



**RIGA
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**Intervention in Yemen in 2015: Assessing the alleged
violations of International Humanitarian Law by Saudi-
Led Coalition In Yemen conflict**

BACHELOR THESIS

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DECLARATION OF HONOUR:

I declare that this thesis is my work and that all references to, or quotations from, the work of others are fully and correctly cited.

(Signed)

ABSTRACT

Importance of International Humanitarian Law has emerged significantly in last two decades, becoming as the primary legal source, which is used as the pre-emptive measure of restricting international actors from indiscriminate actions and use of prohibited weapons with regulating the entire conduct of war. Saudi-led intervention in Yemen has become a vivid example of how the well-established legal rules can become irrelevant, because of the wrong approach, that was taken by respective parties to serve its political interests, while neglecting its legal obligations. Despite the emerged conflict of interests between the law and politics, International Humanitarian Law concerning Yemen conflict has remained as the supreme legal framework that can explain unlawfulness of conducted violations of the acting party. The paper discusses the applicability of International Humanitarian Law in the case of Yemen, especially the nature of alleged violations, by determining unlawfulness of conducted actions.

Keywords: International humanitarian law, Yemen, Saudi-Led coalition, non-international armed conflict, alleged violations, unlawfulness.

SUMMARY

The bachelor thesis “Intervention in Yemen in 2015: Assessing the alleged violations of International Humanitarian Law by Saudi-Led Coalition In Yemen conflict” is an analysis of alleged violations of international humanitarian law together with the assessment of the applicability of international humanitarian law rules in non-international armed conflict, namely Yemen conflict. The thesis analyses the subject of the unlawfulness of actions performed by Saudi-led coalition after its intervention in Yemen in 2015 basis on the assessment of two aspects of international humanitarian law: indiscriminate attacks and use of indiscriminate weapons, such as cluster munitions. Author focus its analysis on the examination of reviewing principles and norms of international humanitarian law, as well defining applicable legal rules of the treaty and customary law to the particular type of conflict, and applicability of respective limitations to the violent conducts related to the indiscriminate attacks and use of indiscriminate weapons by the chosen party. Thus, the author seeks to explain legal issues that arise in approaching different situations with different factual background, in order to affirm or reject the unlawfulness of conducted actions. The thesis is focused on the approaching legal sources of international humanitarian law applicable to non-international armed conflict, notably, the relevant treaty law, including common article 3 to four Geneva Conventions, Additional Protocol II related to non-international armed conflicts, customary international humanitarian law rules related to the indiscriminate attacks and indiscriminate weapons, and case-law practice, which is used to fill the gaps in the treaty and customary law with the analysis of two aspects and for practical application in situations, where violent actions were evidenced. Furthermore, the thesis covers the analysis of linkage of violations of international humanitarian law with the political issues related to the Yemen conflict. The thesis is divided into three parts:

Part one provides with an analysis of the preliminary matters on the Yemen conflict both from political and legal sides. From the political side, it covers the historical background of the emergence of Yemen conflict by defining main events that have brought to the current situation in the country. From the legal perspective chapter analyses belonging of Yemen conflict to the non-international armed type of conflict by covering pertinent legal criteria that indicate on that. In this regard, the classification of the conflict is used for the determination of the applicable law for the analysis of situations, where indiscriminate attacks and the use of indiscriminate weapons were used. For the detailed examination of indiscriminate attacks and indiscriminate weapons, such as cluster munitions, the author analyses their legal status under the international humanitarian law.

In part two, the author analyses different situations on the subject of the unlawfulness of specific actions, conducted by the Saudi-led coalition basis on the law, that applies to non-international armed conflicts. Cases have been chosen base on the different nature of conducts that led to the separate application of legal rules and structure of legal analysis itself.

Part three addresses the analysis of the subject of political relation towards violations of international humanitarian law by making thoughts to how the existence of breaches may result in the political resolution of the conflict.

In conclusion, the author seeks to summarize made considerations in the thesis with affirming or rejecting the hypothesis and give recommendations regarding prevailing circumstances with violations of international humanitarian law in Yemen conflict.

TABLE OF ABBREVIATIONS

UN – United Nations

IHL – International Humanitarian Law

IHRL – International Human Rights Law

CIHL – Customary International Law

NIAC – Non-International armed conflict

IAC – International armed conflict

ICC – International criminal court

YAR – Yemen Arab Republic

PDRY – People Democratic Republic of Yemen

ACLED - Armed Conflict Location and Event Data Project

CA3 – Common Article 3 to four Geneva Conventions

APII – Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts(Protocol II).

US – United States

UK – United Kingdom

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INTRODUCTION

Actuality

“Before we talk about peace, we must talk about war”.¹

Modern world is changing very rapidly, looking from different projections precluding uncertainty and blindness before the next generations. Political agenda on the Middle East de-facto for a long time remained unstable in attempts to change the situation, dispose of the critical matter with relation to the conflicts, however, the international legal norms and rules have always remained as the stable source that has recommended itself as the way that can stop conflicting parties from escalation and increasing violence towards the civilian population. In this matter, the case of Yemen is the crucial one, because it shows the opposite, how the legal norms can be neglected and to what extent it results in violent situations.

Since the moment, when Saudi-led intervention in Yemen took place on 26 March 2015,² the coalition has commenced a large number of attacks against civilian population through airstrikes that were used to enhance military capabilities of the advancing side in the face of Yemen's government, as well as create dominance in the air and on the ground combat.³ Main military objectives of the Saudi-led coalition was to ensure that, firstly, restoration of the legitimacy of the official government of Yemen will come true, secondly, particularly for the Saudi-Arabia it was the question of defending national security near its borders, and thirdly, restore the status-quo in the strategic region to protect states of coalition interests. All these considerations seem to have a positive note, but, in reality, the implementation of plans ended up to create one of the most massive humanitarian disasters in the modern history of humanity.⁴ The current situation in Yemen is as it is, saying that a considerable amount of factors had affected the situation in the country. One of such factors is non-compliance with international legal rules, which are regulating the conduct of hostilities. Since the Yemen conflict has commenced, there have been a significant amount of allegations of violations by the different parties to the conflict on entirely other matters related to the law on armed conflict. Those received the wide “popularity” from foreign governments and NGO's to count Yemen as the humanitarian disaster. For instance, such are the use of child soldiers, arbitrary killings and detentions, torture, naval blockade, and others. However, the most often occurred, one of the gravest and inexplicable in terms of motive actions are the holding of the indiscriminate attacks and the use of indiscriminate weapons by Saudi-led coalition in Yemen conflict that have not been highlighted to a large extent, except observations of NGO's and independent experts. A lot of people, including governmental authorities simply do not go into the specifics of what has happened in Yemen and how matter can be clearly explained reasonably from a legal perspective.

¹ International Committee of the Red Cross (ICRC), “Yemen: Before we talk about peace, we must talk about war”, Available on <https://www.icrc.org/en/document/yemen-we-talk-about-peace-we-must-first-talk-about-war>, Accessed on April 02, 2020.

² May Darwich, *The Saudi Intervention in Yemen: Struggling for Status*, p.125. Available on: <https://www.jstor.org/stable/26390311?seq=1>, Accessed on April 03, 2020.

³ Zachary, Laub and Kali, Robinson, *Yemen in Crisis*. Available on: <https://www.cfr.org/backgrounder/yemen-crisis>, April 03, 2020.

⁴ International Rescue Committee, “Why is Yemen the world's worst humanitarian crisis? Available on: <https://www.rescue.org/article/why-yemen-worlds-worst-humanitarian-crisis>, April 03, 2020.

Objectives

The thesis is aimed to make more transparency on what has happened in the Yemen conflict concerning holding indiscriminate attacks and use of indiscriminate weapons by Saudi-led coalition, together with the matter how the legal and political approaches deals and explains implemented methods. The bachelor thesis has a vital goal to demonstrate the applicability of international humanitarian law (hereinafter" IHL") rules in the non-international armed conflict (hereinafter "NIAC"), notably Yemen conflict, and how rules can explain unlawfulness of the indiscriminating disproportionate attacks directed against civilians and civilian objects, and the use of internationally banned cluster munitions by Saudi-led coalition by observing specific situations, where the implementation of above-mentioned methods of conduct were evidenced. The paper addresses analysis of alleged violations of IHL with reviewing and defining applicable legal norms, including mainly Customary International Humanitarian Law rules (hereinafter "CIHL").

The analysis is aimed to answer on the following research question: how the applicable laws to non-international armed conflict explain the illegality of the use of indiscriminate strikes and indiscriminate weapons, such as cluster munitions by Saudi-led coalition in the Yemen conflict? It is hypothesised that applicable law to non-international armed conflict explains the unlawfulness of conduct of Saudi Coalition in Yemen through an assessment of alleged violations of law that occurred after using indiscriminate attacks towards the civilian population and civilian objects, and use of cluster munitions. Additional sub-question is: can the alleged violations of IHL act as a tool for an excuse towards a political resolution of the conflict in Yemen? It is hypothesised that alleged violations of IHL cannot act as a tool for an excuse towards a political resolution of the conflict in Yemen.

The thesis is restricted not only to mainstream unlawfulness of the alleged violations from a legal perspective with analysing situations, which acts as the evidence but also to elaborate on the **role** of certain types of methods of military conduct, such as indiscriminate attacks and use of indiscriminate weapons. Paper stresses on the explanation of the legal nature of armed conflict in Yemen by affirming its affiliation with non-international armed conflict. Additionally, analysis is aimed to reveal how the alleged violations of the law can be connected to the political elements of the conflict with underlying the impact and role of alleged violations on the topicality of conflict resolution in Yemen.

Methods

To analyse the specific situations, where the violations were evidenced, it is important to describe the methodology, sources and tools that are used in analysis. The legal part of the paper specifies analysis on the two specific types of violations, namely, indiscriminate attacks on the civilians and use of prohibited weapons, such as cluster munitions weapons. Therefore, concerning applicable law and legal sources, which are used in the thesis to substantiate violations legally, concentrates primarily on the application of CIHL rules related to three "chapters". First is the **principle of distinction**, which covers primary rules used in the analysis, these are rules 1 and 7 related to the distinction between civilians and combatants, and civilian objects and military objects respectively. Furthermore, rules 1, 8, 9, 11, 12, 21 that defines respective actors and tools (e.g. civilians, civilian objects, indiscriminate attacks etc.) are mentioned and analysed in the paper respectively. Second is **Weapons(under CIHL)**, and following rule 71 related to use weapons that are in nature indiscriminate, in case

of Yemen, those are cluster munitions weapons used by coalition. **Third is Treatment of the Civilians** [and persons hors de combat (those are not covered in paper)], by covering rule 89, which is related to Violence to life. Additionally, Additional Protocol II, related to non-international armed conflicts, is used by covering analysis of Article 13 related to the protection of the civilian population. Common article 3, to Geneva Conventions, is used to define non-international armed conflict substantive nature under the law. IHL doctrines and principles, which are core for explaining related types of violations that are covered, are the following: the distinction between civilians and combatants; the principle of proportionality; principle of precautions.

The author relies on the reports and reviews of the international and non-governmental organisations, such as Amnesty International, Human Rights Watch, Bellingcat, The National Commission to Investigate Alleged Violations to Human Rights,⁵ United Nations, and sources from the ground.⁶

Structure

The structure of the paper is divided into three chapters; each of them covers a relevant part of the analysis. The first chapter refers to the historical and “legal” background of the conflict, which points out preliminary matters of the Yemen conflict with underlying main events, which have occurred before and during the Saudi intervention in Yemen. Chapter approaches main facts related to the political situation in the country, setting the basis for the further analysis of conflict for legal perspective and analysis related to the further possible political developments. Also, the chapter addresses Yemen conflict from a legal perspective, namely, explaining the nature of the conflict by explaining its belonging to internationalized non-international armed conflict, in order to define relevant applicable law in terms of assessment of unlawfulness of actions further. Therefore, the chapter addresses definitions of indiscriminate attacks and cluster munitions weapons from the perspective of IHL, which are used in the analysis of situations in the second chapter. The second chapter covers assessment of violations of IHL by approaching events, where alleged violations of law were documented, and demonstrating unlawfulness of the conduct of coalition basis on the analysis of the relevant applicable law related to indiscriminate attacks and use of cluster munitions. The third chapter relates to the author's findings and proposals on the idea of using IHL violations as an excuse towards political dialogue for Yemen, by explaining regional political agenda together with the idea that IHL violations can act as the corollary to the cooperation between opposing sides. Finally, the conclusion is aimed to answer the set research question and give recommendations on the chosen topic to the further analysis of the Yemen conflict both from a legal and political perspective.

⁵ Body, which is set by the government of the Republic of Yemen to investigate on alleged violations of Human Rights and International Humanitarian Law.

⁶ Sources from the ground are defined as witnesses, observers or victims of alleged crime with whom interviews by NGO's had been taken.

1. PRINCIPAL MATTERS ON POLITICAL AND LEGAL CONSIDERATIONS OF THE YEMEN CONFLICT

The current chapter refers to the discussion, explanation and evaluation being as the preliminary and descriptive part of the research that is aimed to deeply involve the reader into state of the art about the history and conflict legal framework to build a basis for a continuation of analysing unlawfulness of certain conducts and considerations referred to political element. Firstly, the chapter characterizes main historical events referred to the political situation in the country by underlying the conflict itself, the role of Houthis, Saudi Intervention and emergence of a humanitarian crisis that took place in 2015.⁷ Secondly, chapter analyses legal status of the conflict by approaching its “commitment” to internationalized non-international armed conflict with the assessment of several legal issues, which rise concerning the particular type of conflict, hence, such approach, is taken to determine the applicable law in approaching unlawfulness of actions in the second chapter. Furthermore, a chapter legally defines military “concepts” such as indiscriminate attacks and cluster munitions under IHL.

1.1. Political background and considerations

It is essential to point out that Yemen has been in a permanent status of war since 1962, due to the lack of institutional capacity and fragmentation of government with emerging political and military organisations, such as Houthis and terrorist groups, such as Al-Qaeda, to efficiently manage with the internal political situation that has occurred and has led to the humanitarian crisis.⁸ The real explanation of what happened in Yemen needs a more detailed approach. The history of Modern Yemen can be divided into two pillars: First, before the intervention took place in 2015, which covers events related to events prior and during Arab Spring, and second after the intervention was conducted in 2015.

1.1.1. Situation before intervention

Modern Yemen before being unified in 1990,⁹ has been strictly divided country into two respective states, first, so-called Yemen Arab Republic (hereinafter “YAR”) ruled by Abdullah as Saleh,¹⁰ second, the People’s Democratic Republic of Yemen (hereinafter “PDRY), ruled by Qahtan al Shaabi,¹¹ independency of which was proclaimed in 1967 after the British forces withdrew from the city of Aden.¹² YAR was successful in managing the diplomatic environment, significantly supported by Egypt and opposed by Saudi-Arabia and

⁷ Dan Roberts and Kareem Shaheen. Saudi Arabia launches Yemen airstrikes as alliance builds against Houthi rebels., available on: <https://www.theguardian.com/world/2015/mar/26/saudi-arabia-begins-airstrikes-against-houthi-in-yemen>. Accessed on March 11, 2020.

⁸ Jeremy M.Sharp, “Yemen: Civil War and Regional Intervention”, *Congressional Research Service* (2019): p.1. Available on: <https://fas.org/sgp/crs/mideast/R43960.pdf>, Accessed on March 12, 2020.

⁹ Charles Dunbar, “The Unification of Yemen: Process, Politics and Prospects”, *Middle East Journal* 46(3) (1992): p.456.

¹⁰ Faisal Eldros. Yemen: Who was Ali Abdullah Saleh? Available on: <https://www.aljazeera.com/indepth/spotlight/yemen/2011/02/201122812118938648.html>, Accessed on March 14, 2020.

¹¹ Robert Serjean, “South Arabia” in *Historical Dictionary of Yemen*, ed. Robert D. Burrowes (Metuchen, New Jersey: Scarecrow Press, 2009), p.348.

¹² Ian Proctor. Why Did British Forces Leave Aden? Available on: <https://www.iwm.org.uk/history/why-did-british-troops-leave-aden>. Accessed on March 15, 2020.

Jordan.¹³ On the other side, PDRY had demonstrated itself as the satellite of the Soviet Union with the prevalence of the communist ideology.¹⁴ After the unification was declared on 22 May 1990¹⁵ with the joint constitution being drafted and ratified in 1991¹⁶, the president of the "new" Republic of Yemen became the former Northern Yemen leader Ali Abdullah Saleh, on the other side the head of government Ali Salim al-Beidh, who was the former Southern Yemen leader.¹⁷ It could be considered that both Southern and Northern Yemen states were forced to seek for opportunities for a dialogue, to economically benefit from the extraction of natural resources, have the joint government, hence, prevalent policies, due to importance of Yemen's geopolitical position in the region.

In 2004 situation has changed, when the new actor has "acceded" in state of the art in the face of Houthis, which was internal Zaydi-Shia movement established by dissident cleric Hussein Badreddin al-Houthi.¹⁸ Eventually, the movement had launched an insurgency against the Yemen government, which took large scale even after the Saudi-led intervention in 2015 and continues till present day.¹⁹ Since the Arab Spring uprisings evolved in 2011 in Yemen, its included streets protests and desire of formal and informal opposition factions to change the elites, that were ruling the country, especially, the Saleh.²⁰ Despite the circumstances, which included the rise of the Houthi as an independent political fraction, that became capable of proposing its interests in the country, in 2011 it was not clear that Houthis will regain power in Yemen further on in 2015, that became main motive to begin the intervention.²¹ The momentous event during the Arab Spring in Yemen was connected to the agreement, which was proposed by Gulf Cooperation Council (GCC), to transfer power from Saleh to Abdrabuh Mansur Hadi, draft a new constitution and conduct free and fair elections. Saleh has accepted the deal but has not signed it, due to existing "loopholes" in the agreement.²² Consequently, the transition of power has been done with the support of UNSC,²³ however, the most violent events came further. In September 2014, the Houthis managed to seize the Capital of Yemen – the city of Sana after the decision of the governments that were aimed to cut the subsidies on the fuel.²⁴ Coincidentally, the Hadi itself

¹³ Robert D. Burrowes, *The Yemen Arab Republic: The Politics of Development 1962-1986*, (Milton Park, Abingdon, Oxfordshire: Routledge, 2017), pp. 75-82.

¹⁴ Anahi Alviso-Marino, "Impact of Transnational Experiences: The Case of Yemeni Artists in the Soviet Union", *International Journal of Archaeology and Social Sciences in the Arabian Peninsula* (2013): p.4, Accessed March 15, 2020, <https://doi.org/10.4000/cy.2229>

¹⁵ Dunbar, *supra* note 9.

¹⁶ Constitutional history of Yemen. Available on: <http://constitutionnet.org/country/constitutional-history-yemen>, Accessed on March 15, 2020.

¹⁷ Al Jazeera. Yemen: The North-South Divide, available on: <https://www.aljazeera.com/programmes/aljazeeraworld/2017/11/yemen-north-south-divide-171129152948234.html>. Accessed on March 19, 2020.

¹⁸ Farhad Rezaei, *Iran's Foreign Policy After the Nuclear Agreement*, (Kings Cross London: Palgrave Macmillan (2019), p.165.

¹⁹ Christopher Boucek, *Yemen on the Brink*, (Washington D.C: Carnegie Endowment for Int'l Peace, 2010), p.5.

²⁰ BBC. Yemen Country Profile. Available on: <https://www.bbc.com/news/world-middle-east-14704852>, Accessed on March 16, 2020.

²¹ Counter extremism project. Houthis. Available on: <https://www.counterextremism.com/threat/houthis>, Accessed on March 16, 2020.

²² Luca Ferro, and Tom Ruys, "The Saudi-led Military Intervention in Yemen's Civil War - 2015." In *The Use of Force in International Law: a Case-based Approach*, ed. Tom Ruys, et al. (Oxford: Oxford University Press, 2018), p.899.

²³ The Guardian. UN security council passes resolution demanding Yemen rebels give up power. Available on: <https://www.theguardian.com/world/2015/feb/16/un-security-council-passes-resolution-demanding-yemen-rebels-give-up-power>, Accessed on March 16, 2020.

²⁴ Ferro and Ruys, *supra* note 22.

and his government were put under arrest. However, Hadi and his government have managed to escape from the detention, and in result have rescinded his unlawful resignation, and has requested foreign support under the GCC on March 24, 2015.²⁵ The following events are known as the beginning of the campaign of Saudi coalition against the Houthi rebels, which has led to unforeseen consequences in the face of alleged violations of IHL specifically.

1.1.2. Intervention by Saudi-led Coalition

After the request for the military support from the president Hadi was sent to states of GCC, after two days, the operation “Decisive Storm” has been launched on March 26, 2015, under the official statement to protect the legitimate government of Yemen and people of Yemen, that was subject to illegitimate coup d’état performed by the Houthis.²⁶ The operation has been launched mainly by Saudi Arabia and several Gulf States such as UAE, Bahrain, Kuwait, etc. with the military and financial support from the United States and the United Kingdom.²⁷ The operation has started successfully. Hence, Saudi Arabia affirmed that the set objectives of the operation had been achieved so far and on 22 April 2015, the new operation called "Renewal of Hope" has started.²⁸ Unfortunately, it continues till the present day with long-term uncertainty concerning the prevailing circumstances, including the emergence of the humanitarian crisis, aggressive actions in the face of rocket attacks done by Houthis towards Saudi Arabia and UAE and its cities, airports and particularly its refineries. It resulted in an underestimation of opponent that has proved to be effective military and political force comparing to the strongest armies in the Gulf region. It can be concluded that intervention gave rise only to “supporting” instability, therefore from the perspective of international relations it has made Yemen as the place, where the conflict of interests of regional players, such as Iran, which supports Houthis, and Saudi-Arabia that stood for the restoration of the legitimate government of Yemen are confronted. An indirect confrontation of two major regional players has resulted in a crisis that does not have real solutions, due to the lack of instruments for cooperation and a great differentiation in political interests.

Humanitarian Crisis

Intervention by the Saudi-led coalition has resulted in the emergence of the humanitarian crisis, which reflected in nature in violations of international human rights law and international humanitarian law. Alongside with political fragmentation of the country due to organized military uprising took place, Yemen has suffered from actions and methods of warfare that government forces together with coalition forces, have employed against the Houthi separatists. Despite the attempts from international organisations, such as UN, to compel belligerents to the conflict to halt military operations, to allow humanitarian aid to be provided for affected people, in reality, support has not been provided suitably due to existing obstacles, specifically, the methods of warfare, conducted by coalition. Here reference may be done to the actual concept described in this research – airstrikes and indiscriminate attacks:

²⁵ *Ibid.*

²⁶ *Ibid.*

²⁷ *Ibid.*

²⁸ *Ibid.*

In August 2016, the Saudi-led coalition bombed and destroyed the main bridge between Hodeida and Sana'a. An estimated 90 per cent of food supplies provided by the UN's World Food Programme had previously transited the destroyed bridge.²⁹

The humanitarian situation is not only about the lack of essential drugs and food to be provided for civilians need, but it is also about the extent of violence, that has crossed the red line in Yemen in a significant way. It has been estimated that on December 2018, the Saudi coalition launched 18,000 airstrikes,³⁰ when the one-third of which have hit non-military targets.³¹ Moreover, the UN has estimated, that over 10,000 civilians were killed and around 40,000 were injured during the conflict due to inappropriate methods used to conduct warfare.³²

ACLED estimates that around 56,000 civilians and combatants were killed between January 2016 and October 2018, with an increase of more than 2,000 per month, and an expected 70,000 to 80,000 dead once research backdating casualties to the start of the war in March 2015 is completed.³³

Different sources have different numbers, but the only thing which should be taken in consideration that numbers of people, who have suffered from the conflict circumstances, are dramatically increasing and the effective way to stop such violence should be found.

1.1.3. Summary

The objective of sub-chapters mentioned above was to disclose the origins of the conflict to the reader, the time-line, which is quite essential. Moving on to the linear analysis, the origins before the actual framework of the topic are quite incomprehensible. It can be assumed that due to such violent nature of events, which Yemen was subject for in its history, the violations of law found them as foreseeable. The next chapter discusses the nature of the existing conflict in Yemen from a legal perspective, in order to understand applicable law, which is crucial for the determination of legal substantiation of alleged violations of IHL.

1.2. Legal analysis of the conflict and definitions of military methods

Before turning to the direct legal analysis about the violations that have been conducted by Saudi coalition in the conflict, it is relevant to define the legal basis that is crucial in approaching violations. Since the IHL is the law, which determines rules of how the armed conflict should be regulated, and, because there is a considerable amount of legal sources that are related to IHL, when it turns to research violations, it is essential to firstly, identify the type of conflict, and only then identify particular rules, which are suited to the chosen type of conflict. Even though an explanation of violations in Yemen conflict by Saudi coalition mainly falls under CIHL, the specific legal sources should be observed, because in approaching violations of IHL there can be substantive differentiation in understanding the scope of application of legal rules to the particular type of conflict. After all, if a specific

²⁹ Tristan Dunning, "Yemen - the 'worst humanitarian crisis in the world' continues", University of Queensland(2018), p.3. Available on: https://www.researchgate.net/publication/329544463_Yemen_the_%27worst_humanitarian_crisis_in_the_world%27_continues, Accessed on March 20, 2020.

³⁰ *Ibid.* p.1.

³¹ *Ibid.*

³² *Ibid.*, p.7.

³³ *Ibid.*

situation falls under the concrete type of conflict, it will lead to the specific application of the law on armed conflict, respectively.

Since the laws on the armed conflict were established before the term of NIAC was “established” in Additional Protocol II to Geneva Conventions in June 1977,³⁴ although internationally recognized treaties, documents, and ad hoc tribunals, unfortunately, had not determined the proper definition of NIAC that actually can be applied for cases, where alleged violations of law took place. Therefore, it is vital to elaborate on it, because, firstly, the issue of the distinction between NIAC and IAC types of conflict from a legal perspective has raised new term of “internationalized NIAC”. It covers the subject of the foreign intervention that takes place in support of state party or non-state party in the internal conflict, and which is directly evidenced in Yemen. Secondly, what law should be applied in case there are de-facto two types of conflicts? It is crucial to observe the conditions for the application of legal rules to the conflict, when internationalized NIAC took place together with NIAC. Furthermore, following subchapters observe two legal sources that specify the definition of NIAC, hence - Internationalized NIAC. First is Common Article 3 to Geneva Conventions (hereinafter “CA3”), and Additional Protocol II to Geneva Conventions (hereinafter “APII”). Since the CA3 is considered as the principal legal source of determination of the NIAC and acts as the general principle of IHL, APII supplements it respectively. By observing these legal sources, it can be explained, what applicable law is relevant for the type of conflict existing in Yemen, and, how is it possible to determine conducted violations as unlawful actions in a particular type of conflict, which Yemen conflict fall under given considerations. Therefore, fact, which must be taken into account is, that Yemen and coalition states, which are Saudi-Arabia, United Arab Emirates, Bahrain, Kuwait, Egypt, Jordan, Morocco, as well as Qatar and Sudan in the first phase of intervention are parties to the APII related to the protection of victims in NIAC and CA3 to all Geneva Conventions. All parties are bound by the rules of respective Protocol and CA3, which is partially used as the applicable law in further research.³⁵ Moreover, states to the coalition and its forces are bound by customary rules that are considered as the general principles of law, and which derive from practice accepted by the law, indeed, these rules are used as the principal legal source for explaining unlawfulness of acts in analysed situations.

The following subchapters define Yemen conflict from a legal point of view, underlying, firstly the type of conflict, which Yemen conflict is applied to. Next step addresses the threshold of armed conflict, and does the Yemen conflict meet such threshold with pointing out applicable law in the face of CA3 to Geneva Conventions and APII. Therefore, the chapter defines the term of indiscriminate attacks, and the use of cluster munitions under IHL and related legal sources.

³⁴ International Committee of the Red Cross(ICRC), *Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)* , (8 June 1977), 1125 UNTS 609, available on: <https://treaties.un.org/doc/Publication/UNTS/Volume%201125/volume-1125-I-17513-English.pdf>, Accessed on March 25, 2020.

³⁵ State parties to Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II). Available on: https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/States.xsp?xp_viewStates=XPages_NORMStatesParties&xp_treatySelected=475, Accessed on April 11, 2020.

1.2.1. Classification of the Yemen conflict as NIAC

Firstly, it is important to define what NIAC is and explain why the Yemen conflict is likely to be considered as NIAC basis on the subsequent legal considerations. It should be said that drafters of the Geneva Conventions, possibly, did not think that implementation of certain rules of the Conventions, such as CA3, will be used extensively and become a subject of different legal disputes and various interpretations. Drafters have not clearly defined NIAC in CA3 provision, leaving behind the simple definition of it, which legally raises certain issues to be discussed:

the armed conflict not of an international character occurring in the territory of one of the High Contracting Parties.³⁶

By comparing such interpretation with Common Article 2 to Geneva Conventions, related to IAC³⁷, above-mentioned provision of CA3 deals with expression that outlines NIAC as the armed conflict, which is “not of international character”. It goes contrary to CA2, referred to IAC, which states that application of the Geneva Conventions takes place when there is declared war or any other armed conflict, which arise between two or more States.³⁸ Consequently, it can be said that NIAC practically applies to the hostilities, that are waged between government forces and one or more organized armed groups, and also between armed groups internally in the state.³⁹ In *Tadic* case International Tribunal for Former Yugoslavia (hereinafter “ICTY”) has interpreted context of the existence of armed conflict, specifically NIAC in second part of the provision. It exists when,

there is a ...protracted armed violence between governmental authorities and organized armed groups or between such groups within a State.⁴⁰

The basis on the historical background of Yemen conflict, it clearly defines that violence in Yemen take place between the official government of Hadi and the opposing party to his government - the Supreme Political Council (hereinafter “SPC”), which are considered as the non-state actor that launched an uprising in 2011 during the Arab Spring events. Therefore, the hostilities take place on the territory of the High Contracting party – Yemen. It is pertinent also to clarify why SPC, including Houthi are considered as the non-state actor in Yemen conflict, because this circumstance is crucial in determining presence of NIAC. Firstly, SPC is not internationally recognized government by UN and any other civilized nations or organisations. Secondly, SPC is directly opposing officially recognized government of Yemen by the military means, and have capacity to influence the state of art internally by dictating its own policies. Thirdly, SPC is an organized political actor, which is not directly connected to state, but is confronting state vital interests by continuing destabilizing internal situation in the country.

³⁶ International Committee of the Red Cross(ICRC), *Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (First Geneva Convention)*, (12 August 1949), 75 UNTS 35, Common Article 3, pp.35-36, available on: <https://www.icrc.org/en/doc/assets/files/publications/icrc-002-0173.pdf>, Accessed on March 25, 2020.

³⁷ And to the Scope of the Application of the four Geneva Conventions.

³⁸ International Committee of the Red Cross(ICRC), *Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (First Geneva Convention)*, 75 UNTS 35 (12 August 1949), Common Article 2, pp.35, available on: <https://www.icrc.org/en/doc/assets/files/publications/icrc-002-0173.pdf>, Accessed on March 25, 2020.

³⁹ International Committee of the Red Cross (ICRC). *How is the Term "Armed Conflict" Defined in International Humanitarian Law? Opinion Paper, March 2008*, p. 3. Available on: <https://www.icrc.org/en/doc/assets/files/other/opinion-paper-armed-conflict.pdf>, Accessed on March 25 2020.

⁴⁰ ICRC, *supra* note 38.

From this point, it can be said that the Yemen conflict can be defined as NIAC relying on the basic interpretation of CA3 and court considerations derived from *Tadic* judgement. However, the approach is not simple as it looks like, because, the factor of foreign intervention should be taken in consideration, when the case is applied to the particular type of conflict; and, certain clarification of legal circumstances must be defined.

Legal effect of foreign intervention to the status of conflict is the next step, which is crucial in explaining the nature of Yemen conflict. From a theoretical point of view, the approach of Internationalized NIAC has absolute value than the approach of NIAC, because the CA3 and APII cover the traditional criteria set to determine applicable law for NIAC; however, the determination of applicable law to Internationalized NIAC should be done based on the observation of confronting parties. In order to avoid doubts in the analysis, the author uses the approach established by International Committee of the Red Cross (hereinafter "ICRC"), which is called "fragmented approach" to determine applicable law in terms of Internationalized NIAC.⁴¹ The fragmented approach includes the determination of applicable law basis on the nature of bilateral relationships of belligerents separately together with consideration of the facts that occur on the ground of the conflict.⁴² In other words, as per CA3, if the hostilities are going between non-state party and the state party, the bilateral relationships in armed conflict are regulated by the law of NIAC, because the law of NIAC explains rules of confrontation between state and non-state actors.⁴³ On the other hand, the law of IAC regulates bilateral relationships between two State parties, which are in a military confrontation, and where non-state armed group is not involved as the party.⁴⁴ Accordingly, if the foreign intervention took place in support of State that is fighting against the non-state armed group, it does not mean that relationships have turned to be internationalized between each other. There is no "interference" of IAC, because state that has intervened to support another state military activity against non-state armed group, therefore foreign party has commenced military activity against such non-State armed group, and not another legally recognized state. Thinking in such manner crucial point is releveled, that from the perspective of IHL, the foreign intervention is considered as the separate factor to the already existing NIAC.⁴⁵ The legal rules applicable to NIAC should be directly applicable to the internationalized type of NIAC, because, firstly, the belligerent relationship between state parties that intervened on behalf another State party in fighting against non-state party exists, secondly, state party that intervened, has commenced a military activity against the Non-State party respectively. In the *Prosecutor v. Thomas Lubanga Dyilo*, Pre Trial Chamber of International Criminal Court (hereinafter "ICC") stated that

an internal armed conflict that breaks out on the territory of a State might become international – or, depending on the circumstances, be international alongside an internal armed conflict – if i) another State intervenes in that conflict through its troops (direct intervention) or if ii) some of the participants in the internal armed conflict act on behalf of that other State (indirect intervention)".⁴⁶

⁴¹ Tristan Ferraro, "The ICRC's legal position on the notion of armed conflict involving foreign intervention and on determining the IHL applicable to this type of conflict", *International Review of the Red Cross* (2015): p.1241. Accessed March 22,2020, <https://doi.org/10.1017/S1816383116000448>

⁴² *Ibid.*

⁴³ ICRC, *supra* note 36.

⁴⁴ Ferraro, *supra* note 41, p. 1242.

⁴⁵ *Ibid.*

⁴⁶ Ferraro, *supra* note 41, p. 1241.

In the case of Yemen, the intervention can be defined as direct, because the Saudi-led coalition has intervened directly using its aircraft and ground forces in support of the official Yemen government. Concerning fragmented approach, it can be concluded that Yemen case is unique, because it includes both NIAC type and Internationalized NIAC, because the military confrontation is going between Yemen government and Houthis on the one hand, and on the other hand, it is going between coalition against Houthi, where the coalition acts on behalf of the official government(as co-belligerent) by directly supporting it in military means.

1.2.2. Applicable law and legal test

Since the argument mentioned in above-mentioned sub-chapter related to "fragmented approach", that law applicable to NIAC applies to the Internationalized NIAC, if the firstly, the state is involved in a military confrontation with the non-state group with the intervention of the third states or the group of the countries has value to support the government against the non-state armed group, and consequently does not has the effect of internationalizing relationships between armed groups, and

Under the fragmented approach described above, the ICRC considers that when a foreign power intervenes in support of the State party, the law of NIAC applies.⁴⁷

To determine the affiliation of the Yemen conflict to NIAC, the particular legal test should be conducted, which points out the material elements to affirm the existence of the armed conflict. The "test" for armed conflict derives from *Tadic*, *Limaj* and *Boškovski* judgements, where the Trial Chamber has identified two criteria for the case of internal armed conflict, namely the (1) organisational element of the parties to the conflict, whether such conflict diverges from activities⁴⁸ done by parties to the conflict, and (2) when an armed conflict meet the required intensity threshold.⁴⁹ The test has been established with purposive nature, in order to distinguish armed conflict from less violent events, such as terrorist activities, riots or demonstrations.⁵⁰ Organisational element is used to explain the basis on the context of Article 1(1) of APII and *Tadic* Appeal Judgement, *Limaj*, *Halilovic* Trial Judgements. Conversely, the intensity threshold is used to explain the basis on Article 1(2) of APII and *Tadic* Appeal Judgement, respectively.

Organizational element

Firstly it is crucial to define the conditions, which elaborate term of "armed conflict" in the context of APII, and which is critical to determining NIAC existence. In this regard, those firstly came from understanding the criteria of "armed group", which is first, the opposing

⁴⁷ Ferraro, *supra* note 41, p. 1243.

⁴⁸ Banditry, unorganized and short-lived insurrections, or terrorist activities.

⁴⁹ *Prosecutor v. Du[Ko Tadi] a/k/a "DULE"* (Trial Judgement and Opinion), IT-94-1-T, International Criminal Tribunal for Former Yugoslavia (ICTY), 7 May 1997, para. 562, available on: <https://www.icty.org/x/cases/tadic/tjug/en/tad-ts170507JT2-e.pdf>. Accessed on March 23, 2020.

See also: *Prosecutor v. Fatmir Limaj et.al.* (Trial Judgement), IT-03-66-T, International Criminal Tribunal for Former Yugoslavia (ICTY), 30 November 2005, para.84, available on:

<https://www.icty.org/x/cases/limaj/tjug/en/lim-tj051130-e.pdf>. Accessed on March 23, 2020; *Prosecutor v. Ljube Boškovski and Johan Tarčulovski*(Trial Judgement), IT-04-82-T, International Criminal Tribunal for Former Yugoslavia (ICTY), 10 July 2008, paras 175-176, available on:

https://www.icty.org/x/cases/boskoski_tarculovski/tjug/en/080710.pdf. Accessed on March 23, 2020.

⁵⁰ *Prosecutor v. Ljube Boškovski and Johan Tarčulovski* (Trial Judgement), IT-04-82-T, 10 July 2008, para 175, available on: https://www.icty.org/x/cases/boskoski_tarculovski/tjug/en/080710.pdf. Accessed on March 23, 2020.

party to the government, secondly, the armed group that take part in hostilities.⁵¹ Moreover, it has been evidenced that the specific degree of organisation is required for the elaboration of the armed group for the purpose of CA3. However, it has not been determined in jurisprudence, so the main focus for the test goes under the context of APII.⁵² The common practice is set to differentiate acts of violence that are resulted from hostilities between two parties that have certain obligations and status to act as a military structure, which is different from acts of banditry, rebellion or the protests by the group of people, which does not have the substantive character to be qualified as an armed group.⁵³ Here, Article 1(1) of APII related to the material scope of application clearly defines armed groups as

Dissident armed forces or other **organized** armed groups which, **under responsible command, exercise** such **control** over a **part of its territory** as to enable them to **carry out sustained and concerted military operations**.⁵⁴

Therefore, in *Boškovski* case the Trial Chamber gives reference to *Tadic* Appeal Judgement, where the Appeals Chamber has observed that

“an organised group [...] normally has a structure, a chain of command and a set of rules as well as the outward symbols of authority” and that its members do not act on their own but conform “to the standards prevailing in the group” and are “subject to the authority of the head of the group”.⁵⁵

Furthermore, in *Limaj* Trial Judgement Trial Chamber noted that non-state party to the conflict should reflect some degree of an organisation, and that will establish the existence of armed conflict.⁵⁶ In *Halilović* case Trial Chamber relied on the idea that organizational character of armed group in the face of Croatian Defence Council, the Bosnian-Serb army and the Bosnian army is the satisfied basis on the engagement of military entities in military tactics that are able to perform and achieve military objectives.⁵⁷ Such interpretation is directly applicable for the SPC and Houthis, who have conducted a significant amount of successful military operations on the Yemen territory against governmental and coalition forces.⁵⁸ Houthi are, as per historical background, independent military movement with its current leader Abdul Malik al-Houthi, which firstly, has waged military uprising and has seized the significant amount of the territory that belonged to the official government. Regarding organisational structure, the joint army of Houthi and Saleh forces has a clear military hierarchy of commanding officers, which are in the rule of its armed forces; hence, the centralised military command of the armed forces exists between a ground, missile and naval forces.⁵⁹ Additionally, the SPC has a clear political division to ministries, which are

⁵¹ International Committee of the Red Cross (ICRC). Direct Participation in hostilities, available on: <https://casebook.icrc.org/glossary/direct-participation-hostilities>, Accessed on March 23, 2020.

⁵² *Boškovski* case, *supra* note 50, para. 194.

⁵³ ICRC, *supra* note 34, article 1(2).

⁵⁴ ICRC, *supra* note 34, article 1(1).

⁵⁵ *Boškovski* case, *supra* note 50, para. 195.

⁵⁶ *Prosecutor v. Fatmir Limaj et al.* (Trial Judgement), IT-03-66-T, International Criminal Tribunal for Former Yugoslavia (ICTY), 30 November 2005, para.89, available on: <https://www.icty.org/x/cases/limaj/tjug/en/lim-tj051130-e.pdf>. Accessed on March 24, 2020.

⁵⁷ *Prosecutor v. Sefer Halilović* (Trial Judgement) IT-01-48-T, International Criminal Tribunal for Former Yugoslavia (ICTY), 16 November 2005 paras. 161-163, 165-166, 168-172, available on: <https://www.icty.org/x/cases/halilovic/tjug/en/tcj051116e.pdf>, Accessed on March 24, 2020.

⁵⁸ Michael Knights, “The Houthi War Machine: From Guerilla War to State Capture”, *Combating Terrorist Center at West Point* (2018): pp. 18-21, available on: <https://ctc.usma.edu/wp-content/uploads/2018/09/CTC-SENTINEL-092018.pdf>. Accessed on March 24, 2020.

⁵⁹ International Institute for Strategic Studies, “Iran’s Networks of Influence in the Middle East”, (Routledge, 2019), p.52.

responsible for ruling de-facto unrecognized government, therefore SPC and Houthi have their own flag, slogan and ideology which is famous for its abhorrence towards US and Israel.⁶⁰ From this perspective, it can be said that SPC is the political "entity", which has its armed group in the face of Houthi movement and Pro-Saleh forces, under, the criteria of "armed group" for recognition of armed conflict fit to Yemen case.

Level of Intensity

Intensity threshold is a bit more complicated to be assessed from a legal perspective, because there is no clear explanation what intensity of hostilities should be confirmed in the context of APII and CA3, to demonstrate the existence of an armed conflict in Yemen in the context of NIAC and to what extent the violations of IHL are provable. Article 1(2) of APII states that

This Protocol shall not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflicts.⁶¹

Since APII clearly underlines the material scope of the application, on the other hand, it does not clarify what the criteria of the level of intensity to distinguish situations that have no ground to be legally counted as an armed conflict from the legally identified armed conflict are.

Firstly, in order to differentiate NIAC from the sporadic acts of violence⁶², the criteria of protracted violence had been assessed in the *Tadic* judgement by the Trial Chamber⁶³. It is a preferably additional temporal element for defining the intensity level in conflict as NIAC, which is used for examining situations of violent nature, taking into consideration exclusion of the temporal limits of the indictment, in order to identify the actual "protracted" nature of the violence in the conflict.⁶⁴ For instance, In *Celebići* Trial Judgement, Trial Chamber has found that armed violence in Bosnia-Herzegovina has continued from March 1992 until November 1995, with indictment period from May to December 1992, where the protracted violence has been evidenced.⁶⁵ With regard to the Yemen conflict, since the paper covers the substantive analysis of events starting from September 2015, so, it means that the element of protracted violence should be assessed mainly from September 2015. The duration of violence has been ongoing for five years, so, it can be said that the requirement of the term has been met at least from a factual point of view. Furthermore, with reference to *Tadic* Trial Judgement, ICTY had defined in *Haradinaj* case the primary indicative factors to be met in analysing intensity threshold, which is connected to protracted nature of violence.⁶⁶ The most relevant for Yemen case scenario are:

(1) The gravity of violence on the territory of the state should be significant, including the serious nature of attacks and increase in clashes;⁶⁷ Therefore, the extent of destruction and

⁶⁰ *Ibid.*, p.166.

⁶¹ ICRC, *supra* note 34, Article 1(2).

⁶² ICRC, *supra* note 34, Article 1(2).

⁶³ *Tadic* case, *supra* note 49, paras. 561-562.

⁶⁴ *Boškovski* case, *supra* note 50, para. 186.

⁶⁵ *Prosecutor v. Zejnil Delacic et al.* (Trial Judgement), IT-96-21-T, International Criminal Tribunal for Former Yugoslavia (ICTY), 16 November 1998, paras 3, 108, 183, available on: https://www.icty.org/x/cases/mucic/tjug/en/981116_judg_en.pdf, Accessed on March 26, 2020.

⁶⁶ *Prosecutor v. Ramush Haradinaj et. al.* (Trial Judgment), IT-04-84-T, International Criminal Tribunal for Former Yugoslavia (ICTY), 3 April 2008, para.49, available on: <https://www.icty.org/x/cases/haradinaj/tjug/en/080403.pdf>, Accessed on March 26, 2020.

⁶⁷ *Ibid.*, paras 49, 91,99.

the number of casualties, including civilians that have suffered from the hostilities, and have forced to flee zones, where the hostilities take place.⁶⁸ With regard to Yemen, from March 24, 2015, till January 4, 2020, have been evidenced 43,392 violent events, including violations of law, armed clashes, violence against civilians, demonstrations etc., and 102,043 reported fatalities, including the deaths among the civilian population.⁶⁹ Consequently, the basis on such big numbers, it can be said that the gravity of violence and magnitude of attacks in Yemen has remained significant from the moment when the coalition commenced its intervention till current days, because the conflict is still ongoing.

(2) The conflict attracts the attention of United Nations Security Council (hereinafter “UNSC”) with subsequent resolutions to be passed.⁷⁰ Since the retake of power by Houthi occurred in 2015, UNSC has passed 9 resolutions on different matters,⁷¹ including extension of assets freezing, arms embargo, but the important ones are Resolution 2201 from 15 February 2015, which condemns Houthi unilateral actions to dissolve official government of Yemen,⁷² and Resolution 2451 with an aim to respecting Stockholm agreement on the ceasefire in Yemen.⁷³

To conclude considerations on the above mentioned criteria, it is hard to say, can the armed conflict under NIAC be identified if only one criterion meets for its determination? If the armed conflict has occurred and is defined as "armed" taking into consideration circumstances, which reflect its nature, usually, it should meet more than one criterion that elaborates its occurrence, because criteria are connected to each other. In Yemen conflict, government is in confrontation with the non-state actor, such as, SPC and Houthi, which is an group that has organizational character (criterion 1) basis on the above considerations, hence, the existing “confrontation” raises criterion of the intensity hostilities that happens in protracted way. (criterion 2).

1.2.3. Status of indiscriminate attacks under IHL

Concerning the definition of indiscriminate attacks, which are taken as the core in further legal analysis, it is essential to note that APII does not clearly determine rules that set emphasis on definition of indiscriminate attacks, as well as state practices in non-international armed conflict.⁷⁴ Conversely, the idea of CIHL Rule 12 that relates to the definition of indiscriminate attacks only appears in reasoning within the prohibition of attacking civilian population written in Article 13(2) of APII,⁷⁵ and article 3(8)(a) of the Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices (Protocol II) related to the placement of indiscriminate weapons being subject that is not directed

⁶⁸ *Tadic* case, supra note 49, para. 565.

⁶⁹ Armed Conflict Location and Event Data Project (ACLED). Regional overview: the Middle East 15 December 2019 – 4 January 2020, available on: <https://acleddata.com/2020/01/10/regional-overview-middle-east-15-december-2019-4-january-2020/>. Accessed on March 28, 2019.

⁷⁰ *Tadic* case, supra note 49, para. 567.

⁷¹ Office of the special envoy of the Secretary-General for Yemen (OSESgy). Security Council resolutions, available on: <https://osesgy.unmissions.org/security-council-resolutions>, accessed on April 08, 2020.

⁷² United Nations Security Council (UNSC). Resolution 2201(2015). Available on: <http://unscr.com/en/resolutions/doc/2201>, accessed on April 08, 2020.

⁷³ United Nations Security Council (UNSC). Resolution 2451(2018). Available on: <http://unscr.com/en/resolutions/doc/2451>, accessed on April 08, 2020.

⁷⁴ State practices varies from case to case basis and does not clearly define the definition of indiscriminate attack.

⁷⁵ ICRC, supra note 34, Article 13(2).

against military objective,⁷⁶ and which is applicable to the NIAC,⁷⁷ reflects the definition of indiscriminate attacks set in the customary rule, which implies an attack by bombardment or the attack which may cause incidental loss of civilian life.⁷⁸ It is important to note that the current analysis set emphasis on the indiscriminate attacks, meaning the airstrikes, but not the conventional tools of combat that Protocol II to Convention on Certain Convention weapons covers,⁷⁹ e.g. mines, baby-traps and other devices, hence, it falls out of the scope of the application of the protocol, but provides with the relevant reflection of the definition. Consequently, the only legal source that is relevant to be taken into consideration about indiscriminate attacks, meaning airstrikes, are customary rules, which are accompanied by the legal practice. Rule 12 defines indiscriminate attacks as those,

- (a) which are not directed at a specific military objective;⁸⁰
- (b) which employ a method or means of combat which cannot be directed at a specific military objective; or⁸¹
- (c) which employ a method or means of combat the effects of which cannot be limited as required by international humanitarian law;⁸²

Moreover, consequently, in each such case, are of a nature to strike military objectives and civilians or civilian objects without distinction.⁸³

Indiscriminate attacks in its nature are prohibited. Moreover, those may result from indiscriminate means by using banned weapons or the particular method of combat.⁸⁴ There are two types of indiscriminate forms of combat, first is, when an attack is carried out without any effort to identify objects as military objects, these are also called “blind attacks” or “intentional attacks” against civilians and civilian objects and are a more rare case, which is investigated, when military operations are carried out.⁸⁵ Second are the type of attacks, that are directed against military personnel or objective, which is located or built-in scattered or “single” way with civilian objects or where civilians are located. In such case, the prohibition of attack applies if an attacking party can determine each military target separately and conduct an attack on separate object or combatants respectively, however, it is prohibited because the nature of an object is still joint with the means of a civilian objective, or civilians are present.⁸⁶ However, if objects are not clearly

⁷⁶ International Committee of the Red Cross(ICRC), *Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices(Protocol II) to Convention on Prohibitions or Restrictions on The Use of Certain Conventional Weapons which may be deemed to be excessively injurious or to have indiscriminate effects*, article 3(8)(a), Available on: https://www.icrc.org/en/doc/assets/files/other/icrc_002_0811.pdf, accessed on April 08, 2020.

⁷⁷ International Committee of the Red Cross(ICRC), *Convention on Prohibitions or Restrictions on The Use of Certain Conventional Weapons which may be deemed to be excessively injurious or to have indiscriminate effects(amended 28 November 2003)*, 21 January 1983, 1342 UNTS 137, Article 1(2), available on: https://www.icrc.org/en/doc/assets/files/other/icrc_002_0811.pdf. Accessed on April 08, 2020.

⁷⁸ International Committee of the Red Cross (ICRC), Customary International Humanitarian Law Database, Rule 12, available on: https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule12, Accessed on April 8, 2020.

⁷⁹ ICRC, *supra* note 77, article 1(1).

⁸⁰ ICRC, *supra* note 79.

⁸¹ *Ibid.*

⁸² *Ibid.*

⁸³ *Ibid.*

⁸⁴ Michael N. Schmitt, Charles H.B. Garraway, Yoram Dinstein, “The Manual on the Law of Non-International Armed Conflict”, *International Institute of Humanitarian Law*, (2006): p.20 , available on: https://www.fd.unl.pt/docentes_docs/ma/jc_MA_26125.pdf, Accessed on April 9, 2020.

⁸⁵ *Ibid.*, p.21.

⁸⁶ *Ibid.*

separated, the attack on such can be considered as the legitimate, attack does not fall under the term of being indiscriminate, because the presence of combatants empowers belligerent to conduct attack in circumstance, if the presence of military objects is detected. Moreover, if an attacking party is not able to determine military target separately, it is questioned whether the planned conduct is proportionate.⁸⁷

In the Prosecutor V. Kupresic the framework of the lawfulness of indiscriminate attacks falls under the existence of the cumulative effect, whether the single or repeated attacks target military objects, but it incidentally caused damage to the civilians and civilian objects too.⁸⁸ If attacks are repeated, it can be simply concluded that conduct is unlawful, because it is clear and evident that attacks are not targeted to the military objective.⁸⁹ In case of single attacks, it can be considered that generally, it is questionable, whether it(single attack) can be considered as lawful conduct because party have not respected precautions to avoid incidental damage to civilians.⁹⁰ The problem of precautions is in lack of requirement to perform precaution, if those are not feasible or practically possible, because there is no clear legal rule that elaborates on that. Article 3(10) of Amended Protocol II to the Convention on Certain Conventional Weapons, states that,

All feasible precautions shall protect civilians from the effects of weapons to which this Article applies. Feasible precautions are those precautions which are practicable or practically possible taking into account circumstances ruling at the time, including humanitarian and military considerations.⁹¹

It can be concluded, that even if the single indiscriminate attack has triggered visible damage to civilians, the protection of civilians was not respected. Hence, the conduct can be considered unlawful. However, such interpretation should be reaffirmed by the factual basis of the situation.

1.2.4. Status of cluster munitions under IHL

According to Article 2(2) of Convention on Cluster Munitions,

“Cluster Munition” means a conventional munition that is designed to disperse or release explosive submunitions each weighing less than 20 kilograms and includes those explosive submunitions.⁹²

In the context of Yemen conflict, none of the countries to the Saudi-coalition have accessed, signed or ratified the convention,⁹³ hence, the coalition states are not bound to apply rules of the Convention in the cases, where any breach of convention rules occurred. Despite this fact, Customary IHL rules, which coalition states are bound to,⁹⁴ specifically, rule 71 related to the

⁸⁷ *Ibid.*

⁸⁸ *Prosecutor v. Kupresic et al* (Trial Judgement), IT-95-16-T, International Criminal Tribunal for Former Yugoslavia (ICTY), 14 January 2000, para.526, available on: <https://www.icty.org/x/cases/kupreskic/tjug/en/kup-tj000114e.pdf>. Accessed on April 10, 2020.

⁸⁹ *Ibid.*

⁹⁰ *Ibid.*

⁹¹ *Supra* note 77, Article 3(10).

⁹² International Committee of the Red Cross(ICRC), *Convention on Cluster Munitions*, 10 November 2008, 2688 UNTS 39, Article 2(2), Available on: <https://treaties.un.org/doc/Publication/CTC/26-6.pdf>. Accessed on April 10, 2020.

⁹³ The Convention on Cluster Munitions: State parties and signatories by region, available on: <https://www.clusterconvention.org/the-convention/convention-status/>. Accessed on April 10, 2020.

⁹⁴ See example of ICJ Statute Article 38(1)(b), which states that Court in case of dispute “shall apply international custom, as evidence of a general practice accepted as law”, referring to the idea that international customary law, including customs on humanitarian law are accepted as the practice and states are bound by the

prohibition of use weapons that are in nature indiscriminate applies to cluster munitions basis on the provided examples from ICRC.⁹⁵ From one point, it can be said that rule on the prohibition of indiscriminate attacks is linked with the rule on the prohibition of indiscriminate weapons, or even one supplements another, because nature of indiscriminate attacks may be based on the use of indiscriminate weapons.⁹⁶ However, it has been articulated in separate custom. Furthermore, the applicability of Rule 71 to NIAC from one perspective is a questionable, because Additional Protocol I⁹⁷ and ICC Statute⁹⁸ limit the application of the rule to the IACs'. However, it has been said that if the use of indiscriminate attacks has been accepted in NIAC, the use of indiscriminate weapons can be equalized as the matter of prohibition of law in a very similar manner.

Rule 71, in fact, like Rule 70, could be used on its own as a basis for extending weaponry prohibitions to all armed conflicts, since the nature of a weapon will be the same, whatever the circumstances and situation of its use.⁹⁹

Concerning the use of indiscriminate weapons, such as cluster munitions, it is vital to elaborate not on the fact of the use of the munitions, because these *ipso facto* can be considered unlawful per customary law.¹⁰⁰ Attention should be taken on the conditions and effects of the use of illegal weapons in an unlawful manner, particularly by observing circumstances of targeting the civilian population and civilian objects in case of indiscriminate attack. ICJ revealed in the advisory opinion on the legality of the threat or use of nuclear weapons by making explicit remarks on the effect of the use of prohibited weapons with relation to the essential sense of the IHL principles, clarifying that state must ensure the protection of the civilian population and civilian objects, as well as respect the principle of distinction between civilians and combatants, moreover, the state must not target civilians by

obligation to respect such practice established as the law. United Nations(UN), *Statute of the International Court of Justice*, (17 December 1963), available on: https://legal.un.org/avl/pdf/ha/sicj/icj_statute_e.pdf, Accessed on April 10, 2020. See also Article 1(2) of Additional Protocol I to the Geneva Conventions, which states that, "In cases not covered by this Protocol or by other international agreements, civilians and combatants remain under the protection and authority of the principles of international law derived from established custom, from the principles of humanity and from the dictates of public conscience." International Committee of the Red Cross(ICRC), *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflict (Protocol I)*, 8 June 1977, 1125 UNTS 3, Available on: Available on: https://www.icrc.org/en/doc/assets/files/other/icrc_002_0321.pdf, Accessed April 10,2020.

⁹⁵ International Committee of the Red Cross (ICRC), Customary International Humanitarian Law, Rule 71, Available on: https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule71. Accessed on April 11, 2020.

⁹⁶ David Turns, "Weapons in the ICRC study on Customary International Humanitarian Law", *Journal of Conflict & Security Law* (2006): p.214, available on: HeinOnline. Accessed on April 11, 2020.

⁹⁷ See Article 35(2) of API which provides: "It is prohibited to employ weapons, projectiles and material and methods of warfare of a nature to cause superfluous injury or unnecessary suffering". International Committee of the Red Cross(ICRC), *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflict (Protocol I)*, 8 June 1977, 1125 UNTS 3, Available on: Available on: https://www.icrc.org/en/doc/assets/files/other/icrc_002_0321.pdf, Accessed April 11,2020.

⁹⁸See Article 8(b) and b(xx) of Rome Statute on International Criminal Court that provides: "Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts: " "Employing 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 conflict, provided that such weapons, projectiles and material and methods of warfare are the subject of a comprehensive prohibition and are included in an annex to this Statute, by an amendment in accordance with the relevant provisions set forth in articles 121 and 123" . UN General Assembly, *Rome Statute of the International Criminal Court(last amended 4 April 2020)*, 17 July 1998, ISBN 92-9227-227-6, Available on: <https://www.icc-cpi.int/nr/rdonlyres/add16852-ae9-4757-abe7-9cdc7cf02886/283503/romestatuteng1.pdf>, Accessed April 11,2020.

⁹⁹ Turns, *supra* note 98, p.214.

¹⁰⁰ Turns, *supra* note 98, p.208.

making them as an object of attack, therefore, use weapons, that are incapable of distinguishing between civilian and military targets.¹⁰¹ For such consideration, states are limited in nature of their choice to use certain weapons that may cause unnecessary suffering to the civilian population; therefore, cluster munitions apply in this case because the magnitude of damage, which weapon poses is significant.¹⁰²

1.2.5. Summary

Above-mentioned considerations set a clear understanding of how the Yemen conflict should be determined, what legal issues have been raised concerning the analysis of the type of the conflict, what applicable law should be used. Regarding applicable law determination, it can be concluded that there is no practical difference of application of specific legal rules if the conflict is considered as the Internationalized NIAC and not a “default” NIAC. Fragmented approach established by ICRC explains the way, how Internationalized NIAC is linked to the fundamental NIAC basis on the existing belligerent relationships. In Yemen, intervention by the coalition has turned the conflict in the phase of Internationalized NIAC, and, the criteria of "organizational character" and appropriate "level of intensity" is respected. Therefore, it can be summarized that legal rules applicable to NIAC, hence, CA3, APII and relevant rules of CIHL apply to the Yemen conflict, respectively.

2. ASSESSMENT OF VIOLATIONS OF IHL IN YEMEN BY SAUDI-LED COALITION

The current chapter assesses violations of IHL in Yemen by Saudi-led coalition, by explaining unlawfulness of conducted actions depending on different situations, where indiscriminate attacks and use of cluster munitions have been evidenced. For its part, the unlawfulness of the conducts can be determined from different projections depending on circumstances of the situation, limits of the law and existing legal practices of norms and standards related to the application of the specific rules. The approach is followed by explaining chain of analysis: firstly, explanation of the situation is carried out, where the alleged violations are evidenced, secondly, determination of the legal issues, that set the scope of the applicable law, thirdly, applicable law that is suitable in explaining unlawfulness of actions, fourthly, legal analysis of “unlawfulness” together with the found applicable law to particular situation, where the violation is alleged. Chapter allocates cases of indiscriminate attacks, such as attacks on steam power plant housing complex, attack on al-fyoush cattle market, where civilian population and civilian objects were attacked as well as the attack on cement factory with the use of cluster munitions.

2.1. Attack on Steam power plant housing complex near Mokha city

Facts of the case

On July 24, 2015, the Saudi coalition launched airstrikes on residential compound houses, where workers of the steam power plant and their family members lived, that located near the

¹⁰¹ *Legality of the threat or use of nuclear weapons*, Advisory opinion, 8 July 1996, ICJ GL 95, para 78.

Available on: <https://www.icj-cij.org/files/case-related/95/095-19960708-ADV-01-00-EN.pdf>, Accessed on April 11, 2020.

¹⁰² *Ibid.*

city of Mokha, therefore, airstrikes resulted in the killing of 63 civilians and injuries of 50 other people.¹⁰³ Amnesty International and Human Rights Watch being as the credible sources from the ground has visited power plant three days after the airstrike has been conducted and have taken 21 interviews with residents of the city and workers of the plant, who has not suffered from the airstrike.¹⁰⁴ Resident Amal Sabri commented about the situation as following:

“something out of judgement day. Corpses and heads scattered, engulfed by fire and ashes”¹⁰⁵

According to the interviews, it was evidenced, that nine bombs were dropped targeting main housing complex and maintenance equipment storage, a second housing complex and nearby territory.¹⁰⁶ Amnesty International observers have not found the evidence, that residential complex and power plant were used for military purposes, therefore, it was not evidenced that military personnel was present in the buildings; therefore, it was also evidenced that one airstrike hit second housing compound, which is located 1 kilometre north from the main complex resulted in civilian casualties.¹⁰⁷ (see Annex 1). The vital point in this situation is that Military facility was detected about 800 meters South-East to the main housing complex, where the airstrikes were conducted. It was not evidenced that airstrikes hit a military facility.¹⁰⁸ Therefore, plant workers said that the military base was abandoned, furthermore, Human Rights Watch observers have not found any presence of activity on the base, confirming that it was without the presence of military forces.¹⁰⁹

Since the facts of the situation are considerably clear, it is essential to observe questions with relation to given facts of the case, to analyze applicable law and implications to the specific situation. Are workers considered as the civilian population and, is housing complex considered as a civilian object under IHL? Are airstrikes on housing complex considered as an indiscriminate attack? How can the unlawfulness of attack be explained in a given situation? Can the conduct in the face of airstrikes in such a specific situation be justified?

2.1.1. Applicable law and assessment of unlawfulness of the conduct

Current sub-chapter looks into the legal sources applicable to the particular situation, in order to analyse the respective chain of analysis related to the unlawfulness of individual conduct. Firstly, contrary practice to APII article 1(1) is used to define the status of workers as the civilian population. Therefore, article 13(2) of APII related to the prohibition of the attack on the civilian population is used to assess the nature of the conduct that violated the prohibition. Secondly, the rules of CIHL applicable to NIAC are used in addition to the provisions set up in the APII, or in case of absence of such conditions. Such rules are: rule 8 related to the definition of military objects; rule 9 related to the definition of civilian objects; rules 11, 12

¹⁰³ Amnesty International. *Nowhere safe for civilians: airstrikes and ground attacks in Yemen*, p.12. Available on: https://amnestyfr.cdn.prismic.io/amnestyfr%2Fe179776b-cf2d-4bcf-92b4-853a2c0589bc_mde3122912015english.pdf, Accessed on April 12, 2020.

¹⁰⁴ *Ibid.*

¹⁰⁵ *Ibid.*

¹⁰⁶ *Ibid.*

¹⁰⁷ *Ibid.*, p.13.

¹⁰⁸ *Ibid.*

¹⁰⁹ Human Rights Watch(HRW). *Yemen: Coalition Strikes on Residence Apparent War Crime*, Available on: <https://www.hrw.org/news/2015/07/27/yemen-coalition-strikes-residence-apparent-war-crime>, Accessed on April 12, 2020.

related to the legality and definition of indiscriminate attacks; rule 21 related to target selection; and rule 89 related to prohibition of murder. Thirdly, relevant case law is used for providing examples in already existent legal practice.

Turning to the analysis, firstly, due to the fact, that conducted airstrikes had targeted housing complex and, it has resulted in deaths of the people, definitions of civilians and civilian objects should be determined. APII does not set a clear definition of the civilians, however, it can be concluded that per established practice, the civilian population is a “contrary” to the definition of organized armed groups set in the Article 1(1) of APII, by noticing that civilians are not related to the organized armed group or being a part of dissident armed forces.¹¹⁰ In the particular case, it cannot be evidenced that the civilian population was the part of dissident armed forces or armed groups because persons performed purely civilian actions by working on the power plant. Furthermore, in *Haradinaj* case Appeal Chamber refers to the definition of civilians as “persons, not taking an active part in hostilities”, which is the general reflection of CA3.¹¹¹ In the present case, there are no factual grounds to consider individuals to take part in any kind of hostilities, because the attack took place remotely, and at the home front, where no direct confrontation was evidenced by the reporters.

Concerning “civilian objects definition”, APII does not clearly define the legal status of it, however, according to rule 9 of CIHL applicable to NIAC, these are all objects that are not military objects,¹¹² on the other hand, military objects per Rule 8 of CIHL applicable to NIAC, are objects, that are used to make a useful contribution towards military action, and those, partial or total destruction, capture or neutralization offers a military advantage.¹¹³ In present case housing complex cannot be considered as a military object, because it does not offer a military advantage in case of its destruction by an airstrike, due to its usage for living purposes, therefore, there is no clear evidence, that it has been used for the military purposes.

With regard to the issue of finding indications of an indiscriminately conducted attack, it can be said if the housing complex was intentionally designated being as the aim of attack without intentionally targeting a military object, naming military facility near the complex, it will fall under terms of “indiscriminate” right away. Since there was no clear evidence, that military facility was used for the military purposes and contained military personnel, when the airstrikes were conducted, and no damage has been given to the military facility, it can be concluded that airstrikes have not been directed towards the military object, but were directed towards the civilian object in an intentional manner, so basis on the factual background and evidence, it cannot be said that manner was non-intentional to strike civilians. In *Galic* case, ICTY has elaborated on the “intentional” nature of the indiscriminate attacks, stating that such clarification relates to “attacks which strike civilians or civilian objects and military objects without distinction, may qualify as direct attacks against civilians”. In the current case, it was the definitely intentional basis on the assumption that “behaviour” of the coalition was primarily to target civilians since there were no comments from coalition side. The unlawful

¹¹⁰ ICRC, *supra* note 34, Article 1(1).

¹¹¹ *Haradinaj* case, *supra* note 67, para.107.

¹¹² International Committee of the Red Cross (ICRC), Customary International Humanitarian Law Database, Rule 9, Available on: https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule9, Accessed on April 11, 2020.

¹¹³ International Committee of the Red Cross (ICRC), Customary International Humanitarian Law Database, Rule 8, Available on: https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule8, Accessed on April 11, 2020.

nature conduct is similar to conduct, which Trial Chamber had pointed out in *Blaškić* case, where perpetrators had wanted to intentionally target Muslim population in the town of Stari Vitez, because it resulted in death among civilians.¹¹⁴ Going point by point of the context of rule 12 of CIHL and its application, it can be concluded that attack on housing complex was indiscriminate, because (1) attack was not directed at a military object, (2) the effect of attack cannot be limited as required by IHL rules, because from the beginning it was intentional. With regard to affirming unlawfulness of the conduct, it can be said that coalition has violated rule 11 of CIHL applicable in NIAC, because the use of indiscriminate attacks are prohibited in nature.¹¹⁵ In addition to case-law and CIHL rules Article 13(2) of APII applies, which states that

The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence, the primary purpose of which is to spread terror among the civilian population are prohibited.¹¹⁶

Such understanding is followed by the general prohibition of murder in the context of IHL. According to rule 89 of CIHL applicable to NIAC, the murder of any kinds is prohibited.¹¹⁷ Wording of the custom is based on the fundamental guarantee set in the article 4(2)(a) of APII, which states that any violence of life is prohibited, including murder.¹¹⁸ It can be concluded that coalition by holding indiscriminate airstrikes had violated above-mentioned legal rules and failed to comply with fundamental guarantees related to the prohibition of murder, since the above-mentioned rules apply in the current situation.

The analysis can go much beyond because a lot of CIHL rules can be covered for only one specific situation, and in this particular situation, the issue covers the issue of discrimination by performing the unlawful conduct. However, the target selection test must be done in this specific scenario to make conclusions on the unlawfulness of the killings. Concerning the application of target selection rule 21 of CIHL, which elaborates on the idea that each party must choose the target for attack, which would cause a least danger to the civilian population,¹¹⁹ has led to consider attack as unlawful, because housing complex per given facts has been incorrectly considered as the military object, hence, it does not empowers coalition aircraft to conduct airstrike if the target is not determined as military target basis on exploration data provided by responsible people in armed forces, for instance, intelligence.

Concerning possible justification of the airstrikes, *de-facto* there are no arguments, that would justify the particular conduct in steam power plant case, because indiscriminate attacks are prohibited, and the coalition has intentionally bombed the housing complex. It can be considered that possible justification for an airstrike could be due to coincidence, for instance, the failure of the weapon system to strike a military base instead of a housing

¹¹⁴ *Prosecutor v. Tihomir Blaškić* (Trial Judgement) IT-95-14-T, International Criminal Tribunal for Former Yugoslavia (ICTY), 3 March 2000, para 512, available on: <https://www.icty.org/x/cases/blaskic/tjug/en/bla-tj000303e.pdf>, Accessed on April 11, 2020.

¹¹⁵ International Committee of the Red Cross (ICRC), Customary International Humanitarian Law Database, Rule 11, available on: https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule11, Accessed on April 12, 2020.

¹¹⁶ ICRC, *supra* note 34, art. 13(2).

¹¹⁷ International Committee of the Red Cross (ICRC), Customary International Humanitarian Law Database, Rule 89, available on: https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule89, Accessed on April 12, 2020.

¹¹⁸ ICRC, *supra* note 34, art. 4(2)(a).

¹¹⁹ International Committee of the Red Cross (ICRC), Customary International Humanitarian Law Database, Rule 21, Available on: https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule21, Accessed on April 12, 2020.

complex. However, it cannot be proved that the attack was random, and an airstrike was conducted being the non-intentional basis on the given facts from the ground. Therefore, such consideration can be declined, meaning that even if the conduct is not directed against protected persons, e.g. civilian population. Still, it has been practically commenced, even it has been prevented due to unexpected circumstances, it practically endangers life and health of civilians, and anyway constitute in a violation basis on existing applicable treaty rules and customs.

2.2. Attack on Al-Fyoush cattle market in Lahj governorate

Facts of the case

On July 6, 2015, coalition airstrikes hit the cattle market in the village of Al-Fyoush, which resulted in killing 48 civilians and injury of 85.¹²⁰ According to Bellingcat findings, strikes had targeted territory near Qat (Cattle) market, restaurant and petrol station.¹²¹ It was concluded that two craters were formed after two munitions were dropped. The basis on the Bellingcat research, it can be said that incident took place near the road N1 and connecting road B19, near the crossroad of which the market is located (See Annex 2). About the utilization of the market basis on the research, it was used primarily for the commercial purposes for selling and buying cattle, therefore, it should be noted that other civilian objects are located near the territory of the market, specifically, mosque, supermarkets, restaurants, etc.(See Annex 2). Therefore, a respective territory can be considered as the passing locations for people, who are moving in the opposite direction of N1 road.(See Annex 2) Adam Hassan Umar has told the Amnesty International, that plane flew around the area for some time, then, the explosion occurred.¹²²

Regarding the presence of military forces on the market during the attack, sources differentiate in their considerations. National Commission to Investigate Alleged Violations to Human Rights rely on the point of the witnesses, who were likely visiting the market on a daily basis. Witness "N.F.M." has said that near market there were two checkpoints of the Houthi and Saleh Forces; conversely, Witness A.S.S. said that on the date, when airstrikes were conducted Houthis have established checkpoint that was located 200 metres from the market.¹²³ An important fact is, that, possibly, interviews of witnesses were taken with the presence of military personnel, however, it is not elaborated, to which party military personnel belonged to. Report from LA Times relied on the statement of the witness, who said that car with the Houthi soldiers inside has arrived in the market before the airstrike to make purchases on the market.¹²⁴ Also, LA times consider that 6 Houthi Fighters were killed during the attack.¹²⁵ Official Spokesman of Joint Accidents Assessment Teams (JIAT), who is close to Saudi authorities and Saudi Press Agency has elaborated on the airstrike from the

¹²⁰ The National Commission to Investigate Alleged Violations to Human Rights. *Preliminary Report on Alleged Violations to Human Rights in the Republic of Yemen*, p.47, Available on: <http://embassy-of-yemen.pl/wp-content/uploads/2016/08/Report-on-Human-Rights-Violations.pdf>, Accessed on April 13, 2020.

¹²¹ Bellingcat. *The Yemen Project: ADE10001 – Fayoush Market Strike*, Available on: <https://www.bellingcat.com/news/mena/2019/04/22/the-yemen-project-ade10001-fayoush-market-strike/>, Accessed on April 14, 2020.

¹²² Amnesty International, *supra* note 105, p.16.

¹²³ The National Commission to Investigate Alleged Violations to Human Rights, *supra* note 122.

¹²⁴ Los Angeles Times, "Airstrikes hit two markets in Yemen; more than 100 people killed", Available on: <https://www.latimes.com/world/worldnow/la-fg-yemen-market-explosion-20150706-story.html>, Accessed on April 15, 2020.

¹²⁵ *Ibid.*

coalition perspective, mentioning that done investigation has decreed that no airstrike has been conducted on the respective territory, especially cattle market, although, two airstrikes were conducted on the Houthi militias concentration on the market and on command point ten kilometres north from the market.¹²⁶ Questions, which arise in the current situation, are the following: Can the attack be considered as indiscriminate and how applicable law explains it? Was the attack intentional or not, and how legally it can be explained? What legal grounds demonstrate unlawfulness of the airstrike?

2.2.1. Applicable law and assessment of unlawfulness of the conduct

Current sub-chapter looks into the applicability of the legal sources such as article 13(1) of APII, the relevant rules of CIHL applicable to NIAC, such as, rule 1, 7 related to the principle of distinction, rule 10 related to loss of protection of civilian objective, rule 11, 12 related to legal nature of indiscriminate attacks, rule 14 related to the principle of proportionality, rule 15 related to the principle of precautions in attacks, and respective case law practice such as *Galic* and *Boškovski* Appeal Judgements.

In order to explain unlawfulness of the conduct in the particular situation, it is important to make references to the definitions, which apply in the current situation, and that already have been discussed in steam power plant case above and apply in current case respectively. Practice, contrary to Article 1(1) of APII, rules 5, 8 and 9 of CIHL, determine definitions of civilians, military objects, and civilian objects. With regard to the civilian population, the rule 5 of CIHL apply, because firstly, the individuals were the affected party without indications to recognize them as combatants, because they performed purely commercial activities related to doing business in the market. Secondly, definitions of military objects and civilian objects apply, due to the necessity to distinguish objects in the situation and assess the existence of indiscriminate attack. The analysis of determination and application of CIHL rules related to civilian and military objects is set further.

The approach, which is taken to evaluate the attack in terms of being indiscriminate, is following. In the current situation, it can be said that attack was directed on objects, where military personnel was present as per existing investigations. In the present case, cattle market cannot fall under the definition of a military objective, because the scope of rule 8 of CIHL is about military advantage and not “the presence of military forces”.¹²⁷ In this case, it cannot be said that cattle market with presence of Houthi fighters on the ground that have “created” circumstance for coalition aircraft to decide that bombing of one group of fighters or the checkpoint will create real military advantage against the opposing side. Hence, cattle market falls under the civilian object definition, and rule 9 of CIHL applies. Moreover, rule 10 can be applied, which states that civilian object is protected, unless such is the military objective. Since the rule is applicable to NIAC, unfortunately, it does not clarify the criteria that explain why civilian object may become military objectives. It can be said that cattle market is subject to criteria that make it to be clarified as the military objective, for instance, market use for military purposes or for performing military action.¹²⁸ However, those are merely legal speculations, because those are not pointed out in the particular applicable law. To conclude the idea of rule 10, it can be said that cattle market is not likely to lose its civilian protection,

¹²⁶ Saudi Press Agency. *Official Spokesman of Joint Incidents Assessment Team (JIAT) Issues, Statement 1*, Available on: <https://www.spa.gov.sa/viewstory.php?lang=en&newsid=1567371>, Accessed on April 15, 2020.

¹²⁷ ICRC, *Supra* note 115.

¹²⁸ International Committee of the Red Cross (ICRC), Customary International Humanitarian Law Database, Rule 10, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule10, Accessed on April 12, 2020.

because there are no legal provisions that can clarify “change in status”, therefore, from practical perspective, even presumptions will not clarify market as military objective, because it was not used for military purposes, at least basis on the factual grounds. Accordingly to such argument, cattle market “falls” under the definition of civilian objective. Next question is about checkpoints near market, especially their status under the definition of military object. By applying rule 8 of CIHL, it can be considered that attack on checkpoints employ military advantage, because its destruction may decrease presence of armed forces in the particular area, and mitigate the control over the crucial road, which is also considered as the advantage from logistical point of view. It can be assumed that presence of checkpoints among civilian objective (market) make the possibility of attack counting it as performing legitimate purposes and not indiscriminate, because the airstrike primarily had aimed to target checkpoints and enemy combatants, however with incidental loss of civilians explained by the matter of principle of distinction, taking precautions and proportionality in deciding to attack that were not respected, and which are discussed further.

It can be said that holding airstrike against checkpoints and enemy combatants, which were present among civilian population is considered as disrespect of the principle of distinction pointed out in rule 1 and rule 7 of CIHL that applies in current situation.¹²⁹ UN General Assembly in Resolution 2444 has proposed remarks on the conduct in armed conflict with regard to principle of distinction, meaning that firstly, right of the parties to establish means of injuring is not unlimited, secondly, the attacks on the civilians are prohibited at any time, thirdly, the distinction between civilians and combatants always must be taken in the account.¹³⁰ In *Galic* Appeal judgement, Appeal Chamber had pointed out that

warring parties must at all times distinguish between the civilian population and combatants, between civilian and military objectives, and accordingly direct attacks only against military objectives.¹³¹

However, if principle of distinction is not respected, it does not mean that attack can be considered as unlawful or indiscriminate. In *Boškoski* Appeal Judgment, Appeal Chamber had pointed out that

the targeting of civilians is absolutely prohibited in customary international law, and that civilian casualties are only legitimate if their deaths are incidental to the conduct of military operations.¹³²

It can be considered that coalition airstrike has caused incidental deaths among civilian population, because according to facts and JIAT remarks, the initial objective was to target Houthi military forces and military objects. The main issue here falls under the

¹²⁹ International Committee of the Red Cross (ICRC), Customary International Humanitarian Law Database, Rule 1, available on: https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule1, Accessed on April 12, 2020.

¹³⁰ International Committee of the Red Cross (ICRC). *Respect for Human Rights in Armed Conflicts. Resolution 2444 (XXIII) of the United Nations General Assembly, 19 December 1968*, available on: <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/385ec082b509e76c41256739003e636d/2a611a39fb67b146c125641e005272c1?OpenDocument>, Accessed on April 16, 2020.

¹³¹ *Prosecutor v. Stanislav Galić* (Appeal Judgement) IT-98-29-A, International Criminal Tribunal for Former Yugoslavia (ICTY), 30 November 2006, para 190, available on: <https://www.icty.org/x/cases/galic/acjug/en/gal-acjud061130.pdf>, Accessed on April 16, 2020.

¹³² *Prosecutor v. Ljube Boškoski and Johan Tarčulovski* (Appeal Judgement), IT-04-82-A, International Criminal Tribunal for Former Yugoslavia (ICTY), 19 May 2010, para.46, available on: https://www.icty.org/x/cases/boskoski_tarculovski/acjug/en/100519_ajudg.pdf, Accessed on April 16, 2020.

proportionality of an attack and taking the necessary precautions in order to avoid incidental loss among the civilian population.

Following the principle of distinction, the coalition has ignored requirements under the principle of precautions in their attacks under the rule 15 of CIHL applicable to NIAC, especially, failure to spare the civilian population and civilian objects, as well as no actions has been taken to minimize incidental loss of civilian lives and damage to civilian objects.¹³³ In addition, Article 13(1) of APII elaborates general protection to civilian population and individual civilians from the danger that arises in case of a military operation, consequently, the coalition has not taken any actions to preserve the protection of civilians, besides, and the committed conduct has resulted in disrespect of such general protection. It can be assumed that to lawfully target potentially recognized military target, which is located near multiple civilian targets, the appropriate means of warfare basically should exclude the use of aircraft in such situation because such method can be considered as ineffective for accurate targeting objects. Commanders must assess the reality of military advantage and proportionality of action for targeting two checkpoints or the car with Houthi fighters if such advantage can lead to deaths among civilians. Since there is evidence, that Houthi forces were present in the market during the attack, the coalition has not taken any precautions to minimize the effect of the airstrikes and avoid loss, even incidental towards the civilian population, according to rule 15 of CIHL, which applies in current situation.

With regard to principle of proportionality in attack that is defined by the rule 14 of CIHL apply, which elaborates on the point that launching an attack that may result in incidental loss of civilian lives and cause damage to civilian objects, and, attack is excessive in its nature to perform specific military advantage is prohibited.¹³⁴ Due to the fact that airstrike has resulted in damage to market and deaths among civilian population, attacks in nature cannot be considered as proportionate, because coalition has not factored the necessity and proportionate conditions to launch attack in a way that death of civilians will be avoided and amount of harm that was “posed” on the civilians. Attack did not look proportionate to the military advantage, than advantage intended to be, possibly, from the coalition perspective.

It can be concluded that application of rule 12 of CIHL related to definition of indiscriminate attacks is in a way uncertain and can be rejected, because, it is questionable, was an attack directed on purpose to target civilian objectives(market), even if the airstrike in result has damaged the property of the market and not checkpoint. Analysis correlates with the assessment of non-intentional nature of the attack. In current situation the non-intentional behaviour to target civilian population is likely to take place, due to presence of legitimate targets on the market in face of enemy combatants, which were primarily target of the coalition. However the primary intention to target combatants or military targets, which is located among civilian targets and civilian population, does not deprive coalition forces from the responsibility to respect principle of distinction, take necessary precautions and employ mean of combat that will be proportionate in such case. Such disrespect make the attack on cattle market being unlawful.

¹³³ International Committee of the Red Cross (ICRC), Customary International Humanitarian Law Database, Rule 15, Available on: https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule15, Accessed on April 12, 2020.

¹³⁴ International Committee of the Red Cross (ICRC), Customary International Humanitarian Law Database, Rule 14, Available on: https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule14, Accessed on April 12, 2020.

2.3. Attack on Cement factory quarry in Amran governorate using cluster munitions

On February 15, 2016, coalition aircraft have conducted several airstrikes on the al-Raha mountain, next to Amran cement factory quarry, located 1 kilometre from the main building cement factory in Amran Governorate. No deaths or injuries among the workers or civilian population were evidenced, except the material damage to the factory quarry, according to HRW report.¹³⁵ The case is a vital example, where the so-called cluster munitions, such as US-supplied CBU-105 Sensor Fuzed Weapons with BLU-108 canisters, were used.¹³⁶ Factory workers, along with HRW observers, have investigated the damage and have found the remnants of the munitions that were laying down on the road that connects factory with the quarry.¹³⁷ The reporter provided Human Rights Watch with a 37-second video that he said they filmed during the attack. The video shows multiple distinctive black smoke clouds generated by the CBU-105 submunitions emanating from a strike behind a ridgeline while multiple detonations can be heard in the video.¹³⁸ Furthermore, it is vital to point out that use of cluster munitions was primarily targeted the Al-Raha Mountain, where the military base of Houthis was located, which is in close proximity of al-Darb village, where the civilian population was present.¹³⁹ According to HRW report, a military base with present Houthis forces was located two kilometres from the quarry, which has been damaged during an airstrike.¹⁴⁰

2.3.1. Applicable law and assessment of unlawfulness of the conduct

The analysis aims to explain the nature of the indiscriminate attack and the use of indiscriminate weapons with respective applicable law. Firstly, appropriate definitions are used for classification of civilian and military objects(Rules 8,9 of CIHL), rule 12 related to indiscriminate attacks are used to detect or reject its presence. Secondly, the law chosen to explain the use of indiscriminate weapons is rule 71 of CIHL that applies to NIAC. It is relevant to point out that none of the coalition states is parties to Convention on cluster munitions, thereby it is not applicable in this situation.

The main legal questions are, does the attack in particular situation clarify as indiscriminate one, and how applicable law explains it? Why had the use of cluster munitions been unlawful in a specific case?

Since there are no documented civilian casualties after an attack, and only material damage has been posed, it is the subject of the application of rules related to the definition of civilian and military objects, because one of those “type” of objects has been directly or incidentally hit. Practically, there is no difference towards which “type” of the object the attack was performed, because anyway, the use of indiscriminate weapons is prohibited under the Rules 70 and 71 of CIHL. However, the task is also to define the nature of the

¹³⁵ Human Rights Watch(HRW), *Bombing Businesses: Saudi Coalition Airstrikes on Yemen’s Civilian Economic Structures*, p.47. Available on: https://www.hrw.org/sites/default/files/report_pdf/yemen0716web.pdf, Accessed on April 30, 2020.

¹³⁶ *Ibid.*

¹³⁷ *Ibid.*

¹³⁸ Human Rights Watch (HRW). *Yemen: Saudis using US Cluster Munitions*, available on: <https://www.hrw.org/news/2016/05/06/yemen-saudis-using-us-cluster-munitions>, Accessed April 30, 2020.

¹³⁹ *Ibid.*

¹⁴⁰ HRW, *supra* note 136, p.51.

indiscriminate attack, thereby rules 8 and 9 of CIHL are used as the source of the definition of the status of the civilian and military objects.¹⁴¹ The identification of the status should be made towards factory quarry, which was hit. In this case, rule 8 of CIHL cannot be applied because quarry cannot be considered as the military object. After all, it does not perform any military advantage by targeting it. It can be assumed that targeting factory quarry pursuit exclusively economic benefit by the destruction of the object, that contributes to performing economic-related objectives, such as mining operations. Of course, from one point minerals that are extracted can be used for military purposes, in this case, cement made from minerals can be used for the construction of military objectives, e.g. military equipment that is used for military purposes. However, an argument can be rejected, because the factory and quarry have been closed for some time, due to recent airstrikes on the object, so, it has not performed any economic activity that would lead to “establishment” of the military advantage as the result of such action.¹⁴² Thereby, quarry falls under the definition of the civilian object. Hence, rule 9 of CIHL apply.

It is important to consider, whether the criteria to count an attack as indiscriminate was evidenced or not, basis on the application of rule 12 of CIHL. According to rule 12, the attack cannot be considered as indiscriminate, because it was initially performed towards the military object, naming the military base, which was close to the factory quarry. Hence, the airstrike performed purely legitimate objective. However, it caused incidental damage to the civilian object.¹⁴³ Again, the approach falls under the respect of the principle of distinction, taking necessary precautions and principle of proportionality. In this particular situation, the coalition has not respected the rule 7, which applies in the current situation, because coalition aircraft were not able to distinguish the civilian objective and military object using the particular method of combat – airstrike.¹⁴⁴ About precautions, the coalition has not taken any care to spare the civilian object from a military object to minimize the incidental damage caused to the factory quarry. Hence, rule 15 apply in the current situation. Concerning proportionality, it can be concluded that the conduct of coalition was not proportional, because the anticipated military advantage was not commensurate to the incidental damage caused to the quarry, even it had minimal damage received from an airstrike.

Turning to the thoughts on the use of indiscriminate weapons, the relevant rule that is used to be approached is the rule 71 of CIHL, which states that “use of weapons indiscriminate weapons that are by nature indiscriminate is prohibited” directly falls under the circumstances of the respective situation.¹⁴⁵ It is clear whether cluster munitions are related to the weapons that can cause indiscriminate effect, because in practice when cluster munitions are dropped, those are in a fragmented way targeting the objects in the wide range. Regarding the use of cluster munitions in this particular situation and answering the question, why it is unlawful, the answer is – because it is prescribed by the law. The coalition used cluster munitions as the weapon to perform its military objective, and by direct implementation of the rule, it is anyway prohibited. It does not mean that use of a prohibited weapon can be legitimate, if it is performing legitimate objectives, in such case, targeting military facilities, because the use of those in nature is unlawful.

¹⁴¹ ICRC *supra* note 114, 115

¹⁴² HRW, *supra* note 137.

¹⁴³ ICRC, *supra* note 79.

¹⁴⁴ International Committee of the Red Cross (ICRC), *Customary International Humanitarian Law Database*, Rule 1, available on: https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule7, Accessed May 1, 2020.

¹⁴⁵ International Committee of the Red Cross (ICRC), *Customary International Humanitarian Law Database*, Rule 71, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule71, Accessed May 1, 2020.

To conclude, the conduct can be considered unlawful, because the airstrike performed purely legitimate objective by targeting military base, and has incidentally damaged the factory quarry, the explanation of which derives from the underlying necessity to always distinguish the military and civilian objects, the principle of precautions and principle of proportionality. Secondly, the use of illegal weapons instantly makes the attack illegitimate as per prescribed law.

2.4. Summary

Above-mentioned subchapters have covered the analysis of applicable law to NIAC, that used to demonstrate the illegality of the conduct in the three situations, namely, analysis of rules related to the holding indiscriminate attacks and use of cluster munitions, that have been found. With regard to the illegality of the particular conducts, it can be concluded that actions performed in all three situations are considered as an unlawful, basis on the different application of legal rules and presence of specific circumstances in the situations.

In all three situations, rules related to defining civilians, civilian objects and military objects apply that were used to clarify basis related to explanation, were indiscriminate attack legally took place or not. It can be concluded that in the first situation presence of intentional behaviour of coalition to target the civilians has resulted in the fact of indiscriminate attack respectively, with the application of rule 12 of CIHL, that defines indiscriminate attack, rule 11 of CIHL, that prohibits it, and besides, article 13(2) that prohibits such violent nature of conduct towards civilians. In the second and third situation, the basis on the consecutive analysis of definitions and circumstances of the attack, it can be concluded that indiscriminate attack did not take place basis on the scope of application of rule 12, however the attacks still were considered as unlawful, by applying rules related to the principle of distinction, the principle of precautions in attacks and principle of proportionality, by the way, which were disrespected by the coalition. Finally, the analysis covered the use of cluster munitions in the third situation, which is considered unlawful right away, by applying rule 71 of CIHL, that in nature prohibits use of such weapons.

3. VIOLATIONS OF IHL AS AN EXCUSE TOWARDS CONFLICT RESOLUTION

Yemen conflict has been demonstrating itself as the conflict where different projections can be analysed, including different legal aspects and issues. Applicable law helps to describe the unlawfulness of indiscriminate attacks and cluster munitions in particular situations, , however legal approach is turned to be deficient in order to explain complete picture of considerations that are happening in the Middle Eastern country with regard to presence of alleged violations of law. What about the policy considerations and its connection towards legal element?

From one perspective it is not obvious that violations of law can be connected towards the political developments in the country, in case such are done from the third party of the conflict – the coalition. Here, the treatment, which should be taken, cannot be direct, meaning that non-compliance with legal rules will not directly lead to the political dialogue in the country, because there are no logical clarifications how the alleged violations of law can be connected to the political agenda. Treatment should be taken indirectly, meaning that the

circumstances for carrying out certain unlawful actions with concomitant implications of the prevailing situation with infringements, that existence of conducting such can be depended from the external political factors from the regional and international level, taking into the consideration geopolitical frame established in the context of Yemen conflict. In other words violations of IHL are the negative consequence of actions of the coalition to establish status-quo in the region using military methods, which is affected by external factors, outside the legal framework. The questions that rise with regard to the political dimension are: How the political advantage of intervening party in Yemen can be explained from political perspective? Secondly, why Saudi authorities are not compromising with Houthis? Thirdly, what external political factors can affect decision-making of coalition authorities? Finally, can the existence of unlawful conduct contribute towards establishment of peaceful status-quo?

Basically, it is questionable, what is the impartial political advantage in such case, because again, the role of regional political environment, specifically for Saudi-Arabia is crucial. It is not a matter of political motives of Saudi authorities to keep instability near its borders, rather, it is matter of political effect of carrying out certain actions (indirect approach) for achieving political goals. Humanitarian crisis, which occurred also by carrying out unlawful actions, is an implication of illiterate political and military decisions, which in the beginning expected to be effective, but turned out to be ineffective, because of unclearness of the decision-making process carried out by Saudi side. Of course for Saudi-authorities the victory against Houthis will correspond to the victory against the Iran, which is the main opponent for Saudi Arabia and UAE in regional confrontation. Current circumstances have shown that if Saudi give up in their original initiative, which is possible, to re-establish legitimate government of Yemen, it will led to the weakening of the Saudi position in the region, as well as, internal political effect for the Saudi establishment can be negatively irreversible, because from one point, Saudi establishment is dependent on the U.S interests in the region, especially in the means of confronting Iranian interests and economic interests. It is likely that Saudi authorities are not biased to have a dialogue of Houthis, because it is equal to have a dialogue with Iran, the country, which is destabilizing regional situation in favour of its own interests, where the Houthi acts as the safeguard of its interests. From other point, giving up current positions for Saudis may have negative impact on the internal situation in the Saudi Arabia, as well as jeopardize credibility from official Yemen authorities, that have entrusted their destiny to their ally in face of Saudi Arabia and its allies. It can be said that such violent nature of Saudi policies in Yemen are directed towards rigid coercion of Houthis who are not going to step out from the game without “order from Teheran” or real safeguards from coalition side, which in theory must ensure the stop of bombardment as the primary requirement. Saudis and coalition have used different methods of coercion, including bombing and use of indiscriminate weapons even against civilians, naval blockade and sanctions, however, no one have worked efficiently to have a final solution of the conflict via military methods resulting in state guiltiness for alleged war crimes. It can be said that inefficiency of used military methods has contributed towards political dialogue, because military methods have depleted in their essence.

Holding indiscriminate attacks in face of airstrikes and use of cluster munitions has promoted concerns from both international community and international organisations. In other words, some external factors have definitely affected Saudi and other coalition authorities, and all coalition vision on feasibility of the intervention and necessity to do something completely illegal, even if it was non-intentional. For instance, UN has accorded attention to international community on the situation in Yemen, that it “must stop turning a blind eye to these

violations”[and the intolerable humanitarian situation], and turn to cooperation path.¹⁴⁶ Obviously, coalition authorities, particularly, Saudis, has rejected the idea of cooperation, because they most likely understand their failure and their “involvement” in violating legal obligations, which in consequence may raise towards real criminal responsibility. Its part in possible establishment of dialogue and long-term ceasefire also plays the recent investigation of arms sales to Saudi-Arabia from UK and US.¹⁴⁷ Of course, topic of arms sales is an entirely different and broad matter to be discussed as the separate topic regarding Yemen conflict and even unlawfulness of such duties, however, it correlates with the current agenda in an implicit way. Arms sales is a matter for criticism not only to the sales party, but also to a buyer party in face of the Saudi Arabia and coalition. Here it can be speculated that wider criticism received to UK and US decisions to sale arms to Riyadh can be turned to the wider criticism of the military operations in Yemen by Saudi side. Arms sales case undermine the necessity to continue the operations, firstly, if already UK and US have been internally criticized being involved in the conflict, where their role in violations was substantial. Secondly, if UK and US are going to halt its arms sales in favour of transparency and cooperation with Houthis, Saudi Arabia can be pushed to stop airstrikes and military operations, because of the internal political pressure on the third side(US,UK) and lack of military resources to continue the intervention.

Finally, it is questionable whether the existence of alleged violations and unlawful conduct can contribute towards political resolution of the conflict. It can be said that presence of alleged violations is more factor, but not the real reason, that may change the situation in a positive direction. Legal agenda is not always interdependent with political one, because different factors can affect both of them. The Yemen is not case, whether alleged violations may be perceived as the tool for political resolution, because from one point, those are only alleged, and there have been no real investigation, established ad hoc tribunal on state responsibility with regard to the Yemen.

CONCLUSIONS AND RECOMMENDATIONS

The thesis raises the issue, how the way to carry out military actions in particular conflict by multiple states ended up in broad negligence of internationally recognized standards of conducting war with a number of violations of law. The raised hypothesis in the beginning of the thesis maintains on the prediction that applicable law to non-international armed conflict explains the unlawfulness of conduct of Saudi-led coalition in Yemen through an assessment of alleged violations of law that occurred by using indiscriminate attacks towards the civilian population and civilian objects, and use of cluster munitions. It can be said that hypothesis is confirmed after the researching relevant applicable legal rules and observing the specific situations, together with assessment of criteria for considering the “presence” of the illegality of specific actions performed by the coalition. Moreover, the thesis hypothesised that there is a lack of connection between legal and political elements, more precisely, that alleged violations of IHL cannot act as a tool for excuse towards conflict resolution. The hypothesis can be affirmed respectively. To summarize, thesis analysed how the covering applicable

¹⁴⁶ UN expert report. Yemen: Collective failure, collective responsibility. Available on: <https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=24937&LangID=E>, Accessed on May 3, 2020.

¹⁴⁷ Amnesty International. Stop the flow of weapons to Yemen. Available on: <https://www.amnesty.org/en/get-involved/take-action/yemen-stop-weapons-transfers/>, Accessed on May 3, 2020.

rules to non-international armed conflict, that is set to explain the nature of conduct by the particular party, fits with alleged violations related to the presence of indiscriminate attacks and indiscriminate weapons, as well as the reflection of the legal explanation of such attacks on the particular situations.

To conclude the respective parts included in the paper, it is important first to summarize the theoretical part of the paper related to the assessment of political and legal framework. Analysis in the chapter has shown the complicated nature of the conflict itself, because there is a problematic aspect in a comprehensive approach, especially the number of legal sources and real facts, to indicate the type of conflict and applicable legal rules. Legal analysis that was used in the paper to stress on the affiliation of Yemen conflict to “unusual” type of non-international armed conflict, such as internationalized non-international armed conflict has no particular implications with regard to applicable law. It is merely theoretical and is used to clarify the unavailability of presence of other types of conflict in a particular case, in order not to confuse the reader about a large number of potential legal rules, that could be used for the analysis, if the type is not properly classified. Moreover, the chapter underlines the existence of the armed conflict in Yemen as such, by approaching legal criteria such as organisational element and level of intensity, therefore, it can be concluded that affiliation of Yemen conflict to armed conflict required the in-depth assessment of case-law, which was necessary to base the analysis on already existing practices. Furthermore, the chapter set emphasis on the status of approached military methods in the “practical” part of the analysis, such as indiscriminate attacks and indiscriminate weapons. It can be concluded, that both military methods are linked to each other, however, at the same time, both of them have a different purpose, when it comes to implementation of the legal rules.

With regard to the second part of the thesis, it implies practical analysis of demonstration of unlawfulness of the actions performed by party in the specific situation through using indiscriminate attacks and indiscriminate weapons towards civilian population and civilian objects. Generally, it can be concluded that illegality of action may be proved even in the absence of the actual indiscriminate attacks, because such illegality is clarified and “affirmed” by the different elements. It is not good, because legal framework for indiscriminate attacks, when it is used in legitimate purposes or it causes incidental damage is very limited to rule 12 of CIHL, which can be rejected in simple way. However, as the result it does not change the status of illegality of the attack, that remained. Furthermore, it is important to conclude each case separately, and what are the potential implications for future researches.

In *steam power plant case* the alleged violations became the real violations, because after applying legal rules it was considered that coalition has used indiscriminate attack directly and intentionally against the civilians, which in nature is unlawful and cannot be justified. With regard to *cattle market case* it can be concluded that coalition did not target civilians by the mean of indiscriminate attack, but the conduct still was illegal, because the fundamental principles of IHL have been violated, such as principle of distinction, principle of precaution and principle of proportionality. Concerning *Amran factory case*, it can be concluded that applicable law has explained the unlawful conduct differently, from one point it is in nature unlawful, if the use of prohibited weapons is taken in account, from the perspective of indiscriminate attack, incidental damage to civilian objects has been posed, that still was unlawful, but due to disrespect of fundamental principles. Basis on different circumstances of the conducts and use of different approaches of legal sources that are

applicable to explain the illegality, the possible implications on future researches based on such a strict scope of the analysis can be the presence of uncertainty in legal sources and lack of legal rules that can explain illegality in more detailed way. The solution of the problem set in the paper substantially depends on the presence of applicable law that is capable to clarify certain conducts from a legal perspective, and of course, the availability of sources and reports from the ground, where alleged violations are evidenced, because without such sources it is not possible to make a clear analysis without speculating on the conditions of the conduct.

With regard to political considerations, it can be concluded that political agendas fall outside the legal framework set in the paper, because the concerns on both agendas primarily are different in their nature. Some connecting factors still exist, such as the decision-making process in taking military decisions that is somehow connected to performed conducts. Secondly, the external influence from the international community may affect the coalition to stop an air campaign in Yemen, however in reality international instruments were not effective to make an impact on state actions. Thirdly, the investigations, such as U.S-U.K arms sales may have a certain impact on Saudi and coalition decisions, due to negative consequences both for sellers and for buyers.

Finally, the recommendations for further researches on the same topic, would be the following ones. The assessment of violations of international humanitarian law always needs a careful analysis of legal sources that are applicable to the specific types of conflict. It is a right decision to turn to customary law instead of treaty law, if the treaty law does not cover a specific aspect of the analysed principle. Practical analysis of the situations is more complicated than it is foreseeable from the beginning, because it is essential to apply relevant legal sources together with analysing the facts of the situations in a consistent and clear manner that is not always possible because of the significant number of sources that could be used.

The author emphasizes on the importance of a respective type of analysis for any situations in armed conflicts, where alleged violations took place constantly. It is relevant to make the agenda of international humanitarian law more approached, because in modern conflicts the lack of transparency is evidenced increasingly.

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● Airstrike



¹⁴⁸ HRW, Supra note 109.

Annex 2.¹⁴⁹



¹⁴⁹ Bellingcat, *supra* note 121.