for the violations of human rights and redress the victims of these violations. However, as in the case

[272]FLECK D.,(2013) *The Handbook of International Humanitarian Law,* Third Edition, New York, Oxford University Press p. 78; SASSÓLI M., (2019), op. cit., pp.430-431.
[273]For example in the case of the ECtHR, Grand Chamber, *Loizidou vs. Turkey*, Judgment, 18 December1996, Application No. 1531/89.
[274]SASSÓLI M., (2019), op. cit., p.429.

of the violations of IHL, the National Commission of Inquiry is not a fully functioning system able to bring to account those responsible for the violations of human rights. In addition to that, at the moment of writing, the creation of a regional court capable of judging states for their violations of human rights has not been completed[275], leaving as the only instrument of accountability the Arab Human Rights Committee[276], the treaty body established by the Arab Charter of Human Rights. Moreover, at international level, there are some possibilities to held Yemen accountable for the violations and abuses of human rights, namely the Treaty Bodies of the human rights conventions to which Yemen is party, the UPR, Special Procedures, and other UN mechanisms. However, these, differently from what happens for the IHL violations, are not instruments able to judicially hold Yemen accountable, even if, in some cases, their decisions can have legally-binding force. For this reason, the national courts are the primary tool in order to hold those responsible for abuses and violations of human rights in Yemen. However, since the almost complete collapse of the Yemeni national judicial system, this is a solution not foreseeable in the short period.

4.3. Possible actions

The analysis carried out in the previous sections has demonstrated that in Yemen there are no effective and reliable instruments or commitments to investigate and provide accountability for the violations of IHL, IHRL and war crimes. The accountability for the commission of war crimes is a well-established and rooted norm of international law. It has been recognised in the Geneva Conventions, gaining more and more importance under the international law; in this way, there has been the development of possible actions to be taken at the national and international level, in order to avoid the impunity of the war criminals. Nowadays, the commission of gross violations of human rights and of war crimes as well as the failure of a state

[275]The Ministerial Council of the Arab League in 2014 adopted and opened for ratifications the Statute of the Arab Human Rights Court, but no state have ratified it yet.
[276]The only powers of the Human Rights Committee are: receiving an discussing the states' reports; issuing concluding observations on these reports.

to prevent and protect its people from their perpetration is considered unbearable by the whole international community. For this reason, during the 2001 International Commission on Intervention and State Sovereignty and then during the 2005 World Summit a new doctrine of humanitarian intervention, known as the Responsibility to Protect (R2P) has been developed. This doctrine tries to balance the principles of state sovereignty and international peace with the duty to intervene in the protection of the populations suffering from gross and systematic abuses of human rights. On one hand, it re-affirms the principle of sovereignty by asserting the sovereign responsibility of every state to prevent and protect the human rights of people living in its territory. On the other hand, when a state fails in the fulfilment of these duties, this doctrine clarifies and establishes the responsibility of the international community to intervene through collective action, in order to protect these people's rights from being abused. The possible invocation of the Responsibility to Protect has to be accorded and acted through the UN and it is limited to only four international crimes: genocide, war crimes, crimes against humanity and ethnic cleansing.[277] The possible intervention when a state fails to prevent, protect from and punish the commission of war crimes in its territory makes this doctrine particularly important for the Yemeni case. Nevertheless, the activation of the R2P is the result of a political will and commitment, which have proven to be its major drawbacks, as the political prerogatives of the different states has prevented its activation or exploited this system on more than one occasion[278]. This can be the major obstacle to the desirable intervention through R2P in Yemen. Indeed, as it will be illustrated in the next sections in relation to the possible judicial accountability of the war criminals at international level, there are many political obstacles for a concerted decision to intervene in favour of the Yemeni people.

[277]GA (2005) "Resolution adopted by the General Assembly on 16 September 2005 60/01. 2005 World Summit Outcome", A/RES/60/01, Sixtieth Session, United Nations General Assembly, Paragraphs 138-139.
[278]See STAHN C. (2015), op. cit., pp. 42-43.

In this respect, it is important to underline that the R2P is distinct but strictly connected to international criminal justice. The R2P is not a system of criminal justice with the task of prosecuting those responsible for war crimes and other international crimes. On the contrary, it aims at the intervention as a tool of preventive action and capacity-building, providing different possible actions, including, as a last resort, the authorization to the use of force. However, the R2P provides the normative and moral bases for the activation of instruments of criminal justice, both at national and at international level, particularly important for the situation in Yemen.[279] [280]
Indeed, the accountability for war crimes and IHL violations in the Yemeni conflict is an essential step to be taken; for this reason, it is necessary to concentrate on the possible actions to end the widespread impunity and lack of accountability that is characterising the Yemeni conflict. The next sections deal with these possible actions; in particular, the focus will be on three different instruments: the universal jurisdiction, the possible intervention of the ICC and the creation of an *ad hoc* tribunal or other instruments of hybrid justice, pinpointing the feasibility of each instrument in relation to the specific case of the siege warfare.

Universal Jurisdiction

The concept of the universal jurisdiction is based on the conviction that some crimes are so important that harm the entire international community and the international order as a whole. This concept, thus, moves forward the obligations and responsibilities of the single states, whose nationals have committed or have been the victim of a crime. Indeed, the principle of universal jurisdiction entails the possibility for third-states to prosecute a war

[279]STAHN C. (2015), "Marital Stress or Grounds for divorce? Rethinking the Relationship between R2P and International Criminal Justice" *Criminal Law Forum 2015,* pp.24-30.
[280]In the specific case of the Yemeni conflict, the R2P has been indirectly applied by the Saudi-led coalition to justify its intervention in the Yemeni conflict, even if this intervention failed in many aspects to meet the requirements for a military intervention under this doctrine; indeed, it is now crystal-clear that the protection of the civilians is not the aim of this military intervention, which was not used as the last resort and was no authorized by the Security Council. See ALATTRASH A., (2018), "Responsibility to Protect: in light of Yemen Case" *Research Gate;* THOMPSON, D., (2017) "Responsibility While Protecting (RwP) and Intervention in Yemen" *Ethics and International Affairs.*

criminal under their national courts, even if there is no direct link with the crime, perpetrator or victim of the crime. In other words, every state has the possibility to take charge of prosecuting under its national courts an alleged violation committed in another state, even if the necessity of a link is interpreted in different ways by the states[281]. The aim of the universal jurisdiction is therefore not to leave those crimes and their perpetrators unpunished. There are different crimes that can be subjected to the universal jurisdiction, even if there is no complete list. Genocide, crimes against humanity, torture, slavery, enforced disappearances and piracy are generally recognised as crimes that can be prosecuted under this principle. War crimes are also included in this category[282]. The establishment of the principle of universal jurisdiction is relatively new; it is found in the Four Geneva Conventions and then in other treaties of IHL[283], which explicitly impose an obligation on states to the universal jurisdiction, reflected in the general principle *aut dedere aut judicare.* The principle of universal jurisdiction is now considered a norm of Customary International Law, applicable also to the war crimes committed in non-international armed conflicts.

Despite this instrument has been used on different occasions, it is not free from problems and shortcomings. To begin with, the obligations imposed on states by the universal jurisdiction are not always met, as this principle is not interpreted as really universal. States often require the presence of a link with the perpetrator, victims or crime committed in order to take the responsibility of a trial. Secondly, the states have to update their national systems in order not only to include these crimes, but also to allow for the persecution of non-nationals, which often leads to different problems and discrepancies between the national and international levels. Furthermore, in the national legislation of states, there are often impediments for the

[281]See STAHAN, C., (2019), *A Critical Introduction to International Criminal Law,* Cambridge (UK), Cambridge University Press , pp. 186-187.
[282]PEJIC J. (2002), op. cit., p.26.
[283]For example, Art. 16(1)(c) the Second Protocol to the Hague Convention on Cultural Property and Art. 10(4) of the Convention on the Safety of the United Nations and Associated Personnel.

possible application of the universal jurisdiction[284], which leaves room for the impunity of the perpetrators. Thirdly, the universal jurisdiction imposes a burden on states in terms of resources, time and international judicial cooperation and, thus, it is not the preferred option.

Despite these shortcomings, the possibility to activate the universal jurisdiction for the crimes committed in Yemen remains a possible solution for the widespread impunity, even if, as noted, there are different necessary conditions to be met at the national and international levels.

In conclusion, it is necessary to investigate the relation of the universal jurisdiction and the particular case of siege warfare. In particular, there is a question that needs to be answered: can the universal jurisdiction bring to the accountability of those responsible for the conduct of the "unlawful" sieges in the Yemeni conflict? The answer is no. Indeed, as it has been described in Chapter III, siege is not considered as a war crime under the criminal codes at the national or international level. Consequently, as things stand, the system of universal jurisdiction cannot be employed in this sense. However, since the different components of sieges are already criminalised in several national and international criminal instruments, it is possible to activate the universal jurisdiction for the single cases of human rights abuses and war crimes committed during the sieges of Ta'izz, Hajour, and al-Durayhimi. This scenario can be changed only through a future criminalisation of "unlawful" sieges at national or international level. In the next two sections, two possible strategies to achieve this aim will be analysed.

ICC possible intervention

The International Criminal Court is the only existing permanent criminal court dedicated to the prosecution of the most serious international crimes, namely genocide, war crimes, crimes against humanity and aggression[285].

[284]AI (2012) "Universal Jurisdiction. A preliminary survey of legislation around the world- 2012 update" Amnesty International, London (UK), Amnesty International Publications, p. 2.
[285]The crime of aggression is enshrined under the Art.8bis of the ICC Statute, adopted in 2010 at the Review Conference of Kampala.

The ICC has been established with the approval of the Rome Statute (1998) and entered into force on the 1st of July 2002, when the Statute reached the necessary 60 ratifications. The establishment of the ICC represented a major progress for the international justice, creating a new system of justice in which was established a deep interaction between the national and the international levels based on the complementarity of the ICC to the national courts. However, it is important not to forget that the ICC has been created by the agreement and the commitments of different states, which decided to bind themselves and their citizens to the possible jurisdiction of the Court. Therefore, the jurisdiction of the ICC is limited to those states, which have ratified the Rome Statute. However, neither Yemen nor the majority of the States of the pro-government coalition are parties to the Rome Statute. This means that the Court does not have jurisdiction on the crimes committed by the Yemeni forces, non-state armed forces or pro-government coalition forces during the conflict, despite the different recommendations on the urgency for those states to enter the Rome statute. However, there are two possibilities under which the ICC can have jurisdiction over crimes committed by or towards non-state parties. The first one is enshrined under the Art.13(b) of the Rome Statute: the Security Council, by virtue of their powers under Chapter VII of the UN Charter, can refer to the Court a situation related to a non-state party. The second one is enshrined under Art.12(3) of the Rome Statute and provides the possibility for non-state parties to voluntarily accept the jurisdiction of the Court by declaration and without automatically becoming a party to the ICC. These two special cases could bring to the possible jurisdiction of the ICC over the war crimes in the Yemeni conflict. However, the existence of this possibility does not mean that it will be employed. Indeed, the states involved in the conflict, as already shown, have demonstrated a lack of will in the investigation and accountability of the war crimes committed by the different parties. Furthermore, the relationship between the Security Council and the ICC has often been controversial and characterised by different contrasts. This can become even more problematic in the Yemeni case, as some of the UN

Security Council members are indirectly involved in the conflict, as in the case of the US, France, and the UK. For these reasons, the possibility of the enhancement of the ICC jurisdiction over the war crimes committed in Yemen is remote.

At this point, it is necessary to describe the possible intervention of the ICC in relation to the specific case of the siege warfare. As already noted in the previous Chapter, sieges are not considered as war crimes under the ICC Statute. There is, in this regard, a paradox: even if the components of "unlawful" sieges are enlisted among the war crimes under the ICC Statute, siege as a whole is not. Is it possible to bring the possible jurisdiction of the ICC on the case of "unlawful" sieges in Yemen? As things stand, the answer is no. However, there is a remote possibility of future development, but only with the combination of two changes. First of all, the Statute of the ICC should be amended, according to the Article 121[286] of the Rome Statute, in order to include the conduct of "unlawful" sieges among the war crimes enlisted under Art.8. Secondly, there should be the activation of the instruments described above in order to lead to the jurisdiction of the ICC on the war crimes committed in a non-member state, as Yemen is.

This is just a theoretical speculation. If there are very few possibilities to bring to the intervention of the ICC to the already criminalised war crimes in Yemen, the possibilities to have the jurisdiction of the ICC on the "unlawful" sieges are almost illusory.

[286]Article 121. 1. After the expiry of seven years from the entry into force of this Statute, any State Party may propose amendments thereto. The text of any proposed amendment shall be submitted to the Secretary-General of the United Nations, who shall promptly circulate it to all States Parties. 2. No sooner than three months from the date of notification, the Assembly of States Parties, at its next meeting, shall, by a majority of those present and voting, decide whether to take up the proposal. The Assembly may deal with the proposal directly or convene a Review Conference if the issue involved so warrants. 3. The adoption of an amendment at a meeting of the Assembly of States Parties or at a Review Conference on which consensus cannot be reached shall require a two-thirds majority of States Parties. 4. Except as provided in paragraph 5, an amendment shall enter into force for all States Parties one year after instruments of ratification or acceptance have been deposited with the Secretary-General of the United Nations by seven-eighths of them. 5. Any amendment to articles 5, 6, 7 and 8 of this Statute shall enter into force for those States Parties, which have accepted the amendment one year after the deposit of their instruments of ratification or acceptance. In respect of a State Party, which has not accepted the amendment, the Court shall not exercise its jurisdiction regarding a crime covered by the amendment when committed by that State Party's nationals or on its territory. 6. […]7. The Secretary-General of the United Nations shall circulate to all States Parties any amendment adopted at a meeting of the Assembly of States Parties or at a Review Conference.

Ad Hoc Tribunals and Hybrid Justice

One additional possibility to bring accountability for the war crimes in the Yemeni conflict is the creation of an *ad hoc* tribunal or other instruments of hybrid justice, namely internationalized or mixed courts. The importance and the general success of the first two *ad hoc* tribunals, the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda, are well-known. These tribunals have been created by the Security Council in order to respond to the widespread crimes and atrocities committed during the conflicts of Yugoslavia and Rwanda, with the specific task of providing accountability and prosecution for those responsible. The establishment of internationalized or mixed courts in the late 1990s and early 2000s originated from similar premises. Courts of this type have been established in Sierra Leone, Cambodia, East Timor, Bosnia Herzegovina, and Lebanon. Despite each court had its own peculiar characteristics, the common feature of these ones is their mixed nature, unlike the tribunals for the former Yugoslavia and Rwanda. These courts were composed of both nationals and international professionals, with the establishment of specific Chambers or special Tribunals having jurisdiction on specific categories of crimes.

The importance of the instruments of *ad hoc* or hybrid justice rely on their response to a specific emergency due to the widespread crimes and to the possibility to overcome the eventual lack of will of other states to prosecute those responsible according to the principle of universal jurisdiction on one hand and to overcome the possible breakdown of the national judicial system that may have occurred as a consequence of the conflict on the other. Despite the existence of past examples, the success or failure of *ad hoc* or mixed courts is highly individual and case-based. However, there are some advantages associated with the creation of these instruments. Firstly, they are more impartial than national courts; secondly, the presence of international experts on international crimes is, without doubt, an additional improvement to their work; finally, these courts are better suited to pronounce on crimes considered to offend universal values as they act on

behalf of the international community and, for this reason, are more visible than national courts at the international level.

The creation of these courts is not easy or naive and is subjected to different shortcomings as, to begin with, the lack of enforcement agencies of these courts. Moreover, the *ad hoc* tribunals have been created by the will of the Security Council under Chapter VII of the UN Charter, while the mixed tribunals are the result of an agreement between the UN organs and the single states at stake[287]. As it can be understood, the establishment of *ad hoc* tribunals or mixed courts requires great political will between both States and International Institutions as well as not insignificant economic resources.

Despite the creation of *ad hoc* or mixed tribunals for the Yemeni conflict would be desirable, at the moment of writing, it does not seem that such a proposal would be welcomed or implemented.

However, the creation of an *ad hoc* tribunal is considered of fundamental importance for the criminalisation of the "unlawful" siege. As illustrated in Chapter III, the inclusion of an article criminalising this type of siege under the statute of these instruments could be a possible development in order to arrive at the identification of "unlawful" siege as a war crime. Among the different possible interventions that have been illustrated in this Chapter, here it is considered that the creation of an *ad hoc* tribunal specific for the investigation, punishment, and accountability for the war crimes committed in the Yemeni conflict and the inclusion of "unlawful" siege under the general category of war crimes seems to be the most feasible solution. Naturally, this aim will be achieved only after the overcoming of different obstacles. First of all, the realisation of a mechanism of an *ad hoc* tribunal has to go through all the problems described above in this section. Secondly, there is the necessity of a change in the consideration of siege warfare. This would entail the recognition of the emergence of a type of siege that has been defined as "unlawful" siege, the identification of this type of siege as an

[287]CASSESE A., (2013), op. cit., pp. 263-265.

indiscriminate method of warfare and, finally, the criminalisation under an eventual *ad hoc* tribunal of the “unlawful” siege.

The realisation of such an instrument able to criminalise and bring to the accountability of those responsible for the conduct of “unlawful” sieges becomes even more necessary and desirable with reference to the increasing use of sieges. Indeed, the Yemeni case could become the basis for the recognition and accountability for this war crime in future conflicts.

CONCLUSIONS

The Yemeni conflict can be considered as one of the worst conflicts of our time in terms not only of the number of civilian casualties, but also in relation to the conduct of the hostilities. This overall conclusion has been reached following a deductive reasoning that from the more general aspects of this conflict has moved towards the analysis of the specific case of siege warfare in Yemen, and to the possible international instruments to be applied in order to arrive at its the criminalisation and accountability.

In particular, the labelling of the Yemeni conflict as a NIAC and the consequent identification of the applicable rules to this conflict carried out in Chapter I, paved the way for the analysis of the different violations of IHL, IHRL, and ICL. These norms have been identified in the Common Article 3 of the Four Geneva Conventions, in the Additional Protocol II, in the Customary Law norms applicable to NIACs and in the different treaty-based instruments of IHL and IHRL that bind Yemen and the non-state armed groups at the national, regional and international level.

The examination of the alleged violations carried out in Chapter II demonstrated that the Houthi forces, the pro-government coalition, the Yemeni state forces and the different militias and proxy forces under the control of the different parties, are acting in complete disregard of these norms and, in particular, are responsible for the perpetuation of several war crimes. These war crimes include indiscriminate attacks and attacks targeting the civilian population, civilian buildings, protected facilities and facilities indispensable for the survival of the civilian population. Furthermore, the use of illegal and indiscriminate weapons, as well as several cases of torture, illegal detention, sexual violence, and enforced disappearances have been described. Finally, the spread recur to child recruitment and the use of children in the hostilities need to be added to these categories. Those enlisted are grave breaches of the well-established norms of IHL. However, the crimes and the concrete cases reported in this

work are just the tip of the iceberg of the countless violations of the laws of war that are still committed in Yemen.

The analysis of the employment of the siege warfare in the Yemeni conflict and of the possible commission of war crimes in this regard has been the main focus of this thesis. The analysis carried out in Chapter III has demonstrated, based on different cases of siege in contemporary conflicts, the emergence of a particular model of siege, defined in this work as "unlawful" siege. This model is characterised by a particular pattern that includes: physical, psychological and electronic isolation of the sieged area; inclusion of civilians under the siege; impediments to access to the humanitarian relief operations and strict limits to the freedom of movement of civilians; use of starvation as method of warfare; indiscriminate shelling and bombardments on the sieged area and targeted attacks toward civilians.

The sieges of Ta'izz, Hajour, and al-Durayhimi conducted in Yemen have been carried out following the pattern of the "unlawful" siege, leading to the death and suffering of thousands of civilians. Indeed, in the cases of Ta'izz and Hajour, the Houthi forces have imposed for months a complete isolation on these urban areas, preventing the civilians from leaving the cities and impeding the access of humanitarian relief operations. This led to the starvation and degradation of the humanitarian conditions of the civilians therein, which have been targeted on a daily bases by sniper attacks and indiscriminate shelling. An almost identical pattern has been followed in the on-going siege of al-Durayhimi, laid by the pro-government coalition forces to compel the Houthis to surrender. On this basis, it has been argued that the "unlawful" sieges can and should be considered as war crimes in order to lead to the criminalisation of this indiscriminate method of warfare. However, for this aim, it is necessary to have a development of both International Humanitarian Law and International Criminal Law, aiming at the inclusion of "unlawful" sieges among the war crimes. Many of the components of this type of siege are already considered as war crimes and, thus, criminalised under different instruments of national and International

Criminal Law. The aim of this work has been to demonstrate that, as indiscriminate methods of warfare, “unlawful” sieges as a whole should be no exception.

However, even if the different parties to a conflict are obliged to investigate, prosecute and bring accountability for the war crimes committed by their respective armed forces, based on the analysis carried out in Chapter IV, it is possible to conclude that the parties involved in the Yemeni conflict are not fulfilling their duties in this regard. Indeed, the efforts made by the JIAT and the National Commission of Inquiry have proven to be inadequate and deficient in the respect of the international standards of effectiveness, credibility, impartiality, and independence. For this reason, it is of fundamental importance to overcome this impasse by taking steps at the international level for the accountability of those responsible. The possible actions described in Chapter IV have this precise aim. The resort to the use of the universal jurisdiction, the possible intervention of the ICC or the creation of an *ad hoc* tribunal or mixed court, even if hampered by the lack of effective engagement of the international community in this sense, are all possible solutions to overcome the existing deadlock. Only in this way, indeed, the foundation for the institution and development of a peace-building process in Yemen can be laid.

For each of these instruments has been assessed the possible action for the criminalisation of the siege warfare. As a result of this analysis, the most feasible solution in this sense is identified in the creation of an *ad hoc* tribunal with the recognition of “unlawful” siege as a war crime under its Statute. Basing on the articles enlisted in the statutes of the ICC, of the International Criminal Tribunal for the Former Yugoslavia and of the International Criminal Tribunal for Rwanda[288], the crime of “unlawful” siege could be enlisted under the major category of war crimes and, in particular,

[288]ICTR (1994), “Statute of the International Criminal Tribunal for Rwanda (as last amended on 13 October 2006)” International Criminal Tribunal for Rwanda, United Nations; ICTY (2009), “Updated Statute of the International Criminal Tribunal for the Former Yugoslavia” International Criminal Tribunal for the Former Yugoslavia, United Nations; ICC (1998) “Rome Statute of the International Criminal Court”, United Nations Treaty Series, vol. 2187, No. 38544, Depository of the Secretary General of the United Nations.

under the prohibition of the use of indiscriminate methods of warfare as follows:

“Are considered war crimes the employment of weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflicts of both an international and not of an international character; these include sieges laid on an urban area in which civilians are present and that employ one or more of the following prohibited conducts, or a combination thereof: physical, psychological and electronic isolation of the sieged area; intentional use of the starvation of civilians by depriving them of the objects indispensable for their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions and the Additional Protocols; intentional direction of attacks against the civilian population as such or against individual civilians not taking direct part in hostilities; intentional direction of attacks against civilian buildings, buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objective; employment of weapons that are indiscriminate in nature; directing attacks that do not respect the principles of proportionality and military necessary or that are indiscriminate in nature.”

The criminalisation of this type of siege is of fundamental importance to bring to the accountability of those responsible for the organisation and conduct of this method of warfare in Yemen, including the military commanders of the different state and non-state armed forces.

Finally, there are two considerations that can be made in relation to this conflict. Firstly, it is important to underline the problematic lack of media coverage, information, and attention by the international community towards the Yemeni conflict and the several crimes committed therein. The direct consequence of this situation is that the different violations of IHL, IHRL and

war crimes described in this thesis are perpetrated in the indifference of the international community and of the public opinion. The overcome of this problem is an essential step to take in order to prevent the Yemeni conflict from becoming the forgotten conflict of our time.

The second consideration regards the necessity of a real commitment at the national and international levels in order to achieve a peaceful resolution of this conflict. The Yemeni conflict is not an isolated one: there are different states that are directly taking part in this conflict or that, as in the case of the US, France, Canada, Iran, and others, are providing aid to the two factions of the conflict. As a consequence, there are various regional and international political dynamics that have been put into motion by this conflict. However, despite the inclusion of different international actors, there have been few attempts in the past years to settle confrontations among the parties to find a solution to the hostilities, which have brought to limited positive outcomes. This is not to say that the resolution of the Yemeni conflict will be an easy process or that it can be achieved in a short period. Nevertheless, all the actors involved at different levels in the conflict, namely Yemen, Houthis, coalition states and third-states parties in the first place, and the whole international community in the second, should be fully engaged in the process of peace. The starting point could be the investigation and accountability for those responsible for the innumerable violations committed in this conflict.

Until these two steps are not taken, the violations of IHL, IHRL and the war crimes will continue in the indifference of the international community and in the suffering of the Yemeni people.

BIBLIOGRAPHY

Reports and other documents:

ACAPS (2019) “Conflict escalation in Hajjah, Yemen” Anticipatory Briefing Note in Yemen Analysis Hub, *ACAPS.*

AI (2012) “Universal Jurisdiction. A preliminary survey of legislation around the world- 2012 update” Amnesty International, London (UK), Amnesty International Publications, p. 2.

AI (2019) “Airstrikes and Cluster Munitions. Amnesty International Documentation of Coalition attacks in Yemen, 2015-present”, London (UK), *Amnesty International*.

AKANDE D., GILLARD E.C., (2016)“Oxford Guidance on the Law Relating to Humanitarian Relief Operations in Situations of Armed Conflict commissioned by the United Nations Office for the Coordination of Humanitarian Affairs” OCHA; Oxford Institute for Ethics, Law and Armed Conflict; Human Rights for Future Generations, University of Oxford.

ALATTRASH A., (2018), “Responsibility to Protect: in light of Yemen Case” *Research Gate.*

BLANK, L. (2019), “Joint Blog Series: Sieges, Evacuations and Urban Warfare: Thoughts from the Transatlantic Workshop on International Law and Armed Conflict” Ejil Talk! Blog of the European Journal of International Law. Available at: https://www.ejiltalk.org/joint-blog-series-sieges-evacuations-and-urban-warfare-thoughts-from-the-transatlantic-workshop-on-international-law-and-armed-conflict/

Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly Resolution 39/46 of 10 December 1984, (entered into force 26 June 1987).

Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which May be Deemed to be Excessively Injurious or t have Indiscriminate Effects, Geneva, 10 October 1980, 1342 UNTS 137 (entered into force 2 December 1983).

Convention on the Prohibition of Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and their Destruction, The Oslo Diplomatic Conference on a Total Ban of Anti-Personnel Mines, 18 September 1997 (entered into force 1 March 1999).

Convention on the Rights of the Child, adopted by the General Assembly Resolution 44/25 of 20 November 1989, (entered into force 2 September 1990)

ELBAGIR N., ABDELAZIZ S., SMITH-SPARK L., (2018) “Exclusive Report: Made in America. Shrapnel found in Yemen ties US bombs to string of civilian deaths

over course of bloody civil war" *CNN website*. Available at: https://edition.cnn.com/interactive/2018/09/world/yemen-airstrikes-intl/

GA (2005) "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law" 60/147(2005) United Nations General Assembly.

GA (2005) "Resolution adopted by the General Assembly on 16 September 2005 60/01. 2005 World Summit Outcome", A/RES/60/01, Sixtieth Session, United Nations General Assembly.

GA (2016) "Resolution adopted by the General Assembly on 13 December 2016 71/133. Responsibility of States for Internationally wrongful Acts" A/RES/71/133, Seventy-first Session, United Nations General Assembly.

GAGGIOLI G., (2019) "Joint Blog Series on International Law and Armed Conflict: Are Sieges prohibited under Contemporary IHL?" *Ejiltalk! Blog of the European Journal of International Law*. Available at: https://www.ejiltalk.org/joint-blog-series-on-international-law-and-armed-conflict-are-sieges-prohibited-under-contemporary-ihl/

GAGGIOLI,G., (2014) "Sexual Violence in Armed Conflicts: a violation of international humanitarian law and human rights law" in *International Review of the Red Cross*, International Committee of the Red Cross, pp. 511-538

Geneva Convention (I) for the Amelioration of the condition of the Wounded and of the Sick in Armed forces in the Field of 12 August 1949, 75 UNTS 31 (entered into force 21 October 1950).

Geneva Convention (II) for the Amelioration of the condition of Wounded, Sick and Shipwrecked members of Armed Forces at Sea of 12 August 1949, 75 UNTS 85 (entered into force 21 October 1950.

Geneva Convention (III) relative to the Treatment of Prisoners of War of 12 August 1949, 75 UNTC 972 (entered into force 21 October 1950).

Geneva Convention (IV) relative to the Protection of Civilian Persons in time of War of 12 August 1949, 75 UNTS 287 (entered into force 21 October 1950).

GILLARD E.C., (2019), "Sieges, the Law and Protecting Civilians" International Law Program, *Chatham House*.

GRC and WPF "The Crime of Starvation and Methods of Prosecution and Accountability. Accountability for Mass Starvation: Testing the limits of the Law" Policy Paper #1, *Global Rights Compliance* and *World Peace Foundation*.

GRC and WPF "The Crime of Starvation and the methods of Prosecutions and Accountability. Accountability for Mass Starvation: Testing the Limits of the Law" *Global Rights Compliance*, *World Peace Foundation.* Available at: https://www.globalrightscompliance.com/en/projects/accounting-for-mass-starvation-testing-the-limits-of-the-law

Hague Convention (IV) with Respect to the Laws and Customs of War on Land and its Annex: Regulation concerning the Laws and Customs of War on Land, 18 October 1907, 187 CTS 227 (entered into force 26 January 1910)

HRC (2016), "Situation of Human Rights in Yemen. Report of the High Commissioner for Human Rights" A/HRC/33/38, Human Rights Council.

HRC (2017), "Situation of Human Rights in Yemen including violations and Abuses since September 2014. Report pf the United Nations High Commissioner on Human Rights" A/HRC/36/33, Human Rights Council.

HRC (2018) "Situation on Human Rights in Yemen, including violations and Abuses since September 2014. Report of the United Nations High commissioner for Human Rights containing the findings of the Group of Independent Eminent International and Regional Experts and summary of technical assistance provided by the Office of the High Commissioner to the National Commission of Inquiry", A/HRC/39/43, Human Rights Council.

HRC (2019) "Situation of Human Rights in Yemen, including violations and Abuses since September 2014. Report of the Group of Eminent International and Regional Experts as submitted to the UNHCHR", A/HRC/42/17, Human Rights Council.

HRC (2019) "Situation of Human Rights in Yemen, including violations and abuses since September 2014. Report of the detailed findings of the Group of Eminent International and Regional Experts on Yemen", A/HRC/42/CRP.1*, Human Rights Council.

HRW (2016), "World Report 2016: Yemen. Events of 2015", *Human Rights Watch website*. Available at: https://www.hrw.org/world-report/2016/country-chapters/yemen

HRW (2018) "Hiding behind the Coalition. Failure to Credibly Investigate and Provide Redress for Unlawful Attacks in Yemen" *Human Rights Watch*, US.

HRW (2019), "World Report 2019: Yemen. Events of 2018", *Human Rights Watch website*. Available at: https://www.hrw.org/world-report/2019/country-chapters/yemen#c43786

HRW (2020) "World Report 2020: Yemen, events of 2019" *Human Rights Watch website*. Available at: https://www.hrw.org/world-report/2020/country-chapters/yemen

ICC (1998) "Rome Statute of the International Criminal Court", United Nations Treaty Series, vol. 2187, No. 38544, Depository of the Secretary General of the United Nations.

ICRC "Commentary of 2016 to the First Geneva Convention. Article 1: Respect for the Convention", Treaties, State Parties and Commentaries, *International Committee of the Red Cross Website*. Available at: https://ihl-

databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=72239588AFA66200C1257F7D00367DBD#_Toc452378931

ICTR (1994), "Statute of the International Criminal Tribunal for Rwanda (as last amended on 13 October 2006)" International Criminal Tribunal for Rwanda, United Nations.

ICTY (2009), "Updated Statute of the International Criminal Tribunal for the Former Yugoslavia" International Criminal Tribunal for the Former Yugoslavia, United Nations.

ILC (2001), "International Law Commission, Report on the work of its fifty-third session (23 April-1 June and 2 July-10 August 2001**)**" A/56/10, Chapter I, General Assembly, Official Records. Articles: 28-30-31-32.

Independent International Commission of Inquiry for the Syrian Arab Republic (2018) "Sieges as a Weapon of War: Encircle, Starve, Surrender, Evacuate" *Independent International Commission of Inquiry on the Syrian Arab Republic*.

International Covenant on Civil and Political Rights, adopted by the General Assembly Resolution 2200A(XXI) of 16 December 1966, 999-I-14668, (entered into force 23 March 1976).

International Covenant on Economic, Social and Cultural Rights, Adopted by the General Assembly Resolution 2200A(XXI) of 16 December 1966, 999-I- 14531, (entered into force 3 January 1976).

KEARNEY J., (2019), "An Examination of Saudi Arabia's airstrikes rules of engagement and its protection of civilians", *Relief Web.* Available at: https://reliefweb.int/report/yemen/examination-saudi-arabia-s-airstrike-rules-engagement-and-its-protection-civilians

LATTIMER M., (2019), "Can Incidental Starvation of Civilians be Lawful under IHL?" Ejiltalk! Blog of the European Journal of International Law. Available at: https://www.ejiltalk.org/can-incidental-starvation-of-civilians-be-lawful-under-ihl/

MIKOS-SKUSA E., "Siege Warfare in the 21st Century from the Perspective of International Humanitarian Law" Wroclaw Review of Law Administration & Economics, *Sciendo*.

MSF (2016), "Report MSF internal investigation of the 15 August attack on the Abs Hospital Yemen, summary of Findings", *MSF*.

Mwatana for Human Rights (2019) "Report Withering Life: Human Rights Situation in Yemen 2018" *Mwatana for Human Rights* website. Available at: https://mwatana.org/en/withering-life/

National Commission of Inquiry "First Report of the National Commission to Investigate the Alleged Violations to Human Rights in Yemen", pp. 10-11. Available at: https://www.ncive.org/periodic-reports-ar/?lang=en

OHCHR (2006) “The Core International Human Rights Treaties”, *Office of the High Commissioner for Human Rights*, New York and Geneva, UN.

OHCHR (2011) “International legal protection of Human Rights in armed conflict”, *United Nations Office of the High Commissioner for Human Rights*, New York and Geneva.

OHCHR (2017) “International Humanitarian Law and Human Rights Law relevant to Siege Warfare”, *United Nations Office of the High Commissioner for Human Rights*.

OHCHR “Applicable International Human Rights and Humanitarian Law Framework” *Manual on Human Rights Monitoring*, Chapter 05, UN Office of the High Commissioner for Human Rights, pp. 7-15

Optional Protocol to the Convention of the Rights of the Child on the involvement of Children in Armed Conflicts, adopted by the General Assembly Resolution A/RES/54/263 of 25 May 2000, (entered into force 12 February 2002)

PEJIC J. (2002) “Accountability for International Crimes: from conjecture to reality” *International Committee of the Red Cross*.

POWER, S., (2016), “Siege Warfare in Syria: Prosecuting the Starvation of Civilians” *Amsterdam Law Forum,* VU University Amsterdam.

Protocol Additional to the Geneva Convention of 12 August 1949, and relating to the protection of victims of international armed conflicts (Protocol I), of 8 June 1977, 1125 UNTS 3 (entered into force 7 December 1979).

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of non-international armed conflicts (Protocol II), of 8 June 1977, 1125 UNTS 609 (entered into force 7 December 1978.

Rights Radar (2019) “Yemen: Hajour, brutality of Abuses. A Human Rights Report on the Abuses in Hajour District” *Rights Radar,* pp. 4-28

RULAC (2018) “The War Report 2017. The Armed Conflict on Yemen: a Complicated Mosaic” *RULAC Publications*. Available at: http://www.rulac.org/publications/the-armed-conflict-in-yemen-a-complicated-mosaic

Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict 1999, 17 May 1999, 2253 UNTS 212 (entered into force 9 March 2004).

SIATITSA, I., TITBERIDZE, M., (2011) “Human Rights in armed conflict from the perspective of the contemporary state practice in the United Nations: factual answers to certain hypothetical challenges”, Geneva Academy of International Humanitarian law.

STAHN C. (2015), “Marital Stress or Grounds for divorce? Rethinking the Relationship between R2P and International Criminal Justice” *Criminal Law Forum 2015.*

The Arms Trade Treaty, UN General Assembly, 2 April 2013 (entered into force 24 December 2014).

The Constitution of the Republic of Yemen, as amended by public referendum held on February 20, 2001.

THOMPSON, D., (2017) "Responsibility While Protecting (RwP) and Intervention in Yemen" *Ethics and International Affairs.*

UN "Draft Articles on the Responsibility of States for Internationally Wrongful Acts, with commentaries" A/56/10, Chapter IV, International Law Commission fifty-third session 2001, *United Nations website*, pp. 64-67. Available at: https://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf

UN Country Team in Yemen (2019), "Humanitarian needs overview- Yemen 2019", *UN Office for the Coordination of Humanitarian Affairs*, p.4, 7-11, 13-19, 21-26, 28-30, 33-46

UNSC (1994)"Final Report of the United Nations Commission of Experts established pursuant to Security Council resolution 780 (1992)",S/1994/974, *UN Security Council*, Annex VI- part I Study of the Battle and Siege of Sarajevo.

UNSC (2017) "Letter dated 27 January 2017 from the Panel of Experts on Yemen addressed to the President of the Security Council" S/2017/81, UN Security Council.

UNSC (2018) "Letter dated 26 January 2018 from the Panel of Experts on Yemen mandated by Security Council Resolution 2342 (2017) addressed to the President of the Security Council" S/2018/594, UN Security Council.

UNSC (2019) "Letter dated 25 January 2019 from the Panel of Experts on Yemen addressed to the President of the Security Council" S/2019/83, UN Security Council.

UNSC (2019), "Children and armed conflict in Yemen. Report of the Secretary General" S/2019/453, UN Security Council.

UNSC "Resolution 2139 (2014) adopted by the Security Council at its 7116th meeting, on 22 February 2014" S/RES/2139 (2014), UN Security Council. Available at: https://documents-dds-ny.un.org/doc/UNDOC/GEN/N14/243/39/PDF/N1424339.pdf?OpenElement

UNSC "Resolution 2286 (2016) adopted by the Security Council at its 7685th meeting, on 3rd May 2016" S/RES/2286(2016), UN Security Council. Available at: http://unscr.com/en/resolutions/2286

UNSC "Resolution 2417 (2018) adopted by the Security Council at its 8267th meeting, on 24 May 2018" S/RES/2417(2018), UN Security Council. Available at: http://unscr.com/en/resolutions/2417

WATTS S., (2014), “Counterterrorism and Humanitarian Engagement Project. Under Siege: International Humanitarian Law and Security Council practice concerning Urban Siege Operations”, Project on Law and Security, *Harvard Law School*.

WATTS S., (2019), “Humanitarian Logic and the Law of Siege: a Study of the Oxford Guidance on Relief Actions”, in *International Law Studies* Vol. 95, Stockton Centre for International Law, US Naval War College.

Books:

BEEHNER, L.M., BERTI, B., JACKSON M.T., (2017) “The Strategic logic of sieges in counterinsurgencies” Innovations in Warfare & Strategy*, The US Army War College Quarterly Parameters*, Contemporary Strategy and Landpower, VOL.47 NO.2, Edited by Dr. Antulio L. Echevarria II, pp. 77-86

CASSESE A., (2013), *Cassese’s International Criminal Law, Revised by A.Cassese, P.Gaeta, L.Baig, M. Fan, G. Gosnell and A. Whiting* , Third Edition, Gosport (UK), Oxford Publications.

CULLEN, A., (2010), *The Concept of Non-International Armed Conflicts in International Humanitarian Law*, Lauterpacht Centre for International Law, New York (US), Cambridge University Press

DINSTEIN Y., “Siege Warfare and the Starvation of Civilians”, in *Humanitarian Law of Armed Conflict: Challenges Ahead*, edited by Astrid J.M. Delissen, Gerard J. Tanja, T.M.C Asser Instituut, Martinus Nijhoff Publishers, 1991, p.145-152

FLECK D., (2013) *The Handbook of International Humanitarian Law,* Third Edition, New York, Oxford University Press.

GAWRYCH G.W., “The Siege of Beirut”, in *Robertson W.G, Yates L.A. Block by Block: the Challenges of Urban Operations*, Kansas (US),U.S. Army Command and General Staff College Press Fort Leavenworth, pp.205-229

HENCKAERS J-M., DOSWALD-BECK, L., (2009), *Customary International Humanitarian Law. Volume I: Rules,* International Committee of the Red Cross, New York (US), Cambridge University Press, Rules: 2-71- 81-82-93-98-102-103-149-156.

KOLB, R., (2014), *Advanced Introduction to International Humanitarian Law*, Cheltenham (UK) and Northampton (US), Elgar Publications

MILANOVIC M., HADZI-VIDANOVIC V., (2012), “A Taxonomy of Armed Conflict”, in White Nigel, Henderson Christian, *Research Handbook on International Conflict and Security Law*, Cheltenham(UK) and Northampton (US), Elgar Eds., pp. 256-315

MOIR L., (2002), *The Law of Internal Armed Conflict*, Cambridge Studies in International and Comparative Law, Cambridge (UK), Cambridge University Press

SASSÓLI M., (2019), *International Humanitarian Law. Rules, Controversies and Solutions to Problems arising in Warfare,* Cheltenham, Elgar Publications.

SHELTON D.L., (2014), *Advanced Introduction to International Human Rights Law*, Cheltenham (UK), Northampton (US), Elgar Publications.

SIVUKUMARAN S., (2012), *The Law of Non-International Armed Conflict*, Croydon (UK), Oxford University Press.

SOLIS, G. D., (2016), *The Law of Armed Conflict. International Humanitarian Law in War*, Second Edition, Padstow (UK), Cambridge University Press.

STAHAN, C., (2019), *A Critical Introduction to International Criminal Law,* Cambridge (UK), Cambridge University Press.

VAN DEN BOOGARD J.C., VERMEER A., (2017), "Precaution in Attack and Urban and Siege Warfare" in *Yearbook of International Humanitarian Law 2017*, Volume 20, Asser Press, Springer, The Hague (Netherlands), p. 163-194

WYLER e., CASTELLANOS-JANKIEWICZ L.A., (2011), "State Responsibility and International Crimes" in *Routledge Handbook of International Criminal Law, Edited by William A. Shabas and Nadia Bernaz,* London (UK) and New York (US), Routledge Handbooks, p.385-405

ZEGVELD L., (2002), *The Accountability of Armed Opposition Groups in International Law*, Cambridge Studies in International and Comparative Law, Cambridge (UK), Cambridge University Press.

Articles:

ABDULKAREEM A., (2019), "Saudi siege of Yemen's Al-Durayhimi as devastating as WII Siege of Leningrad" *MPN News website.* Available at: https://www.mintpressnews.com/saudi-siege-of-yemen-al-durayhimi-as-devastating-as-wwii-siege-of-leningrad/256820/

ACLED (2019) "Regional Overview: Middle East 9-15 February 2020" *ACLED website.* Available at: https://www.acleddata.com/2020/02/20/regional-overview-middle-east-9-15-february-2020/.

AI (2017), "Yemen: Saudi-Arabia-led coalition uses banned Brazilian cluster munitions on residential areas", *Amnesty International* website. Available at: https://www.amnesty.nl/actueel/yemen-saudi-arabia-led-coalition-uses-banned-brazilian-cluster-munitions-on-residential-areas

AI (2018) "Disappearances and torture in southern Yemen detention facilities must be investigated as war crimes" *Amnesty international* website. Available at:

https://www.amnesty.org/en/latest/news/2018/07/disappearances-and-torture-in-southern-yemen-detention-facilities-must-be-investigated-as-war-crimes/.

AMN (2019) "Protests in Hodeydah denouncing Siege on Al-Durayhimi city", *Almasirah Media Network*. Available at: https://english.almasirah.net/details.php?es_id=10359&cat_id=1

BARAA S., (2019), "Yemen's Startegic Hajour District: A forgotten battlefront" *Al-Arabiya English website.* Available at: http://english.alarabiya.net/en/features/2019/03/07/Yemen-s-strategic-Hajour-district-A-forgotten-battlefront.html

BBC (2015), "Yemen's President Hadi UN to back intervention", *BBC NEWS*. Available at: https://www.bbc.com/news/world-middle-east-32045984

EU Parliament (2018) "MEPs demand end to EU arms exports to Saudi Arabia" *News European Parliament, press room*. Available at: https://www.europarl.europa.eu/news/en/press-room/20181018IPR16536/meps-demand-end-to-eu-arms-exports-to-saudi-arabia

GRC (2019) "Vital Amendment to the Rome Statute Unanimously Passes" *Global Rights Compliance Press Release*. Available at: https://starvationaccountability.org/news-and-events/vital-amendment-to-the-rome-statute-unanimously-passes

HRW (2016), "Yemen: Saudi-led funeral Attack apparent War Crime. Credible International Investigation Urgently needed", *Human Rights Watch website*. Available at: https://www.hrw.org/news/2016/10/13/yemen-saudi-led-funeral-attack-apparent-war-crime

MSF (2019), "Trapped by Mines", *MSF*. Available at: https://www.msf.org/trapped-mines-yemen

NEBEHAY S., (2019), "U.S., France, Britain, may be complicit in Yemen war crimes, UN report says", *REUTERS*, Geneva. Available at: https://www.reuters.com/article/us-yemen-security-un/u-s-france-britain-may-be-complicit-in-yemen-war-crimes-u-n-report-says-idUSKCN1VO11B

The Guardian (2019) "Human cost of Yemen war laid bare as the deaths toll nears 100,000. Report outlines the war's impact on civilians as well as fighters as the researchers call for the call for the resolution to conflict" *The Guardian Website*. Available at: https://www.theguardian.com/global-development/2019/jun/20/human-cost-of-yemen-war-laid-bare-as-civilian-death-toll-put-at-100000

The Guardian (2020) "Saudi-led coalition starts court martial against Yemen strikes air crews. Proceedings over breaches of International Law are first such cases of their kind" *The Guardian Website*. Available at: https://www.theguardian.com/world/2020/feb/12/saudi-led-coalition-starts-courts-martial-against-yemen-strikes-air-crew.

UN (2019), “Humanitarian Crisis in Yemen remains the worst of the world, warns the UN”, *UN news*. Available at: https://news.un.org/en/story/2019/02/1032811

Cases:

ECtHR, Grand Chamber, *Loizidou vs. Turkey*, Judgment, 18 December 1996, Application No. 1531/89.

ICTY, Trial Chamber III, *Prosecutor v. Dragomir Milosĕvić*, 12 December 2007, Case No. IT-98-29/1-T.

ICTY, Appeals Chamber, *Prosecutor v Dusko Tadić*, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995, Case No. IT-94-1-A.

ICTY, *Prosecutor vs. Dusko Tadic a/k/a “DULE”*, *Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction*, Appeals Chamber Decision, 2 October 1995, paragraphs 94 and 143.

ICTY, *The Prosecutor v. Ljube Boškoski and Johan Tarčulovski*, Trial Chamber, Judgment, 10 July 2008, Case No. IT-04-82, paragraphs 177-178, pp. 79-80

ICTY, Trial Chamber I, *Prosecutor v. Stanislav Galić*, 5 December 2003, Case No. IT-98-29-T.

Websites:

BARON A., (2019), “Mapping the Yemeni Conflict”, *European Council on Foreign Relations Website*. Available at: https://www.ecfr.eu/mena/yemen

Carnegie Endowment for International Peace “Yemen” *Carnegie Endowment for International Peace website.* Available at: https://carnegieendowment.org/regions/219

Cluster Munitions Coalition, “What is a cluster bomb?” *Cluster Munitions Coalition* website. Available at: http://www.stopclustermunitions.org/en-gb/cluster-bombs/what-is-a-cluster-bomb.aspx

Global R2P (2020) “Population at Risk: Yemen” *Global Centre for the Responsibility to Protect website*. Available at: http://www.globalr2p.org/regions/yemen

ICRC “Treaties, State Parties and Commentaries. Yemen” *International Committee of the Red Cross Website*. Available at: https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/vwTreatiesByCountrySelected.xsp?xp_countrySelected=YE

ICRC “War in Yemen: Ravaged by years of conflict and war, Yemen has become the scene of the biggest humanitarian crisis in the world” Where we work, Middle East, *International Committee of the Red Cross Website*. Available at: https://www.icrc.org/en/where-we-work/middle-east/yemen/war-yemen

Just Security “The UN Yemen Report and Siege Warfare” *Just Security website.* Available at: https://www.justsecurity.org/66137/the-un-yemen-report-and-siege-warfare/.

MSF “How we are Helping in Yemen. The war in Yemen is fueling massive humanitarian crisis”, *Doctors Without Borders website*. Available at: https://www.doctorswithoutborders.org/what-we-do/countries/yemen

OCHA “Yemen” *United Nations Office for the Coordination of Humanitarian Affairs Website*. Available at: https://www.unocha.org/yemen

OHCHR “Yemen” *United Nations Office of the High Commissioner of Human Rights website*. Available at: https://www.ohchr.org/EN/Countries/MENARegion/Pages/YEIndex.aspx

RULAC (2017) “Classification: Contemporary Challenges for Classification”, *RULAC.* Available at: http://www.rulac.org/classification/contemporary-challenges-for-classification

RULAC (2017) “Classification: Non-International Armed Conflict”, *RULAC.* Available at: http://www.rulac.org/classification/non-international-armed-conflicts#collapse1accord

Saudi Arabian Press Agency (2018) “Custodian of the Two Holy Mosques Pardons all Military Men, Taking Part in Restoring Hope Operation, of Military, Disciplinary Penalties” *Saudi Press Agency*. Available at: https://www.spa.gov.sa/viewfullstory.php?lang=en&newsid=1783696

Saudi Press Agency (2016) “Joint assessment Team (JIAT) on Yemen responds to Claims on coalition forces’ violations in Decisive Storm Operation” *Saudi Press Agency*. Available at: https://www.spa.gov.sa/1524799

UNODA “IEDs- a growing threat” *United Nation Office for Disarmament Affairs.* Available at: https://www.un.org/disarmament/convarms/ieds-a-growing-threat/