

## Yemen's Houthis

Legal dilemmas in the fog of war

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**Abstract:** This paper examines the legal and geopolitical complexities surrounding the rise of the Houthis in Yemen's ongoing conflict. It provides a historical overview of the group's evolution and assesses their classification under international law. The study explores the legal implications of the Houthis' actions, particularly in relation to the principles of State sovereignty, self-defense and the use of force against non-state actors. By analyzing international legal instruments such as the United Nations Charter, Geneva Conventions, and customary international law, this paper evaluates the legitimacy of force used by and against the Houthis. Special attention is given to the classification of their attacks on maritime vessels and whether these constitute acts of piracy or lawful engagements within a Non-International Armed Conflict (NIAC). The paper further investigates the role of key stakeholders, including Saudi Arabia and the United States in responding to Houthi actions and the broader implications for international security. Through a doctrinal legal research approach, supported by case law and scholarly analysis, the study provides insights into the evolving challenges of addressing non-state actors within the framework of international law. Ultimately, this paper aims to contribute to the ongoing discourse on state sovereignty, collective security, and the legal boundaries of self-defense in contemporary armed conflicts.

*Keywords:* Yemen; Houthis; non-State Actors; Armed Conflict; Humanitarian Law.

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## 1. *Introduction*

No conflict occurs in isolation; every event is deeply rooted in historical and geopolitical processes. Yemen's civil war and the rise of the Houthis as a significant international actor exemplify this reality. This paper aims at exploring the geopolitical trajectory of the Houthis, legally assessing their status under international law, and analyzing the implications of their actions within the global legal framework.

To achieve this, the paper is structured into four key sections. First, it examines the historical and geopolitical factors shaping the conflict. Next, it delves into the legal considerations surrounding the Houthis' actions and their classification under international law. The third section presents the arguments from the primary stakeholders in the conflict – namely Yemen, the Houthis, Saudi Arabia and the United States –, and, finally, the paper offers a comprehensive analysis of the legal and geopolitical consequences, culminating in concluding remarks on the broader implications for international law and security.

By addressing these issues, this study seeks to provide a nuanced understanding of the complex legal and political dynamics surrounding the Houthis and the Yemen conflict, shedding light on the challenges faced by the international community in responding to non-state actors in modern warfare.

This paper aims to examine the complexities of state sovereignty and its evolution within a multicultural nation engaged in regional power struggles that reverberate globally. By using

Yemen as a case study, the article also tries to establish the possible international responsibilities of Yemen as a State or the Houthis as international law subjects.

Regarding methodology, this work employs a doctrinal legal research approach, analyzing key legal texts such as the United Nations Charter, international humanitarian law, and relevant court rulings to assess the legality of actions taken by the Houthis and other involved parties. Additionally, secondary sources — including scholarly articles, policy reports, and expert opinions — are utilized to provide context and a broader geopolitical understanding. A comparative analysis of past conflicts involving non-state actors will also be incorporated to draw parallels and highlight legal precedents.

## *2. Historical and Geopolitical Context*

To contextualize a conflict we must necessarily choose when to begin our story. For the case of the Houthis, our historical cut should be done at the end of the Cold War. The dissolution of the Soviet Union and the rise of the United States as a unipolar hegemony<sup>1</sup> — uncontested, at least for a brief period — shaped the world and its

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<sup>1</sup> See generally Francis Fukuyama, *The End of History and the Last Man* (Penguin Books 2012) (The notion of "unipolar hegemony" involves the emergence of the United States as the unchallenged single superpower after the dissolution of the Soviet Union in 1991).

relations as we understand it today. With the fall of communism, national borders were redefined and some States, who were previously divided, became one. Notoriously that was the case in Germany, where West Germany absorbed East Germany in 1990. It was also the case with Yemen, where capitalist North Yemen (Yemen Arab Republic) absorbed communist South Yemen (People's Democratic Republic of Yemen) in the same year. This unification bears some similarities to the German one, namely that the capitalist portion of the country had an overwhelmingly bigger population (12 million v. 2 million)<sup>2</sup> and a larger economy. The capital of the newly formed State, the Republic of Yemen, would be Sana'a, historically the capital of North Yemen. The North, therefore, absorbed the South.

In any case, in the negotiations prior to the unification, some concessions were made by both sides. The new president would be the president of the North — Ali Abdullah Saleh — and the new Vice-President would be the acting president from the South — Ali Salem al-Beidh. Divergences on how to run the newly-formed country, however, quickly arose. The main point of dispute was the economic policies adopted by the North-dominated government. Those policies involved heavy criticism from the peoples from the South of Yemen who felt that their resources were being taken without any form of compensation or improvement of life conditions. In parallel, general elections were held and in the new Yemeni Congress, the North would be dominant once again. After general elections were held — with help from international groups<sup>3</sup> in the organization and

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<sup>2</sup> Data Population: Yemen Arab Republic and People's Republic of Yemen (Our World in Data, 2024), available at [https://ourworldindata.org/grapher/population?time=0..latest&country=OWID\\_YAR-OWID\\_YPR](https://ourworldindata.org/grapher/population?time=0..latest&country=OWID_YAR-OWID_YPR) (last visited March 10, 2025).

<sup>3</sup> *Republic of Yemen 1990 - Present* (University of Central Arkansas), available at <https://uca.edu/politicalscience/home/research-projects/dadm-project/middle-eastnorth-africapersian-gulf-region/yemen-1990-present/> (last visited March 11, 2025) ("Some 300 observers from several organizations, including 19 observers from the International Republican Institute (IRI), three observers from the NDI, and three

balloting —, the results were: 143 General People's Congress, 69 Yemeni Socialist Party (YSP)<sup>4</sup>, 63 Islah (the nation's largest Islamist party), 6 Baathists, 3 Nasserist Unionist People's Organisation, 2 Al Haq, and 15 independents<sup>5</sup>. The governing coalition was formed with President Saleh's party, General People's Congress, at the head and supported by the islamic Islah, who were granted the position of speaker of Parliament. South Yemen's governing party, YSP, even though it was the second largest party by number of seats, was excluded from governance and proportional representation in the government<sup>6</sup>.

Naturally, this political and economical inequality between North and South would lead to quarrels between Northerners and Southerners for power in Yemen. In the middle of this internal struggle for political coherence, about 800 thousand Yemenis were expelled from Saudi Arabia because of Yemen's indisposition to support the Saudis during the Gulf War<sup>7</sup>. Almost inevitably, the country soon fell into a Civil War, where, after gruesome fighting, and shifting alliances, President Saleh emerged victorious. In his victory, he enjoyed support from political parties, large parts of the

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observers from the International Federation of Electoral Systems (IFES), monitored the legislative elections").

<sup>4</sup> Consider the Yemeni Socialist Party was the ruling party of South Yemen before unification. It was aligned with the Soviets during most of its history and enacted communist policies that do not, by nature, have market-based strategies as their core mechanisms.

<sup>5</sup> Dieter Nohlen, Florian Grotz and Christof Hartmann, 1, *Elections in Asia: A Data Handbook* at 301 (Oxford Academic 2001), available at <https://academic.oup.com/book/36350> (last visited March 10, 2025).

<sup>6</sup> Al-Gannd, Tawfeek, *A History of Yemeni Political Parties: From Armed Struggle to Armed Repression*, Sana'a Center for Strategic Studies (February 7, 2022), available at [https://sanaacenter.org/publications/analysis/16421#Political\\_Pluralism\\_After\\_Unification](https://sanaacenter.org/publications/analysis/16421#Political_Pluralism_After_Unification) (last visited March 16, 2025).

<sup>7</sup> Hisham Foad, *The Effects of the Gulf War on Migration and Remittances*, at 2 (San Diego State University December 2009), available at [https://web.archive.org/web/20120315085524/http://www-rohan.sdsu.edu/~hfoad/GulfMigration\\_v1.pdf](https://web.archive.org/web/20120315085524/http://www-rohan.sdsu.edu/~hfoad/GulfMigration_v1.pdf) (last visited March 10, 2025).

military, tribes and religious groups. One of those groups were the Houthis, followers of Shia Islam. Originally a moderate theological movement that preached tolerance and held a broad-minded view of all the Yemeni peoples, it had its first organization<sup>8</sup> *Believing Youth* (BY) founded in 1992 by Hussein al-Houthi.

Al-Houthi is undoubtedly an important figure in this conflict. He was an elected member of the newly-formed Yemeni parliament from the Al-Haq party and, after it decided to support Southern segregationists in the Civil War, he had to leave for the holy Shiite city of Qom in Iran, returning to Yemen in 1997. After his return, he and his allies from Believing Youth broke with his former party of Al-Haq after, to his belief, his party was not radical enough in its opposition to Saleh<sup>9</sup>.

The religious reality of Yemen also plays a huge role in the development of the conflicts in the country. Sunni muslims make up the majority of the population – about 65% – while Shi'a make up for the minority – about 35% of the population<sup>10</sup>. On the map of the

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<sup>8</sup> Saeed Al Batati, *Who are the Houthis in Yemen?* (Al Jazeera, March 29, 2015), available at <https://www.aljazeera.com/news/2015/3/29/who-are-the-houthis-in-yemen> (accessed October 22, 2024).

<sup>9</sup> Manuel Almeida, *Profile: Who are Yemen's Houthis?* (Al Arabiya News, October 8, 2014), available at <https://english.alarabiya.net/perspective/profiles/2014/10/08/Profile-Who-are-Yemen-s-Houthis-> (last visited March 8, 2025).

<sup>10</sup> *Yemen: Religion, Peace and Conflict Country Profile* (United States Institute for Peace), available at <https://www.usip.org/programs/religion-and-conflict-country-profiles/yemen> (last visited March 10, 2025), see also *2023 Report on International Religious Freedom* (United States Department of Defense, 2023), available at <https://www.state.gov/reports/2023-report-on-international-religious-freedom/yemen/#> (last visited March 16, 2025) (“While there are no official statistics, the U.S. government estimates 65 percent of the population is Sunni and 35 percent Zaydi. Hindus, Baha'is, Christians (many of whom are economic migrants to the country), and Jews together make up less than 1 percent of the population”).

Demographic Distribution in Yemen<sup>11</sup> it is clearly shown that the Shi'a minority in Yemen are mostly located in the North, while the Sunnis take up the rest of the country. Originally from Northern Yemen, Hussein al-Houthi and the movement he founded in 1992 follow the Shi'a branch of Islam<sup>12</sup>. His disagreements with the central government therefore are not only political but also involve a religious background in regards to worldview and religious constellations<sup>13</sup>.

Having established one side of the conflict, some words should be dedicated to the other side, that is, President Saleh. Born in North Yemen in humble origins, he rose through the ranks in the military to the highest position possible, that of North Yemeni President, where he kept internal order by consolidating local leaderships around him and buying the support of various tribes<sup>14</sup>. Intensely politically able, he was objectively skilled to create a coalition around him throughout his Presidency both in the Yemen Arab Republic and the present Republic of Yemen (remaining in power from 1978 to 2012), described the situation as "dancing on the heads of snakes"<sup>15</sup>.

Coming back to Yemen's first civil war, Saleh emerged victorious over the South and its allies, but by no means that was the determining factor in bringing peace to the country. After his internal triumph, in the early 2000s President Saleh sided with the United

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<sup>11</sup> Surya Tallavarjula, *The Houthi Resistance: Justice, Defiance, & Unity* (threads, January 24, 2024), available at <http://threadsatcal.org/entries/houthiresistance> (last visited March 22, 2025).

<sup>12</sup> Al-Grand, Tawfeek, *A History of Yemeni Political Parties* (cited in note 6).

<sup>13</sup> *Yemen: Religion, Peace and Conflict Country Profile* (cited in note 10).

<sup>14</sup> Faisal Edroos, *Yemen: Who Was Ali Abdul Saleh?* (Al Jazeera, December 5, 2017), available at <https://www.aljazeera.com/news/2017/12/5/yemen-who-was-ali-abdullah-saleh> (last visited March 11, 2025).

<sup>15</sup> Coles, Isabel. *Newsmaker: Yemen's Saleh, "dancing on the heads of snakes"*, (Reuter, September 23, 2011), available at <https://www.reuters.com/article/world/newsmaker-yemens-saleh-dancing-on-the-heads-of-snakes-idUSTRE78M20X/> (last visited October 22, 2024).

States in its War on Terror campaign<sup>16</sup>. This took place, for example, when Saleh allowed US military personnel to hunt down al-Qaeda militants in Yemen after they had targeted the destroyer USS Cole in 2000<sup>17</sup>. However, sources indicate that, while doing this, he was also collaborating with Al-Qaeda, trying to extract the most advantages from all sides<sup>18</sup>. In this context, the Houthis, now a radicalized movement<sup>19</sup>, led a low-level insurgency in 2004 against the President, bearing a slogan of “God is the Greatest; Death to America; Death to Israel; Curse be Upon the Jews; Victory to Islam”<sup>20</sup>. The government's response was to repress this rebellion, killing the leader and founder of the Houthis, Hussein al-Houthi.

The definition of the Houthis as “radical” can be argued through the ‘*General Assembly's Report on best practices and lessons learned on how protecting and promoting human rights contribute to preventing and countering violent extremism*’, where radical groups are defined by the “willingness to condone, support, facilitate or use

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<sup>16</sup> Adam Seitz, *Houthi Expansionism, Internal War, Geopolitics and the Yemen Regime*, 8 MES Insights, (June 17, 2025), available at [https://www.usmcu.edu/Portals/218/MES/Insights/MES\\_insights\\_v8\\_i3.pdf?ver=2018-10-16-110327-657](https://www.usmcu.edu/Portals/218/MES/Insights/MES_insights_v8_i3.pdf?ver=2018-10-16-110327-657) (last visited March 11, 2025).

<sup>17</sup> Ali Abdullah Saleh, *Yemen's Dominant Force* (BBC News, December 4, 2017), available at <https://www.bbc.com/news/world-middle-east-10984704> (last visited March 11, 2025).

<sup>18</sup> Will Jordan, *Informant says Yemen's Saleh helped direct al-Qaeda* (Al Jazeera, June 4, 2015), available at <https://www.aljazeera.com/news/2015/6/4/informant-says-yemens-saleh-helped-direct-al-qaeda> (last visited October 23, 2024), see also Simon Henderson and Daniel Green, *Yemen in Transition: The Dangers of Continued Stability and al-Qaeda* (The Washington Institute, June 6, 2011), available at <https://www.washingtoninstitute.org/policy-analysis/yemen-transition-dangers-continuing-instability-and-al-qaeda> (last visited March 10, 2025).

<sup>19</sup> Nadwa Al-Dawasari, *The Houthis and the Limits of Diplomacy in Yemen* (Middle East Institute, May 6, 2021), available at <https://www.mei.edu/publications/houthis-and-limits-diplomacy-yemen> (last visited March 11, 2025).

<sup>20</sup> Safa Al Ahmad, *Meeting the Houthis - and Their Enemies* (BBC News, March 17, 2025), available at <https://www.bbc.com/news/magazine-31907671> (last visited March 10, 2025).



violence to further political, ideological, religious or other goals<sup>21</sup>". Since the movement has used violence for years in order to further their goals, their characterization as radical is appropriate. In any case, after constant skirmishes, it could be said the Houthi rebellion had been successfully contained — even if not defeated — by Saleh's forces between 2004 and 2011, when the parties agreed to a ceasefire<sup>22</sup>.

The situation of the entire country, however, would drastically change because of the Arab Spring, a popular movement initiated in Tunisia that quickly shook the entire world, with consequences in the Middle East, Latin America and Europe. The Arab Spring was a mass protest movement that took place starting in 2010 and had national characteristics in each State it affected. However, a common theme was the push for dignity and human rights expansion in the region, with students and the youth in general specially being deeply frustrated by the long-lasting government corruption and the lack of economic opportunities. It toppled regimes that stood for decades and, at least for some time, did increase democratic values<sup>23</sup>.

In the case of Yemen, protests against unemployment, corruption<sup>24</sup> and the overall state of the country arose in the same year. The intensity and size of the movement was so strong that

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<sup>21</sup> A/HRC/33/29, *Report on best practices and lessons learned on how protecting and promoting human rights contribute to preventing and countering violent extremism*, 8 (United Nations Human Rights Council (UNHRC), July 21, 2016), available at <https://documents.un.org/doc/undoc/gen/g16/162/55/pdf/g1616255.pdf> (last visited March 11, 2025).

<sup>22</sup> *Yemen Declares End to Northern War* (Al Jazeera, March 19, 2010), available at <https://www.aljazeera.com/news/2010/3/19/yemen-declares-end-to-northern-war> (last visited March 11, 2025).

<sup>23</sup> Kali Robinson and Will Merrow, *The Arab Spring Ten Years Later: What's the Legacy of the Uprisings?* (Council of Foreign Relations, December 3, 2020), available at <https://www.cfr.org/article/arab-spring-ten-years-whats-legacy-uprisings> (last visited March 11, 2025).

<sup>24</sup> See *Yemen protests: 'People are fed up with corruption'* (BBC News Middle East, January 27, 2011), available at <https://www.bbc.co.uk/news/world-middle-east-12298019> (last visited October 23, 2024).

President Saleh made a public commitment not to run for reelection on 2013<sup>25</sup>. With rising violence and unrest in the country<sup>26</sup>, Saleh signed a transfer of power — brokered by the Gulf Cooperation Council — where he would transfer his power to Vice-President Andrabbuh Mansur al-Hadi in exchange for immunity from prosecution<sup>27</sup>.

The role of the Gulf Countries is of note in this process. A regional-unity project that unites the wealthy monarchies of the region – Saudi Arabia, the UAE, Bahrein, Kuwait, Oman and Qatar –, it enjoys significant influence over the region, specially over nearby countries such as Yemen, facing deep internal struggle and seeking international support<sup>28</sup>. It is not surprising, therefore, that they were able to negotiate with President Saleh in this delicate situation.

After the transfer of power, Yemen held general elections in the following year of 2012, with al-Hadi running unopposed — an election boycotted by the Houthis<sup>29</sup>. Hadi had been the Vice-President

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<sup>25</sup> Laura Kasinov and Nada Bakri, *Facing Unrest, Yemen's Leader Says He Will Step Down in 2013* (The New York Times, February 2, 2011), available at <https://www.nytimes.com/2011/02/03/world/middleeast/03yemen.html> (last visited March 10, 2025).

<sup>26</sup> See *Yemen: President Saleh 'was injured by palace bomb'* (BBC News, 23 June 2011), available at <https://www.bbc.com/news/world-middle-east-13892502> (last visited October 23, 2024) (not even the Presidential Palace was safe, as Saleh was injured by a bomb, suffering extensive burns, broken bones, smoke inhalation and shrapnel injuries).

<sup>27</sup> See *Yemen's Saleh agrees to transfer power* (Al-Jazeera, November 24, 2011), available at <https://www.aljazeera.com/news/2011/11/24/yemens-saleh-agrees-to-transfer-power-2/> (last visited October 23, 2024).

<sup>28</sup> Farea Al-Muslimi, *A History of Missed Opportunities: Yemen and the GCC* (Carnegie Endowment for International Peace, January 5, 2016), available at <https://carnegieendowment.org/middle-east/diwan/2016/01/a-history-of-missed-opportunities-yemen-and-the-gcc?lang=en> (last visited March 11, 2025).

<sup>29</sup> Muhammed Mukhashaf and Joseph Logan, *Violence As Yemen Elects Candidate to Replace Toppled Leader* (Reuters, February 22, 2012), available at <https://www.reuters.com/article/world/violence-as-yemen-elects-candidate-to-replace-toppled-leader-idUSTRE81J0RQ/> (last visited March 10, 2025).

of Yemen since 1994, when the first civil war came to an end, having been a relevant figure in the country's politics since then, always as second-in-command to Saleh<sup>30</sup>. The new government with Hadi as President, however, did not have the political capabilities of its predecessor, soon became unpopular and faced a legitimacy crisis<sup>31</sup>. Revolts began to, once again, take over the country.

Civil War was inevitable, as no side could, at this time, claim total victory and effectively control the entirety of Yemen's territory<sup>32</sup>. In 2015, Houthi rebels took over the capital Sana'a<sup>33</sup>, announcing the dissolution of parliament and the formation of a Revolutionary Committee with themselves at the top of the hierarchy to rule the entire country<sup>34</sup>. Hadi, then on house arrest by the Houthis in Sana'a, managed to escape to Aden, a major port city in the South, but subsequently fled to Oman and finally to Saudi Arabia.

In response to the taking of power by the Houthis, the United Nations Security Council passed the Resolution 2216<sup>35</sup>, which

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<sup>30</sup> Saleh's successor: Low-Profile Warrior of Consensus in Yemen (Al Arabiya News, February 19, 2019), available at <https://www.alarabiya.net/articles/2012/02/19/195733> (last visited March 11, 2025).

<sup>31</sup> Mohammed Alshuwaiter, *President Hadi and the Future Legitimacy of Yemen* (Middle East Institute, May 14, 2020), available at <https://www.mei.edu/publications/president-hadi-and-future-legitimacy-yemen> (last visited March 10, 2025).

<sup>32</sup> Patrick Wintour, *Yemen Civil War: The Conflict Explained* (The Guardian, June 10, 2019), available at <https://www.theguardian.com/world/2019/jun/20/yemen-civil-war-the-conflict-explained> (last visited March 10, 2025).

<sup>33</sup> Saeed Al-Batati, *Yemenis Are Shocked by Houthis' Quick Capture of Sana'a* (Middle East Eye, February 23, 2015), available at <https://www.middleeasteye.net/fr/in-depth/features/yemenis-are-shocked-houthi-s-quick-capture-sanaa-690971750> (last visited October 24, 2024).

<sup>34</sup> Mohammed Ghobari, *Yemen's Houthis Dissolve Parliament, assume power: televised statement* (Reuters, 2015), available at <https://www.reuters.com/article/us-yemen-crisis-idUSKBN0LA1NT20150207/> (last visited October 24, 2024).

<sup>35</sup> United Nations Security Council Resolution 2216 (2014), available at: <https://documents.un.org/doc/undoc/gen/n15/103/72/pdf/n1510372.pdf> (last visited October 24, 2024).

emphasized its endorsement of President Hadi's legitimacy. Additionally, the resolution reiterated the importance of preserving Yemen's unity, sovereignty, independence and territorial integrity. Furthermore, it called for the Houthis to withdraw from all territories captured during the recent conflict, surrender weapons taken from military and security institutions, halt any activities that fall under the jurisdiction of Yemen's legitimate government, and fully comply with previous Council resolutions. Finally, it also imposed sanctions on individuals undermining the stability of Yemen, in particular the Houthis.

It should also be clarified that the United Nations Security Council (UNSC) is the only body within the UN-system that can issue mandatory resolutions. That is, differently than, for example, the General Assembly and the Economic and Social Council that can only issue recommendatory resolutions, the UNSC's resolutions have to be carried out by all UN members<sup>36</sup>. Resolution 2216/2015, therefore, has dense legal weight.

With the rebels advancing towards Aden, President Hadi requested military intervention from Saudi Arabia and its coalition. The objective of this intervention was to reiterate Hadi's authority and to protect the people from Yemen<sup>37</sup>. The Coalition received military support from Egypt, Morocco, Jordan, and Sudan and the endorsement of the Arab League and Western states including the US, the UK, France, and Canada<sup>38</sup>.

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<sup>36</sup> *United Nations, Charter*, art. 25. (United Nations, 1945), available at <https://www.un.org/en/about-us/un-charter/chapter-5> (last visited March 11, 2025).

<sup>37</sup> *Operation Decisive Storm Ends, Operation Renewal of Hope Begins With Military Objectives Achieved, Focus Shifts to the Political Process* (The Embassy of the Kingdom of Saudi Arabia, April 21, 2015), available at:

<https://www.saudiembassy.net/press-release/operation-decisive-storm-ends-operation-renewal-hope-begins-military-objectives> (last visited 24 October 2024) (this military operation, named Operation Decisive Storm, later renamed Renewal of Hope, had very clear objectives, as stated by Saudi Arabia in this press release).

<sup>38</sup> *Yemen Conflict: UN Expert Details Possible War Crimes by All Parties*, (BBC News, August 28, 2018), available at <https://www.bbc.com/news/world-middle-east->

It could be argued that the almost-unanimous vote for UNSC Res. 2215(2015)<sup>39</sup> was a diplomatic victory for Saudi Arabia. The country had intervened in Yemen to preserve Hadi's government – per request – and therefore the Saudis are perhaps one of the most interested in keeping their officially-recognized government in Yemen. As the most members of the UNSC hold aligning interests with Saudi Arabia, naturally they backed the resolution<sup>40</sup>.

Since 2015, the fighting has been taking place in Yemen, between the Houthis and the Yemeni Government, supported by the Coalition. The fight has expanded into Saudi territory, as of Houthi's attacks, and, since 2023 and the Israel-Hamas War, the Houthis have also targeted Israeli territory and ships off Yemen's coast in the Red Sea. By also targeting Western-flagged ships, the Houthis gave way for the US and UK bombardment of Yemen territory in claims of self-

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45329220 (last visited 10 March 2025), see also Djuric, Mickey. *Canada Provided Support for US's Strikes on Yemen's Houthis*. (National Post, February 4, 2024), available at <https://nationalpost.com/news/world/canada-provided-support-to-u-s-for-strikes-on-yemens-houthis> (last visited March 10, 2025).

<sup>39</sup>*Security Council Demands End to Yemen Violence, Adopting Resolution 2216 (2015) With Russian Federation Abstaining* (UN Meetings Coverage, April 14, 2015), available at <https://press.un.org/en/2015/sc11859.doc.htm> (last visited March 21, 2025) (Russia's position of abstaining from the Resolution was explained by their diplomat at the UNSC: "VITALY CHURKIN (Russian Federation) said his delegation had abstained because the resolution was not fully in line with what was required by the crisis in Yemen. The text failed to take into account proposals his country had made and to call on all sides to halt fire, did not provide for due reflection on consequences and lacked clarity on a humanitarian pause. There were also inappropriate references to sanctions, he added, stating that the resolution must not result in an escalation of the crisis. He stressed that there was no alternative to a political solution and action by the Council must be engendered from already-existing documents").

<sup>40</sup> Waleed Alhariri, *Five Years of the UN Security Council Toeing the Saudi Line* (Sana'a Center For Strategic Studies, April 9, 2020), available at: <https://sanaacenter.org/publications/analysis/9603> (last visited March 21, 2025) ("The most powerful nations on the council hold common political, economic and security interests with Saudi Arabia, giving the state leading one warring side in the conflict a huge say in deciding when and how international diplomatic efforts are advanced to resolve it").

defense. At first glance, the Houthi-Hamas alliance seems out of order, as the Shi'a-Sunni rapprochements are not the most intuitive. However, the two share a common self-proclaimed enemy: Israel<sup>41</sup>. The Houthis' actions, therefore, happen within this context.

The conflict in Yemen involves a multitude of factors, both national and international players, tribal alliances and the United Nations. Furthermore, it takes place in the middle of a *quasi*-Cold War in the Middle East between Saudi Arabia and Iran<sup>42</sup>.

In the following sections, within the geo-political nature and consequences of the current situation in the Arabian Peninsula, we turn to the legal aspects, consequences and the overall international laws that aim to govern this specific situation. I intend to analyze the different courses of action that the Houthis have taken, such as attacks on the internationally-recognized Yemeni Government, attacks on Saudi Arabia and attacks on Western ships. As they bear different legal natures, they also have different consequences under international law, and, therefore, must be examined differently.

### 3. *Legal Considerations on the Yemen Conflict*

#### 3.1. *The Houthis (Ansar Allah)*

When it comes to law in general and in particular international law, the legal definition of subjects, classifying them into specific

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<sup>41</sup> Marc Junyent, *Why Are the Houthis Getting Involved in a War Between Israel and Hamas?* (Stimson Center, December 4, 2025), available at: <https://www.stimson.org/2023/why-are-the-houthis-getting-involved-in-a-war-between-israel-and-hamas/> (last visited March 12, 2025).

<sup>42</sup> *The Iranian-Saudi Hegemonic Rivalry* (German Council on Foreign Relations, October 26, 2017), available at: <https://dgap.org/en/research/publications/iranian-saudi-hegemonic-rivalry> (last visited March 12, 2025), Gustav Dahl, *Understanding the 'Islamic Cold War': How can the growing rivalry between Iran and Saudi Arabia and their behaviour in recent years best be explained using IR theory* (SciencesPo Kuwait Program, 2018), available at <https://www.sciencespo.fr/kuwait-program/wp-content/uploads/2019/03/Gustav-Skjold-Bang-Dahl-Essay-International-Relations-in-the-Middle-East.pdf> (last visited March 12, 2025).

categories, groups and concepts are of deep significance and will lead us to different avenues.

The situation in Yemen, at this time, can be correctly categorized as a Non-International Armed Conflict (NIAC) by force of article 3 common to the Geneva Conventions (1949), which Yemen is a part of<sup>43</sup>. In an Opinion Paper from March 2008, the International Committee of the Red Cross defines any conflict as a NIAC based on four necessary criteria<sup>44</sup>:

- A. Armed confrontations;
- B. Between governmental armed forces and the forces of one or more armed groups on the territory of a State
- C. Said confrontation must reach a minimum level of intensity
- D. The parts involved must show a minimum of organization.

Assessing the situation in Yemen, we can clearly see that there are indeed armed confrontations (A) — as of many reports and United Nations Security Council resolutions on the matter<sup>45</sup>; the Yemeni government faces many non-governmental forces, namely the Houthis and al-Qaeda (B); the level of intensity has reached an internationally significant level, as of the attention given by the UNSC on the issue (C); and the parties involved show a high level of organization, with both the Yemeni government and the Houthis

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<sup>43</sup> *The Geneva Conventions and their Commentaries* (International Committee of the Red Cross), available at <https://www.icrc.org/en/law-and-policy/geneva-conventions-and-their-commentaries> (last visited October 21, 2024).

<sup>44</sup> *How is the Term "Armed Conflict" Defined in International Humanitarian Law?* (International Committee of the Red Cross, March 2008), available at <https://www.icrc.org/sites/default/files/external/doc/en/assets/files/other/opinion-paper-armed-conflict.pdf> (last visited October 21, 2024).

<sup>45</sup> For example, UNSC Resolutions 2201/2015, 2266/2016, 2342/2017 and 2481/2019.

receiving international support from different actors such as Saudi Arabia and its Coalition and the United States<sup>46</sup>.

The fact that Yemen's Government has consented to the intervention of external actors such as a coalition led by Saudi Arabia does not change this classification as NIAC. That is because, even when foreign states support a territorial state's armed forces against one or more armed group with the state's consent or invitation, the situation remains categorized as non-international armed conflict<sup>47</sup>.

With all of this in mind, the Houthi movement can be described as a non-governmental force, an international entity that is not in fact a State. It *de facto* controls a large portion of the Yemeni territory and population, namely in North Yemen. It has the capacity to enter into relations with States, such as Iran<sup>48</sup>, and conducts military operations on the region that affect the entire global value chain, mobilizing the attention of the UNSC in the form of reunions and Resolutions, which are two of the four requisites of Statehood as of the 1933 Montevideo Convention on the Rights and Duties of States<sup>49</sup>.

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<sup>46</sup> *Non International Armed Conflicts and Yemen*, (RULAC, October 19, 2022), available at <https://www.rulac.org/browse/conflicts/non-international-armed-conflicts-in-yemen#collapse5accord> (last visited March 12, 2025).

<sup>47</sup> Efthymios Papastavridis, *Red Sea Attacks and the International Response: an International Law Insight* (Hellenic Foundation for European and Foreign Policy, January 2024), 7, available at <https://www.eliamep.gr/wp-content/uploads/2024/01/Insights-2-Red-Sea-EN.pdf> (last visited October 21, 2024).

<sup>48</sup> Final report of the Panel of Experts on Yemen established pursuant to Security Council resolution 2140 (2014) (United Nations Security Council, January 26, 2022), available at <https://documents.un.org/doc/undoc/gen/n21/415/62/pdf/n2141562.pdf> (last visited October 21, 2024) (the full extension of Iranian support to the Houthis is still not clear. In January 2022, a Panel of Experts on Yemen addressed the UNSC as follows: "11. The situation is less clear with regard to external support for the Houthis. The Islamic Republic of Iran has been a political ally for the movement since at least 2015 and maintains an 'ambassador' in Sana'a. It is one of the few Member States of the United Nations that recognizes the Houthis as the legitimate government of Yemen").

<sup>49</sup> *Montevideo Convention on the Rights and Duties of States* (1933), available at [https://www.ilsa.org/Jessup/Jessup15/Montevideo\\_Convention.pdf](https://www.ilsa.org/Jessup/Jessup15/Montevideo_Convention.pdf) (last visited



The definition of the Houthi movement as a Non-State Actor (NSA) is also a natural possibility. An NSA can be defined as "a person or group of persons that is not a part of the *de jure* or *de facto* State or and whose conduct at issue is not attributable to the State"<sup>50</sup>.

This qualification of the Houthis as an NSA participating in a NIAC has important ramifications in the legal field, as the use of force against such an entity is highly debated and there is not, still, a consensus on its legality or extent of its possibilities.

### 3.2. *The non-State Actor Sovereignty Paradox*

The rise of the Houthis in Yemen exemplifies what can be addressed as the "Non-State Actor Sovereignty Paradox." This paradox emerges when Non-State Actors, such as the Houthis, exercise basic functions traditionally associated with sovereign states— namely, control over territory, governance structures, foreign relations, and the provision of public services. What makes this situation unique is that these functions are performed without the NSAs enjoying formal recognition as sovereign entities under international law and among the international community of States. This situation exposes critical tensions within the international legal framework, which remains predominantly state-centric despite the increasing prominence of non-state actors (NSAs) in global affairs.

Traditionally, sovereignty has been looked upon through the Westphalian model, which privileges States as the primary subjects

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October 10, 2024) (art. 1 of the Convention states: The State as a person of international law should possess the following qualifications: permanent population, defined territory, government and capacity to enter into relations with other States).

<sup>50</sup> John Norton Moore, *The Virginia-Georgetown Manual Concerning the Use of Force Under International Law: Rules and Commentaries on Jus Ad Bellum* at 113 (West Point Press, 2024), available at <https://static1.squarespace.com/static/6239ec5f3f7611307897a1f0/t/66d89bded14e2b013fb9242c/1725471710573/JAB+Online+Version+%28no+crops%29.pdf> (last visited October 8, 2024).

of international law. The Montevideo Convention on the Rights and Duties of States (1933)<sup>51</sup> codifies the criteria for statehood in its very first article: a permanent population, a defined territory, a government, and the capacity to enter into relations with other states. The Houthis meet several of these criteria. They exercise *de facto* control over substantial portions of northern Yemen, including the former internationally-recognized capital, Sana'a, they are the providers of main governmental functions, maintain armed forces, and engage in foreign relations, albeit not largely. In spite of all this, they still lack the important element of international recognition.

This legal paradox of acting in all manners as a State and yet not fully being one raises several important questions. First, should entities that function as *de facto* States be afforded similar rights and obligations under international law as recognized sovereign States? Second, how does the lack of recognition impact the applicability of international legal norms, particularly concerning the use of force, humanitarian obligations, and State responsibility? And third, what implications does this have for the broader international legal system, which increasingly grapples with the realities of non-State governance structures?

NSAs like the Houthis therefore challenge the classic bifurcation between State and non-State entities. Their control over territory and population imposes objective obligations, particularly under international humanitarian law (IHL)<sup>52</sup>. As articulated by Andrew Clapham in "Human Rights Obligations of Non-State Actors"<sup>53</sup>, the responsibilities of such groups cannot be ignored

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<sup>51</sup> *Montevideo Convention on the Rights and Duties of States* (1933), Article 1 (cited in note 49).

<sup>52</sup> *Geneva Conventions* (1949), Common Article 3, available at <https://ihl-databases.icrc.org/en/ihl-treaties/gci-1949/article-3?activeTab=> (last visited October 20, 2024).

<sup>53</sup> Andrew Clapham, *Human Rights Obligations of Non-State Actors* (Oxford University Press, 2006), available at <https://cadmus.eui.eu/handle/1814/6490> (last visited October 20, 2024).

simply because they lack formal statehood. The Geneva Conventions, specifically Common Article 3, extend obligations to all parties in a non-international armed conflict (NIAC), including non-state armed groups<sup>54</sup>. This imposes minimum standards of humane treatment and sets a series of prohibitions, such as torture, summary executions, and the targeting of civilians. However, the application of these obligations without corresponding rights presents an asymmetry in international law. While the Houthis are bound by IHL, they cannot claim protections typically reserved for States, such as the right to self-defense set under Article 51 of the UN Charter. This legal gap creates inconsistencies particularly when external powers justify military interventions against NSAs under the guise of self-defense, as seen in the actions of the Saudi-led coalition and, more recently, U.S. military strikes against Houthi targets, which will be addressed in a later section.

The paradox is further complicated by the issue of recognition. Recognition is not circumscribed to diplomacy; it carries legal consequences. In the case of the Houthis, their lack of widespread recognition, despite fulfilling two of the four statehood criteria, reflects the political nature of international law, as recognition often relies on geopolitical considerations of the recognizing States rather than on legal realities of the would-be States. Comparative examples can shed light on this paradox. Hezbollah in Lebanon exercises significant political and military power, effectively functioning as a State within a State<sup>55</sup>. The Taliban, prior to their recent recognition following the U.S. withdrawal from Afghanistan<sup>56</sup>, operated as the de facto government despite lacking formal international recognition.

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<sup>54</sup> *Geneva Conventions* (1949) (cited in note 52).

<sup>55</sup> *What is Hezbollah?* (Council on Foreign Relations), available at <https://www.cfr.org/background/what-hezbollah> (last visited October 29, 2024).

<sup>56</sup> Adam Leslie, *China's Recognition of the Taliban Sets a Dangerous Precedent* (Australian Strategic Policy Institute, 2024), available at <https://www.aspistrategist.org.au/chinas-recognition-of-the-taliban-sets-a-dangerous-precedent/> (last visited October 24, 2024).

Similarly, ISIS, at the height of its territorial control, administered services and maintained foreign relations, and yet was by all accounts universally condemned and denied any sovereign status<sup>57</sup>. These cases illustrate the fluidity and inconsistency in how the international community engages with NSAs.

Addressing the Non-State Actor Sovereignty Paradox requires us to rethink international legal norms. Therefore a possible approach could involve developing a more nuanced legal status for NSAs that acknowledges their governance functions while imposing corresponding both legal obligations and rights. This would help bridge the gap between *de facto* authority and recognition, ensuring greater accountability and coherence within the international legal system. For example, our governing notion of Statehood is set at the before-mentioned Montevideo Convention of 1933. Surely, the international reality of the 1930s was deeply different than the present one of the 2020s, almost a hundred years later. A new international agreement regarding criteria for Statehood would surely be welcome, as the current architecture for dealing with Non-State Actors is not entirely useful anymore. If not an entirely new set of rules regarding Statehood, the review and/of amendment of art. 1 of said Convention could be useful. Furthermore, art. 4 of the UN Charter governs admissions to the Organization, following a process that needs the UNSC recommendation<sup>58</sup>. Just like many other UN decision-making processes, the power of the veto applies here, which makes negotiations unbalanced, as there are 193 nations in the UN, 15 at a time in the Security Council and only five nations with veto-power<sup>59</sup>. Like a multitude of other discussions, the Permanent 5 – or P5 –

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<sup>57</sup> Marco Longobardo, *The Self-Proclaimed Statehood of the Islamic State Between 2014 and 2017 and International Law*, 33 *Anuario Español de Derecho Internacional* (2017) (last visited March 10, 2025).

<sup>58</sup> UN Charter, Art. 4 (2): The admission of any such state to membership in the United Nations will be affected by a decision of the General Assembly upon the recommendation of the Security Council (cited in note 36).

<sup>59</sup> UN Charter, Art. 23 (cited in note 36).

holding the power to block any major decision by the United Nations becomes problematic and should object of democratic deliberations, as some countries have already suggested<sup>60</sup>.

The Houthis exemplify the challenges non-State actors pose to the State-centric framework of international law. Their *de facto* sovereignty raises critical questions about recognition, legal obligations, and the applicability of international norms. As conflicts increasingly involve powerful NSAs, the international legal community must adapt to these realities, balancing the principles of sovereignty with the need for legal clarity and accountability in contemporary armed conflicts.

In the next sections, I will address how the international community has dealt with issues arising from NSAs historically and legally, in order to try and navigate the current legal and military crossroads.

### 3.3. Use of Force Against Non-State Actors

Firstly, it must be clearly established that the prohibition of the use of force, as a rule, in the international arena is one of — if not the main — pillar that emerged after the Second World War. The United Nations (UN), in the preamble of its Charter<sup>61</sup>, declare that one of its objectives is to protect future generations from the devastation of war that in the past has caused immense suffering to humanity and avoid war even if it means going through great lengths to do it.

The geography of legal documents matter. In national Constitutions, usually the first articles are dedicated to establishing

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<sup>60</sup> One of the most prominent proposals for UNSC reform is the so-called G4: a reform that would enlarge the permanent members of the organ to also include Brazil, Germany, Japan and India, as stated by the German Foreign Office at a recent press conference. *G4 Ministerial Joint press Statement on the Reform of the UN Security Council* (Federal Foreign Office, September 24, 2024), available at <https://www.auswaertiges-amt.de/en/newsroom/news/g4-2677142> (last visited March 12, 2025).

<sup>61</sup> United Nations Charter, available at <https://www.un.org/en/about-us/un-charter/full-text> (last visited October 24, 2024).

what that country is, how it chooses to organize itself and what are the main principles that guide it<sup>62</sup>. For example, the Brazilian Constitution establishes in its first article that Brazil is founded on the principles of sovereignty, citizenship, human dignity, the social values of labour and political pluralism<sup>63</sup>. The Japanese Constitution affirms that the Emperor serves as a symbol of the State and the national unity, holding his position based on the will of the people, in whom sovereign power resides<sup>64</sup>. As a last example, the French Constitution states that "France shall be an indivisible, secular, democratic and social Republic"<sup>65</sup>. All of the mentioned States are therefore bound by those principles and from them the rest of the Constitution – and therefore every other norm – derives from.

The UN Charter is no different, with its first article dedicated to the main purposes of the organization, while the second article states the principles that are meant to guide the pursuit of the art.1. Regarding specifically the use of force, art. 2 (4) 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"<sup>66</sup>.

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<sup>62</sup> Roger Masterman and Colin Murray, *Constitutional and Administrative Law* at 3, Cambridge University Press (2022), available at <https://www.cambridge.org/highereducation/books/constitutional-and-administrative-law/E1EB9FEDC43459C991E42BD945231DB5/the-purposes-and-characteristics-of-constitutions/5D7AFF3AAFFE9B8B687E2466088306B6> (last visited April 9, 2025).

<sup>63</sup> *Brazilian Constitution*, article 1 (1988), available at [https://www.planalto.gov.br/ccivil\\_03/constituicao/constituicao.htm](https://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm) (last visited March 12, 2025).

<sup>64</sup> *The Constitution of Japan* (1946), article 1, available at [https://japan.kantei.go.jp/constitution\\_and\\_government\\_of\\_japan/constitution\\_e.html](https://japan.kantei.go.jp/constitution_and_government_of_japan/constitution_e.html) (last visited March 12, 2025).

<sup>65</sup> *French Constitution*, article 1 (1958), available at [https://www.conseil-constitutionnel.fr/sites/default/files/as/root/bank\\_mm/anglais/constitution\\_anglais\\_oct2009.pdf](https://www.conseil-constitutionnel.fr/sites/default/files/as/root/bank_mm/anglais/constitution_anglais_oct2009.pdf) (last visited March 12, 2025).

<sup>66</sup> UN Charter, article 2 (4) (cited in note 38).

In the daily lives of States, however, it is clear that the use of force has not disappeared from international law and neither is it completely prohibited by the UN or its charter. Further along the document, the right to Self-Defense is clearly stated and recognized. Art. 51 of the UN Charter states as follows:

Article 51

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

The right to self defense is therefore not only recognized by the Charter, but also it is stated as “inherent”. By combining the two articles — that is, art. 2 (4) and art. 51 — a clear picture starts to appear: the use of force and the threat to do so is prohibited. However, States have the right to defend themselves against armed attacks, which is the exception to the prohibition of the use of force in the overall Collective Security system that the UN tries to achieve.

On this matter, Hans Kelsen contended that self-defense involves the use of force by an individual who is unlawfully attacked. The use of force in self-defense is permitted only when the attack has already occurred or is intended to be carried out through force<sup>67</sup>. Stress should be put on *illegally attacked*. That is, the use of force permitted by art.51 of the Charter is an exception to the general rule

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<sup>67</sup> See Hans Kelsen, *Collective Security and Collective Self-Defense Under the Charter of the United Nations* 42 *The American Journal of International Law* 784 (1948), available at <https://doi.org/10.2307/2193350>.

as it is in itself a response to a breach of the norm. The exception is made so that States are not toothless when they are the victims of an illegal aggression.

Self-defense itself falls into the general rule of Collective Security, one of the pillars of the UN-System. Although the term is not featured in the Charter, it personifies the logic through which the security of one is the concern of all. After World War II, States deemed that one-sided solutions were not the best approach to achieve peace in inter-State conflicts<sup>68</sup> and, as of art. 24 of the Charter, conferred to the Security Council the primary responsibility for maintaining international peace and security<sup>69</sup>. States, by force of art. 51 can make use of force in self defense *until the Security Council has taken necessary measures*. Through this article, it is made clear that the primary responsible for international peace is the UNSC – through the logic of Collective Security – but States are allowed to defend themselves if attacked until the Security Council has taken a decision on the matter.

Initially, this did not raise many legal questions as most of the international relations were captained by States themselves. Yet, as the world order changes, this State-centric approach to international law has faced new challenges, especially with the rise of Non-State Actors. Can States proceed with the use of force against these NSAs? The answer seems to be positive, as article 51<sup>70</sup> allows for the use of self defense “if an armed attack occurs”. The occurrence of an armed attack seems to be the only limitation to the use of self defense, in a literal interpretation of the Charter<sup>71</sup>. Therefore, through this point of

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<sup>68</sup> Erika de Wet, *A Future for the UN System of Collective Security* (Lieber Institute, February 22, 2024), available at <https://lieber.westpoint.edu/future-un-system-collective-security/> (last visited March 12, 2025).

<sup>69</sup> UN Charter article 24 (cited in note 36).

<sup>70</sup> UN Charter article 51 (cited in note 36).

<sup>71</sup> Resolutions by the UNSC in the wake of the September 11th attacks in New York contribute to this point of view. That is the case of UNSC Res. 1368/2001 and 1373/2001, both of which authorized the use of force against a Non-State Actor.



view — adopted by the United States, for instance<sup>72</sup> — self defense can be legally exercised against NSAs, given they incur in armed attacks against States<sup>73</sup>.

The primary issue with the use of force against non-state actors (NSAs) lies in the fact that, by nature, NSAs operate from a given territory. This territory therefore becomes a potential target for retaliation by the injured party in the exercise of self-defense without the territorial State, necessarily, being allied to the NSA. Said State would, theoretically, be subjected to a foreign attack without having taken part in any hostility.. It is important to note, however, that the use of force against NSAs may arise in several scenarios, such as when invited by the territorial state<sup>74</sup> or under the principle of *self-defense* against an armed attack. Both of these situations align with international law, as the first respects state sovereignty, and the second seeks to protect the human rights of individuals whose own state is either unwilling or unable to protect them.

Intervention by invitation is another way of legally utilizing force against NSAs. State sovereignty entitles a government to defend

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<sup>72</sup> Alasdair Soussi, *Can the US Strikes on Yemen's Houthis be Justified as Self-Defense?* (Al Jazeera March 1, 2024), available at <https://www.aljazeera.com/news/2024/3/1/can-the-us-strikes-on-yemens-houthis-be-justified-as-self> (last visited March 11, 2025), see also United Nations Security Council Report S/2024/56, available at <https://www.securitycouncilreport.org/un-documents/document/s-2024-56.php> (last visited March 12, 2025) (“This letter from the US to the Council said that strikes on Houthi military targets in Yemen were conducted in the exercise of its inherent right of self-defence, as reflected in Article 51 of the UN Charter”).

<sup>73</sup> Steven R. Ratner, *Self-Defense Against Terrorists: The Meaning of Armed Attack. In Counter-terrorism Strategies in a Fragmented International Legal Order: Meeting the Challenges*, at 334-55 (Cambridge: Cambridge University Press, 2013).

<sup>74</sup> George Nolte, *Intervention by Invitation* (Max Planck Encyclopedia of Public International Law, 2010), available at <https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1702> (last visited March 17, 2025).

themselves against armed opposition within their territory<sup>75</sup>. In this logic, introduction of foreign troops *by request of the territorial State by means of its legitimate authorities* does not harm the principle of non-intervention and sovereignty. By virtue of this consent, the use of force by an invited military does not harm the host State's territorial integrity and, therefore, it is not a violation of art. 2 (4) of the Charter<sup>76</sup>. However, there are three main preconditions for Intervention by Invitation. Scholars suggest that the requesting government must be i) legitimate, ii) effective and iii) the intervention must not violate the principle of self-determination<sup>77</sup>. The intervention therefore is legally possible given that the requesting authority does in fact represent the State's authority. Naturally, the government's legitimacy and effectiveness in times of civil war, as is the present case of Yemen, are highly questionable and, because of it, the request for Saudi intervention in fighting the Houthis becomes highly problematic.

### 3.4. *The use of Force against NSAs in self-defense*

#### 3.4.1. *Interpretations of Art. 51 and State Practice*

Having established that the use of force is possible against Non-State Actors in the cases of invitation by the host State, we must now

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<sup>75</sup> Gerhard Hafner, *Present Problems of the Use of Force in International Law*, 73 Institut de Droit International 299, 302 (2009); see also Louise Doswald-Beck, *The Legal Validity of Military Intervention by Invitation of the Government*, 56 British Yearbook of International Law 189, 189 (1986).

<sup>76</sup> Cómán Kenny and Sean Butler, *The Legality of Intervention by Invitation in situations of R2P Violations*, NYU Journal of International Law and Politics (2020), available at <https://nyujilp.org/wp-content/uploads/2019/01/NYI103.pdf> (last visited March 13, 2025).

<sup>77</sup> Ratner, *Self-Defense Against Terrorists*, at 141 (cited in note 79), Albrecht Randelzhofer and Oliver Dorr, *Use of Force and art. 2 (4) of the UN Charter* at 110 (Kohl University, May 21, 2019), available at [https://kups.ub.uni-koeln.de/10875/1/Pobjie\\_PhD\\_KUPS.pdf](https://kups.ub.uni-koeln.de/10875/1/Pobjie_PhD_KUPS.pdf) (last visited March 13, 2025).

address the use of force by third States without the host State's consent while arguing for self-defense.

The main legal sources for this problem are the Charter of the United Nations and customary law. When it comes to the interpretation of the mentioned art. 51, the Vienna Convention on the Law of Treaties (VCLT)<sup>78</sup>, especially its article 31, can also be valuable.

Art. 31 of the VCLT states: "Article 31, General rule of interpretation 2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes: (b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;"

This way, in order for it to be clearly possible for the interpretation of the right to self defense to being applicable against NSAs, there would have to be a "practice which establishes agreement regarding the interpretation"<sup>79</sup>. We must turn our analysis towards cases involving use of force against NSAs in self defense, without the territorial State's consent, to better understand whether this interpretation of art. 51 does indeed constitute an agreement on this practice.

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<sup>78</sup> See *Vienna Convention on the Law of Treaties*, available at [https://legal.un.org/ilc/texts/instruments/english/conventions/1\\_1\\_1969.pdf](https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf) (last visited October 25, 2024).

<sup>79</sup> See Dire Tadi, *Extraterritorial Use of Force against Non-State Actors* (Brill May 16, 2022) available at <https://doi.org/10.1163/9789004521483> (last visited October 16, 2024) (as professor and ICJ Judge Dire Tladi teaches us: "First, an act of extraterritorial force against non-State actors will constitute subsequent practice under Article 31 only if it establishes the agreement of all the parties as to the interpretation of the UN Charter. It is not sufficient that there is widespread practice, or acceptance of that practice. Any expression of criticism or objection to the practice will almost certainly negate a claim of subsequent practice. Second, the emphasis falls, not on the practice, but on the establishment of an agreement. In other words, it should be clear from the practice that the parties engaging in, and acquiescing to, the practice *have the same interpretation* of the practice. Thus the fact that States are engaging in the same conduct cannot establish the agreement of the parties if the basis on which they do so reveals different interpretations").

The most prominent State that advocates for the interpretation of art. 51 allows for the use of force against NSAs is the United States of America<sup>80</sup>. Being a target of ISIS attacks in Syria<sup>81</sup>, it declared<sup>82</sup> that when the government of the territory where threat originates is either unwilling or unable to prevent its land from being used for attacks, the affected state has the right to use force in self-defense<sup>83</sup>. The US argues that, for the use of self defense to be lawful in this scenario, the Unwilling or Unable test must be applied, as not to leave States that suffer from aggression from NSAs with their hands tied while they suffer casualties. At its most basic, this test requires a victim State that has suffered an extra-territorial armed attack by an NSA to evaluate, using the preconditions of necessity, proportionality, and imminence, what action it can take in response. In the context of a use of force on the territory of a third State against an NSA, the necessity criterion's second prong then requires, in the absence of consent, an assessment of whether the territorial State is unwilling *and* unable to suppress the threat<sup>84</sup>. This test essentially was first put into practice by the Nixon administration in their ground campaign in Cambodia

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<sup>80</sup> See United Nations Security Council Resolution 1368 (2001), see also Department of Justice, *White Paper on Targeted Killing*, available at <https://www.asil.org/insights/volume/17/issue/8/international-law-issues-department-justice-white-paper-targeted-killing> (last visited March 13, 2025).

<sup>81</sup> See generally the US's response came by means of Operation Inherent Resolve, available at <https://www.inherentresolve.mil/WHO-WE-ARE/History/> (last visited March 17, 2025).

<sup>82</sup> See *Timeline: US Intervention in Syria's War Since 2011* (Al Jazeera October 7, 2019), available at [https://www.aljazeera.com/news/2019/10/7/timeline-us-intervention-in-syrias-war-since-2011?utm\\_source=chatgpt.com](https://www.aljazeera.com/news/2019/10/7/timeline-us-intervention-in-syrias-war-since-2011?utm_source=chatgpt.com) (last visited March 13, 2025).

<sup>83</sup> See *Letter from the Permanent Representative of the United States to the UN addressed to the Secretary General*, (September 23, 2014).

<sup>84</sup> Lucy Jordan, *Unwilling or Unable*, 103 Stockton Center for International Law 154 (2024), available at <https://digital-commons.usnwc.edu/cgi/viewcontent.cgi?article=3071&context=ils> (last visited March 13, 2025).

against North Vietnam<sup>85</sup>. In a nutshell, it means that, in theory, if a State was the victim of an illegal aggression by a NSA, and the territorial State where that NSA is located is unwilling or unable to act on that aggression, then the victim-State would be allowed to act in the State's territory without its consent, legally. The U/U test is, however, unanimous even among States that participate in attacks against ISIS in Syria claiming self-defense. Germany does not refer at all to the "unwilling or unable" test<sup>86</sup>. It chose to rely, instead, on the fact that ISIS "occupied a certain part of the Syrian territory", thus treating that part of Syrian territory as the territory of ISIS and not of Syria. The European State chose to treat, therefore, the territory it attacked as *de facto* ISIS territory, not Syria<sup>87</sup>. This would, in legal terms, make it so that we are back at a situation where a State attacks another State (even if one of them is merely a *de facto* State), and art. 51 of the UN Charter could, in this scenario, be applied without controversy.

These legal justifications suggest that there is no consensus among States in regards to the interpretation of art. 51 and, therefore, there is not a coherent State practice to suggest that self defense can be used against NSAs without territorial consent of the host State. In an article published by the Interamerican Court of Human Rights, the conclusion is clear: "Despite the overwhelming support for the 2001 US-led campaign in Afghanistan, it remains the only internationally accepted example of a use of force directed against a State's apparatus, where that State did not launch the armed attacks being

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<sup>85</sup> Kevin J. Heller, *The Earliest Invocation of Unwilling or Unable* (March 19, 2019), available at <https://opiniojuris.org/2019/03/19/the-earliest-invocation-of-unwilling-or-unable/> (last visited March 13, 2025).

<sup>86</sup> See *Letter from the Chargé d'affaires a.i. of the Permanent Mission of Germany to the United Nations addressed to the President of the Security Council* (December 10, 2015), available at [http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s\\_2015\\_946.pdf](http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2015_946.pdf) (last visited March 13, 2025).

<sup>87</sup> See *Letter from the Permanent Representative of the United States to the UN addressed to the Secretary General*, (cited in note 83).

responded to"<sup>88</sup>. It remains, therefore, a legal and political vacuum that the international community should address.

### 3.4.2. Attribution

Another possibility of the use of force against NSAs without the consent of the host-State is that of attribution. Attribution in international law determines when the actions of non-state actors (NSAs) can be legally ascribed to a state. This principle is crucial in assessing state responsibility, particularly in cases involving the use of force. If an NSA's conduct is sufficiently linked to a State, that State may be held accountable for violations of international law.

The question of attribution is especially significant in situations where a state uses force against NSAs operating within another state's borders, raising complex legal and sovereignty concerns. In the landmark case *Military and Paramilitary Activities in Guatemala*<sup>89</sup> the ICJ established that if attacks carried out by non-state actors can be attributed to the territorial state, then the use of force within that state's borders may be legally justified. This principle plays a key role in determining state responsibility and the legality of military actions in response to threats posed by NSAs. An example of this was the case of Afghanistan in 2001: in 2001 the UNSC Res. 1373<sup>90</sup>, by recognizing the link between the Afghani government and Al-Qaeda, allowed for the use of force against the Asian State in response to 9/11.

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<sup>88</sup> Kimberly Trapp, *Back to Basics: Necessity, Proportionality and the Right to Self-Defense Against Non-State Terrorist Actors*, 56 International and Comparative Law Quarterly 14 (2007), available at <https://www.corteidh.or.cr/tablas/R06755-6.pdf> (last visited March 13, 2025).

<sup>89</sup> *Military and Paramilitary Activities in and Against Nicaragua* (Nicaragua v. United States), Judgment, 1986 I.C.J., available at <https://www.icj-cij.org/sites/default/files/case-related/70/070-19860627-JUD-01-00-EN.pdf> (last visited October 18, 2024).

<sup>90</sup> United Nations Security Council *Resolution 1373* (2001), available at [https://www.unodc.org/pdf/crime/terrorism/res\\_1373\\_english.pdf](https://www.unodc.org/pdf/crime/terrorism/res_1373_english.pdf) (last visited October 12, 2024).

Additionally, professor Dire Tladi is crystal clear when he claims that, according to many proponents of the expansive approach, the legal developments following 9/11 the strongest evidence for an evolution in the law. However, this does not justify the notion that attacks by non-state actors alone can serve as a basis for extraterritorial force without attribution<sup>91</sup>.

The complex issue here is determining a level of attribution of a State to a NSA that will allow for the use of force in self defense . In the also famous *Armed Activities in the territory of the Congo*<sup>92</sup> Judge Korma of the ICJ highlights the importance of distinguishing between a state's significant support for armed groups, such as granting them deliberate access to its territory, and a state's mere facilitation of their actions against another state. Only the first scenario may qualify as an “armed attack” under Article 51 of the Charter, thereby justifying a unilateral response<sup>93</sup>.

### 3.4.3. *Intervention by Invitation*

Intervention by Invitation is another possibility of the use of force against Non-State Actors. Georg Nolte defines it as “intervention by foreign troops in an internal armed conflict at the invitation of the government” of the territorial State<sup>94</sup>. Following this statement, this act is possible in cases of a Non-International Armed Conflict, where a legitimate government asks another State for help in quarreling internal disturbances.

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<sup>91</sup> Dire Tladi, *Extraterritorial Use of Force against Non-State Actors* at 329, (cited in note 79).

<sup>92</sup> *Armed Activities on the Territory of the Congo* (Democratic Republic of the Congo v. Rwanda), Judgment, 2006 I.C.J., at 6 (February 3, 2006), available at <https://www.icj-cij.org/case/116> (last accessed March 13, 2025).

<sup>93</sup> *Armed Activities in the territory of the Congo* (Democratic Republic of the Congo v. Uganda), Declaration by Judge Koroma, 2005 I.C.J., at 124 (December 19, 2005) available at <https://www.icj-cij.org/sites/default/files/case-related/116/116-20051219-JUD-01-01-EN.pdf> (last visited October 26, 2024).

<sup>94</sup> George Nolte, *Intervention by Invitation* (cited in note 74).

It should be added, however, that intervention by invitation is not present in the UN Charter, nor does it fall under the two exceptions to the prohibition of the use of force: those allowed by the UN Security Council and actions taken in self-defense. Professor Dire Tladi once again sheds light on the issue: intervention by invitation does not violate a state's territorial integrity or political independence, as it occurs with the consent of the territorial state<sup>95</sup>.

If the territorial State gave its consent, intervention by invitation is a sign of respect for that State's sovereignty. The ICJ, in the *Military and Paramilitary Activities*, decided that intervention by invitation "at the request of the government of a State" was allowable<sup>96</sup>, further contributing to the pacification of this doctrine.

This type of use of force has been used in Syria in its fight against ISIS<sup>97</sup>, where the Arab State requested Russia's intervention to fight the terrorist group acting in its territory. The same can be said, in another different continent and conflict logic, to have happened between Brazil and Colombia in 1991<sup>98</sup>, where the Brazilian Armed Forces, with consent given by the Colombian government, bombarded strategic positions along the Traíra River in the Amazon in order to hit FARC (Fuerzas Armadas Revolucionarias de Colombia) targets that had previously attacked the Brazilian Army.

Coming back to the legal aspect, it should be noted that only the recognized government of a State may consent to the use of force in

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<sup>95</sup> Dire Tladi, *Extraterritorial Use of Force against Non-State Actors* at 335, (cited in note 79).

<sup>96</sup> *Nicaragua v. United States of America*, 1986. ICJ, Judgment, at 126 (cited in note 89).

<sup>97</sup> See *Press conference by Foreign Minister Lavrov of the Russian Federation*, available at [https://www.mid.ru/en/foreign\\_policy/news/1520083/?TSPD\\_101\\_R0=08765fb817ab200054dfdebaba939036d78f080307631d23f875dad5319bcf3d433e269c243e614a08fffe4b761430003ac4f712e68f0990b0dcbfd6fdbfe08d5ecd8d50b394d8bc3296bb1ac32cf8749da1c5dc2f6c895dbaab4be20ef511c](https://www.mid.ru/en/foreign_policy/news/1520083/?TSPD_101_R0=08765fb817ab200054dfdebaba939036d78f080307631d23f875dad5319bcf3d433e269c243e614a08fffe4b761430003ac4f712e68f0990b0dcbfd6fdbfe08d5ecd8d50b394d8bc3296bb1ac32cf8749da1c5dc2f6c895dbaab4be20ef511c) (last visited October 27, 2024).

<sup>98</sup> See *Farc (Forças Armadas Revolucionárias da Colômbia)*, (Brasil Escola), available at <https://brasilecola.uol.com.br/historia/farc.htm#:~:text=> (last visited October 27, 2024).



its territory. Because of this, it is not possible for dissident groups to consent to the use of force by foreign States in their fight against the government. Going deeper in this, the presence of a civil war does indeed undermine an intervention by invitation. If the intervention undermines people's self-determination, that is, the outcome of a civil war, then such intervention is not, in principle, legal. Quickly coming back to our study of Yemen, Hadi's government was the one who called for international help in defeating the Houthis but, when it did so, it was not legitimate nor had effective control of Yemen's territory<sup>99</sup>. The country was in the middle of a civil war and, because of that, international intervention is forbidden<sup>100</sup>.

That is because the whole point of this type of use of force is to respect the sovereignty of a State and to help it defend itself against unjust and illegal aggressions coming from within its territory, not to influence the right of its people into choosing a specific government or leader. Civil wars are an expression of a people's right to self-determination, allowing them to shape their own political future without external interference, even if that is done through internal violence. Therefore, intervention must be carefully assessed to avoid distorting the genuine aspirations of a people, making a purpose-based approach much needed.

#### 4. *Houthis's Actions and their Consequences*

Having established that the use of force against Non-State Actors is possible under a few restricted possibilities, we now analyze

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<sup>99</sup> See *Yemen's President Hadi Asks UN to Back Intervention*, (BBC News, March 25, 2015), available at <https://www.bbc.com/news/world-middle-east-32045984> (last visited March 13, 2025).

<sup>100</sup> *Nicaragua v. United States of America*, 1986, ICJ, Judgment, at 126 (cited in note 89) (in the *Nicaragua* Case, the ICJ made it clear that the US had illegally intervened in Nicaragua's civil war), see also United Nations General Assembly, Resolution 36/103/1981 (which corroborates with the prohibition of intervention and interference in another State's Internal Affairs, such as civil wars).

the nature of the Houthi's attacks, as different actions have different outcomes.

#### 4.1. Piracy

On 19th November 2023, a Houthi-owned helicopter hijacked an Israeli ship with the name of "Galaxy Leader" in the Red Sea<sup>101</sup>. On the 23th of November, they also attacked another Israeli ship, the "M/V Central Park", which had to be rescued by United States' warships<sup>102</sup>. Furthermore, the "Maersk Hangzhou" was also a target of Houthi attacks<sup>103</sup>, and, it too, had to be rescued by the US Navy in the region. All of these actions can constitute the crime of piracy as of the definition brought by the United Nations Convention on the Law of the Seas (UNCLOS),

UNCLOS art. 101 states that:

Article 101 Definition of piracy

Piracy consists of any of the following acts:

(a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:

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<sup>101</sup> Michelle Wiese Bockman, *Houthis 'hijack' Israeli-owned car carrier Galaxy Leader* (Lloyd's List, November 19, 2024), available at <https://www.lloydslist.com/LL1147314/Houthis-hijack-Israeli-owned-car-carrier-Galaxy-Leader> (last visited October 25, 2024).

<sup>102</sup> Patrick Wintour, *US warship rescues Israeli-linked tanker Central Park after attack in Gulf of Aden* (The Guardian, November 27, 2024), available at <https://www.theguardian.com/world/2023/nov/26/attackers-seize-another-israeli-linked-ship-yemen-coast> (last visited October 27, 2024).

<sup>103</sup> Eliman, Ahmed, *US sinks 3 ships, kills 10 after Houthi Red Sea attack* (Reuters, January 1, 2024), available at <https://www.reuters.com/world/middle-east/maersk-pauses-red-sea-sailings-after-houthi-attack-container-ship-2023-12-31/> (last visited October 27, 2024).

- (i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;
- (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;<sup>104</sup>

All of the mentioned attacks check the boxes for the definition of acts of piracy, but the main controversy arises when taking into consideration art. 101 (a). The attacks must be committed “for private ends”<sup>105</sup>, and the Houthis, in being the legitimate government of Yemen (according to themselves), would not commit those acts for private ends but necessarily for the good of the Yemeni people. However, this argument is fragilized by the fact that they are not the legitimate government of Yemen and therefore do not, at least regarding international law, speak for the Yemeni people.

Papastravidis, however, holds a different opinion: a recognized belligerent or rebel group attacking vessels of third states, rather than those of the state they are revolting against, may not be exempted under the political ends exception. If the other conditions outlined in Article 101 of UNCLOS are met, such actions could be classified as piracy<sup>106</sup>. Therefore, while it would not be considered a private end to

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<sup>104</sup> Art 101, para. (a), UNCLOS 7 October 1982, A/CONF.62/122, available at [https://www.un.org/depts/los/convention\\_agreements/texts/unclos/unclos\\_e.pdf](https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf) (last visited October 27, 2024).

<sup>105</sup> Arron N. Honniball, *Private Political Activists and the International Law Definition of Piracy: Acting for Private Ends*, 36 *Adelaide Law Review* 279, (2015), available at <https://law.adelaide.edu.au/ua/media/501/alr-36-2-ch01-honniball.pdf> (last visited March 13, 2025) (in a very interesting article, Arron Honniball exacerbates the absence of a specific definition of what, in this context, “for private ends” means, especially in a post-9/11 context of rise of NSAs. Before that, acts of piracy would be attributed or attributable to States, in which case the separation of private and public ends was clearer. As NSAs do not, *per se*, represent a peoples, this separation becomes blurry).

<sup>106</sup> Efthymios Papastravidis, *Piracy off Somalia: The ‘Emperors and the Thieves of the Oceans’ in the 21st Century*, 7 *Oxford Academic* 122, (September 2010), available at <https://doi.org/10.1093/acprof:oso/9780199578986.003.0007>

attack ships of the government the Houthis are rebelling against, by attacking vessels not flagged to the States participating in the Yemeni civil war, piracy can be correctly attributed to the Houthis. The only vessels that the group could attack are the ones flagged to the participants of the civil they are fighting, namely, the Yemeni internationally recognized government, Saudi Arabia, US and UK<sup>107</sup>.

Article 110 of UNCLOS<sup>108</sup> is very clear when dealing with piracy by stating that "all warships and other duly authorized vessels are entitled to board and search vessels suspected of being engaged in such activity". Therefore, all States, including those involved in the US-lead operation against the Houthis – Operation Prosperity Guardian – are allowed to take all necessary actions to protect not only ships flagged by their own States but every ship that is facing the dangers of piracy by the Houthis.

That being said, not every Houthi attack on maritime vessels can be considered an act of piracy. The rules applicable to a NIAC in land also apply for sea warfare<sup>109</sup>, and targeting military vessels of States or entities that take part in that NIAC is legal – given, of course, that rules of engagement are respected. That would make, therefore, both the US and the UK participants in that armed conflict and therefore possible targets as they can be considered parties to the Yemeni Non-International Armed Conflict.

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<sup>107</sup> Oren Lieberman et al., *US and UK carry out strikes against Iran-backed Houthis in Yemen* (CNN January 12, 2024), available at <https://edition.cnn.com/2024/01/11/politics/us-strikes-houthis-yemen/index.html> (last visited October 25, 2024).

<sup>108</sup> Art 110, UNCLOS 1982, A/CONF.62/122.

<sup>109</sup> *Air and Naval Warfare* (International Committee of the Red Cross), available at <https://www.icrc.org/en/law-and-policy/air-and-naval-warfare#:~:text=International%20humanitarian%20law%20covers%20all,sea%20or%20in%20the%20air> (last visited March 13, 2025) (some specific rules do apply for naval warfare, such as the San Remo Manual (1994), which reviewed and reaffirmed that IHL applies to naval combat. Furthermore, art 49(3) of the Additional Protocol I to the Geneva Conventions specifically states that IHL applies to naval warfare).

In regards especially to the US, 'since 2009, the United States has conducted drone strikes against AQAP (Al-Qaeda)<sup>110</sup> with the consent of the government of Yemen<sup>111</sup>, which raises the question whether, in particular after 2011, they became a party to the non-international armed conflict between the Yemeni government and al-Qaeda in the Arabian Peninsula. The United States claimed that their drone strikes took place to pursue their own counter-terrorism efforts, targeting high level operatives, and that the United States 'was not working with the Yemeni government in terms of direct action or lethal action as part of that insurgency'<sup>112</sup>. Yet, against the background of the insurgency in Yemen, the United States' drone strikes, and the scope of their mission more generally broadened to include wider support to the government against the insurgency by al-Qaeda in the Arabian Peninsula. Hence, the United States is considered a party to the conflict'<sup>113</sup>.

It should be stressed, nonetheless, that neither the US nor the UK claim the legality of their attacks on the Houthis based on NIAC

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<sup>110</sup> Jeff Davis, *Statement by Pentagon Spokesman Capt. Jeff Davis on US Strikes Against AQAP in Yemen* (U.S. Department of Defence, March, 2017), available at <https://www.defense.gov/News/Releases/Release/Article/1100244/statement-by-pentagon-spokesman-capt-jeff-davis-on-us-strikes-against-aqap-in-y/#:~:text=More%20than%2020%20strikes%20targeted,were%20coordinated%20with%20President%20Hadi> (last visited March 14, 2025).

<sup>111</sup> Khaled Abdullah, *Drones Spur Yemenis' Distrust of Government and the US*. Reuters (Reuters, October 27, 2010), available at <https://www.reuters.com/article/idUSTRE69Q36520101027/?pageNumber=1> (last visited 14 March 2025).

<sup>112</sup> Hakim Almasari, *Drone Strikes Must End, Yemen's Parliament Says* (CNN News, December 15, 2013), available at <https://edition.cnn.com/2013/12/15/world/meast/yemen-drones/index.html> (last visited March 14, 2025).

<sup>113</sup> See *Non-international armed conflicts in Yemen* (Rulac, Geneva Academy, October 19, 2022), available at <https://www.rulac.org/browse/conflicts/non-international-armed-conflicts-in-yemen#collapse3accord> (last visited October 24, 2024).

rules, but rather self-defense, which has already been explored in section 3.4.1.

#### 4.2. *Terrorism*

Lastly, the final scope to be analyzed is whether Houthi's actions can be qualified as terrorist attacks. Although there is no clear definition of terrorism, UNSC Res. 2722<sup>114</sup> is essential to solve this question. Largely, the resolution is devoted to demand that the Houthis ceases any attacks on merchant vessels (2) and requests the Secretary-General to provide monthly reports on the situation in the Red Sea to inform the Council's future resolutions (10). Paragraph (3) of the resolution is the most relevant here, as it clearly states that: "3. Affirms the exercise of navigational rights and freedoms by merchant and commercial vessels, in accordance with international law, must be respected, and takes note of the right of Member States, in accordance with international law, to defend their vessels from attacks, including those that undermine navigational rights and freedoms;"

However, the resolution does not clarify if States can defend *foreign* vessels. On the other hand, it makes it clear that States can defend their own vessels against acts that threaten navigational rights and freedoms.

Nevertheless, the boundaries of what constitutes terrorism can be broadly defined, as terrorist acts generally include indiscriminate use of violence (or threat to do so) against the general population, without discerning military or civilian targets, with the objective of causing widespread fear and chaos<sup>115</sup>.

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<sup>114</sup> UN Security Council, Resolution 2722(2024), (2024) available at <https://documents.un.org/doc/undoc/gen/n24/009/28/pdf/n2400928.pdf> (last visited October 28, 2024).

<sup>115</sup> Alex P. Schmid, *Defining Terrorism* (International Center for Counter-Terrorism Report, March 2023), available at [https://icct.nl/sites/default/files/2023-03/Schmidt%20-%20Defining%20Terrorism\\_1.pdf](https://icct.nl/sites/default/files/2023-03/Schmidt%20-%20Defining%20Terrorism_1.pdf) (last visited March 14, 2025)

Houthi attacks on foreign vessels in the Red Sea, while certainly disrupting global commerce, do not have, in the opinion of this author, the objective of causing mass confusion and fear in the general population. Rather, as the Houthis themselves have claimed<sup>116</sup>, their attacks have been a solidarity response to Israeli attacks on Hamas. These acts, although not terrorist *per se* – as they have a clear military objective of targeting the so-called enemy directly, and not creating chaos and terror for entire civilian populations/areas –, can constitute a series of breaches to international law, and can be classified as piracy or general aggression (in the case of the missiles launched towards Israel). States can defend their vessels and their peoples in different claims other than terrorism, and, given the severity of terrorist acts, those should only be defined as so in a narrow, specific spectrum.

### 5. Concluding Arguments

Ever since the 2011 Arab Spring in Yemen, the country has fallen into a series of connected yet different conflicts both internally and externally. President Saleh kept the country united and unified by ruling with an iron fist and navigating the dense tribal and political landscape of the Arabian country. From the moment he left power — driven out by the masses —, Yemen has fallen into a unequivocal civil war, standing in the middle of a series of geopolitical crossroads, such as the *quasi* cold war between Saudi Arabia and Iran, the Israel-Hamas conflict and the United States' strife to keep the Middle East under its influence.

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(although there is no consensus definition on 'terrorism', some common denominators of terrorist acts can be highlighted, such as willful killing of hostages, intentionally directing attacks to the civilian population and/or buildings dedicated to religion or education).

<sup>116</sup> *Who are the Houthis and why are they attacking Red Sea ships?* (BBC, March 15, 2024), available at <https://www.bbc.com/news/world-middle-east-67614911> (last visited October 28, 2024).

In the middle of this dense political landscape, the Houthis have risen as the most significant non-governmental force in Yemen, controlling the vast majority of its population and its most densely populated areas. By controlling these areas, they have successfully launched attacks against vessels in the Red Sea that have affected global commerce as they force commercial ships to, rather than taking the Bab El-Mandeb strait, turn around and make an enormous detour through South Africa in their voyages between East Asia and Europe/the US.

The Houthis' actions should be examined on a case-by-case scenario so as not to create a legal confusion. Being part of a Non-International Armed conflict involving multiple actors, they can legally attack (and be attacked by) their fellow parties in the NIAC, that are: the UN-recognized Yemeni Government, Saudi Arabia, the US and the UK. Their attacks against non-participants in the NIAC can be classified as piracy in the case of attacks on vessels or aggression, in the case of the missiles fired against Israel.

Another complication in this situation is the non-linear legal treatment of Non-State Actors by the international community. The responsibility of States under international law, although by no means free of controversy, is an established field with centuries of material, trials and legally binding opinions. That is certainly not the case for the treatment of NSAs. They are bound by the obligations set on the Geneva Convention's common article 3, but do not enjoy many of the rights that States do under international law, which creates an unbalanced situation. This approach has proven to be less effective in addressing NSAs, which are increasingly prevalent worldwide as civil wars in failed states often spill over into neighboring regions. The non-State Actor Sovereignty Paradox must be addressed by the international community to avoid unnecessary suffering of populations by prolonged conflicts.

Finally, the use of force against Non-State Actors has been debated by multiple scholars, States and organizations, and yet no



consensus has been reached. While West Point — the Army Academy of the United States — brings good arguments on the use of force in self defense against the Houthis<sup>117</sup>, professor Dire Tladi is a vocal advocate for a more cautious approach to the matter<sup>118</sup>.

Apart from the legal and theoretical considerations, as important as they may be — and are — the main focus should always be on the people who are suffering on the ground in Yemen and in different armed/civil conflicts<sup>119</sup>. The Collective Security logic, which is one of the most important innovations that the United Nations brings, has not been adequately used to resolve the ongoing dispute in Yemen. A true collective approach, with multiple voices being heard, from different political, economical and military backgrounds is, I believe, the only solution to the humanitarian crisis in Yemen.

This collective approach needs to include efforts on the stabilization of the country, prioritizing dialogues — for example, through 'neutral' countries that act as mediators — between all the relevant parties to this conflict. The Houthis, the UN-recognized Yemeni government and regional players should be consulted on discussions that aim firstly at acknowledging the complex political

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<sup>117</sup> Russel Buchanan, *The Law of Self Defense and US and UK Strikes Against the Houthis* (West Point Lieber Institute, January 31, 2024), available at <https://lieber.westpoint.edu/law-self-defense-us-uk-strikes-against-houthis/> (last visited October 20, 2024) ("The United States and United Kingdom can engage in defensive action against the Houthis because it is necessary to repel an ongoing armed attack and prevent reasonably expected future attacks").

<sup>118</sup> Tladi Dire, *The Extraterritorial Use of Force Against Non-State Actors*, 418 *The Hague Academy Collected Courses Online* 357, (2020), available at [https://doi.org/10.1163/1875-8096\\_pp1rdc\\_A9789004503809\\_02](https://doi.org/10.1163/1875-8096_pp1rdc_A9789004503809_02) ("As a general point, international law does not permit the unilateral extraterritorial use of force against non-State actors without the consent of the territorial State and without the conduct of the non-State actor being attributable to the territorial State").

<sup>119</sup> See *Yemen*, (Global Center for the Responsibility to Protect, March 14, 2025) available at <https://www.globalr2p.org/countries/yemen/> (last visited March 13, 2025) (regarding the human toll in Yemen, the Global Center for the Responsibility to Protect has calculated that about 20.000 civilians have died and more than four million were displaced during the Yemeni Civil War).

and social situation in Yemen and secondly at providing support for the reconstruction of the country's governing structures without imposing international political control.

Furthermore, it is essential that any international intervention — whether humanitarian, diplomatic, or military — aligns with international law, particularly the principle of non-interference. While the Houthis and other non-state actors may challenge the status quo, their presence does not justify foreign forces disregarding Yemen's sovereignty in the pursuit of strategic interests. A commitment to the rule of law must be central to any peace process, with clear frameworks for accountability and the protection of human rights.

Ultimately, resolving the Yemen conflict requires an inclusive, collaborative approach that guarantees Yemen's sovereignty while addressing the security concerns of all parties involved. The humanitarian toll to Yemen is devastating, and no solution will be viable without first recognizing the right of its people to determine their future. Only through genuine dialogue and international cooperation can Yemen begin to heal, rebuild, and reassert its undoubtedly strategic position on the global stage.