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# **How to stop the unstoppable?**

**United States Arms Trade to Saudi Arabia & the Impacts on the  
Conflict in Yemen**

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## **Abstract**

The ravages of war have ripped apart Yemen, and the United States has been heavily influential to the destruction. While there are multiple parties to this non-international armed conflict which started in 2015, the party in question is the Saudi-led Coalition which has had extensive military and weaponry support from the United States, in addition to other western countries. The U.S. is the largest supplier of arms to Saudi Arabia, and Saudi Arabia continues to be the world's largest arms importer. Ongoing credible sources have claimed that the Saudi-led Coalition is disproportionately impacting the people of Yemen, with civilians and civilian objects being targeted, and such violations are said to amount to war crimes. Thousands of innocent lives have been lost, critical infrastructure has been destroyed, and Yemen is claimed to be the worst humanitarian crisis of today. Increasing evidence from credible bodies, such as the Group of Eminent Experts on Yemen appointed by the Human Rights Council, or the Human Rights Watch, amongst other human rights bodies, have found a multitude of violations committed by the Saudi-led Coalition, and yet the United States has extensively continued supporting the Coalition with arms trade and logistical support. Violations committed by the Saudi-led Coalition have not been a single occurrence, but rather years of systematic targeting and destruction of civilians and non-military objects. Those who are granted protection under international humanitarian law and human rights law have been largely ignored in this war. The massive support from the United States to Saudi Arabia, and thus the Coalition, has provided the means for violations to continue. The United States' domestic policies clearly outline the expectations and regulations of selling arms to another state and is also legally bound to international regulations of arms trade. While human rights and respect for international humanitarian law are outlined in both domestic and international policies, they are not respected in the arms trade transaction. The United States has national and international obligations to uphold and have failed to effectively do so by continuing arms sales with Saudi Arabia.

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## **List of Abbreviations**

ADHR	Americans for Democracy & Human Rights
AECA	Arms Export Control Act
AJIL	American Journal of International Law
AQAP	Al-Qaeda in the Arabian Peninsula
ATT	Arms Trade Treaty
CIA	Central Intelligence Agency
DoD	Department of Defense
GCC	Gulf Cooperation Council
GPC	General People's Congress
GVHR	Gross Violations of Human Rights
FAA	Foreign Assistance Act
FMS	Foreign Military Sales
HRC	Human Rights Council
HRW	Human Rights Watch
IAC	International Armed Conflict
ICRC	International Committee of the Red Cross
IHL	International Humanitarian Law
IHRL	International Human Rights Law
JIAT	Joint Incident Assessment Team
NATO	North Atlantic Treaty Organization
NIAC	Non-international armed conflict
OHCHR	Office of the United Nations High Commissioner for Human Rights
SIPRI	Stockholm International Peace Research Institute
UAE	United Arab Emirates
UK	United Kingdom
UN	United Nations
UNICEF	United Nations International Children's Emergency Fund
UNSC	United Nations Security Council
US	United States of America
YDP	Yemen Data Project

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## Chapter I: Introduction to the War in Yemen

### 1.1 The War in Yemen: A Brief History

The war in Yemen has been an ongoing civil war since 2015. Tensions have not ceased, and thousands of civilians have been killed or injured. Yemen presents the worst humanitarian crisis with millions in need of humanitarian assistance. In 2011, the Arab Springs protests deeply uprooted the Yemeni Government. Hathaway et al. state that after the protests, “the central government began to unravel. Former Yemeni President Ali Abdullah Saleh agreed to relinquish his office at the end of 2011” (Hathaway, O. A. *et al.*, 2019, p. 5-6). This led to the internationally recognized government led by President Abdu Rabbu Mansour Hadi in 2012, who was designated the role of trying to unify and resolve tensions within the country” (Sharp, 2017, P. 1). Despite numerous attempts to resolve issues, including a proposal of establishing six different regional entities in Yemen, conflicts grew stronger. One of the main groups in the conflict are the Houthis who were involved with the start of the war. Hathaway et al. states that “the Houthi alliance expanded rapidly between 2014 and 2015” (Hathaway, O. A. *et al.*, 2019, p. 6). Sharp continues to state that “in 2014, Houthi militants took over the capital, Sanaa (also commonly spelled Sana’a)” (Sharp, 2017, P. 1). The uprising of the Houthi-Saleh alliance led to the start of the war in 2015.

In 2015, President Hadi requested help from other countries, which thus led to the Saudi-led Coalition. Hathaway et al. explains that “on March 24, 2015, President Hadi requested assistance from Saudi Arabia, the United Arab Emirates, Bahrain, Oman, Kuwait, and Qatar” (Hathaway, O. A. *et al.*, 2019, p. 7). These countries have been heavily backed by western countries, primarily the United States and the United Kingdom. The Saudi-led Coalition has been heavily watched internationally for their combattance “against the northern Yemeni-based Ansar Allah/Houthi movement” (Sharp, 2017, P. 1). As explained by Hathaway et al., “the Saudi-led coalition has come under intense scrutiny for killing civilians and destroying civilian infrastructure with its airstrikes” (Hathaway, O. A. *et al.*, 2019, p. 9). Since the start of the conflict, emerging evidence has continuously shown that civilians have been disproportionately affected by the Saudi-led Coalition’s military response.

The conflict in Yemen has left millions of people vulnerable, while thousands have been killed or injured. According to Sharp, “with close to 80% of Yemen’s population of nearly 30 million needing some form of assistance. Two-thirds of the population is considered food insecure. The United Nations notes that humanitarian assistance is ‘increasingly becoming the only lifeline for millions of Yemenis’” (Sharp, 2017). The Human Rights Watch (HRW) Report of 2020 states that “[the] armed conflict...has killed over 18,400 civilians...Yemen is experiencing the world’s worst food security crisis with 20.1 million people—nearly two-thirds of the population—requiring food assistance at the beginning of 2020” (Human Rights Watch, 2020). HRW continues to state that “civilians suffer from destroyed critical infrastructure, lack of fuel, lack of basic services, abusive



local security forces, a weak state, and fragmented governance” (Human Rights Watch, 2020). Millions of people have been both directly and indirectly impacted by the civil war. Lives are continuously under threat due to the high necessity of humanitarian assistance and destruction of critical infrastructure.

Women and children have been particularly impacted by the conflict. Bachman states that “in total, 9.9 million children need some form of nutritional assistance” (Bachman, 2018, P. 7). Bachman continues to state that “food scarcity and the lack of potable water and sanitation put the lives of 352,000 pregnant women at risk. Maternal and child undernutrition substantially increases mortality and overall disease burden” (Bachman, 2018, P. 7). United Nations Children’s Emergency Fund (UNICEF) states that “a child dies every ten minutes in Yemen from preventable causes like diarrhea, breathing infections and malnutrition” (United Nations Children’s Emergency Fund, 2016). Bachman states that “the Coalition has effectively threatened the future of the Yemeni people. It has placed children at great risk of death from starvation and disease, both of which are preventable. (Bachman, 2018, P. 7). Hathaway et al. state that “the conflict has caused thousands of civilian deaths, forced millions of people to flee their homes, and pushed the country to the brink of famine, all part of what UN agencies have described as a catastrophic situation” (Hathaway, O. A. *et al.*, 2019, p. 4). Casualties from military operations account for thousands of deaths, and in addition the lives of millions are at risk due to the instability of Yemen, the targeting of civilian objects, and access to adequate resources.

## **1.2 Parties to the Conflict:**

### **Overview:**

There are multiple actors involved in the conflict in Yemen, whether that be in the form of direct combatants, armed forces, or external countries involved in the Yemeni war.

### **President Hadi and aligned forces:**

During the height of the Arab Springs protests in 2011, former President Saleh was forced to resign. Byrne states that “President Hadi came to power in a single-candidate election in the wake of the Arab Spring in 2012” (Byrne, 2016, p. 113). President Hadi was meant to aid the governmental transition process. Tzimas states that “Whilst in office, President Hadi failed to meet higher expectations, provoking renewed discontent in the framework of which the Houthis maintained a significant role” (Tzimas, 2018, P. 174) In March 2015, President Hadi requested the intervention of the Gulf Cooperation Council (GCC) in attempts to suppress the Houthis and push for a governmental transition. Since the start of the war in 2015, the military units in Yemen have been divided. Arraf states that “several military units have remained loyal to the former president [Saleh] or have defected to join the Houthis. Though Hadi attempted to address division by appointing Ali Mohsin, Hadi was forced to request international support to combat the Houthis and fled to the capital of Saudi Arabia, Riyadh.

**Saudi-led Coalition:**

The Saudi-led Coalition has played a large role in the Yemen war. As stated by Arraf, the Coalition was “formed in late March 2015 with the declared goal of countering Houthi forces and restoring Hadi to power. It was originally made up of nine Arab countries (Saudi Arabia, the UAE, Bahrain, Egypt, Jordan, Kuwait, Morocco, Sudan and Qatar); however the latter was cast out from the coalition on June 2017 following the Qatari diplomatic crisis” (Arraf, 2017, P. 9). The Coalition has “referred to the Hadi regime as ‘the legitimate authorities’ in responding to the Hadi government’s invitation for intervention” (Byrne, 2016, p. 114). HRW states that “since March 2015, Saudi Arabia and the United Arab Emirates (UAE) have led a military coalition against Houthi-led forces that took over Yemen’s capital, Sanaa, in September 2014” (Human Rights Watch, 2020). Since March 2015, the Coalition has committed numerous airstrikes and attacks which have been internationally disputed. According to the Yemen Data Project, there have been a total of 23,226 airstrikes conducted by the coalition as of July 2021 (Yemen Data Project, 2021). The Human Rights Watch asserted that “the coalition has bombed hospitals, school buses, markets, mosques, farms, bridges, factories, and detention centers” (Human Rights Watch, 2020). The 2020 report states that “Human Rights Watch has documented at least 90 apparently unlawful Saudi-led coalition airstrikes” (Human Rights Watch, 2020). The Coalition has taken an aggressive position throughout the conflict and arguably has violated international humanitarian law.

**Houthi Forces:**

The Houthi forces have been the primary target of the Saudi-led Coalition. Arraf explains that “the Houthis rely on a network of militias which rotate frequently through areas under Houthi control, as well as former military units who broke away from Hadi and joined the Houthi movement” (Arraf, 2017, P. 8). Politically speaking, the Houthis have been supported by the state of Iran. Sharp explains that “the Houthis embody what Iran seeks to achieve across the Arab world: that is, the cultivation of an armed non-state, non-Sunni actor who can pressure Iran’s adversaries both politically and militarily (akin to Hezbollah in Lebanon).” (Sharp, 2017, P. 2). The Houthis were involved in six conflicts between the period of 2004 and 2010, which were wars aimed against the Saleh regime, and the group “participated in the uprisings in early 2011 that called for him to step down” (Arraf, 2017, P. 8). Sharp further explains that “with each successive round of fighting, the Houthis improved their position, as anti-government sentiment became more widespread amidst an aggrieved population in a war-torn and neglected north...its goals grew in scope and ambition in the wake of the 2011 uprising and government collapse to embrace a broader populist, anti-establishment message” (Sharp, 2017, P. 3). Despite the ongoing conflict against the Houthi forces, the operation has grown stronger. Sharp describes that “after five years of military operations against the Yemeni government and Saudi-led coalition, it would appear that the Houthis are better equipped with sophisticated weaponry than in previous conflicts against its rivals” and further mentions that there have been improvements in ballistic missiles and drone technology” (Sharp, 2017, P. 5).

### **United States:**

Since the start of the war in Yemen, the United States has heavily backed the Saudi-led Coalition, from military training, logistic support, and weapon sales. During his administration, President Barack Obama agreed to support the Saudi-led Coalition. Hathaway et al., states that “On March 25, 2015, the United States announced that it would provide “logistical and intelligence support” to the Saudi-led coalition forces against the Houthis. Since then, U.S. military assistance to the Saudi-led coalition against the Houthi alliance has been in the form of weapons sales and mid-air refueling.” (Hathaway, O. A. *et al.*, 2019, p. 14). Klomp states that “Saudi Arabia is the United States’ largest foreign military sales customer and currently the destination for more than ten percent of all US arms exports” (Klomp, 2020, P. 1). According to Arraf, the large-scale sale of weapons to Saudi Arabia includes “cluster bombs which pose a particular threat to civilians, providing logistic and intelligence support to the Saudi-led. In addition, it has been providing logistic and intelligence support to the Saudi-led coalition, as well as refuelling the coalition’s fighter jets that conduct airstrikes in Yemen” (Arraf, 2017, P. 9-10). Stockholm International Peace Research Institute (SIPRI) states that “by far the largest recipient of US arms in 2013–17 was Saudi Arabia, accounting for 18 percent of US arms exports (see figure 4). The USA’s arms exports to Saudi Arabia increased by 448 per cent between 2008–12 and 2013–17” (Wezeman et al., 2018, P. 3). Sales to Saudi Arabia dramatically increased after the war in Yemen started. A major deal was agreed upon by U.S. president Donald Trump and Saudi Arabia’s King Salman bin Abdulaziz for weapon sales; the deal amounted to “US\$110 billion immediately and 350 USD billion over the next ten years. The intended purchases include battle tanks, navy ships, missile defense systems, as well as radar, communication and cybersecurity technology” (Klomp, 2020, P. 1).

### **United Kingdom and France:**

In addition to the United States, other Western countries have contributed to Saudi-led Coalition support, including the United Kingdom and France. Arraf states that “[The United Kingdom and France] have been supplying weapons and military equipment to the Saudi-led coalition on a large scale. Since the coalition’s military campaign began in March 2015, the UK has licensed over £3.3 billion of arms and military equipment despite evidence of repeated breaches of IHL by the coalition” (Arraf, 2017, P. 10). Although these sales have been disputed legally, both States have continued to garner support. Alongside military equipment sales, there has also been training provided by officers of the U.K. and France to Saudi fighter pilots (Arraf, 2017, P. 10). Regarding the U.S. and U.K. support, Bachman states “the US and UK have provided the Coalition with mid-air refueling (US), targeting advice and support (US), intelligence (US), expedited munitions resupply and maintenance (US/UK) and other technical support (US/UK)” along with targeting precision aid to combat criticism of civilian casualties (Bachman, 2018, P. 11). Lastly, Bachman explains that “the US and the UK have also provided additional support for the maintenance of the air and naval blockade of Yemen’s ports. Thus, US and UK support cannot be separated from the crimes it enables” (Bachman, 2018, P. 11). Though the U.S., U.K., and other Western Countries

have been heavily involved with providing military support, logistics, and equipment, there has not been an adequate response to alleged war crimes committed by the Saudi-led Coalition.

### **Iran:**

Iran has been backing the Houthi forces since 2011. Its involvement has been contested, and though support is provided to the Houthis, the extent of the support is not as extensive as mentioned. Arraf states that “the military support provided to the Houthis since 2011 has largely been limited to training, mostly channelled through Hezbollah. According to the UN Panel of Experts on Yemen, there is no sufficient evidence to confirm any direct large-scale supply of arms from the Iranian government given the coalition’s tight grip on Yemen’s air and maritime spaces” (Arraf, 2017, P. 10) Additionally, Hokayem and Roberts state that “although the UN found in 2015 that Iran had been supplying weapons and materiel to Ansar Allah since 2009, overall, the group does not fit the profile of an Iranian-controlled non-state actor” (Hokayem & Roberts, 2016, P. 163). The authors continue to state that “Tehran has no decisive say over Houthi decision-making, and the relationship between them is recent and opportunistic” (Hokayem & Roberts, 2016, P. 163).

### **ISIS:**

The Islamic State has been involved in Yemen since 2014. Arraf states that “the Islamic State branch in Yemen was announced on 13 November 2014. Unlike [Al-Qaeda in the Arabian Peninsula], its leadership consists mainly of non-Yemenis and its members appear to have been fighting with IS in Syria and Iraq” (Arraf, 2017, P. 9). ISIS has been a primary target of the U.S. counterterrorism efforts, including in Yemen.

### **Saleh-Aligned Forces:**

The former President of Yemen was President Ali Abdullah Saleh. After the Arab Springs in 2011, “Saleh signed an agreement proposed by the Gulf Cooperation Council (GCC) to step down from power. Under the agreement, Saleh would transfer power to his then deputy, Abdrabbo Mansour Hadi, in exchange for immunity from prosecution” (Arraf, 2017, P. 2). Saleh-aligned forces are those who are aligned with the previous President of Yemen. The Houthis have been known to support Saleh aligned forces after he was forced out of office. Arraf states that “although [the Houthis] political alliance with Saleh seems to have tightened over the course of the last year, military units loyal to Saleh and Houthi forces remain largely distinct” (Arraf, 2017, P. 8) Arraf continues to explain that “Although he stepped down as president, he continued to act as head of Yemen’s leading party, the General People’s Congress (GPC), and enjoyed the loyalty of powerful units in the army” (Arraf, 2017, P. 3).

### **Salafi:**

Lastly, Salafi militias are also present in Yemen and combat Houthi forces. The Saudi-led Coalition forged alliances with this militia (Arraf, 2017, P. 9). Arraf states that “in Aden, they act

with UAE support as state-sponsored, irregular security forces. Since December 2016, Salafi and other resistance militias have nominally been integrated into the Yemeni army while remaining separate in reality. (Arraf, 2017, P. 9).

## **Chapter II: Saudi-led Intervention**

### **2.1 Classification**

Before discussing the matters of the Saudi-Led Intervention in Yemen, which occurred with the consent of President Hadi and the Yemeni government, the type of conflict will first be defined. Based on International Humanitarian Law, as defined by the Geneva Conventions, there are international armed conflicts (IACs) and non-international armed conflicts (NIACs). According to the International Committee of the Red Cross (ICRC), “An international armed conflict occurs when one or more States have recourse to armed force against another State, regardless of the reasons or the intensity of this confrontation” (International Committee of the Red Cross, 2011a). However, the conflict in Yemen is classified as a non-international armed conflict. The ICRC states that “Under Article 3 common to the Geneva Conventions of 12 August 1949, non-international armed conflicts are armed conflicts in which one or more non-State armed groups are involved. Depending on the situation, hostilities may occur between governmental armed forces and non-State armed groups or between such groups only” (International Committee of the Red Cross, 2011b) Regardless of whether multiple states are involved in the conflict, if the states are fighting against non-state armed groups and not against the central government, the classification will remain a NIAC. Fighting has to reach a certain threshold in order to be considered a NIAC. Lastly, the rule of law must be upheld during non-international armed conflicts by all parties. As stated by Tzimas, “Human rights have...been adopted as a legal template which needs to be followed in cases of non-international armed conflicts. (Tzimas, 2018, P. 185-186). Human rights need to be upheld during NIACs.

In the conflict in Yemen, many non-state armed groups and states are involved in the conflict. Al-Enezy and Al-Duaij state that “there are currently many ongoing parallel and overlapping conflicts in Yemen that are non-international in nature. The notable examples include the conflict between the Saudi-led coalition, the government and the Houthis; that between Al-Qaeda in the Arabian Peninsula (‘AQAP’) and the Government; and those between diverse armed groups as well as the Southern movements” (Al-Enezy & Al-Duaij, 2020, P. 331-332). The conflict in Yemen presents a multitude of actors and ongoing sub-conflicts. Regardless of whether one or more of the non-state armed groups respect the law of armed conflict, all parties are still bound to uphold such obligations. This includes the Saudi-led Coalition.

### **2.2 Consent**

In March of 2015, President Hadi requested help from the Saudi-led Coalition. The consent to use of force has been contested, especially regarding the aftermath of what the use of force has led to in the civil war. While there is a debate about the legitimacy of President Hadi’s consent for Saudi-Led intervention, the legal obligations remain relevant for the consent of Saudi-led intervention.

While the Saudi-led Coalition was requested to defend the state of Yemen, there are limits to what extent they may act.

Article 2(4) of the UN Charter states that:

"All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations. There are three exceptions to this blanket prohibition: A host state may consent to the use of force; A state may use force in self-defense under Article 51 of the Charter; and A state may use force if authorized to do so by the UN Security Council" (UN Charter, 1948)

In March 2015, President Hadi requested the intervention of the Gulf Cooperation Council. He sent a letter both to the GCC and the UN Security Council (UNSC). The actual letter became a critical event in legitimizing and legalizing both consent and intervention. In April 2015, President Hadi's legitimacy was reinforced by the UN Security Council (UNSC). The UNSC created resolution 2206 in 2015. Tzimas states that "[the] resolution reaffirmed the UNSC '... support for the legitimacy of the President of Yemen, Abdo Rabbo Mansour Hadi', while condemning Houthis' actions" (Tzimas, 2018, P. 178).

The letter from President Hadi to the GCC states:

"I urge you, in accordance with the right of self-defence set forth in Article 51 of the Charter of the United Nations, and with the Charter of the League of Arab States and the Treaty on Joint Defence, to provide immediate support in every form and take the necessary measures, including military intervention, to protect Yemen and its people from the ongoing Houthi aggression, repel the attack that is expected at any moment on Aden and the other cities of the South, and help Yemen to confront Al-Qaida and Islamic State in Iraq and the Levant. (Ferro & Ruys, 2018, P. 2)

The Gulf Cooperation Council (GCC) is "an organization of six oil-exporting countries of the Persian Gulf...The members as of [December] 2020 were Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the United Arab Emirates" (Amadeo, 2021). When President Hadi requested help, it was "directed towards specific countries (Saudi Arabia, United Arab Emirates, Bahrain, Oman, Kuwait, and Qatar), not the international community in general" (Hathaway, O. A. *et al.*, 2019, p. 62). Despite being directed towards the GCC, the coalition was led by Saudi Arabia primarily. This thus led to the immense aid provided by the United States and other countries who provided military support, logistics, and arms sales.

The basis of consent is not limitless. As stated by Tzimas, “even if the government of the state is recognized as the legitimate one, its right to consensual intervention is not absolute (Tzimas, 2018, P. 155). Regardless of whether consent was legitimate, the government is obligated to respect and uphold international law. Violations of international law are not justifiable. Tzimas continues to state that “Consent in general can be no excuse for neglecting the rights of individuals within the consenting State, who, after all, are subjects of international law too, or for violating at least fundamental norms of international law” (Tzimas, 2018, P. 155). If international law is not upheld during intervention, it denounces legitimacy for a state’s intervention. The individuals living under the consenting state’s jurisdiction are still protected under international law. Tzimas further explains that “when a consensual intervention after some point harms the collective security system imperatives or fails to meet international law standards, the consent which has been provided as a basis of justification, even if initially justified and legitimate, becomes null and void under international law” (Tzimas, 2018, P. 182). If the security and well being of the state is jeopardized or negatively impacted due to violations of international law, the consent is no longer justified.

### **2.3 Intervention by Invitation**

The intervention of the Saudi-led Coalition in Yemen is considered to be intervention by invitation. According to Hursh, “The doctrine of intervention by invitation is generally lawful and consistent with the law governing the use of force and state responsibility...it allows a recognised government to request a foreign government to intervene militarily within an internal conflict on its behalf” (Hursh, 2020, P. 128). While consent has been debated, at the time of initial intervention, consent from President Hadi was legitimate along with his request for the Saudi-led Coalition to intervene. Hursh continues to state that “The lawfulness of the use of force flowing from an intervention by invitation request centres foremost on consent. Here, valid consent requires answering two questions in the affirmative: first, was consent properly given, and second, did the individual providing the invitation (making the request) have the legal authority to speak for the state” (Hursh, 2020, P. 129). Since consent was given properly and under valid conditions, and he was the State head, then it is considered as such. Hursh concludes that “Given that Hadi retained authority, he also could consent. Accordingly, his application of the intervention by invitation doctrine was valid and the Saudi coalition acted lawfully by responding to this request for military assistance” (Hursh, 2020, P. 135). At the start of the Yemeni war, President Hadi was internationally recognized as the legal authority for Yemen, and therefore his request for an intervention was valid.

### **2.4 Resolution 2140 & 2216**

Two resolutions by the UN Security Council have been regarded as the basis for Saudi-led Intervention: 2216 and 2140. Americans for Democracy & Human Rights (ADHR) states that “UNSC 2140 voices support for Hadi’s government and calls on all parties to reject violence and



work constructively to aid a peaceful political transition. UNSC 2216 demands that Houthi forces withdraw from “all areas seized during the latest conflict, relinquish arms seized from military and security institutions, cease all actions falling exclusively within the authority of the legitimate Government of Yemen and fully implement previous Council resolutions” (Americans for Democracy and Human Rights, 2018, P. 2)

Both resolutions are acting under Chapter VII of the United Nations Charter. Chapter VII outlines “Actions with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression” (UN Charter, 1945). Whittle states that “the Council has broad powers to maintain international peace and security, most notably under Chapter VII of the UN Charter, and its decisions are binding on UN members” (Whittle, 2015, P. 672). Resolutions made under Chapter VII are legally binding for member states. Additionally, Chapter VII goes alongside Article 25 of the UN Charter, which states that “The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter” (Charter of the United Nations, 1945, Article 25). Since these resolutions are legally binding, all members in question are obligated to adhere to the Security Council. Since the start of the Yemeni war, the Security Council expressed concern for adherence to international law standards for all parties. While the concern was geared towards the Houthis in the beginning, the concern grew to encapsulate all parties. According to the United Nations, “the Council expressed concern over reported serious human rights abuses and violence against civilians and urged all parties to end conflicts and comply with their obligations under applicable international humanitarian and human rights law” (United Nations, 2014). Despite the call for peace and adherence to international law, countless violations continued throughout the war until the present. All parties have been involved with violations, but the states most heavily armed and funded has continued to be the Saudi-led Coalition.

Resolution 2140 states “its strong commitment to the unity, sovereignty, independence and territorial integrity of Yemen, Commending the engagement of the Gulf Cooperation Council (GCC) in assisting the political transition in Yemen” (UNSC Res 2140, 2015). Furthermore, Resolution 2140 imposes retribution for any entity that threatens Yemen. Ferro and Ruys state that “The transition process received political support by the UN Security Council (UNSC), which adopted Resolution 2140 (2014), envisioning an asset freeze and travel ban for individuals ‘engaging in or providing support for acts that threaten the peace, security or stability of Yemen’” (Ferro & Ruys, 2018, P. 1). The resolution states that “Acting under Chapter VII of the Charter of the United Nations, Reaffirms the need for the full and timely implementation of the political transition following the comprehensive National Dialogue Conference, in line with the GCC Initiative and Implementation Mechanism, and in accordance with resolution 2014 (2011) and 2051 (2012), and with regard to the expectations of the Yemeni people” (S/RES/2140, 2014). This resolution was created at the start of the war and is legally binding on all parties to the conflict.

Resolution 2216 focuses on military action to combat the Houthis and any entity that undermines or threatens the security of Yemen. UNSC 2216 asserts:

“...its support for the legitimacy of the President of Yemen, Abdo Rabbo Mansour Hadi, and reiterating its call to all parties and Member States to refrain from taking any actions that undermine the unity, sovereignty, independence and territorial integrity of Yemen, and the legitimacy of the President of Yemen, Expressing grave alarm at the significant and rapid deterioration of the humanitarian situation in Yemen, and emphasizing that the humanitarian situation will continue to deteriorate in the absence of a political solution” (S/Res/2216, 2015)

Additionally, the resolution reaffirms “its strong commitment to the unity, sovereignty, independence and territorial integrity of Yemen, and its commitment to stand by the people of Yemen” while also reaffirming the requested help from the GCC to provide support (S/Res/2216, 2015). Sharp states that “one of the key aspects of the 2015 UNSCR 2216 is that it authorizes member states to prevent the transfer or sale of arms to the Houthis and also allows Yemen's neighbors to inspect cargo suspected of carrying arms to Houthi fighters” (Sharp, 2017, P. 14). The resolution continues to state that the Security Council:

*“Demands* that all Yemeni parties adhere to resolving their differences through dialogue and consultation, reject acts of violence to achieve political goals, and refrain from provocation and all unilateral actions to undermine the political transition and *stresses* that all parties should take concrete steps to agree and implement a consensus-based political solution to Yemen’s crisis in accordance with the Gulf Cooperation Council Initiative and its Implementation Mechanism and the outcomes of the comprehensive National Dialogue conference” (S/RES/2216, 2015)

Although this resolution in general geared many aspects towards the Houthis, it also mentions the applicability to all parties of the conflict. Regardless of whether the Security Council directly addressed the Houthis, all parties were called on to cease violence and adhere to the original goal of political transition. By continuing acts of violence and violations of international humanitarian law, parties are in violation of their legal obligations to this resolution.

As referenced in Resolution 2216, Resolution 2201 is also applicable for the conflict. Based on the Security Council’s demands in 2201, it states that the Security Council is

“Reaffirming its strong commitment to the unity, sovereignty, independence and territorial integrity of Yemen, and its commitment to stand by the people of Yemen...Reiterating the need

for comprehensive, independent and impartial investigations consistent with international standards into alleged human rights violations and abuses in line with the outcomes of the comprehensive National Dialogue Conference, the Gulf Cooperation Council Initiative and its Implementation Mechanism, to ensure full accountability. (S/RES/2201, 2015).

Violations committed in the conflict demand comprehensive, independent and impartial investigations for any human rights violations and abuses. All parties in the conflict are legally bound to this resolution as is mentioned in 2216. Without adhering to this demand, states are in violation of the Security Council's legally binding decisions.

Both resolutions were created shortly after President Hadi sent the initial request in March 2015. The resolutions upheld the requested support of the Saudi-led Coalition while outlining the goal of the intervention, which was to protect the people of Yemen, combat entities which threaten the security of Yemen, and further the transition to a peaceful governmental transition in the country. America for Democracy & Human Rights state that "While Saudi Arabia and its coalition allies point to UNSC resolutions 2140 and 2216 as the basis for their armed intervention, neither resolution empowers the coalition to engage in indiscriminate attacks on civilian areas or establish a crippling blockade of Yemen that disproportionately affects non-combatants" (Americans for Democracy and Human Rights, 2018, P. 2). Tzimas states that "On the basis, both of the contradiction of the intervention with the UNSC mandate and with international humanitarian law and given that a government cannot consent to acts which would be illegal if committed by the government itself, even if Hadi's consent was lawful in the first place it would have lost its legitimacy" if there were violations (Tzimas, 2018, P. 186). The Saudi-led intervention has come under intense scrutiny for disproportionately harming Yemeni civilians, as will be discussed in detail in Chapter III.

## **2. 5 Saudi-Led Intervention**

The intervention of the Saudi-led Coalition has been condemned by the international community. While the initial consent was based on aiding Yemen in combating the Houthis and other armed forces, the fight has claimed the lives of thousands of civilians. Al-Enezy and Al-Duaij state that "humanitarian intervention can be narrowly described as a situation where force is used to prevent endemic and gross human rights violations, especially when the aggrieved state is powerless or unwilling to act under the circumstance. (Al-Enezy & Al-Duaij, 2020, P. 329-330). The Saudi-led Coalition was requested in order to prevent such atrocities, but in doing so have ended up committing numerous violations. Furthermore, Tzimas states that "The United Nations Human Rights Office in Yemen also recalled '... that indiscriminate or disproportionate attacks, or attacks targeting civilian objects such as markets, are prohibited under international humanitarian law, ... reminding all parties to the conflict of their obligation to ensure full respect for international human

rights and humanitarian laws” (Tzimas, 2018, P. 183). All parties are bound by this obligation to respect international law.

Airstrikes from the Saudi-led Coalition proved to be incredibly damaging to the population. Al-Enezy and Al-Duaij state that “Yemenis and [Saudi-led coalition] airstrikes are responsible for nearly 67% of civilian deaths, a percentage which primarily includes women and children. In contrast, the Houthi attacks caused minor casualties among civilians in the border cities of Saudi Arabia, and among the armed forces” (Al-Enezy & Al-Duaij, 2020, P. 341-342). If civilians are largely being impacted by Saudi-led interventions, their wellbeing is not prioritized, and their security is threatened. Civilians have been targeted, whether directly or indirectly, and civilian casualties have grown exponentially since the start of the war. Ferro states that “by June 2018, the hostilities had claimed at least 16,706 civilian casualties while the total number of conflict-induced deaths was estimated at 57 000. Nearly 80% of the population—a staggering 24 million people—required some form of humanitarian assistance and protection, and 3.9 million people were displaced” (Ferro, 2019, P. 505). Due to the grave circumstances in Yemen, it has been deemed one of the worst humanitarian crises of today. The coalition has continued heavy airstrike campaigns despite the disproportionate deaths. Al-Enezy and Al-Duaij continue to state that “despite the Saudi-led coalition’s intervention, the Yemen crisis continued unabated. The situation worsened with violent air strikes and counter attacks by the rival group, using Iranian technology. (Al-Enezy & Al-Duaij, 2020, P. 341). Since the start of 2015, the situation has gotten worse, and the Saudi-led intervention remains ineffective and disastrous.

## **2.6 Saudi-led Coalition Military Operations**

While military operations have largely targeted Houthi military targets, there have been high numbers of civilian areas that have also been targeted. Americans for Democracy & Human Rights states that:

According to the Yemen Data Project, since Saudi Arabia and its coalition allies entered the conflict in Yemen, they have conducted over 16,000 airstrikes. While many were military targets – Houthi training camps, positions of pro-Houthi fighters, military convoys, and weapons caches – many of the strikes targeted civilian areas. Among the civilian targets struck by airstrikes were refugee camps, schools including a school for the blind, markets, weddings, and a funeral hall. The coalition has also attacked hospitals around northern Yemen, including hospitals supported by Doctors without Borders (MSF)” (Americans for Democracy and Human Rights, 2018, P. 2-3)

Since the start of the war, the coalition has taken an aggressive stance which has resulted in indiscriminate targeting of civilians and civilian areas.

Not only have the airstrikes led to excessive damage for civilians and civilian areas, but the naval and aerial blockades have further distressed Yemen. Americans for Democracy and Human Rights states that the “the naval blockade has severely restricted the import of food, water, and fuel, while the aerial blockade on Sana’a’s airport has severely restricted the import of necessary medical as well as humanitarian supplies” (Americans for Democracy and Human Rights, 2018, P. 3). This has further exacerbated the humanitarian crisis in Yemen. As of 2018, as stated by the ADHR, the “UN High Commissioner of Refugees warn[s] that 22.2 million people are in need of aid while 2 million people are internally displaced, with over 100,000 people displaced over the past six months alone” (Americans for Democracy and Human Rights, 2018, P. 3). Yemen is already facing extreme issues from the destruction of war, but the naval and aerial blockade have worsened the humanitarian crisis.

## **Chapter III: Saudi-led Coalition Violations**

### **3.1 Introduction**

The Saudi-Led Coalition has been under intense scrutiny for committing war crimes and violations of International Humanitarian Law. This has involved attacking civilians and civilian areas, negatively impacting civilians by using blockades, using indiscriminate weapons banned by the international community, and accusations of torturing those who are detained. Despite all of these violations committed since the beginning of that war in 2015, the Saudi-led Coalition has continued to garner support through arms sales by western countries, and largely by the United States. In regard to the Saudi-led intervention, Hokayem and Roberts explain that “the stated objectives of the operation were to recapture the entirety of Yemen and destroy the Houthi movement, thus denying Iran a presence on the Arabian Peninsula.” (Hokayem & Roberts, 2016, P. 165). The motivations behind the Saudi-led Coalition’s intervention have been debated and questioned. Despite airstrikes and operations, the coalition has failed to achieve the initial objectives at the start of the war. Ferro states that “the governments of Yemen, Saudi Arabia and the United Arab Emirates (UAE) were accused of committing war crimes including attacks in violation of the principles of distinction, proportionality and precaution; cruel treatment and torture; outrages upon personal dignity; rape; and the use of child soldiers” (Ferro, 2019, P. 505). These violations go against the regulations outlined in International Humanitarian Law and the laws governing non-international armed conflicts.

### **3.2 Non-International Armed Conflict Overview**

A primary aspect of non-international armed conflicts defines who are to be protected (civilians and noncombatants), and what are appropriate targets. Schmitt et al. states that:

“All military operations must comply with the principles of distinction, prohibition of unnecessary suffering, and humane treatment; Military necessity has already been taken into account in the formulation of these rules. Therefore, where not mentioned explicitly as an exception in the rules, military necessity cannot serve as a justification for their violation. 1. These principles are based on customary international law. They are derived from the fundamental tenet that the right of belligerents to choose methods or means of warfare is not unlimited. (Schmitt et al., 2006, Pg. 8)

A clear definition is that there are no exceptions for a military force’s violation, nor are the methods or means of warfare an unlimited act. The laws regarding NIACs must be complied with, and violations are not justifiable.

The principle of distinction is crucial during NIACs regarding who active participants are versus who are not. Schmitt et al. states that

“It is important to distinguish active (direct) participation in hostilities from participation in the war effort. The former term is much more restrictive. Examples of active (direct) participation in hostilities include such activities as attacking the enemy, his materiel, or facilities; sabotaging enemy installations; acting as members of a gun crew or artillery spotters; delivering ammunition; or gathering military intelligence in the area of hostilities. It would not include, however, general contributions to the war effort, such as working in a munitions factory. Under Article 13.3 of Additional Protocol II [of the Geneva Conventions], the loss of protection exists only ‘for such time as [civilians] take a direct part in hostilities.’” (Schmitt et al., 2006, P. 4-5).

As clearly defined, active and inactive individuals need to be distinguished when carrying out an attack. While it is not always possible to make an immediate assessment, every effort is required to minimize and avoid attacking inactive individuals. As Schmitt et al. continues to define, “Attacks must be directed only against fighters or military objectives. This rule is based on the principle of distinction, as it applies to the direct targeting of persons and objects. Since the term ‘attacks’ means acts of violence, it is clear that any military operation that does not entail violence (or violent consequences, such as death, injury, destruction, or damage) is beyond the scope of the prohibition” (Schmitt et al., 2006, Pg. 18).

### **3.2.1 Civilian Protection**

Civilians are to be protected during both international and non-international armed conflicts; attacking civilians or civilian objects is prohibited. The principle of distinction is a crucial element for protecting civilians. Schmitt et al. state that “the principle of distinction is the ‘foundation on which the codification of the laws and customs of war rests.’ It seeks to shield those who are not actively (directly) participating in armed conflict from its effects by prohibiting direct attacks upon civilians or objects that do not constitute legitimate military objectives. It also underpins the rule of proportionality” (Schmitt et al., 2006, Pg. 10-11). There is the prohibition to target civilians or civilian objects during conflicts. Schmitt et al. state that “Attacking the civilian population...as well as individual civilians, is forbidden. It is also forbidden to attack civilian objects, unless they become military objectives” (Schmitt et al., 2006, Pg. 18-19). A distinction between civilians and civilian objects versus military personnel and objects is needed to avoid violations. Civilian objects can become military objects if they are taken over by an armed force. As clarified by Schmitt et al., “every civilian object is liable to become a military objective as a result of use (or abuse) by the enemy for military purposes. Thus, even a hospital, church, school, or cultural object can become a military objective. Having said this, it must be borne in mind that any attack against such an objective is qualified by the rule of proportionality” (Schmitt et al., 2006, Pg. 6). Civilian objects that become military objects are liable for attack if they are strictly for military purposes. Schmitt et al. continue to define that “an attack is forbidden if it may be expected to cause incidental loss

to civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated. It is recognised that incidental injury to civilians and collateral damage to civilian objects may occur as a result of a lawful attack against fighters or military objectives” (Schmitt et al., 2006, Pg. 22). An assessment must be made to determine whether an attack is proportional or not.

### **3.2.2 Geneva Conventions: Common Article 3**

All states who are party to the Geneva Conventions are bound to Common Article 3 which defines the protection of civilians. Schmitt et al. state that “Common Article 3(1)(a) of the Geneva Conventions requires humane treatment of those taking no active part in hostilities and includes a prohibition on violence to life and person. General Assembly Resolution 2444 affirmed ‘the following principles for observance by all governmental and other authorities responsible for action in armed conflict...(b) that it is prohibited to launch attacks against the civilian population as such” (Schmitt et al., 2006, Pg. 19). While the rule of proportionality does not strictly prohibit civilian casualties, compared to the military gain expected, directly targeting, or launching attacks on civilians is prohibited. Common Article 3 states:

“Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed ‘hors de combat’ by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria....(2) The wounded and sick shall be collected and cared for” (Geneva Conventions, 1949, Art. 3(1))

Additionally, bodies offering services to Parties to the conflict are to be granted access. As stated in the Conventions, “An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict” (Geneva Conventions, 1949).

Before attacking an area, precautions and assessments need to be made to avoid harming civilians and civilian objects. For further clarification, attacking civilian objects is not expressly prohibited in the Geneva Conventions. As stated by Schmitt et al., “Neither Common Article 3, nor Additional Protocol II, contain any express prohibition on attacking civilian objects; rather, the ICRC Commentary to Additional Protocol II specifically mentions that “civilian objects do not enjoy a general protection, but some are protected because of their nature and function, in order to ensure that the civilian population will be safeguarded” (Schmitt et al., 2006, Pg. 19). While a general protection and prohibition is not expressly stated, assessments need to be made to assess the role and function of civilian objects in order to protect and safeguard the population.



### **3.3 Continued Violations from the Saudi-led Coalition**

Since 2015 up until today, Saudi Arabia and the Coalition have been accused of committing violations that might amount to war crimes. Each year, there have been a wide array of violations committed by the Coalition. The Group of Eminent Experts on Yemen with the Human Rights Council issued a report in 2020 which detailed what they believed to be violations by all parties involved, including multiple examples from the Coalition. The Group of Eminent Experts stated that “Individuals in the coalition, in particular from Saudi Arabia, may have conducted air strikes in violation of the principles of distinction, proportionality and precaution, acts that may amount to war crimes” (Human Rights Council, 2020, P. 17). Additionally, the report explains that the Coalition might have been involved with war crimes “Individuals in... the coalition (in particular from Saudi Arabia and the United Arab Emirates) ...have committed...acts that may amount to war crimes, including murder of civilians, torture, cruel or inhuman treatment” among other crimes that are violations of IHL (Human Rights Council, 2020, P. 17). Lastly, the Group of Eminent Experts found that “individuals in the coalition have conducted indiscriminate attacks using indirect-fire weapons, acts that may amount to war crimes” (Human Rights Council, 2020, P. 17). There are extensive details indicating that the Coalition specifically has violated multiple sectors of international law, as will be detailed below.

#### **3.3.1 Saudi-led Intervention: Civilian Deaths**

As of July 2021, there have been 23,226 Coalition air raids, 8,773 civilians killed, and 9,843 civilians injured by the Saudi-led Coalition (Yemen Data Project, 2021). Over the course of the seven years of the ongoing war, the Saudi-led Coalition has come under intense scrutiny for disproportionately harming or killing civilians. The disproportionate attacks have led to thousands of deaths, along with damaging critical civilian infrastructure. Attacks have ranged from wedding ceremonies, school buses, to markets and detention facilities. Musa states that “the coalition had conducted airstrikes targeting civilians and civilian objects, in violation of international humanitarian law, including camps for internally displaced persons and refugees; civilian gatherings, including weddings; civilian vehicles, including buses; civilian residential areas; medical facilities; schools; mosques; markets, factories and food storage warehouses; and other essential civilian infrastructure, such as the airport in Sana’a, the port in Hudaydah and domestic transit routes.” (Musa, 2017, P. 438). This is not an isolated incident in question but rather a recurring theme of numerous violations.

In 2017, as an example, there were multiple attacks that critically harmed civilians. Hathaway et al. state that:

“On June 9, 2017, a strike on a residential building in Sana'a killed 4 civilians and injured 8. On August 4, 2017, a strike on a residential building in Sa'ada killed 9 civilians and injured 3. On August 23, 2017, a strike on a motel in Arhab killed 33 civilians and injured 25.

On August 25, 2017, a strike on a residential building in Sana'a killed 16 civilians and injured 17. On September 2, 2017, a strike on a residential building in Hajjah killed 3 civilians and injured 13. On September 16, 2017, a strike on a vehicle in Ma'rib killed 12 civilians. On November 1, 2017, a strike on a market in Sa'ada killed 31 civilians and injured 26. On November 10, 2017, a strike on a residential building in Sa'ada killed 4 civilians and injured 4. On November 14, 2017, a friendly fire strike against President Hadi's military forces in Ta'izz resulted in the 3 civilian deaths and 5 injuries" (Hathaway, O. A. *et al.*, 2019, p. 10).

These incidents represent one year alone, yet there are repeated offenses like the ones listed throughout the entirety of the war. Civilians have been disproportionately impacted, and civilian areas have been targeted.

Until the middle of June 2018, there were dozens of attacks that caused civilian casualties and impacted civilian objects. Hathaway et al. state that

“From March 2015 to June 2018, there were at least 11 airstrikes that hit marketplaces; five that hit funerals, weddings, and analogous social gatherings; four that hit detention facilities; 11 that hit civilian boats; and 32 that hit medical facilities and educational, cultural, and religious sites that have special protection under international humanitarian law. In the 60-recorded cases of air strikes that hit residential areas, more than 500 civilians were killed, including 233 children. On August 9, 2018, a Saudi-led airstrike hit a school bus, killing dozens, including at least 29 children" (Hathaway, O. A. *et al.*, 2019, p. 10).

An example of one of the attacks in 2018 disturbingly documents a wedding that was targeted. Hathaway et al. continues to state that “in April 2018 there was yet another reported strike on civilians in Yemen-this time an attack on a wedding that reportedly killed more than twenty people and wounded dozens of others” (Hathaway, O. A. *et al.*, 2019, p. 67). Due to the targeting of civilian areas, along with the hundreds of individuals killed from airstrikes, there should have been repercussions for such heightened damage. Instead, the Saudi-led Coalition continued a ruthless campaign that disproportionately impacted civilians.

In 2019, based on the World Report published by the Human Rights Watch, there have been “at least 90 apparently unlawful Saudi-led coalition airstrikes, including deadly attacks on Yemeni fishing boats that have killed dozens and appeared to be deliberate attacks on civilians and civilian objects in violation of the laws of war....The coalition has bombed hospitals, school buses, markets, mosques, farms, bridges, factories, and detention centers” (Human Rights Watch, 2020, P. 642). The excessive number of unlawful airstrikes questions the legality of the Saudi-led intervention,

and any external support provided. In 2018, the Coalition's naval forces illegally struck fishing boats: "Human Rights Watch has documented at least five deadly attacks by Saudi-led coalition naval forces on Yemeni fishing boats since 2018, killing at least 47 Yemeni fishermen, including seven children" (Human Rights Watch, 2020, P. 642). Both children and adult civilians were killed in these strikes. There has not been an improvement protecting civilians since the start of the war, and persons taking no active part in hostilities continue to be at risk of indiscriminate attacks, despite the protections all contracting state parties are bound to by the Geneva Conventions.

An incident in 2019 demonstrates another example of the illegality of Saudi-led intervention. As stated by Human Rights Watch "in August 2019, the Saudi-led coalition carried out multiple airstrikes on a Houthi detention center, killing and wounding at least 200 people. The attack was the single deadliest attack since the war began in 2015" (Human Rights Watch, 2020, P. 642). As stated in the Geneva Conventions Common Article 3, all members who are not actively participating in hostilities, including individuals who are in detention, are to be treated humanely and violence to life and person are prohibited. This type of targeting is a direct violation of Common Article 3 of the Geneva Conventions.

The Group of Eminent Experts documents one of several deadly airstrikes conducted by the Coalition which resulted in a high number of civilian casualties. The Group of Eminent Experts "...documented two...airstrikes that resulted in large numbers of civilian casualties, especially children. On 24 September 2019...over 30 civilians were killed and injured by two air strikes. One of the deadliest airstrikes of 2020 was launched by the coalition in the early hours of 15 February 2020...resulting in approximately 50 civilians killed and injured" (Human Rights Council, 2020, P. 6). This adds to the thousands of civilian deaths that have already been caused by the Saudi-led Coalition specifically. The Group of Eminent Experts also asserts that "the coalition may have failed to take all measures necessary to minimize civilian casualties. Failures relate particularly to fulfilling duties to verify a target as a legitimate military target, to collect and assess intelligence relating to likely civilian impact and to cancel or suspend an attack if it becomes apparent that the target is not a lawful one or that it would be disproportionate" (Human Rights Council, 2020, P. 6). By failing to take appropriate measures and to minimize or avoid civilian casualties, the Coalition has continued to carry out violations by recklessly targeting and impacting Yemeni civilians.

### **3.3.2 Usage of Indiscriminate Weapons**

Indiscriminate weapons are prohibited under customary international humanitarian law. Geneva Academy of International Humanitarian Law and Human Rights states that "An indiscriminate weapon is a weapon that cannot be directed at a military objective or whose effects cannot be limited as required by international humanitarian law (IHL). Under IHL, the use of such an 'inherently' indiscriminate weapon is prohibited" (Geneva Academy of International Humanitarian Law and Human Rights, 2017). Indiscriminate weapons are unable to accurately distinguish

military versus non-military targets and thus can cause excessive harm to non-combatants. Schmitt et al. states that “Indiscriminate attacks are those that ‘are of a nature to strike military objectives and civilians or civilian objects without distinction’” (Schmitt et al., 2006, Pg. 20). Weapons must comply with both the principle of distinction and prevent unnecessary suffering (Schmitt et al., 2006, Pg. 28). From both principles, when attacks are carried out, the option that minimizes or prevents civilian harm needs to be selected. Since indiscriminate weapons, such as cluster bombs, are unable to distinguish who and what are targeted, they are forbidden.

The Saudi-led Coalition has been accused of using cluster bombs which are prohibited under customary IHL. Hokayem and Roberst state that “While both Saudi Arabia and the UAE used precision weapons and benefited from US and UK targeting support, there are also reports of the use of cluster bombs and the targeting of civilian areas and medical infrastructure, which the coalition has either denied or blamed on Saleh and the Houthis” (Hokayem & Roberts, 2016, P. 167). Human Rights Watch documents that “ Saudi Arabia has used US-made cluster munitions near civilian areas in Yemen, leaving behind unexploded submunitions” (Human Rights Watch, 2016). The report continues to state that “Cluster munitions are prohibited by a 2008 treaty signed by 119 countries, though not Saudi Arabia, Yemen, or the US.” Despite the overwhelming ban on Cluster Munitions, the U.S. and Saudi Arabia have failed to embrace this ban. The Arms Control Association (ACA) states that “Cluster munitions are bombs, rockets, and artillery shells that disperse explosive submunitions over wide areas. Many submunitions fail to detonate as designed, leaving explosive remnants that later injure or kill civilians” (Arms Control Association, 2018.). Cluster munitions not only violate the principle of distinction but can have lasting effects on the civilian population years after they are used, since some bombs might malfunction and not detonate when initially launched. Many states have banned cluster munitions, and the U.S. and Saudi Arabia have failed to ban a weapon that violates the principles of IHL.

Apart from the usage of disproportionately injuring and killing civilians, targeting non-military objects, and using indiscriminate weapons, the allegations of other violations (torture, forced disappearances, the usage of child soldiers, and sexual violence) have also been reported by Human Rights Watch. Thw focus will solely be on military attacks and targeting. Sharp states that “According to a recent U.N Human Rights Council Report on Yemen, which found human rights violations on all sides of the conflict between 2018 and 2019, despite ‘reported reductions in the overall number of airstrikes and resulting civilian casualties, the patterns of harm caused by airstrikes remained consistent and significant’” (Sharp, 2017, P. 4). Over the course of the war, there has been no major improvement to the IHL violations. Additionally, there have not been adequate investigations for potential violations. Hathaway et al. state that “A Human Rights Watch report claims that the Saudi-led coalition's investigations into alleged war crimes in Yemen (via the Joint Incidents Assessment Team) lack credibility, impartiality, and transparency. The report warns Britain, France, and the U.S. that they risk complicity by continuing to supply arms”

(Hathaway, O. A. *et al.*, 2019, p. 11). Investigations need to be impartial and effective in order to accurately analyse potential violations, yet they have remained untrustworthy and insufficient.

### **3.4 International Humanitarian Law and International Human Rights Law Conclusions**

Not only has Saudi Arabia and the Coalition continued to cause systemic attacks and damage to the civilian population, but they have thoroughly failed to uphold their obligations for international humanitarian law and human rights law. The United Nations Office of the High Commissioner for Human Rights states that “Since States have [positive obligations] or to abstain from doing something (negative obligations) under both branches, they can be responsible for a violation of international human rights and humanitarian law through action, omission or inadequate action. In international humanitarian law they have an explicit obligation to respect and to ensure respect” (United Nations Office of the High Commissioner for Human Rights, 2011, P. 17). As can be seen through the numerous reports on civilian casualties and the targeting of non-military targets, the Saudi-led Coalition has failed to uphold their positive and negative obligations. Positive obligations should include impartial, transparent, and neutral investigations into civilian casualties and targeting, however there have been numerous reports that this has not been upheld. Negative obligations include abstaining from any targeting that could cause civilian casualties or harm to non-military targets. Lastly, the United Nations Office of the High Commissioner for Human Rights states that “State responsibility for violations of international human rights and humanitarian law has long been a foundation of international law. State responsibility stems from the principle of *pacta sunt servanda*, which means that every treaty in force is binding upon the parties to it and must be performed by them in good faith” (United Nations Office of the High Commissioner for Human Rights, 2011, P. 72). Despite the treaties that the Saudi-led Coalition is bound by, to uphold, respect and protect human rights even during times of war, the Coalition has failed to do so. There have been no concrete actions taken to dramatically reduce violations of international law, and civilians have continued to be targeted and killed as a result of noncompliance.

## Chapter IV: United States Domestic Policies for Arms Trade

### 4.1 Introduction

Despite widespread systematic violations of international humanitarian law, arms exports from the U.S. to the Saudi-led Coalition, and largely to Saudi Arabia, have not ceased since 2015. As stated by Hathaway et al., “since the start of the war, the United States has provided billions of dollars in arms sales to countries participating in the Saudi-led coalition that is fighting a war in Yemen against the Houthis-Saleh alliance, contributing to one of the world's worst humanitarian crises. Investigative reports have tied shrapnel from U.S.-made bombs to numerous civilian deaths in Yemen.” (Hathaway, O. A. *et al.*, 2019, p. 31). Yemen is one of the worst humanitarian crises of the world that has affected a majority of the population, with thousands of civilians killed, including casualties caused by U.S. made arms. The American Bar Association Center for Human rights submitted a report and “concluded that the Saudi-led coalition's use of force in Yemen was not legitimate self-defense because it violated both necessity and proportionality” (Hathaway, O. A. *et al.*, 2019, p. 34). This report was first submitted in 2017 and since then, arms export and coalition violations have only continued without proper, impartial, and effective investigations into alleged violations. Widespread condemnation of U.S. arms trade to Saudi Arabia continues to persist, and yet no strong stance by the government has been taken. Domestic policies outline the standards that are expected for arms trade with other countries. These policies outline human rights standards, along with international law standards that must be respected in order to complete an arms sale. Multiple policies exist which should strictly guide the United States in taking these decisions, yet they are bypassed or vetoed in the process.

Three United States presidents and their administrations have been involved since the start of the Yemeni war in 2015: President Barack Obama (2012-2016), President Donald Trump (2016-2020), and currently President Joseph Biden (2020-2024). Previous President Trump stated the following in 2018:

After my heavily negotiated trip to Saudi Arabia last year, the Kingdom agreed to spend and invest \$450 billion in the United States. This is a record amount of money. It will create hundreds of thousands of jobs, tremendous economic development, and much additional wealth for the United States. Of the \$450 billion, \$110 billion will be spent on the purchase of military equipment from ...U.S. defense contractors. If we foolishly cancel these contracts, Russia and China would be the enormous beneficiaries – and very happy to acquire all of this newfound business. It would be a wonderful gift to them directly from the United States!” (Donald Trump, 2018)

This statement accurately demonstrates how both financial gain and competition amongst other states is at the forefront of arms trade concern, rather than preventing human rights and

humanitarian law violations. Arms regulations need to consider all factors, not merely employment and financial benefits.

During the entirety of the war, each U.S. president has supported the war through arms trade and military logistical support. Hathaway et al. state

“The United States conducted a total of 157 airstrikes in Yemen from 2011 through 2016. U.S. strikes increased from twenty-one strikes in 2016, under the Obama Administration, to at least 131 in 2017, the first year of the Trump Administration. By September 2017, U.S. Central Command stopped issuing updated statements for individual strikes and simply estimated that it had conducted over 100 strikes. In late December 2017, the Department of Defense acknowledged ‘multiple ground operations and more than 120 strikes in 2017’” (Hathaway, O. A. *et al.*, 2019, p. 12)

If human rights and international law violations are not heavily considered, it perpetuates further violations through heavy military support. As stated above, individual airstrikes were no longer being updated after September 2017, which lacks transparency and accountability for actions that should be public knowledge.

#### **4.2 United States Arms Trade**

A large portion of U.S. arms exports goes to the Middle East, and a majority of weapons that Saudi Arabia imports is from the U.S. According to SouthFront, “Almost half (47%) of US arms exports went to the Middle East in 2016–20, an increase of 28% on the previous five-year period....Saudi Arabia was the world’s largest arms importer in 2016–20 and received 11% of global arms imports” (SouthFront, 2021). Saudi Arabia is the largest importer, and heavily relies on the U.S. for their imports. According to SIPRI:

“Saudi Arabia was the world’s largest arms importer in 2015–19. Its imports of major arms increased by 130 percent compared with the previous five-year period and it accounted for 12 percent of global arms imports in 2015–19. Despite the wide-ranging concerns in the USA and the United Kingdom about Saudi Arabia’s military intervention in Yemen, both the USA and the UK continued to export arms to Saudi Arabia in 2015–19. A total of 73 percent of Saudi Arabia’s arms imports came from the USA and 13 per cent from the UK” (SIPRI, 2020).

While both the U.S. and the U.K. are large exporters to Saudi Arabia, the scale of imports is dramatically larger with 73% of total arms sales coming from the United States.

Arms exports from the U.S. dramatically strengthened Saudi Arabia's defense system. After the start of the war, U.S. arms trade intensified and contributed to the Coalition's military capabilities. Wezeman explains that:

“The Royal Saudi Air Forces (RSAF) uses several types of combat aircraft, all of which have been used in the war in Yemen. During the 1990s, the USA supplied 72 F-15S. Starting in 2016, these began being replaced by 154 F-15SA, a heavily modernized version of the F-15S ordered from the USA in 2011. In addition, the USA continues to deliver large quantities of ordnance for these aircraft, such as SLAM-ER cruise missiles with a 280-kilometre range, and a variety of guided bombs that have been used in Yemen. (Wezeman, 2018)

U.S. support to Saudi Arabia has a large range of influence, from actual weaponry to military logistical support and training.

Compared to the years prior to 2015, Saudi Arabia drastically increased their arms acquisitions that were then used in Yemen. SouthFront states that

“In 2016–20 Saudi Arabia strengthened its long-range strike 4.3 capabilities with 91 combat aircraft from the USA...It also imported 14 air defense systems from the USA. By the end of 2020 several large deliveries of major arms were outstanding, including for 61 combat aircraft, 4 frigates and 7 anti-ballistic missile systems from the USA...Saudi Arabia is therefore expected to remain among the world's largest arms importers in the coming five years” (SouthFront, 2021).

The U.S. has directly impacted the capabilities of the Coalition which thus has encouraged and supported widespread violations of international humanitarian law. Each year, the amount of intense arms trade to Saudi Arabia has continued unabated, all while violations have persisted

### **4.3 United States Involvement with the Saudi-led Coalition**

U.S. Involvement began when the Saudi-led Coalition was asked to intervene by President Hadi. Sharp states that “In March 2015, President Obama authorized ‘the provision of logistical and intelligence support to GCC-led military operations, and the Obama Administration announced that the United States would establish ‘a Joint Planning Cell with Saudi Arabia to coordinate U.S. military and intelligence support’” (Sharp, 2017, P. 3). Though U.S. troops were not on the ground fighting, the U.S. was heavily involved in the logistical support. Hokayem and Roberts explain that “the US provided intelligence, targeting advice, logistical support, air-to-air refuelling, expedited munitions resupply and maintenance that were key to the coalition's operations. Even though the U.S. had heavy influence over the coalition, dozens of violations continued to occur since 2015. Hathway continues to state that “according to defense officials at the outset of U.S.



assistance, the United States would not provide targeting information to the Saudis but would review Saudi-picked targets and advise on the risk of civilian casualties” (Hathaway, O. A. *et al.*, 2019, p. 15). Although the U.S. reviewed targets and the risks of civilian casualty, civilians were disproportionately killed and injured.

There have been numerous reports that indicate that U.S. manufactured and exported arms were involved with Coalition violations. This includes the usage of cluster munitions which are internationally prohibited. Musa states that “Investigators from organizations like Human Rights Watch also found a US bomb delivered to Saudi Arabia during the war, as well as remnants of US-supplied weapons at 23 unlawful coalition airstrikes. Human Rights Watch proved that around 12 attacks involved US cluster munitions” (Musa, 2017, P. 440-441). Another incident involved “US manufactured weapons were also used in an attack on Mastaba market, killing 97 civilians and a funeral hall in Sanaa, killing 100 and wounding more than 500 people.” (Musa, 2017, P. 441). Although the U.S. has provided extensive military logistical support and weaponry, there are multiple incidents which demonstrate that U.S. manufactured weapons have been used to disproportionately target civilians. Violations from the Coalition's attacks have not been scrutinized to a point of halting arms exports.

#### **4.4 United States’ Issues**

Based on the high rates of civilian casualties, members of the U.S. congress have repeatedly expressed concern about U.S. involvement in the war. There have been numerous attempts to halt or question the number of arms provided to Saudi Arabia. Hathaway et al. state that “a year into the war between the Saudi coalition and Houthi-Saleh alliance, members of Congress expressed growing concern about civilian casualties” (Hathaway, O. A. *et al.*, 2019, p. 15). This concern was expressed only a year after the war started, and violations and civilian casualties continued to intensify. Musa states that “if the arms trade is regulated properly, it could potentially prevent, or at least reduce the exponential rises in human rights and humanitarian law violations and the commission of crimes such as genocide, war crimes and crimes against humanity” (Musa, 2017, P. 434). Without proper and strict regulations, states can continue to export arms to handlers that will commit violations. Musa continues to state that “there is a causal link between strict international law considerations pre-export and levels of deaths and casualties post-export.” (Musa, 2017, P. 434). With this correlation, and with means and methods of analysing such risks, states can determine whether arms exports are secure or not.

Global and national opposition to U.S. arms exports to Saudi Arabia has not been enough for presidents to cut ties with Saudi Arabia trade. Sharp states:

“Many foreign observers have denounced human rights violations that they charge have been committed by all parties to the conflict. In the United States and other Western countries, there has been vociferous opposition to errant coalition air strikes against civilian

targets.... The Trump Administration opposes congressional efforts to restrain U.S. support for Saudi Arabia and continues to call for a comprehensive settlement to the conflict in line with relevant U.N. Security Council resolutions and other international initiatives” (Sharp, 2017).

Rather than critically analysing and strictly handling arms trade, the U.S. government has chosen to take a stance that opposes the basic obligations to ensure that arms exports will not immediately lead to human rights or international humanitarian law violations. Musa states that “...States must apply arms control laws strictly to prevent human rights abuses....there is the need for exporting states to recognize that their duty to abide by international law is not relinquished upon the completion of an arms transaction and additional measures must be undertaken to also ensure the prevention of human rights and humanitarian law violations, as will be dealt with later on in the article” (Musa, 2017, P. 435). Arms trade is not complete after a transaction, and the aftermath of such a sale needs to be tracked. The selling state must ensure that arms will not lead to violations of IHL or IHRL, especially if there are legitimate concerns that widespread violations have already occurred.

In order to prevent arms exports to states who may commit violations of international law, there needs to be a strengthening of arms trade regulations. Musa states that “The end user’s legitimate need must be clarified, in addition to its capacity to ensure that the arms would be utilized in conformity to international law. If international bodies perceive the end user’s attitude and behaviour towards human rights as negatively then this should be taken into account” (Musa, 2017, P. 460-461). As current arms trade stands, especially regarding the United States who exports the most weapons, potential violations are not weighed heavily in the trading process. Continued trade with Saudi Arabia, a state which has widespread human rights violations in the context of Yemen, demonstrates this weakness. Musa continues to state that “on the face of it, the US national control system appears rigorous; however, arms sales to Saudi Arabia have highlighted that the existence of law does not necessarily mean practice. The USA does appear to have one of the most detailed and comprehensive national frameworks on arms control” (Musa, 2017, P. 452). While policies exist in multiple forms, the U.S. is not adhering to their own standards and international standards for human rights and humanitarian law obligations.

#### **4.5 U.S. Government & Domestic Policies**

Based on various actions throughout the last six years, the U.S. has acknowledged and reacted to excessive civilian casualties, regardless of whether the claim that arms exports to Saudi Arabia remain legal. After over a year of the conflict, “In December 2016, the Obama Administration cancelled the planned sale of 16,000 precision-guided munition kits (valued at \$350 million) and announced that it would restrict further intelligence sharing involving targeting Houthi-Saleh forces. At the same time, the United States announced it would continue its refueling operations and would step up its training of the Saudi Air Force, as well as continue intelligence sharing in

regards to AQAP and securing the Saudi-Yemeni border” (Hathaway, O. A. *et al.*, 2019, p. 16). The U.S. decided to restrict the type of arms that were exported to Saudi Arabia, while also trying to mitigate civilian casualties through training.

During the Trump Administration, there was excessive support for the Coalition and Saudi Arabia in general, as demonstrated by the sale of \$110 billion dollars of arms exports to Saudi Arabia. Additionally, he has retaliated against Congress for attempting to halt or freeze certain sales. The House and Senate attempted to address continued concerns of Saudi support. The American Journal of International Law (AJIL) states “The House and Senate passed three joint resolutions with bipartisan support in an attempt to disprove the arms sales, but Trump vetoed all of them... four of Trump’s eight vetoes during his presidency to date have dealt directly with the conflict in Yemen or arms sales to Saudi Arabia” (American Journal of International Law, 2021, P. 149). Half of Trump’s vetoes dealt with arms sales to Saudi Arabia, despite continuous information demonstrating the potential illegality of such trades.

Former Director of the Central Intelligence Agency (CIA) and Secretary of State, Michael Pompeo, also continued Saudi arms export support. AJIL states that “acting on behalf of the president, Pompeo declared an emergency under that exception in May 2019, thereby bypassing congressional review of twenty-two arms sales packages to Saudi Arabia, the UAE, and Jordan, worth a total of \$8.1 billion” (American Journal of International Law, 2021, P. 148). More than half of these sales were frozen by Congress, and due to the state of emergency, all pauses were lifted. Acting Inspector General “determined that the Secretary’s May 2019 use of emergency authorities was executed in accordance with the requirements of Section 36 of the [Arms Export Control Act (AECA)]” (Shaw, 2020, 9). AJIL continued to state that “Pompeo justified the emergency declaration on the grounds that the sales were necessary to “support our allies, enhance Middle East stability, and help these nations to deter and defend themselves from the Islamic Republic of Iran,” noting that “[t]hese national security concerns have been exacerbated by many months of Congressional delay in addressing these critical requirements, and have called into doubt our reliability as a provider of defense capabilities, opening opportunities for U.S. adversaries to exploit” (American Journal of International Law, 2021, P. 149). Whether this is grounds for enough justification under the AECA and the Conventional Arms Transfer Policy remains largely debated.

Despite attempted adjustments, the U.S. has continued their strong support of the Coalition. The current Biden administration focuses on providing self defense arms. Crowley and Wong state that

“The Biden administration plans to suspend the sale of air-to-ground offensive weapons used by fixed-wing aircraft — mainly fighter jets and drones — to Saudi Arabia, U.S. officials said. This includes systems that can turn regular bombs into precision-guided munitions. The suspension is aimed at addressing one of the main

concerns in the Yemen war: the killings of civilians, including many children, because of the use of such bombs by the Saudi-led coalition” (Crowley & Wong, 2021).

By suspending offensive arms, there is an implication that Saudi Arabia and the Coalition are not complying with the rules of IHL or IHRL. Civilian casualties continue to be an implied concern of the United States without the government taking concrete action to completely halt arms trade. Crowley and Wong continue to state that “The suspension does not cover sales of any other kinds of weapons to Saudi Arabia, U.S. officials said. Weapons used by helicopters would still be permitted, as well as ground-to-ground munitions and small arms. Electronics equipment, including jamming technology, would also be permitted. The Saudi military receives almost all its weapons from the United States” (Crowley & Wong, 2021). Following the regulations of various policies, arms exports are prohibited with regards to widespread violations. The U.S. has not wavered in their support for the Coalition.

An attempted investigation was initiated for the Yemeni war yet was disrupted. As stated in the *American Journal of International Law (AJIL)*,

“The then-State Department IG Steve A. Linick, who was appointed by President Obama in 2013, opened the investigation, but Trump fired him in May 2020—a move that prompted three congressional committees to review whether the termination was retaliatory. During the hearings, Linick testified that two State Department officials had attempted to pressure him into ending the arms sales investigation, including the Acting Legal Adviser Marik String, who had helped Pompeo prepare the emergency declaration’ Diana Shaw then became acting Inspector General” (AJIL, 2021, P. 149).

Linick being fired for an attempted investigation is concerning and suppresses the call for accountability and impartiality. Following the assertive stance of the Trump administration to heavily support arms trade with Saudi Arabia, and considering the threat of an investigation, his removal from the position raises concerns.

President Biden, on May 11th, 2021, decided to continue the state of emergency in Yemen, by Executive Order 13611. Biden stated that:

“The actions and policies of certain former members of the Government of Yemen and others continue to threaten Yemen’s peace, security, and stability. These actions include obstructing the political process in Yemen and the implementation of the agreement of November 23, 2011, between the Government of Yemen and those in opposition to it, which provided for a peaceful transition of power that meets the legitimate demands and aspirations of the Yemeni people. For this reason, I have determined that it is

necessary to continue the national emergency declared in Executive Order 13611 with respect to Yemen” (Biden, 2021).

While initially this state of emergency was geared towards Houthi forces and others who opposed the internationally recognized government of Yemen, it does not address or reference the insecurity that the Saudi-led Coalition has caused in Yemen. Crowley and Wong states that “U.S. officials have debated which weapons sold under the Trump administration might plausibly be used for Saudi Arabia’s self-defense, including ones from missile and drone attacks by the Iranian-backed Houthi rebels, whom the Saudis have been fighting in Yemen. Even as Biden administration officials have criticized Saudi Arabia and its crown prince...” (Crowley & Wong, 2021). The U.S. continues to support those who threaten Yemen’s peace, security, and stability which goes against both national security and foreign policies of the United States.

#### **4.6 Office of the Investigative General, 2020 Report**

As stated in the previous section, the Office of the Investigative General, led by Diana Shaw, found Michael Pompeo’s state of emergency request to be valid and in accordance with Arms Export Control Act. Shaw states that “Transfers of defense articles and services are governed by U.S. law, principally the AECA. Decisions to approve or deny proposed arms transfers are based on criteria outlined in the Conventional Arms Transfer Policy” (Shaw, 2020, P.5). The AECA is a main component assessing the legality of foreign arms trade. Shaw continues to specify that “Consistent with the Law of Armed Conflict, the current Conventional Arms Transfer Policy expressly prohibits the Department from approving arms transfers in cases where the United States has knowledge that the transferred arms will be used to commit attacks intentionally directed against civilians” (Shaw, 2020, P. 6). Regardless of whether steps are taken to lessen civilian casualties, the violations presently known have not been considered. The Conventional Arms Transfer Policy states that:

“The risk that the transfer may be used to undermine international peace and security or contribute to abuses of human rights...Whether the United States has actual knowledge at the time of authorization that the transferred arms will be used to commit: genocide; crimes against humanity; grave breaches of the Geneva Conventions of 1949; serious violations of Common Article 3 of the Geneva Conventions of 1949; [or] attacks intentionally directed against civilian objects or civilians who are legally protected from attack...If the United States has such knowledge, the transfer shall not be authorized” (Conventional Arms Transfer Policy, 2018)

This policy specifies that arms trade is prohibited if there are violations of IHL and systematic violations against human rights at the time of authorization.

The Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General found that:

“Individuals in the coalition, in particular from Saudi Arabia, may have conducted air strikes in violation of the principles of distinction, proportionality and precaution, acts that may amount to war crimes; (b) Individuals in the Government of Yemen and the coalition (in particular from Saudi Arabia and the United Arab Emirates) and the southern transitional council have committed, as applicable to each party, acts that may amount to war crimes, including murder of civilians, torture, cruel or inhuman treatment, rape and other forms of sexual violence, outrages upon personal dignity, denial of fair trial, and enlisting children under the age of 15 or using them to participate actively in hostilities; (c) Individuals in the coalition have conducted indiscriminate attacks using indirect-fire weapons, acts that may amount to war crimes (Human Rights Council, 2020, P. 17)

After extensive investigations into numerous allegations of violations from the Saudi-led Coalition, the Human Rights Council concluded the widespread violations might have been committed by the coalition. This credibly assessed report warrants a genuine concern over continued support to Saudi Arabia and other coalition members.

In retaliation to high rates of civilian casualties since the start of the war, Shaw describes how the U.S. Government justified their current support. Shaw states that “Partly in response to concerns about the high rates of civilian casualties caused by Coalition airstrikes in Yemen, the U.S. Government provides training to Saudi Arabia on the Law of Armed Conflict and on best practices for preventing civilian casualties. The United States also supports Saudi efforts to improve its targeting processes and mechanisms for investigating alleged incidents of civilian casualties” (Shaw, 2020, P. 6). This exemplifies that the U.S. is aware of disproportionate attacks on civilians, and shows that their training and efforts have not remedied high civilian deaths over the six years. Shaw found that “the Department did not fully assess risks and implement mitigation measures to reduce civilian casualties and legal concerns associated with the transfer of [Precision-Guided Munitions] included in the Secretary’s May 2019 emergency certification” (Shaw, 2020, P. 11). While the emergency declaration might have complied with the AECA, the Government’s efforts to address and mitigate civilian casualties was insufficient. McBride explains that “while the U.S. government regularly sells weapons to its allies and partners, it is barred from transferring weapons that will be used against civilians, and U.S. policy dictates that the government seek to minimize harm to civilians” (McBride, 2020). Members of Congress have repeatedly voiced their concern over continuing support to Saudi Arabia with a primary concern of civilian casualties. Despite multiple efforts, their proposed solutions were vetoed or were unsuccessful.

#### 4.7 Arms Export Control Act & Foreign Assistance Act

The Arms Export Control Act (AECA) and the Foreign Assistance Act (FAA) are two policies that involve regulations surrounding arms exports to countries and the need to uphold human rights. Both acts contain strict regulations regarding forbidden trades if violations of IHL or IHRL are involved. Hathaway et al. states

“In May 2017, in the midst of debates over congressional proposals to halt arms sales, the American Bar Association (ABA) Center for Human Rights sent a report by Vanderbilt Law Professor Michael A. Newton to the Senate arguing that ‘further sales under both the Arms Export Control Act [AECA] and the Foreign Assistance Act [FAA] are prohibited until the Kingdom of Saudi Arabia takes effective measures to ensure compliance with international law and the President submits relevant certifications to the Congress’” (Hathaway, O. A. *et al.*, 2019, p. 32).

Arms sales are prohibited unless the state with alleged violations takes adequate measures to uphold international law. If there is no improvement with adhering to international law, arms sales are forbidden.

A new policy by President Obama was created in 2014 as an attempt to reign in arms export regulations. Hathaway et al. state that “President Obama put the 2014 Policy in place precisely to ensure that arms transfer decisions would meet the requirements of the AECA, FAA, and other applicable laws and regulations. It stated that one goal of U.S. conventional arms transfer policy was ‘[e]nsuring that arms transfers do not contribute to human rights violations or violations of international humanitarian law’” (Hathaway, O. A. *et al.*, 2019, p. 36). For the United States Conventional Arms Transfer Policy, The Presidential Policy Directive 27 was created to strengthen global arms trade. The Policy states that the “United States conventional arms transfer policy serves the following U.S. national security and foreign policy goals [of] [e]nsuring that arms transfers do not contribute to human rights violations or violations of international humanitarian law” (Presidential Policy Directive 27, 2014). This is in accordance with arms trade agreements, including the Arms Export Control Act and the Foreign Assistance Act. Additionally, “All arms transfer decisions will be guided by a set of criteria that maintains the appropriate balance between legitimate arms transfers to support U.S. national security and that of our allies and partners, and the need for restraint against the transfer of arms that would enhance the military capabilities of hostile states, serve to facilitate human rights abuses or violations of international humanitarian law, or otherwise undermine international security” (Presidential Policy Directive 27, 2014). The Policy continues to specify the following:

“More specifically, all arms transfer decisions will be consistent with relevant domestic law and international commitments and obligations, and will take into account the following criteria:

- The human rights, democratization, counterterrorism, counterproliferation, and nonproliferation record of the recipient, and the potential for misuse of the export in question.
- The likelihood that the recipient would use the arms to commit human rights abuses or serious violations of international humanitarian law, retransfer the arms to those who would commit human rights abuses or serious violations of international humanitarian law, or identify the United States with human rights abuses or serious violations of international humanitarian law.
- The ability of the recipient to field effectively, support, and appropriately employ the requested system in accordance with its intended end-use” (Presidential Policy Directive 27, 2014)

This Policy clearly outlines that arms trade must be in compliance with both U.S. and international law and will not support the trade if violations of IHL or IHRL are likely to occur.

Restrictions of this policy include: “The United States will not authorize any transfer if it has actual knowledge at the time of authorization that the transferred arms will be used to commit: genocide; crimes against humanity; grave breaches of the Geneva Conventions of 1949; serious violations of Common Article 3 of the Geneva Conventions of 1949; attacks directed against civilian objects or civilians who are legally protected from attack or other war crimes as defined in 18 U.S.C. 2441” (Presidential Policy Directive 27, 2014). Additionally, restraints will be put in place if:

“Such restraint will be considered on a case-by-case basis in transfers involving states whose behavior is a cause for serious concern.... where the transfer of weapons raises concerns about undermining international peace and security, serious violations of human rights law, including serious acts of gender-based violence and serious acts of violence against women and children, serious violations of international humanitarian law...or indiscriminate use.” (Presidential Policy Directive 27, 2014).

While initial arm sales to the coalition were justifiable, specifically regarding having actual knowledge at the time of authorization, as numerous allegations of violations have occurred over the last six years of the war, there is overwhelming evidence demonstrating that Saudi Arabia is unfit for further weapon sales.

#### **4.7.1 Arms Export Control Act**

The Arms Export Control Act is a major domestic instrument in the U.S. that outlines obligations in arms trade to other states. The AECA states that:



“Defense articles and defense services shall be sold or leased by the United States Government under this chapter to friendly countries solely for internal security, for legitimate self-defense, for preventing or hindering the proliferation of weapons of mass destruction and of the means of delivering such weapons, to permit the recipient country to participate in regional or collective arrangements or measures consistent with the Charter of the United Nations, or otherwise to permit the recipient country to participate in collective measures requested by the United Nations for the purpose of maintaining or restoring international peace and security, or for the purpose of enabling foreign military forces in less developed friendly countries to construct public works and to engage in other activities helpful to the economic and social development of such friendly countries” (AECA, U.S. Code 2754).

The AECA emphasises that the recipient country is permissible if they remain compliant with the UN Charter. While it is permissible to act for internal security and legitimate self-defense, which is applicable in the case of the Yemeni war, this is not a limitless right.

An arms trade is not permissible under this if there are risks of violations to IHL or IHRL. The AECA states:

“No credits (including participations in credits) may be issued and no guaranties may be extended for any foreign country under this chapter as hereinafter provided, if such country uses defense articles or defense services furnished under this chapter, or any predecessor Act, in substantial violation (either in terms of quantities or in terms of the gravity of the consequences regardless of the quantities involved) of any agreement entered into pursuant to any such Act” (AECA, U.S. Code 2753, C(1)(a)).

Klomp states that “Under the Arms Export Control Act...major foreign military sales can be blocked by Congress using a resolution of disapproval. The AECA delineates the president’s arms sales authorities by creating limitations and restrictions concerning the use of defense articles, prohibiting arms exports to particular recipients, requiring the development of arms export controls, and setting out mandatory Congressional reporting requirements, such as advice notification to Congress for any major arms sale” (Klomp, 2020, P. 2). The purpose of the AECA is to strengthen the bounds of arms trade. There are limitations for the selling of weapons and the justification for arms, while also strengthening Congress’ transparency and ability to halt concerning trade deals.

Importantly, the AECA clarifies when arms sales are allowed to resume if a country was found ineligible for sales due to a violation. The AECA states that “(4) A country shall remain ineligible

in accordance with paragraph (1) of this subsection until such time as—(A) the President determines that the violation has ceased; and (B) the country concerned has given assurances satisfactory to the President that such violation will not recur. (AECA, U.S. Code 2753, 4(A) & (B)). Assessments need to be made in order to determine whether a state is eligible again to receive arms. For the case of selling to Saudi Arabia, the U.S. helped with targeting and military training in order to prevent the risk of civilian casualties. However, disproportionate targeting of civilians did not cease despite these attempted remedies. There was no indication that Saudi Arabia and the coalition drastically reduced civilian targeting. Every single year of the conflict presented numerous assessed violations by credible human rights organizations. There was no improvement that should have led to the continuation of arms sales to Saudi Arabia.

#### **4.7.2 Foreign Assistance Act**

The Foreign Assistance Act (FAA) is another domestic policy that relates to human rights concerns and arms trade. Hathaway et al. state that “The FAA prohibits security assistance ‘to any country the government of which engages in a consistent pattern of gross violations of internationally recognized human rights.’ ‘Security assistance’ includes’ sale of defense articles or services, extensions of credits (including participations in credits), and guarantees of loans under the Arms Export Control Act” (Hathaway, O. A. *et al.*, 2019, p. 35-36). Unlike recently, with the current U.S. administration’s decision to suspend defense weaponry, the U.S. has continuously exported defense articles and services to Saudi Arabia. According to Section 502B, that the United States observe the international obligations set forth in the UN Charter, as well as “to promote and encourage increased respect for human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion. To this end, a principal goal of the foreign policy of the United States is to promote the increased observance of internationally recognized human rights by all countries” (FAA, 1961, (a)(1)). Additionally, the Policy states that “it is further the policy of the United States that, except under circumstances specified in this section, no security assistance may be provided to any country the government of which engages in a consistent pattern of gross violations of internationally recognized human rights” (FAA, 1961, (a)(2)).

Exceptions to this prohibition that can be applied to the current arms export to Saudi Arabia, include the following: “(i) extraordinary circumstances exist which necessitate a continuation of security assistance for such country, and, if so, a description of such circumstances and the extent to which such assistance should be continued (subject to such conditions as Congress may impose under this section), and (ii) on all the facts it is in the national interest of the United States to provide such assistance” (FAA, 1961, (c)(1)(C)). The U.S. has been heavily involved in providing Saudi Arabia with continued arms and military logistics since the start of the war. This could be considered extraordinary circumstances, especially since the U.S. has expressed an investment with counterterrorism in the country. However, this has not been weighed against the extensive violations of international law for a course of six years and counting.

#### **4.8 United States Code 2304- Title 22**

The U.S. Code 2304, Title 22, focuses on Human Rights and Security Assistance. This has been in effect since 2012 and provides further regulations to arms sales and observance of human rights as the principal goal of foreign policy. U.S. Code 2304 (a)(1) states that

“The United States shall, in accordance with its international obligations as set forth in the Charter of the United Nations and in keeping with the constitutional heritage and traditions of the United States, promote and encourage increased respect for human rights and fundamental freedoms throughout the world without distinction as to race, sex, language, or religion. Accordingly, a principal goal of the foreign policy of the United States shall be to promote the increased observance of internationally recognized human rights by all countries” (U.S. Code 2304, 2011, (a)(1)).

Promotion and observance of human rights cannot be recognized by a state that commits widespread violations. Though the principle of this code focuses on human rights being at the core of the policy, the United States has demonstrated a strong disregard for their primary focus of protecting the basic human rights established in the UN Charter.

The second paragraph states that “Except under circumstances specified in this section, no security assistance may be provided to any country the government of which engages in a consistent pattern of gross violations of internationally recognized human rights” (U.S. Code 2304, 2011, (a)(2)).

The circumstances specified in the section include that

“Security assistance may not be provided to the police, domestic intelligence, or similar law enforcement forces of a country, and licenses may not be issued under the Export Administration Act of 1979 for the export of crime control and detection instruments and equipment to a country, the government of which engages in a consistent pattern of gross violations of internationally recognized human rights unless the President certifies in writing to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate and the chairman of the Committee on Banking, Housing, and Urban Affairs of the Senate...[1] that extraordinary circumstances exist warranting provision of such assistance and issuance of such licenses. Assistance may not be provided under part V of this subchapter to a country the government of which engages in a consistent pattern of gross violations of internationally recognized human rights unless the President certifies in writing to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate that extraordinary circumstances exist

warranting provision of such assistance” (U.S. Code 2304, 2011, (a)(2)).

Extraordinary circumstances need to exist for the President to bypass all concerns with international law violations. This has been used for far too long and U.S. support has continued unabated. Throughout the course of the war, there has been no improvement in Yemen, but rather a crippling conflict that has left thousands dead or injured, and civilians disproportionately attacked by the Saudi-led Coalition. Attempts for the Coalition to remedy civilian casualties have failed and been ineffective.

#### **4.9 Leahy Law**

Lastly, Leahy Law is another law in the United States which demonstrates the importance of human rights and military assistance. The Bureau of Democracy, Human Rights, and Labor states that “The term ‘Leahy law’ refers to two statutory provisions prohibiting the U.S. Government from using funds for assistance to units of foreign security forces where there is credible information implicating that unit in the commission of gross violations of human rights (GVHR). One statutory provision applies to the State Department and the other applies to the Department of Defense (DoD)” (Bureau of Democracy, Human Rights, and Labor, 2021). DoD Leahy includes two exceptions that may allow for U.S. trade or assistance to states that had committed GVHR. DoD Leahy Law states that:

“The DoD Leahy law is now permanent in Section 362 of Title 10 of the U.S. Code. It requires that DoD-appropriated funds may not be used for any training, equipment, or other assistance for a foreign security force unit if the Secretary of Defense has credible information that such unit has committed a GVHR. The law allows for two exceptions to this restriction. The first in cases where the Secretary of Defense (after consultation with the Secretary of State) determines that the government of that country has taken all necessary corrective steps. This first exception is also known as ‘remediation.’ A second exception exists if U.S. equipment or other assistance is necessary to assist in disaster relief operations or other humanitarian or national security emergencies.” (Bureau of Democracy, Human Rights, and Labor, 2021).

Saudi Arabia and the Coalition have not sufficiently demonstrated that effective and corrective steps have been taken to minimize civilian risks. Violations against IHL have continued to persist by the Coalition, even though U.S. training was enforced. Musa states that “the law refers specifically to human rights stating that military assistance could not be provided to ‘any unit of the security forces of a foreign country if the Secretary of State has credible evidence that such unit has committed gross violations of human rights’” (Musa, 2017, P. 454). The exceptions provided under Leahy Law do not permit continued support if measures have not adequately addressed systemic gross violations of human rights. With the consideration that international

criticism has accused both the Saudi-led Coalition, the United States and other western countries of committing violations of human rights and international humanitarian law, U.S. support has been in violation of the domestic policies.

#### **4.10 Domestic Policies in Relation to International Humanitarian Law and International Human Rights Law**

Despite a rigorous outspoken stance from the United States that calls for respect of International Humanitarian Law and International Rights Law, their domestic policies on arms trade have fallen short of such aspirations. While human rights are intertwined within multiple domestic policies for arms trade, the United States has failed to uphold itself to the same standards it encourages the rest of the world to follow. In theory, the United States must not sell to states which have committed violations of IHL or IHRL unless there are extraordinary circumstances yet has continued heavy support to the Saudi-led Coalition. Weak justifications for continuously selling arms have been the reality of the United States since the start of the war, even though credible evidence has existed that Saudi Arabia has committed violations of IHL. The United States is responsible for war crimes committed in Yemen at the hands of the Saudi-led Coalition for its heavy support and arms export. The International Committee of the Red Cross stated that “the ICRC has proposed that all national and international standards for arms transfers should include a requirement to assess the recipient’s likely respect for international humanitarian law and to not authorize transfers if there is a clear risk that the arms will be used to commit serious violations of this law” (International Committee of the Red Cross, 2007, P. 3). The United States has kept decisions on arms sales in control of the president, has allowed vetoes to continue sales, and has bypassed concerns of Congress to conclude a sale. There has not been any extensive effort to investigate or assess the genuine risk that selling arms to Saudi Arabia could lead to. The ICRC states that:

“Any discernible pattern of violations, or any failure by the recipient to take appropriate steps to put an end to violations and to prevent their recurrence, should cause serious concern. In cases where there is uncertainty about the risk, States should seek further clarification from the recipient or from other sources. If concerns persist after further examination, there should be a presumption against authorizing transfers in light of the obligation of States under Article 1 common to the Geneva Conventions to “respect and ensure respect” for international humanitarian law” (International Committee of the Red Cross, 2007, P. 9).

This extensive type of assessment has clearly not been used in domestic policies of the United States, apart from its international obligations to uphold international law. National policies must uphold and strictly respect legitimate threats when it comes to aiding countries who seriously threaten international peace and security. States who continuously violate international humanitarian law and international human rights law are not trustworthy of receiving support,

especially regarding militarized support and arms trade. Without upholding these standards, it is apparent that the United States has failed to consider this when enacting domestic policies.

#### **4.11 Prioritizing Arms Trade Over Humanitarian Aid**

As a State, the United States has made it clear that arms trade with Saudi Arabia is more important than alleviating humanitarian suffering and disaster in Yemen. There have been more transfers of arms to Saudi Arabia than humanitarian aid since the start of the war. After 6 years in conflict, Hartman states that “the United States has provided more than \$3.4 billion in aid to Yemen since the conflict began six years ago” (Hartman, 2021). However, arms sales to Saudi Arabia significantly overshadow this figure. The Office of the United States Trade Representative states that in 2019 alone, “The top export categories (2-digit HS) in 2019 were: aircraft (\$2.6 billion), vehicles (\$2.0 billion), machinery (\$2.0 billion), arms and ammunition (\$1.6 billion), and electrical machinery (\$835 million)” (Office of the United States Trade Representative). Arms and ammunition at \$1.6 billion, and aircrafts topping \$2.6 billion already top the total amount of humanitarian aid that the U.S. provided since 2015. The United States Department of State documents that “The U.S. has \$126.6 billion in active government-to-government sales cases with Saudi Arabia under the Foreign Military Sales (FMS) system. Since the May 2017 signing of the \$110 billion commitment to pursue Saudi Armed Forces modernization, we carried out an increase in FMS and DCS cases. To date, this initiative resulted in over \$27 billion in implemented FMS cases” (US Department of State, 2021). There has been no sign of slowing or halting arms sales, only slight adjustments from the United States.

## **Chapter V: International Humanitarian Law and International Regulations for Arms Trade**

### **5.1 Introduction**

The United States prides itself on advocating for human rights and respect for international law, yet this concern is not adequately present during arms trade. Human rights and respect for international humanitarian law needs to be a core concern at the center of all arms export transactions. Both national and international regulations for arms exports have guidelines that aim to uphold human rights while selling weaponry. While the United States has various domestic policies that aim to enforce this rule, there are also legal frameworks at the international level which the United States and Saudi Arabia are bound by. The U.S. is the largest supplier of arms to Saudi Arabia, yet the legality and transparency of this trade remains debated and unclear. U.S. aid to Saudi Arabia has been described as essential, and based on international regulations, has been criticized. Hathaway et al. states that “The war in Yemen, and the U.S. role in it, reveals the degree to which the rule of law—both domestic and international—relies on a government, and government officials, committed to the rule of law, for the law to succeed. Sometimes violations of domestic law or international humanitarian law bring consequences that states cannot ignore, but most of the time law protecting the rights of the most vulnerable depend on states to self-police their own behavior” (Hathaway, O. A. *et al.*, 2019, p. 73-74). While regulations are meant to ensure the respect and observance of human rights, the responsibility relies on States to uphold high standards. Without this, there are potentially dangerous ripple effects with a lack of adherence to the law. Strengthening legitimate and legal trade that conforms to and respects international laws will improve the arms exporting trade. This can thus address the issue of sellings arms to a State where human rights and humanitarian law violations are a legitimate threat.

### **5.2 International Humanitarian Law**

International humanitarian law (IHL) is the law of armed conflict which focuses on protection of civilians and noncombatants from the dangers of armed conflict. Ensuring respect for the principles of IHL is crucial for all parties of a conflict, and in this case for a non-international armed conflict (NIAC). Human Rights Watch states that “The non-international armed conflict between coalition forces with its Yemeni allies and the Houthi forces and their Yemeni allies is governed by international humanitarian law set out in treaties and in the rules of customary international law. (Human Rights Watch, 2015). HRW continues to state that “[IHL] addresses the conduct of hostilities—the means and methods of warfare—by all sides to a conflict. Foremost are the principles of ‘civilian immunity’ and ‘distinction’—the requirements that civilians may never be the deliberate target of attacks and that parties to a conflict must distinguish at all times between combatants and civilians” (Human Rights Watch, 2015). Importantly, Human Rights Watch continues to state that “parties to the conflict are required to take all feasible precautions to minimize harm to civilians and civilian objects and to not carry out attacks that fail to discriminate

between combatants and civilians or would cause disproportionate harm to the civilian population” (Human Rights Watch, 2015). All parties must ensure respect for civilians, civilian objects, and therefore take all precautions to cause the minimal amount of damage. If parties to the conflict are reckless and do not take precautions, this could lead to a violation of IHL. According to the Human Rights Watch:

Serious violations of international humanitarian law committed with criminal intent—that is, deliberately or recklessly—are war crimes. War crimes, listed in the ‘grave breaches’ provisions of the Geneva Conventions and as customary law in the International Criminal Court statute and other sources, include a wide array of offenses for which individuals may be held criminally liable —deliberate, indiscriminate, and disproportionate attacks harming civilians; hostage taking; using human shields; and imposing collective punishment, among others. Individuals also may be held criminally liable for attempting to commit a war crime, as well as assisting in, facilitating, aiding, or abetting a war crime. (Human Rights Watch, 2015)

Based on this statute, Saudi Arabia is likely to have committed acts of war crimes, since the Coalition has been involved in multiple indiscriminate and disproportionate attacks that excessively harmed civilians and civilian objects. This therefore would incriminate the U.S. for continuing to facilitate and aid a war crime by the extensive aid and training provided to Saudi Arabia.

### **5.2.1 Military Attacks**

Direct attacks against civilian objects—such as homes, apartments and businesses, places of worship, hospitals, schools, and cultural monuments—are prohibited unless they are being used for military purposes and thus become military objectives.... Where there is doubt about the nature of an object, the warring party must presume it to be civilian” (Human Rights Watch, 2015). There needs to be constant assessment for military attacks to determine whether a military objective or a civilian object is being targeted. As stated above, if there is any doubt about the state of an object, it must be presumed to be civilian. The regulations presented under IHL emphasize that military targeting must be accurate and precise. As can be seen with Saudi Arabia and the Coalition, it is likely that objects have been assumed to be of military nature, especially since many civilian areas and objects have been targeted throughout the war. Human Rights Watch continues to state that “attacks on civilians and civilian objects...are prohibited. The laws of war also prohibit indiscriminate attacks, which strike military objectives and civilians or civilian objects without distinction. Examples are attacks that are not directed at a specific military objective or that use weapons that cannot be directed at a specific military objective” (Human Rights Watch, 2015). Without adhering to principles of proportionality, distinction and military necessity, parties violate basic IHL principles.



### 5.2.2 Proportionality

The rule of proportionality cannot be violated under IHL. However, as seen, there are discrepancies with parties to a conflict thoroughly and accurately assessing this rule. Schmitt et al. states that “proportionality is not an exact science and it is impossible to draw in advance hard and fast rules as to what outcome is proportionate to military advantage. The key word is “excessive”. It is essential not to produce a result where there is no proportionality at all between the ends sought and the expected harm to civilians and civilian objects” (Schmitt et al., 2006, Pg. 23). Since no exact science exists to determine whether a military attack will be proportional, parties have attempted to evade accountability. However, Schmitt et al. states that “it is not enough that an attack is carried out against fighters or military objectives. All attacks must also be conducted bearing in mind the principle of proportionality, i.e., the collateral damage to civilian objects and incidental injury to civilians must not be excessive in relation to the ‘concrete and direct military advantage anticipated.’ As a result, targeting is a delicate and important task” (Schmitt et al., 2006, Pg. 23). The rule of proportionality requires assessments and a determination of whether excessive damage is likely to occur. All parties of the Geneva Conventions must adhere to and respect the law of armed conflict. If an attack is suspected to cause disproportionate damage, the attack is forbidden. Human Rights Watch states that “Attacks that violate the principle of proportionality are also prohibited. An attack is disproportionate if it may be expected to cause incidental loss of civilian life or damage to civilian objects that would be excessive in relation to the concrete and direct military advantage anticipated from the attack” (Human Rights Watch, 2015). Since Saudi Arabia has clearly violated the rule of proportionality, from bombing funerals and weddings, to marketplaces, medical facilities, and beyond, this demonstrates that the Saudi-led Coalition has failed to adhere to the rule of proportionality.

Schmitt et al. state that “Despite the unique character of non-international armed conflicts, it is clear that the advantage against which incidental injury and collateral damage are assessed must be military in nature” (Schmitt et al., 2006, Pg. 24). While incidental injury and civilian casualties are not necessarily in violation of IHL, these factors need to be critically assessed and considered to adhere to proportionality. If the expected damage or casualties are excessive compared to the desired military objective, then the attack is prohibited. Additionally, using indiscriminate weapons will lead to a violation of proportionality, as excessive damage will be ongoing. Human Rights Watch states that

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

substantial risk of civilian harm, then they should not be deployed”  
(Human Rights Watch, 2015)

Using indiscriminate weapons not only violates the principle of proportionality, but it also impacts targeting, as the desired object will inevitably not be the only object impacted.

The usage of cluster bombs has been banned by the international community, yet Saudi Arabia and the United States have not ratified the Convention on Cluster Munitions. Human Rights Watch states that “Cluster munitions have been banned under the 2008 Convention on Cluster Munitions because of their widespread indiscriminate effect at the time of use, and the long-lasting danger they pose to civilians” (Human Rights Watch, 2015). Human Rights Watch continues to state that “Dropped by aircraft or fired by artillery and rocket systems, cluster munitions typically explode in the air and send dozens, even hundreds, of tiny submunitions or bomblets over an area the size of a football field. These cluster submunitions often fail to explode on initial impact, leaving duds that act like landmines” (Human Rights Watch, 2015). This has lasting and fatal consequences for civilians. Not only do cluster munitions cause widespread damage and are not able to specifically target, but cluster munitions can turn into the equivalent of landmines that puts civilians at risk for sometimes years after a conflict. Human Rights Watch states that “there is credible evidence that in November 2009 Saudi Arabia dropped cluster bombs in Yemen’s northern Saada governorate during fighting between the Houthis and the Yemeni and Saudi militaries. The US had provided Saudi Arabia with significant exports of cluster bombs and Saudi Arabia possesses attack aircraft of US and Western/[North Atlantic Treaty Organization (NATO)] origin capable of dropping US-made cluster bombs” (Human Rights Watch, 2015). Although this incident occurs before the war officially started, it proves that Saudi Arabia caused indiscriminate attacks by using cluster munitions and would therefore be a risk of selling arms to, and also demonstrates the U.S. involvement in providing weapons that are largely banned by the international community.

### **5.3 Party to the Conflict**

The debate about whether the United States is a party to the states in the Saudi-led Coalition against the Houthi forces has been discussed since the start of the war. While the U.S. initial participation and support in 2015 was unclear, over the years the role became well established. Weizmann states that “U.S. assistance to the Saudi-led coalition has included providing weapons, sharing intelligence, targeting assistance, and aerial jet refueling” (Weizmann, 2016). While the U.S. has not directly fought in the conflict, their extensive military support to the coalition has been said to have reached the threshold of becoming a party to the conflict. Human Rights Watch explains that “[party involvement] would include when a state’s military forces participate in combat operations, when the state provides a direct role in organizing, coordinating or planning military operations, or when the state acknowledges that it is a party to the conflict. A state’s indirect involvement by its general provision of military aid, financial assistance or political support would not make it a party to a conflict. (HRW, 2015). Multiple international agencies have assessed that the extent of their participation constitutes a party status.

Weizmann states that there are “two approaches [which] can assist in determining, from the facts, whether a country has become a party to a pre-existing NIAC for the purposes of applying international humanitarian law (IHL): (1) the ‘support-based approach’; and (2) the concept of ‘co-belligerency’ under the international law of neutrality” (Weizmann, 2016). Under the support-based approach, there are four criteria to be met, including:

- There is a pre-existing NIAC ongoing in the territory where multinational forces intervene;
- Actions related to the conduct of hostilities are undertaken by multinational forces in the context of that pre-existing conflict;
- The multinational forces’ military operations are carried out in support of a party to that pre-existing conflict;
- The action in question is undertaken pursuant to an official decision by the TCC or international organisation in question to support a party involved in that pre-existing conflict (Ferraro, 2013, P. 584)

Based on each of these criteria, the U.S. would be considered a party to the conflict in Yemen. The ‘co-belligerent approach’ states that “Under the law of neutrality, a State will become a co-belligerent when, in association, cooperation, assistance or common cause with another belligerent it participates in hostilities to a significant extent or it systematically or substantially violates its neutrality duties of impartiality and non-participation in the conflict” (Weizmann, 2016). Based on the assistance provided to Saudi Arabia, this would also implicate the U.S. as a party to the NIAC.

The International Committee of the Red Cross legal advisor, Dr. Tristan Ferraro, explains further what can constitute party involvement in a modern NIAC under the ‘support based’ approach. Ferraro states that “the ICRC considers that when a foreign power intervenes in support of the State party, the law of NIAC applies. The belligerent relationship between the State party and the non-State party is governed by the law of NIAC, as is the belligerent relationship between the intervening foreign power and the non-State party” (Ferraro, 2015, P. 1243). The extensive involvement of the United States to Saudi Arabia and the Coalition means that they are bound by the laws of the non-international armed conflict. Ferraro explains what activities would or would not implicate a state becoming a party. Ferraro states that “War-sustaining activities such as financial support, or the delivery of weapons/ammunition to a party to the conflict, should be regarded as a form of indirect involvement in hostilities that has no effect on the multinational forces’ status under IHL” (Ferraro, 2014, P. 585). If a third-party state is funding or supplying weapons, this does not constitute the third party becoming involved in the NIAC. However, Ferraro continues to explain that “transporting the supported state’s armed forces to the front line or providing planes for refuelling jet fighters involved in aerial operations carried out by the supported state do implicate multinational forces in the collective conduct of hostilities and make them a party to the pre-existing NIAC” (Ferraro, 2013, P. 585-586). Apart from other legal issues

and potential violations that arms trade from the U.S. to Saudi Arabia present, the refuelling of jet fighters throughout the war would make them a party to the conflict and therefore bound by IHL.

Co-belligerency was originally designed for International Armed Conflicts (IAC) but might also be applicable for NIACs. Weizmann states that “the concept of co-belligerency under the international law of neutrality...might also serve as a source of guidance to determine whether a supporting State is party to a pre-existing NIAC” (Weizmann, 2016). Weizmann continues to state that “examples of violations of a State’s neutrality include supplying war materials, engaging its own military forces, supplying military advisors to a party to the armed conflict, or providing or transmitting military intelligence on behalf of a belligerent” (Weizmann, 2016). Military advising has been provided by the United States in a few forms. Hathaway et al. state that “the U.S. military has provided assistance to Saudi-led operations including through targeting advisers and, up until November 2018, mid-air refueling of Saudi-led coalition aircraft” (Hathaway, O. A. *et al.*, 2019, p. 22). Additionally, “the United States would not provide targeting information to the Saudis but would review Saudi-picked targets and advise on the risk of civilian casualties.” (Hathaway, O. A. *et al.*, 2019, p. 15). This type of advising has halted and resumed throughout the course of the conflict. As recently as February 2021, military advisors explained their current role aiding Saudi-Arabia yet have continued to assert that they are not a party to the Yemen conflict. Szuba explains that “The United States military will continue to provide certain support, including intelligence, to Saudi Arabia regarding Yemen for defensive purposes” which was stated by the top commander of American forces in the Middle East, Gen. Kenneth “Frank” McKenzie (Szuba, 2021). Szuba continues to state that “The military has said the coaching was initiated to minimize civilian casualties in the Saudi-led air war over Yemen, though civilian deaths have continued. That advising has halted because of President Joe Biden’s order” in February 2021” (Szuba, 2021). The U.S. has recently adopted a more defensive form of aid to Saudi Arabia and the Coalition, yet are still providing military assistance, logistics and weaponry.

While the U.S. has not met the same threshold as the states of the Saudi-led Coalition, this does not deter them from becoming a party to the conflict. As stated by Hathaway et al.,

“The International Committee of the Red Cross...has argued that a third-party state or multinational coalition supporting one side in a NIAC does not need to meet the same intensity threshold in order to be a party to the NIAC. It explained: ‘[I]t is not always necessary to assess whether, on their own, the actions of multinational forces meet the level of intensity required for the existence of a new non-international armed conflict in order for them to become Parties to that conflict’” (Hathway et al., 2019, P. 59)

The U.S. has constantly asserted that they were not a party to the Yemen conflict, yet international experts in the field have concluded that their involvement constitutes party involvement. Human Rights Watch describes the distinction if the U.S. is considered a party. HRW states that “the

distinction is significant. As a party to the conflict in Yemen, the US would be fully bound by applicable international humanitarian law. US participation in specific military operations, such as bombing raids, could make US forces jointly responsible for laws-of-war violations by allied forces. And the US would be obligated to assist in investigations where there are credible allegations of war crimes and hold those responsible to account” (Human Rights Watch, 2015). If the U.S. is a party to the conflict, they would be bound by IHL, and any IHL violations committed by the Saudi-led Coalition would implicate the U.S. in such violations.

#### **5.4 State Responsibility**

Under International Law, there is the law of State Responsibility which could apply to U.S. involvement in Yemen. The ICRC States that “Under general international law, the responsibility of a State is engaged if the actions of its agents or actions otherwise attributable to it constitute internationally wrongful acts, in violation of its international obligations...The State is required to cease the unlawful conduct and to make reparation for the injury caused by its wrongful conduct” (International Committee of the Red Cross, 2014). If a state is heavily backing a coalition that has committed violations, then the state must end all participation. This concept also indicates that reparations must be provided for any wrongdoing. Hathaway et al. state that “The international law of state responsibility, captured in the International Law Commission’s (ILC) Draft Articles on State Responsibility, provides a possible ground on which the United States may be liable for its assistance to the Saudi-led coalition. Liability likely would turn on the bounds of U.S. intent and whether the United States knew that its aid would actually facilitate an internationally wrongful act” (Hathaway et al., 2018b). This concept ties in with the domestic policies of the United States, in terms of whether at the time of transaction any violations were known. If this were the case, the transaction would be prohibited.

Moynihan describes the concept of knowledge and intent regarding supporting a state which commits internationally wrongful acts, as found in the International Law Commission’s Articles on State Responsibility. Moynihan states that “‘Knowledge’ in this context means actual or near-certain knowledge of specific illegality on the part of the recipient state. Where the assisting state is ‘wilfully blind’ – that is, makes a deliberate effort to avoid knowledge of illegality on the part of the state being assisted, in the face of credible evidence of present or future illegality – that is also sufficient to satisfy the mental element under Article 16” (Moynihan, 2016, P. 24). The United States might have chosen to be ‘willfully blind’ to avoid restricting arms exports and military support to Saudi Arabia. Overwhelming evidence exists on numerous violations of IHL, and yet the United States has continued their trade and support. To say that the United States does not have any knowledge, or no near-certain knowledge, is difficult to accept at this stage in the war. There have been insufficient impartial investigations by the Saudi-led coalition, while international and credible human rights bodies have asserted that their actions are unlawful. Moynihan continues to state that “from para 70 above...knowledge and intent are closely intertwined, and that in light of Article 30(2)(b) of the Rome Statute, actual or near-certain knowledge of illegality is effectively a

form of intent. Applying this to Article 16 of the International Law Commission's Articles on State Responsibility, if an assisting state has actual or near-certain knowledge that unlawful conduct will be committed, it cannot shield itself from responsibility by arguing that its purpose is not to facilitate unlawful conduct" (Moynihan, 2016, P. 21). If a state continued to support another state or party which was committing internationally unlawful acts, with knowledge or near-certain knowledge, then this can always be viewed as intent.

## **5.5 Geneva Conventions**

The Geneva Conventions govern the law of armed conflicts. Cornell Law School states that

"The Geneva Conventions and their Additional Protocols is a body of Public International Law, also known as the Humanitarian Law of Armed Conflicts, whose purpose is to provide minimum protections, standards of humane treatment, and fundamental guarantees of respect to individuals who become victims of armed conflicts. The Geneva Conventions are a series of treaties on the treatment of civilians, prisoners of war (POWs) and soldiers who are otherwise rendered *hors de combat* (French, literally "outside the fight"), or incapable of fighting" (2017)

While all the four Geneva Conventions are relevant to the war in Yemen, the focus will be on the fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War. Cornell Law School explains that "Under Convention IV, civilians are afforded the same protections from inhumane treatment and attack afforded to sick and wounded soldiers in the first Convention. Further, additional regulations regarding the treatment of civilians were introduced. Specifically, it prohibits attacks on civilian hospitals, medical transports, etc... Finally, it discusses how occupiers are to treat an occupied populace" (Cornell Law School, 2017). The distinctions set forth in the Convention are crucial when determining whether a party to a NIAC has violated the protections granted to civilians. The two articles that are crucial to this discussion are Common Article 1 and Common Article 3, which are legally binding.

### **5.5.1 Geneva Conventions: Common Article 1**

Common Article 1 of the Geneva Conventions states that "The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances" (GC, 1949, Art. 1). This is binding for all High Contracting Parties, including the United States and Saudi Arabia. All circumstances emphasize a state's responsibility, even if they are not directly involved with a conflict.

In the case of the U.S., where their involvement is debated, they are still involved with a state which commits IHL violations. Hathaway et al. state that:

“The ICRC Commentaries conclude that Common Article 1 imposes not only a negative obligation on states not to encourage violations of the law of armed conflict, but also (and more controversially) a positive third-party obligation on states to closely coordinate their activities with other parties, whether state or non-state actors. The Commentaries state: ‘Under the negative obligation, High Contracting Parties may neither encourage, nor aid or assist in violations of the Conventions by Parties to a conflict. Under the positive obligation, they must do everything reasonably in their power to prevent and bring such violations to an end.’ Continued U.S. support for the Saudi-led military campaign in Yemen arguably violates both these negative and positive duties. (Hathaway et al., 2018a)

The United States has barely taken any action to adequately restrict or prevent aiding Saudi Arabia even after credible accusations have arisen. There have been no positive obligations by the United States which adequately verified whether violations occurred.

Additionally, the United States accepted the bare minimum from Saudi Arabia’s proposed plans to lessen civilian deaths, yet no improvement has been made. As stated in Chapter II, remedies were insufficient and therefore should not have allowed further sales. Based on the extensive damage to the Yemeni population, Saudi Arabia and the U.S. did not provide adequate responses. Hathaway et al. state that

“in the current case of Yemen, the United States may similarly be in violation of the negative obligation under Common Article 1...The U.S. government reportedly restarted sales of weapons to the coalition only after receiving assurances that Saudi Arabia would take greater precautions to avoid indiscriminate targeting and adhere to IHL. However, states that make a good faith effort to encourage parties to abide by IHL can still be held to violate their Common Article 1 negative duties” (Hathaway et al., 2018a).

When dealing with grave breaches of the Geneva Conventions, assurances are not sufficient to remedy potential violations.

There must be clear and effective methods to prevent unnecessary civilian damage and casualties. Hathaway et al. explain that the ICRC was not the first to suggest that states have positive obligations to uphold Common Article 1. Hathaway et al. states that

“In its 2004 *Wall* Advisory Opinion, the [International Court of Justice] adopted a more expansive reading of Common Article 1 than it had in *Nicaragua*. It found that the Article imposed negative duties “not to encourage” abuses, and also some *positive* third-state

obligations. The ICJ interpreted Common Article 1 to imply that “every state party to [the Fourth Geneva] Convention, whether or not it is a party to a specific conflict, is under an *obligation to ensure* that the requirements of the instruments in question are complied with” (para. 158). (Hathaway et al., 2018a)

Regardless of whether the U.S. is a party to the conflict or not, even though their involvement is likely to amount to qualification, there are still positive obligations to ensure that all Geneva Conventions are being complied with under all circumstances. Weizman concludes that “While becoming a party to the conflict is what triggers the application of IHL, it is important to recall that even *non*-parties to armed conflict have general obligations when it comes to their support activities. Under common article 1 of the Geneva Conventions of 1949 and their Additional Protocol I, States must *ensure* respect for IHL by other parties to an armed conflict” (Weizman, 2016). The U.S. is in violation of IHL and the Geneva Conventions by their involvement in the war and asserting that they are not a party to the conflict does not alter their obligation to Common Article 1.

Lastly, Weizmann describes that “Under the customary rule, they ‘may not encourage violations of international humanitarian law by parties to an armed conflict. They must exert their influence, to the degree possible, to stop violations of international humanitarian law.’ This has been described as an obligation of due diligence under which ‘a State with close political, economic and/or military ties...to one of the belligerents has a stronger obligation to ensure respect for IHL by its ally. ...’” (Weizmann, 2016). Examples of a State’s ties can include the U.S.’ involvement, including “through equipping and training of armed forces or joint planning of operations” (Weizmann, 2016). This type of support is encouraging violations of a threatening country since the state in question has had no serious repercussions. Support directly allows violations to continue by providing the means of warfare. By continuously garnering support from the U.S, Saudi Arabia has had no strong push to end their current practices that involve disproportionately targeting civilians and civilian objects. Weizmann continues to state that “this obligation is particularly relevant in the Yemeni context today in light of the influence that contributing countries like the U.S. (which has contested the obligation as a matter of law but seeks to promote adherence as a matter of policy... can have over Saudi Arabia in particular” (Weizmann, 2016). Rather than respecting the obligations as a matter of law, the U.S. promotes a weak system in which states can continue to violate IHL without legal consequences.

### **5.5.2 Geneva Conventions: Common Article 3**

Common Article 3 of the Geneva Conventions solely focuses on the protection of civilians and noncombatants during a non-international armed conflict. This article clearly outlines the protections granted to non-combatants, and the violations Saudi Arabia is accused of violating these principles. Human Rights Watch states that



“The most important treaty law is Common Article 3 to the Geneva Conventions of 1949, to which all members of the Coalition are party. Common Article 3...sets forth minimum standards for all parties to a non-international armed conflict. Yemen and some states participating in the armed conflict are also party to Protocol II to the Geneva Conventions, which provides further protections for combatants and civilians during non-international armed conflicts” (Human Rights Watch, 2015).

Saudi Arabia and the U.S. are both legally bound to Common Article 3 since they are High Contracting Parties of the Geneva Conventions, therefore both parties are expected to protect civilians as outlined in this article, and any violations are prohibited.

As defined in Chapter 3, Common Article 3(1) states the protection of all individuals who are taking no active part in hostilities (Geneva Conventions, 1949, Art. 3(1)). The elements of Common Article 3 (1) state that:

“The following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

- (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- (b) taking of hostages;
- (c) outrages upon personal dignity, in particular humiliating and degrading treatment;
- (d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples. (Geneva Conventions, 1949, Art. 3(1))

While Saudi Arabia might have committed violations of each category, the focus will be on Common Article 3(1)(a).

Saudi Arabia has had multiple allegations of violating Article 3(1)(a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment, and torture. As stated in Chapter III, the Human Rights Council (HRC) report from 2020 outlined credible and detailed examples of how Saudi Arabia and the Coalition violated both international human rights law and international humanitarian law. While the overall assessment includes potential violations of Article 3(1)(c) and Article (3)(1)(d) as stated above, the focus remains on Article 3(1)(a) since there is extensive and compelling evidence of Saudi-led Coalition violations, primarily focusing on Saudi Arabia. The Group of Eminent Experts was confident with their assessment, and they strongly recommended ending support. HRC states that “Notwithstanding the strong recommendations by the Group of

Eminent Experts in its previous reports, third States, including Canada, France, Iran (Islamic Republic of), the United Kingdom of Great Britain and Northern Ireland and the United States of America, continued their support of parties to the conflict, including through arms transfers, thereby helping to perpetuate the conflict” (A/HRC/45/6, 2020, P. 5). Many western countries have continued their strong support of Saudi Arabia and the Coalition, yet the U.S. has dramatically provided the most support to Saudi Arabia.

## **5.6 Arms Trade Treaty**

The Arms Trade Treaty was an impactful treaty that aimed to strengthen arms trade regulations to ensure that States exported arms responsibly. The United States is a signatory of this treaty as of 2013, without ratification, and Saudi Arabia has not signed the treaty. While being a signatory does not legally bind a state, there are responsibilities to adhere to. The United Nations states that “Signing a treaty is one of the most common steps in the process of becoming party to a treaty.... A State does not take on any positive legal obligations under the treaty upon signature. Signing a treaty does...indicate the State’s intention to take steps to express its consent to be bound by the treaty later. Signature also creates an obligation on a State, in the period between signature and ratification, acceptance or approval, to refrain in good faith from acts that would defeat the object and purpose of the treaty” (United Nations, 2011). The State has the responsibility to refrain from any acts that would violate the treaty in question.

Since it is a signatory, the United States would be expected to take all measures to ensure they made every effort to avoid a violation. However, the United Nations Office for Disarmament Affairs states that

“In a communication received on 18 July 2019, the Government of the United States of America informed the Secretary-General of the following: ‘This is to inform you, in connection with the Arms Trade Treaty, done at New York on April 2, 2013, that the United States does not intend to become a party to the treaty. Accordingly, the United States has no legal obligations arising from its signature on September 25, 2013. The United States requests that its intention not to become a party, as expressed in this letter, be reflected in the depositary’s status lists relating to this treaty, and all other publicly available media relating to the treaty be updated to reflect this intention not to become a party.’” (United Nations Office for Disarmament Affairs, 2019).

During 2019, former President Donald Trump clearly expressed the U.S.’ interest to maintain strong support for Saudi Arabia and the Coalition, as was documented in Chapter IV. During this period, arms exports were extremely high. Even though signing a treaty demonstrates a State’s motive to eventually ratify the treaty, this statement indicated that the United States did not want to be bound or held accountable for any of the elements included in the ATT.

The Arms Trade Treaty garnered international support, with 110 States who ratified the treaty, and a total of 130 signatories. Musa states that “the ATT has placed human rights and humanitarian law at the core of decision-making on the arms trade, which...should be at the forefront of arms trade regulation to prioritize the protection of innocent human lives” (Musa, 2017, P. 443). The United States should be highly criticized for their strong promotion of human rights and humanitarian law in theory, but their failure and refusal to act by ratifying and adhering to international treaties like the Arms Trade Treaty. Musa continues to state that “Article 1 of the ATT describes its purpose as to contribute towards international and regional peace, security and stability; reduce human suffering and promote cooperation, transparency and responsible action by States in the international trade in conventional arms, building confidence among them” (Musa, 2017, P. 445). The United States has vigorously supported the war in Yemen through their involvement, even though it has continued to be the worst humanitarian crisis of the day.

The Arms Trade Treaty aligns with the principles of the Geneva Conventions. The Arms Trade Treaty upholds “Respecting and ensuring respect for international humanitarian law in accordance with, inter alia, the Geneva Conventions of 1949, and respecting and ensuring respect for human rights in accordance with, inter alia, the Charter of the United Nations and the Universal Declaration of Human Rights” (Arms Trade Treaty, 2013). In accordance with Article 8(1), states are expected to:

assess the potential that the conventional arms or items:

(a) would contribute to or undermine peace and security; (b) could be used to: (i) commit or facilitate a serious violation of international humanitarian law; (ii) commit or facilitate a serious violation of international human rights law; (iii) commit or facilitate an act constituting an offence under international conventions or protocols relating to terrorism to which the exporting State is a Party; or (iv) commit or facilitate an act constituting an offence under international conventions or protocols relating to transnational organized crime to which the exporting State is a Party. (ATT, 2013, Art. 8(1))

This assessment is intended to prevent or ensure that arm sales would contribute to any violations of IHRL, IHL and international law in general. Such assessments should become more transparent to the public to ensure compliance. Musa states that “by embedding a degree of transparency into decision-making processes, there was an aim that there would be less room for States to enter into trading deals with actors who are or could even potentially be responsible for violations of international humanitarian law and human rights abuses” (Musa, 2017, P. 444). As can be seen with the United States, there is not a strong adherence to laws governing arms trade, both on a national and international level.

## **Chapter VI: United Nations Involvement**

### **6.1 Introduction**

While the Human Rights Council has taken some actions against the international humanitarian and human rights law violations, the UN Security Council (UNSC) has been reluctant to name the specific State offenders, especially regarding the Saudi-led Coalition. Being that the Security Council's permanent members include both the United Kingdom and the United States, both heavily influential to Saudi Arabia and the Coalition, this brings into question their silence on violations committed specifically by the Coalition. Rather than explicitly mention the Saudi-led Coalition, the Security Council has merely said that all parties of the war in Yemen are guilty of committing international violations, which removes pressure and accountability from the Coalition specifically.

### **6.2 United Nations Charter: Chapter VII**

Chapter VII of the United Nations Charter establishes the responsibility of the Security Council. The varying articles that apply to the war in Yemen include Articles 39-42, which overall involve "Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression." Any act under Chapter VII by the Security Council is legally binding.

Article 39 of Chapter VII states that "the Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security" (United Nations Charter, 1949, Chapter VII Art. 39). Considering excessive violations of the Saudi-led Coalition, there should have been further recommendations or assessments of their involvement, specifically since acts of aggression and breaches of peace have been involved. For documentation of such violations, including the fact that there are years of alleged violations, the Security Council has failed to accuse Saudi Arabia and the Coalition of such crimes.

Article 40 states that:

"in order to prevent an aggravation of the situation, the Security Council may, before making the recommendations or deciding upon the measures provided for in Article 39, call upon the parties concerned to comply with such provisional measures as it deems necessary or desirable. Such provisional measures shall be without prejudice to the rights, claims, or position of the parties concerned. The Security Council shall duly take account of failure to comply with such provisional measures" (United Nations Charter, 1949, Chapter VII Art. 40).

The Security Council's failure to submit recommendations, and at a minimum call on Saudi Arabia specifically to immediately halt violations of IHL and IHRL, demonstrates the reluctance to specifically target the state. The Security Council has asserted either that all parties, or solely the Houthis, are responsible for violations. The UNSC has not specifically named Saudi Arabia in their decisions against violations.

Article 41 states that:

“The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations” (United Nations Charter, 1949, Chapter VII Art. 41).

There are alternatives to hold states accountable that do not involve armed intervention, which include interrupting economic and diplomatic relations, yet the UNSC has failed to assert such influence over Saudi Arabia and states involved with the Coalition.

Article 42 states that:

“Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations” (United Nations Charter, 1949, Chapter VII Art. 42).

After thousands of civilians have been disproportionately killed, civilian objects continuously targeted, and numerous allegations of IHL violations since the start of 2015, there has been no insertion of the UNSC against Saudi Arabia specifically. This calls into question the concern of impartiality, with two members heavily involved and tied to Saudi Arabia in the form of arms exports and other logistical support.

### **6.3 U.N. Security Council, Resolution 2451**

In December of 2018, the Security Council adopted Resolution 2451. The Resolution states that:

“[The Security Council] Calls on all parties to the conflict to comply with applicable international law and to fulfil their obligations under international humanitarian law including to respect and protect medical facilities and personnel and their means of transportation, as such, and calls on them to protect civilian objects including schools and objects indispensable to the civilian population such as

those necessary for food distribution, processing and storage, to withdraw any military personnel from civilian infrastructure, and to allow and facilitate the safe, rapid and unhindered access for humanitarian and medical personnel to all those in need, and reiterates that aid should be disbursed on the basis of need and be gender and age sensitive” (United Nations Security Council, 2018, Res. 2451).

While this resolution is important in reaffirming the need for all parties to comply with international humanitarian law, it is insufficient targeting specific parties that need to be held accountable. It also does not specify any party, therefore spreading responsibility to all parties. Saudi Arabia has billions of dollars in support from other countries in terms of arms exports, while also having the Coalition to support its military advances. The extensive support and military power that Saudi Arabia has access to is extremely powerful and therefore needs to be explicitly targeted to ensure their specific adherence to IHL. This Resolution was not acting under Chapter VII, but states are still legally bound to decisions of the Security Council in Article 25 of the UN Charter which states that “The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter” (Charter of the United Nations, 1945, Article 25)

The Panel of Experts on Yemen addressed the President of the Security Council with concerns of violations in Yemen. This was prepared in accordance with paragraph 8 of Resolution 2511. The Panel of Experts states that “All parties continue to commit egregious violations of international humanitarian law and international human rights law, including indiscriminate attacks against civilians, enforced disappearances and torture” (Panel of Experts on Yemen, 2020, P. 3). The Panel states that all parties have been involved in international humanitarian violations and continues to explain violations made specifically by the Saudi-led Coalition, whereas the Security Council has shied away from making such accusations. The Panel explains in detail all accusations by all parties involved, while explicitly stating credible evidence against Saudi Arabia and the Coalition. The Panel continues to state that “Pursuant to paragraphs 9, 17, 18 and 21 of Security Council resolution 2140 (2014), read together with paragraph 19 of resolution 2216 (2015) and paragraph 6 of resolution 2511 (2020), the Panel investigated several violations of international humanitarian law and international human rights law, as well as human rights abuses by all parties in Yemen” (Panel of Experts on Yemen, 2020, P. 39). In Paragraphs 121 through 125, the Panel implicates the Coalition with violations of international humanitarian law which involved airstrikes by the Coalition in support of Yemen. Paragraph 121 states that “the Panel investigated five air strikes and concluded investigations of two incidents (14 February and 12 July) which resulted in the death of 41 people and the injury of 24. The majority of victims were women and children” (Panel of Experts on Yemen, 2020, P. 40). While two airstrikes reached conclusions, three others are still being investigated.

Regarding one of the concluded investigations, the Joint Incident Assessment Team (JIAT) found the Coalition guilty of violations of IHL. The report states that “According to information and testimonies received by the Panel, there were no Houthi military present in the area and no civilians who had lost their protection under IHL. The Panel has received information that there was a Houthi security point approximately 3-4km away to the North-East of the targeted area” (Panel of Experts on Yemen, 2020, P. 242). The report continues to state that

“Under IHL, parties to the conflict must at all times distinguish between civilians and combatants, and direct attacks only against combatants. They also have the obligation to take all feasible precautions to avoid or minimize incidental loss of civilian life, injury to civilians and damage to civilian objects.” and concluded that “at least one of the explosive devices which hit the area came from a Coalition aircraft” (Panel of Experts on Yemen, 2020, P. 243).

Not only were Houthi military individuals absent from the area that was targeted, but a non-military target was attacked. Targeting requires that civilian objects and non-military targets are considered and avoided.

The second concluded investigation involved the targeting of a house that killed women and children. The report states that

“According to evidence received by the Panel, the house is located in a remote area not accessible by road and there were no Houthis, military facilities or activities, nor civilians having lost their protection under IHL in the house or the surrounding area. Only women and children were present in the house at the time of the attack. It was the first time the area was hit by an airstrike. JIAT stated that the house was not the intended target” (Panel of Experts on Yemen, 2020, P. 245).

All the civilians killed in this airstrike are protected under international humanitarian law, and the Coalition was required to ensure that all feasible measures were taken in order to avoid civilian targeting. JIAT continued to recommend that “‘The coalition states to provide assistance for human and material losses, caused by the accidental fall of the bomb on the site of the claim’ and that the ‘Coalition Forces to study the reasons for the failure of the bomb to hit its target, and to take a corrective measure to prevent this from happening in the future’” (Panel of Experts, 2020, P. 245). JIAT had found the Coalition of violating the principles of IHL and therefore stated that all responsible states initiate remedies for such breaches.

The United Nations reported on violations by all parties. United Nations News reports that “There were ‘no clean hands’ in the violence which has likely killed well over 100,000 people, destroyed vital public infrastructure and created a humanitarian catastrophe affecting many millions, the

experts maintained” (United Nations News, 2020). Parties to the war have caused significant damage to civilian areas, critical infrastructure, alongside the thousands of civilian deaths that resulted from military attacks. United Nations News continues to state that “responsibility for this rested ‘with all parties to the conflict...Namely the Government of Yemen, de facto authorities, the Southern Transitional Council and members of the Coalition, in particular Saudi Arabia and the United Arab Emirates’” (United Nations News, 2020). This statement further establishes that the Coalition, including Saudi Arabia, are responsible for violations. The Human Rights Council states that:

“The Group of Experts has concluded that some of the airstrikes conducted by the Coalition appear to have been undertaken without proper regard to principles of distinction, proportionality and precaution to protect civilians and civilian objects. It also concluded that indiscriminate attacks have been carried out by both the Coalition and the Houthis, inflicting harm on civilians and civilian objects. It notes that disproportionate and indiscriminate attacks constitute war crimes under customary international law” (United Nations Human Rights Council, 2019)

Numerous credible Human Rights bodies have asserted that the Coalition is responsible for violating international law through the illegality of their military attacks. While these bodies have critically analyzed Saudi involvement in the war, and named such allegations for those responsible, the Security Council has been reluctant to specifically name Saudi Arabia and the Coalition for these violations.

#### **6.4 Criticisms of the Security Council**

The Houthis have been sanctioned and condemned for international law violations, as well as Iran, yet the same treatment and standard have not been upheld for members of the Coalition. While the United Nations and its bodies are supposed to uphold international standards for upholding human rights, there has been too much inaction in the war in Yemen. Human Rights Watch states that:

“The bottom line is that the UN body, whose job has been to ensure international peace and security since 1945, is failing to do so in Yemen. A large part of the blame falls on the shoulders of the Security Council member with primary responsibility for drafting resolutions regarding Yemen: Britain, which continues to sell arms to Saudi Arabia, enabling the military forces committing war crimes. The US and France, which have also risked complicity in war crimes by selling weapons to abusive Saudi forces, share responsibility for the lack of principled Security Council action” (Human Rights Watch, 2018).

The Security Council is responsible for not upholding the same standards to Saudi Arabia and the Coalition to other parties of the Yemen conflict. The United States and others are also responsible



for lack of repercussions and allowing war crimes to continue with their support. Human Rights Watch concludes that “Any resolution that [does not] specifically mention the Saudi-led coalition by name and reverts to vague appeals to ‘all parties’ [will not] have the required effect in Riyadh” (Human Rights Watch, 2018). Condemnation needs to be specifically named in order to effectively take steps to ensure an end to international violations in this war.

### **6.5 Sanctions on Iran from Resolution 2140**

The Security Council can sanction states who are in violation of international law, and the Council decided to place sanctions on Iran for their involvement with the Houthis, yet never suggested the same retribution towards Saudi Arabia or the Coalition. The United Nations states that:

“The Security Council Committee established by resolution 2140 (2014) — which monitors implementation of the sanctions and designates the individuals or entities to be subjected to the measures — may exempt any activity, on a case-by-case basis, from sanctions imposed under resolutions 2140 (2014) and 2216 (2015) if it determines that such exemption is necessary to facilitate the work of the United Nations and other humanitarian organizations in Yemen” (United Nations, 2020).

While the Security Council was initially in favor of allowing intervention by the Saudi-led Coalition, as the war continued, international humanitarian and human rights violations were extensive and seemingly endless. Despite this reality, the Saudi-led Coalition has continued receiving massive amounts of support from western countries in the form of arms sales and military logistical support. The Security Council has not taken any concrete actions to address extensive violations from the Coalition. The United Nations continues to explain how “Rodney M. Hunter (United States) said that, while his delegation supports United Nations efforts to hold spoilers in Yemen to account, Iran is defying its obligations under the sanctions regime by smuggling increasingly sophisticated weapons to the Houthis” (United Nations, 2020). While the Security Council has been quick to condemn Iran for aiding Houthis, there has not been this same threshold for supporting the Saudi-led Coalition.

### **6.6 Duty to Investigate**

The Duty to Investigate is a crucial factor in the war in Yemen, and the United States should investigate possible war crimes by the Saudi-led Coalition since their involvement is increasing the likelihood of such violations. The right to life and the Right not to be tortured, as Musa states, are “the two non-derogable human rights standards most apparently relevant to arms transfers are the right to life and the right not to be subjected to torture or to cruel, inhuman, or degrading treatment or punishment. Many conflicts, including in Yemen, exemplify how arms transfers may cause and aggravate the violation of these two norms” (Musa, 2017, P. 459).

These rights are non-derogable, though exceptions to this rule are narrowly defined in times of emergency, and therefore need to be respected at all costs. Human Rights Watch explains that

“While the [International Covenant on Civil and Political Rights] permits some restrictions on certain rights during wartime or an officially proclaimed public emergency ‘threatening the life of the nation,’ any reduction in rights during a public emergency must be of an exceptional and temporary nature, and limited ‘to the extent strictly required by the exigencies of the situation.’ Certain fundamental rights—such as the right to life and the right to be secure from torture and other ill-treatment, the prohibition on unacknowledged detention, the duty to ensure judicial review of the lawfulness of detention, and rights to a fair trial—must always be respected, even during a public emergency. (Human Rights Watch, 2015)

Times of emergency can make exceptions to these rights, but this is not limitless and must be temporary and exceptional circumstances. Deprivation of Life, under the exceptions, must be thoroughly justified. Corsi explains that “Nils Melzer states that the [United Nations Human Rights Council] articulates the prohibition of arbitrary deprivation of life as requiring sufficient legal basis for each and every killing at the hands of a State agent. He also mentions additional requirements of necessity, proportionality, and precaution regarding State power for deprivation of life” (Corsi, 2017, P. 230). In the case of arbitrary deprivation of life, States must fully treat this by legally assessing the situation. This insinuates that arbitrary deprivation of life must be rare and therefore fully justified.

In the International Humanitarian Law Database, the ICRC states in Rule 157 that “State practice establishes this rule as a norm of customary international law with respect to war crimes committed in both international and non-international armed conflicts. The universality principle is additional to other bases of criminal jurisdiction” (International Committee of the Red Cross, 2005a). According to Rule 158, “States must investigate war crimes allegedly committed by their nationals or armed forces, or on their territory, and, if appropriate, prosecute the suspects. They must also investigate other war crimes over which they have jurisdiction and, if appropriate, prosecute the suspects” (International Committee of the Red Cross, 2005b). If a war crime is suspected, states can use Universal Jurisdiction. While the United States claims that they are not a party to the conflict in Yemen, they still have a right to investigate alleged war crimes by Saudi Arabia and the Coalition, especially if they supply such heavy involvement. The ICRC continues to state that:

“State practice establishes this rule as a norm of customary international law applicable in both international and non-international armed conflicts. This rule, read together with Rule 157, means that States must exercise the criminal jurisdiction which their national legislation confers upon their courts, be it limited to

territorial and personal jurisdiction, or include universal jurisdiction, which is obligatory for grave breaches” (International Committee of the Red Cross, 2005a).

The ICRC also explains how the Geneva Conventions require States to investigate alleged war crimes. According to Rule 158, the ICRC states:

“The Geneva Conventions require States to search for persons alleged to have committed, or ordered to have committed, grave breaches and to try or extradite them. The obligation to investigate and prosecute persons alleged to have committed crimes under international law is found in a number of treaties that apply to acts committed in both international and non-international armed conflicts. The preamble to the Statute of the International Criminal Court recalls ‘the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes’.

(International Committee of the Red Cross, 2005b)

Since the Saudi-led Coalition is accused of international crimes violating IHL and IHRL, this would mean that parties of the Geneva Conventions should investigate such violations. States that are heavily involved in the war are responsible to investigate and provide impartial investigative bodies. The ICRC continues to state that “The rule that States must investigate war crimes and prosecute the suspects is set forth in numerous military manuals, with respect to grave breaches, but also more broadly with respect to war crimes in general. Most States implement the obligation to investigate war crimes and prosecute the suspects by providing jurisdiction for such crimes in their national legislation, and there have been numerous national investigations and prosecutions of suspected war criminals” (International Committee of the Red Cross, 2005b). Based on domestic policies alone, the United States clearly outlines what is expected and prohibited from arm sales, with a constant emphasis on adhering to international humanitarian law and human rights law. In no circumstance does the United States minimize the importance of these rules. The ICRC continues to state that “It is not possible...to determine whether this practice was pursuant to an obligation or merely a right. An obligation to investigate and prosecute is, however, stated explicitly in a variety of other State practices, such as agreements and official statements” (International Committee of the Red Cross, 2005b). If the United States constantly states how important respecting IHL and IHRL is, along with international law in general, then their duty to investigate and prosecute war crimes committed by Saudi Arabia and the Coalition needs to take the forefront.

## Chapter VII: Possible Solutions

### 7.1 Introduction

The United States is one of the most powerful countries in the world, especially in terms of military power and foreign military assistance. The United States has sold billions worth of arms to other countries in the last two decades, and their involvement can dramatically influence the respect of humanitarian and human rights law. While domestic and international arms trade regulations advocate for human rights and prohibit international law violations as the core concern, it is evident that the United States does not fully uphold these standards in their own practice. Through the strengthening of accountability, transparency, domestic and international reforms, and increasing the responsibility for U.S. arm sales, the United States can protect, respect and uphold international humanitarian and human rights law.

Thrall and Dorminey explain the magnitude of U.S. arm sales, along with policies that can be improved. Thrall and Dorminey state that “U.S. arms sales policy is out of control. Since 2002, the United States has sold more than \$197 billion worth of major conventional weapons and related military support to 167 countries. In just his first year in office, President Donald Trump inked arms deals at a record pace, generating hundreds of billions of dollars’ worth of potential sales” (Thrall & Dorminey, 2018, P. 1). While the regulations that the United States apparently advocates for, such a high number of sales calls into question how strict their policies are, and whether all regulations are being adhered to. Thrall and Dorminey state that “the United States has repeatedly sold weapons to nations engaged in deadly conflicts, and to those with horrendous human rights records, under conditions in which it has been impossible to predict where the weapons would end up or how they would be used” (Thrall & Dorminey, 2018, P. 1). Arms sales should not end at the transaction, but the aftermath of such sales needs to be gravely considered. While there is supposed to be a format of prohibiting sales where potential violations are likely to occur, this has not prevented number sales by the United States.

Due to the magnitude and lack of adherence to applicable regulations, economic benefits take heightened priority. While the economic benefits of selling such a large number of arms globally might come with short term advantages, these same sales have fatal consequences in the long term. Arms exporting to a high degree leads to horrendous violations of international humanitarian law and war crimes as can be seen with the case of Yemen. Those who are supposed to be protected under the principles of IHL are therefore under threat due to weak arms trade regulations. Tightened restrictions are needed for U.S. arm sales, and rather than heavily supplying states who have extensive and credible accusations of international law violations, the approach must be improved upon. The assessments need to be thorough, transparent, and justifications of arm sales should be publicized. While the U.S. might justify their sales for countering terrorism or aiming to improve peace and security, there seems to be no convincing evidence that this is true. Rather, their sales appear to contribute to more instability and widespread casualties.

## **7.2 Improvement of the U.S. Domestic Arms Trade Policies**

Domestic regulations exist which assert that the U.S. must not complete a sale if violations are likely to occur. While multiple domestic policies state this, there is room for further improvement to ensure that human rights and respect for international law are at the heart of such policies.

### **7.2.1 Domestic Improvements**

The Arms Export Control Act should include more risk assessments in arms trade, along with congressional approval of sales rather than allowing presidential vetoes overriding concerns. Sanders states that “Under the Arms Export Control Act, arms sales are a foreign policy tool, and the decision to export must take into account U.S. interests, the broader needs of the buyer, and the risk of causing an arms race or regional conflict” (Sanders, 2021). If arms sales are expected to go against U.S. interests, which involves respect for human rights and international humanitarian law, then such factors need to be considered. Thrall and Dorminey recommend that:

“The AECA be amended to require congressional approval for all arms sales. The current law is designed to make arms sales easy by making it difficult for Congress to block them... Requiring a congressional vote to approve arms sales, on the other hand, would subject arms deals to much more intense scrutiny than has traditionally been the case, and blocking misguided arms sales would be much easier. Requiring a separate piece of legislation to approve each arms deal, not simply requiring a resolution against, would encourage deliberations about the strategic benefits of any proposed deal. (Thrall & Dorminey, 2018, P. 22)

Members of Congress should have the ability to weigh in on arms sales deals and prohibit sales when members see fit. The ability to intervene should not be nearly impossible. Especially considering that the presidential approach can change drastically, as can be seen between the differences of the Obama, Trump, and Biden administrations. Since these sales have global consequences, tighter regulations and filtration need to be applied.

Additionally, arms sales need to have thorough assessments after sales to ensure that they are not involved with violations. Thrall and Dorminey state that “The United States should significantly expand its tracking of the use and misuse of American weapons. The current system of end-use monitoring does not collect enough data on how weapons are used once they are transferred. End-use monitoring should be tracked and reported annually, and the results should be made public to enforce oversight and give Congress the information needed to make better informed decision” (Thrall & Dorminey, 2018, P. 21). Data for the aftermath of arms transfers is crucial to determine the state of future sales. In the case of the Saudi-led intervention in Yemen, U.S. munitions were used in tragic violations of IHL. The responsibility does not end at the transaction, but States are responsible for how the munitions will be used. If exporting States willingly continue sales despite

the risk, any further violations hold them liable. Additionally, all information should be made public.

### **7.3 Security Council Accountability**

States need to be held accountable to the highest standard. If violations are committed, or suspected of having been committed, States need to face consequences regardless of the circumstances. Saudi Arabia has suffered no consequences since the start of the war in Yemen, and the government continues to get massive support despite widespread violations. The Security Council can interfere if there are breaches or threats to peace, therefore the Council needs to be held accountable for failing to interject when years of violations have been occurring in Yemen. The Panel of Experts recommend that:

““Noting the lack of provisions directly relating to the need for accountability relating to international humanitarian law and human rights violations by all parties to the conflict in resolutions 2140 (2014), 2216 (2015) and subsequent resolutions, the Panel recommends that the Security Council include in its next resolution language that stresses that all those responsible for human rights and international humanitarian law violations and abuses must be held accountable, and that underlines the need for a comprehensive, independent and impartial investigation consistent with international standards into alleged human rights abuses and violations, to prevent impunity and ensure full accountability. (Panel of Experts, 2020, P. 47)

Clearly, the response of telling all states to adhere to international humanitarian law has been grossly ineffective. There needs to be a firmer stance taken for each party involved, criminalizing any violations. Each party should be explicitly named and pressured, instead of the general “all parties” referral.

The Security Council should stress accountability amongst Coalition member states, especially those most involved with violations, notably the two largest members Saudi Arabia and United Arab Emirates. The Council should “[engage] with members of the Coalition to Support Legitimacy in Yemen, including the United Arab Emirates, to clarify what measures have been taken to investigate and prosecute international humanitarian law violations, and to provide remedies or assistance to those individuals affected by their operations, including ground operations and detention” (Panel of Experts, 2020, P. 48). How investigations are conducted are crucial to determine whether further actions are needed. If investigations are independent, impartial, thorough, and immediate, accurate determinations are likely to result. If investigations are insufficient or misleading, states should be held accountable for violating the duty to investigate.

Individuals who are most responsible for violations need repercussions to end any actions they committed. Human Rights Watch states that “the Council should sanction the individuals most responsible for these atrocities. Any country can suggest names to the UN Yemen sanctions committee, triggering immediate consideration of Security Council action” (HRW, 2018). Individuals accused of atrocities should be thoroughly reviewed by the Security Council. This can then involve further action, including investigations or sanctions, which not only applies pressure but assures that such atrocities will end. Human Rights Watch continues to state that the Security Council should “Impose sanctions on those who share the greatest responsibility for the numerous laws-of-war violations committed during the coalition’s aerial campaign, notably Saudi Crown Prince Mohammed bin Salman and senior commanders, until the coalition ends its unlawful attacks, credibly investigates them and provides civilian victims redress” (HRW, 2018). There needs to be repercussions for leaders of member states who are allowing atrocities to continue, without remedy or reparation for victims and areas destroyed.

#### **7.4 Human Rights as the Core, Not Economics**

The reality of U.S. arms sales is that economic gain is a huge factor in maintaining power and therefore allowing mass amounts of sales. Sanders states that “During the Trump administration, the economic rationale of such sales was highly emphasized, and arms sales increased as the administration released some restrictions on sales. Countries that do not have formal alliance arrangements with the United States, like Saudi Arabia and the United Arab Emirates (UAE), were the recipients of a significant portion of those sales” (Sanders, 2021). This type of rationale has dramatically increased potential future sales and allowed for violations of IHL to continue. Human Rights and respect for IHL need to concretely be considered at the core of arm sale arrangements. Sanders continues to state that:

“potential economic and security cooperation benefits must be weighed against the inherent risk that weapons may be used after delivery to facilitate human rights violations or to destabilize neighboring countries, causing direct harm as well as damage to the United States’ reputation. Because a wide range of interests are at stake, the arms sales approval process is led by the State Department, with advice and implementation typically supplemented by DoD. However, monitoring and enforcement by the State Department and DoD has been uneven” (Sanders, 2021)

While short term economic gain is possible through arm sales, innocent lives that are supposed to be protected are at stake. Sales further hypocrisy of the U.S. government by asserting their commitment to human rights in theory, but in practice disregarding laws that are meant to protect those deeply affected by conflict, namely civilians and non-combatants.

### **7.5 International Commitments through the Arms Trade Treaty**

Lastly, the United States should sign and ratify the Arms Trade Treaty, based on their extensive policies which adhere to these standards. By not signing and ratifying the treaty, the United States is blatantly avoiding any initiative to improve standards of arms trade, and therefore improve the commitment to human rights and international humanitarian law. Without signing and holding State practices accountable, the United States will continue a blatant disregard of these principles they claim to respect. Olabuenaga states that

“The world is in dire need of an effective implementation of the only global legally binding instrument that regulates the international trade in arms. And for that to happen, it is key to have on board the largest exporter in the world, if not as a State Party, at least as a responsible actor committed not to undermine the object and purpose of the treaty, which has at its core international peace and security and, most importantly, the value of the human person. (Olabuenaga, 2019)

While the ratification will not immediately and drastically improve the status of U.S. arms exports, it will allow further implementation and regulation to integrate into the U.S.’ current practices, solidifying the potential for accountability.



## Conclusion

The United States has been outspoken globally for the need to respect and protect human rights and international humanitarian law yet has failed to uphold these obligations in practice. The U.S. has proclaimed the importance of these rights, yet they have been woefully disregarded during arms trade transactions. The United States has continued to have the largest military expenditure, all the while being the largest exporter of arms in the world. The perfect pairing for this position is with Saudi Arabia, the world's largest importer of arms. Economic benefits of providing arms takes the forefront, even though massive amounts of violations by the Saudi-led Coalition have been documented since the very start of the war in 2015.

Saudi Arabia and the Coalition have been involved with far too many violations of international humanitarian law over the last six years and therefore the United States can no longer claim that there is no knowledge or no near certain knowledge. The United States has domestic policies that have human rights and international humanitarian law written into the legislation, which aims to refuse arms sales to any state that is at risk of violating these standards. This can be seen in the Arms Export Control Act and the Foreign Assistance Act. However, despite these guidelines, U.S. presidents hold far too much power in overriding calls to pause or to halt arms trade. The United States Congress has repeatedly tried to prevent further sales to Saudi Arabia for violations in the Yemeni War. There has been widespread concern both nationally and internationally, and yet by the proclamation of a state of emergency, the U.S. presidents have been able to veto and continue arms sales to Saudi Arabia.

The United States is legally bound to international obligations for arms trade. The Geneva Conventions have thoroughly outlined the laws governing war, and the United States has signed and ratified the Conventions. Under Common Article 1, parties must respect the Geneva Conventions under all circumstances. Convention IV has established that civilians must be protected during armed conflicts, and this has been thoroughly violated by the Saudi-led Coalition. The United States is responsible for recklessly selling arms that have continuously been used to disproportionately harm and impact civilians. While the United States has claimed they are not responsible for such violations, this stance cannot be upheld. By knowingly selling to a state that has committed, and has continued to commit, violations of international law, that is merely providing a violator with tools to continue such behavior.

The Security Council has also remained largely complacent with the conflict in Yemen. Although the Security Council has recently stated that all parties to the conflict have committed violations of international humanitarian law, there has been no direct condemnation of Saudi Arabia and the Coalition. During the first few years of the war, the UNSC was quick to condemn the Houthis, as well as Iran for its support, and yet failed to condemn the Saudi-led Coalition for the gross systemic violations that they were responsible for. The Security Council can sanction states as a method to stop violations from continuing. While the UNSC has the power to interfere with breaches of international peace and security, it has failed to enact such measures on a huge contributor to international violations and threats to peace. Being that the United States is a

permanent member of this body, the question of how impartial and neutral the Security Council is arises.

The United States has violated international law by failing to end their arms trade relations with Saudi Arabia. The United States has been a major provider in this war; attempting to evade responsibility for violations that occurred with arms and military logistical support by the U.S. must not be tolerated. The U.S. has legal obligations both domestically and internationally to respect and protect international humanitarian law and human rights which is thoroughly and clearly stated for all arms trade transactions. Members of the national and international community have called upon the United States to end their support. Numerous reports have been submitted documenting the terror that the Saudi-led Coalition has sustained in Yemen. No serious changes have been made to the support of the U.S to Saudi Arabia. Years have gone by with continued support, even though the first year alone was enough to credibly suspect that violations were occurring by the Coalition. In theory, these circumstances were enough to prevent further sales, but in practice the U.S. refused to abide by all regulations it was bound to.

With the incredible amount of military worth that the United States has, the respect for human rights and international humanitarian law in arms trade is crucial. The determination of whether arms are provided to a state can directly impact the likelihood of whether violations will occur. The weight of such a trade must not be taken lightly since it causes irreversible damage and harm to the global community. Additionally, arms trade cannot merely be a transaction but rather an ongoing assessment of how the arms are used by the recipient. If any weaponry is used to commit violations, there needs to be a clear and immediate stop. The United States can no longer contribute to such reckless practices. Information on military support and arms provided need to be transparent, detailed, and made public. Investigations of any violations that occur by such support needs to be immediate, impartial, and publicized. By failing to uphold high standards in arms trade transactions, the United States is responsible for any violations that occur from arms and military support provided.

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