Saudi-Led Military Intervention in Yemen and International Law

Ishan Jan, M. N.* and Lawan Haruna, A.
Ahmad Ibrahim Kulliyyah of Laws, International Islamic University Malaysia, Jalan Gombak, 53100 Kuala Lumpur, Malaysia

ABSTRACT
On 25 March 2015, Saudi Arabia launched a military intervention, known as “Operation Decisive Storm”, in civil-war stricken Yemen, changing the status of the conflict from ‘non-international armed conflict’ (NIAC) to ‘international armed conflict’ (IAC). Saudi Arabia conducted the operation in response to a de jure Yemeni government request, headed by President Abd Rabb Mansur Hadi, and in coordination with a coalition comprising the United Arab Emirates, Qatar, Kuwait, Bahrain, Jordan, Morocco, Sudan, Pakistan and Egypt. The United States supported the coalition by providing ‘logistical and intelligence support’. The de facto Yemeni government was led by Abdul Malik al-Houthi (a Zaidi Shia Muslim) and previously, by former President Ali Abdullah Saleh (a Sunni Muslim). The de facto government was supported by Iran. Some observers described the war in Yemen as a proxy war fought on behalf of Iran and the Saudi government while the victims of the war were the poverty-stricken innocent civilians of Yemen. The conflict in Yemen raised numerous questions that this paper attempts to answer. Does Operation Decisive Storm show lawful use of force? Is Iran’s support of the Houthi-led de facto government lawful? Is this conflict an international armed conflict or a non-international armed conflict? Does international humanitarian law (IHL) apply in this conflict and if so, do the parties to the conflict abide by their obligation under international law? These questions will be discussed in this paper with reference to the relevant international law provisions using primary sources as well as subsidiary sources of the law.

Keywords: Yemen, Saudi-led coalition, military intervention, legality of the use of force, IHL

INTRODUCTION
Yemen is one of the oldest centres of civilisation in the Near East with fertile lands and is a strategically important country. Sadly, due to mismanagement, corruption and internal conflict, Yemen
is impoverished and plagued with power struggles and armed conflicts that have serious implications for the region and the world. The conflict in Yemen is between numerous groups, mainly forces loyal to the beleaguered President, Abd Rabbo Mansour Hadi, supported by the southern Sunni militia known as the Popular Resistance Committee and local tribesmen, and Houthi and their ally, former President Ali Abdullah Saleh. Both Hadi and the Houthis are opposed by al-Qaeda in the Arabian Peninsula (AQAP). All these divergent forces are opposed by another and yet more brutal armed group known as the Islamic State (Daesh). The Houthis and Saleh forced President Hadi to flee to Saudi Arabia. At the request of President Hadi a coalition led by Saudi Arabia intervened in Yemen and launched air strikes on Houthi targets. The coalition comprises five Arab Gulf states and Jordan, Egypt, Morocco and Sudan.

The issues of concern that this article intends to address are whether Iranian support to the Houthis and the Saudi-led intervention in the conflict in Yemen show lawful use of force in the sight of international law regulating the use of force. Another issue of concern is whether the conflict in Yemen has reached the required legal threshold for armed conflict. This may lead to the question of whether the Saudi-led and the Iran intervention has affected the nature of the armed conflict in Yemen and whether the belligerents involved in the conflict are complying with their obligations under international humanitarian law (IHL). Lastly, the paper considers whether the conflict in Yemen could have been resolved through other methods of dispute resolution or diplomatic means rather than the use of force.

Military Intervention and International Law

It is a trite law that states should refrain from intervening in the sovereign independence of a state. Use of military force to intervene in the affairs of an independent state generally violates the established customary principle of non-involvement and the enshrined prohibition of the use of force under the United Nations Charter (UN Charter) (Nicaragua v United States). Article 2(4) of the UN Charter provides that “[a]ll Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or any other manner inconsistent with the purposes of the United Nations.” This provision of the Charter specifically prohibits the use of military force against the sovereignty of a state and does not preclude the exertion of economic or political pressure on a state. The prohibition of the use of force in this context does not also cover cases of indirect intervention as it has been established by the International Court of Justice (ICJ) in the case of Nicaragua v United States. It is important to mention that the provision of Article 2(4) of the UN Charter covers not only the actual use of armed force but the threat of use of force. Accordingly, the “threat of use of force”
includes situations in which an ultimatum is given announcing recourse to use of military measures if certain demands are not accepted. Thus, both threat and actual use of armed force against the territorial integrity of a sovereign state is prohibited in international law (Ruiz, 1997).

However, the prohibition of the use of armed force contained in the UN Charter is not absolute as the Charter appreciates that certain situations may warrant the use of force in international relations. In other words, the Charter has provided for certain exceptional circumstances where the use of force is allowed. It permits the use of force in two broad situations i.e. military force may be used in self-defence under Article 51 of the Charter and military force may also be used if it is authorised by the UN Security Council under Chapter VII of the UN Charter. It is obvious that in the case of the conflict in Yemen, there has been no UN Security Council resolution authorising the use of force in accordance with Chapter VII of the UN Charter. As such this paper concentrates on self-defence being the principle of international law mostly relied upon by state involved in conflict such as the conflict in Yemen.

In the case of use of force in self-defence, Article 51 of the UN Charter has allowed a member state to use its armed forces against another state in individual self-defence or collective self-defence. The Article provides that:

*Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.*

It is obvious from the wording of the Charter that self-defence may be individual or collective. Self-defence envisaged under the Charter is a lawful use of force by a state in line with the conditions prescribed under international law. In essence, a state is allowed to resort to use of armed forces in response to an unlawful use of force against its territorial integrity or sovereignty. According to the provisions of Article 51 of the UN Charter, it is a fundamental (inherent) right of every sovereign State to deter aggression against its territory in order to protect its territorial sovereignty.

The principle of self-defence by states in protection of their territorial sovereignty is a well-established customary norm that is to be exercised in a defensive but not retributive manner.

It is significant to mention that the right of states to resort to use of force in self-defence has its limitations. Therefore, for a state to exercise the right of self-defence in this respect, there must be “a necessity
of self-defence”, that is, the action taken in self-defence must be in response to an armed attack. It has been emphasised that the phrase “if an armed attack occurs” contained in the provision of Article 51 of the UN Charter must be given its ordinary meaning. The ICJ in Nicaragua v United States stated that the ordinary meaning of the phrase was that the exercise of the right of self-defence was subject to the State concerned having been the victim of an armed attack and that reliance on collective self-defence did not remove the need of this requirement. Perhaps this position excludes other extraneous meaning to be given to the phrase “if an armed attack occurs”, thereby preventing the imputation of “pre-emptive self-defence” within the scope of the principle of self-defence. In line with this argument, Philip Ce. Jessup asserted that:

*Article 51 of the Charter suggests a further limitation on the right of self-defence: it may be exercised only ‘if an armed attack occurs’. This restriction in Article 51 very definitely narrows the freedom of action States had under traditional international law.*

The question now is whether intervention in the conflict in Yemen is in consonance with the spirit of international law regulating the use of force.

*Military Intervention in Yemen*

In view of the discussion above, it is clear that the UN Charter prohibits the use of force in international relations but it has, however, provided for two circumstances that may necessitate the use of force against the territorial sovereignty of a state. The two exceptions are use of military in self-defence as well as use of force as authorised by the UN Security Council under Chapter VII of the UN Charter. The intervention under consideration in this paper is Iranian support given to the Houthis and the Saudi-led intervention. Do these two cases of interventions violate the prohibition of use of force enshrined in Article 2(4) of the UN Charter or they are within the lawful contemplated exceptions provided for under Article 51 of the UN Charter? It is understandable to exclude the exception provided for under Chapter VII of the UN Charter since there is no issue whatsoever as to authorisation of use of force by the UN Security Council.

To begin with, Iran has been alleged to have been providing aid to the Houthis in Yemen. Iran is accused of supporting the Houthis through weapons supply, financial aid and military advice. The question is, does mere supply of weapons, rendering financial aid and providing military advice amount to military intervention? This question has been answered in the case of Nicaragua v United States. The ICJ stated that:

*The United States of America, by training, arming, equipping, financing and supplying the contra forces or otherwise encouraging, supporting and aiding military and paramilitary activities in and against Nicaragua, has acted, against the Republic of*
Nicaragua, in breach of its obligation under customary international law not to intervene in the affairs of another State.

In essence, the ICJ decided that providing training, arming, equipping, financing as well as providing military aid and support to an armed group in NIAC violated the prohibition of the use of force in Article 2(4) of the UN Charter.

Therefore, support given to the Houthis in Yemen by Iran violates Iranian obligation to refrain from intervening in the territorial integrity or political independence of another State as enshrined under Article 2(4) of the UN Charter. Since Iran provides support to the rebel forces that may be considered the de facto government of Yemen after the de jure President had fled the country, this dismisses any claim that Iran intervenes based on invitation from the government of Yemen. In addition, Iran’s support given to the Houthis began prior to the time when the Houthis gained control of Yemen’s capital, the act that forced the de jure President to flee the country. It can be submitted that Iran’s intervention in supporting the Houthis in Yemen is unlawful as it violated the prohibition of the use of force against the sovereign entity of a State.

In the case of the Saudi-led intervention, there is no gainsaying the fact that air strikes by the coalition are an intervention in the sovereign territory of Yemen. The issue of the degree of involvement of the Saudi-led coalition is apparent and does not need to be assessed as in the case of Iran since in the Saudi case there have been direct military strikes in Yemen. The question is whether the Saudi-led intervention was in violation of the prohibition of the use of force contained under Article 2(4) of the UN Charter or if it was a lawful intervention that falls under the exception in Article 51 of the UN Charter.

According to Saudi Arabia, the coalition force it is leading intervened in Yemen based on the invitation of Hadi, who was the de jure President of Yemen. Based on this assertion made by Saudi, since Hadi remains the de jure president of Yemen, he has the power to invite foreign forces to assist in the protection of lives and the property of innocent citizens of Yemen who are caught in the middle of these hostilities. Any intervention against the territorial sovereignty of a state that is based on the invitation of the sovereign state cannot be held to be a violation of the prohibition on the use of force envisaged under Article 2(4) of the UN Charter. In other words, military intervention by a State in the internal conflict of another State that is based on invitation to assist in the protection of life and property is in line with the UN Charter. Article 51 has provided for the right to resort to self-defence in a collective manner. Thus, invitational military intervention in this case could be said to have fallen within the contemplation of collective self-defence envisaged by Article 51. Therefore, since the Saudi-led coalition is carrying out a military operation in the territory of Yemen based on the invitation
of the de jure President, the operation may be considered within the realms of collective self-defence. The question now is whether the parties involved in the conflict in Yemen are complying with their respective obligations under international humanitarian law (IHL), which is the law applicable during armed conflict.

The Conflict in Yemen and IHL

IHL is the body of law that applies in armed conflict. It consists of principles and regulations that set out to regulate the conduct of belligerents during hostilities and limits the rights of the belligerents to choose the means and methods of warfare of their choice as well as provides protection to persons who are not or who are no longer taking part in hostilities. This branch of international law applies to victims of war without discrimination and regardless of whether the armed conflict is legitimate or not under jus ad bellum (law regulating the legality or otherwise of going to war) (Henderson, 2010; Turns, 2010). Thus, application of IHL is independent of any argument as to whether or not the armed conflict is just or not within the realm of jus ad bellum. IHL regulates the conduct of hostilities from the initiation of the armed conflict to the cessation of hostilities and it applies to both international and non-international armed conflict. The rules of IHL are basically contained in the Hague Law and the Geneva Conventions of 1949. Presently, The Geneva Conventions are four in number and with the adoption of their additional protocols of 1977, the Hague Law has become silent. All the four Conventions apply to international armed conflict while common article 3 to the Conventions applies to non-international armed conflict. In addition, the first and second Additional Protocols of 1977 to the Geneva Conventions apply to international and non-international armed conflicts respectively (Wallace & Martin-Ortega, 2009).

With this understanding of IHL, the issue now is, does the conflict in Yemen constitute an armed conflict to which IHL applies? If it does, do the intervention of Iran and the Saudi-led coalition change the nature of the conflict or affect the obligation of the parties under IHL? To begin with, armed conflict has been defined by the International Criminal Tribunal for the Former Yugoslavia (ICTY) in the case of Prosecutor v Tadic. According to the Tribunal, “armed conflict exists whenever there is a resort to armed force between states or protracted armed violence between governmental authorities and organised armed groups or between such groups within a state”. This definition has taken care of both international and non-international armed conflicts. The first limb refers to resort to use of force between states, which categorically means international armed conflict, while the second limb refers to protracted armed violence between armed forces of the State and armed groups or between armed groups that represent non-international armed conflict. Obviously, the conflict in Yemen started between government
armed forces and armed groups, and thus, portrays a non-international armed conflict and at the same time precludes imputing international armed conflict. However, for armed violence to become armed conflict, the violence must meet the required legal threshold for non-international armed conflict. The requirements are: protracted armed violence; organisation of the armed groups; exercise of control over certain territory; and ability to implement IHL (Paulus & Vashakmadze, 2009).

These requirements are further elaborated on by the International Committee of the Red Cross (ICRC). Considering the nature of the violence, “the hostilities have to be conducted by force of arms and exhibit such intensity that, as a rule, the government is compelled to employ its armed forces against the insurgents instead of mere police forces.” The armed groups are expected “to exhibit a minimum amount of organisation. Their armed forces should be under a responsible command and be capable of meeting minimal humanitarian requirements” (ICRC, 2008). It is further required that the groups should exercise control over certain parts of a territory of the State that enables them to carry out concerted and sustained military operations. The armed group should also exhibit organisation that is capable of imposing discipline among its rank as a de facto authority (Schmitt, 2012). Therefore, considering the legal requirement for non-international armed conflict, it is clear that the conflict in Yemen has satisfied the intensity requirement and the armed groups involved in the conflict have satisfied the requirement of organisation, territorial control and ability to implement IHL. This position has been confirmed by the ICRC declaration on the situation in Yemen as being a non-international armed conflict.

Having established that there is a non-international armed conflict in Yemen, the pertinent question remains as to whether the intervention of Iran and Saudi-led coalition have changed the nature of the conflict to internationalised armed conflict. A non-international armed conflict usually changes its character to internationalised armed conflict when there is an intervention by a third State (Jinks, 2003). Thus, we are going to analyse the Iran and Saudi-led coalition intervention separately.

We begin with Iran. The intervention of Iran was in support of the rebel forces (including dissident armed forces) fighting the government forces. This satisfies the requirement for internationalisation of internal conflict, which demands that support must be given to the side of the rebel forces in order to effectively have two or more states fighting each other either directly or through agents. However, for support to armed groups to constitute intervention that changes the nature of an armed conflict, the intervening state must have overall control over the military activities of the armed groups. The degree of involvement has to reach a certain level that the military activities of the armed group can be attributed to the intervening state. In other words, mere provision of
training and financial support to armed groups by a state is not enough to attribute the military activities of the group to the state. In *Prosecutor v Tadic*, the ICTY stated that for acts to be attributed to the State it would seem necessary to prove not only that the State exercised some measure of authority over those individuals but also that it issued specific instructions to them concerning the performance of the acts at issue, or that it *ex post facto* publicly endorsed those acts.

Therefore, it is can be concluded that the intervention of Iran through provision of training, weapons and finance to the Houthis does not suffice to attribute the military activities of the Houthis to Iran. Iran does not exercise overall control over the military activities of the Houthis and the military activities of the groups cannot be attributed to Iran. Thus, Iran’s intervention in support of the Houthis does not affect the nature of the non-international conflict in Yemen.

In the case of the Saudi-led coalition intervention, the intervention has been in support of the *de jure* government of Yemen. Military intervention in non-international armed conflict that is in support of government forces does not change the character of the non-international armed conflict to internationalised armed conflict. This raises concern as to the obligation of the parties involved in the conflict including the intervening forces under IHL. It is significant to point out at this juncture that though the fact that a party to an armed conflict may have the legitimate right to wage war or resort to self-defence under the UN Charter, this does not absolve the party from observing its obligation under IHL. In essence, the armed groups involved in the conflict in Yemen as well as the government and coalition forces are bound to observe the minimum standards set out by IHL during their conduct of hostilities. The obligation of the intervening forces steams from the fact that they intervene by carrying out activities that form part of the hostilities in an already existing non-international armed conflict that is regulated by IHL. Accordingly, the parties involved...
must avoid creating a humanitarian crisis by balancing military necessity with humanitarian considerations during hostilities. Since it is a non-international armed conflict, the parties are bound to respect the rules contained in Common Article 3 of the Geneva Conventions of 1949 and the Additional Protocol II of 1977 to the Geneva Conventions as the applicable law in non-international armed conflict. The parties must also respect the rules of customary IHL that are applicable in both international and non-international armed conflict. It is important to mention that the entirety of the armed conflict would have been avoided had the parties considered diplomatic options of dispute resolution.

CONCLUSION

The conflict in Yemen started as an armed violence between the government forces and the Houthis. Iran has been alleged to be providing support in terms of training, weapons and finance to the Houthi-led armed groups. Recently, Saudi Arabia has led coalition air strikes in Yemen against the Houthi rebels. The intervention of Iran in the internal affairs of Yemen violates the prohibition of the use of force in international relations as contained in Article 2(4) of the UN Charter. The Saudi-led intervention in the conflict in Yemen does not violate the prohibition of the use of force enshrined in the UN Charter. This is in view of the fact that the intervention is sequel to an invitation from the de jure president of Yemen, Hadi. Thus, the Saudi-led intervention falls within the contemplated collective self-defence envisaged in Article 51 of the UN Charter. The situation in Yemen is indeed a non-international armed conflict to which IHL applies. The armed conflict remains non-international despite the intervention by Iran and the Saudi-led coalition. Support given by Iran to the Houthi-led rebels does not affect the nature of the conflict since Iran is not exercising effective control over the military activities of the rebels and the activities of the rebels cannot be attributed to Iran. Similarly, the Saudi-led intervention in support of the government forces does not also change the nature of the conflict. For an intervention to alter the nature of a conflict it has to be in support of the rebel groups so that, effectively, there will be a conflict between two or more states. As such, IHL applies to the conflict in Yemen and the parties involved must respect their obligations under the law. It is suggested that Iran should withdraw from supporting the Houthi-led rebels and respect its obligation under Article 2(4) of the UN Charter while the parties involved in the conflict in Yemen should balance their military operations against humanitarian considerations in order to minimise civilian casualty and destruction of civilian objects.

REFERENCES


