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An Analysis of the Saudi-led coalition's Attack on Yemen on the Basis of the International Criminal Court

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Abstract

The Saudi-led coalition's Attack to Yemen killed and wounded thousands of people, many of whom were women and children. Numerous civilian targets, such as hospitals and schools were bombed and destroyed in these attacks, which resulted in famine, malnutrition and severe health problems for the civilian population. Given that the International Criminal Court is competent to deal with genocidal crimes, crimes against humanity, war crimes and aggression, we seek in this paper to first introduce Yemen and analyze the causes of the crisis in that country, and then to analyze the Saudi-led coalition's Attack to this country in accordance with the jurisdiction of the International Criminal Court and mention the warnings of international organizations and institutions regarding these crimes, and finally come to an analysis of these acts in general.

Keywords: Yemen, Saudi Arabia, packet storm, the International Criminal Court, war crimes

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Introduction

The wish of many justice- seekers including the founder of the International Committee of the Red Cross, Mr. Gustave Moynier, regarding the prosecution of perpetrators of international crimes has now been actualized under the title "International Criminal Court". This permanent institution entered the scene following the experiences of the Nuremberg and Tokyo trials at the end of World War II.

This court is a symbol of the values shared by the nations of the world, and the result of many years of efforts made by governments, the International Law Commission, and other United Nations agencies that had witnessed disasters and crimes throughout the world, and wanted not to leave the perpetrators of these crimes unpunished. The International Criminal Court was approved at the Rome Diplomatic Conference in Rome in 1998 with 128 articles. The Court has jurisdiction over genocide, crimes against humanity, war crimes and aggression.

The International Criminal Court (ICC) was established as the first permanent international court in 1998 to investigate international crimes of genocide, war crimes, crimes against humanity and aggression (Poorbafrani, 2015: 275). The draft of the court's Statute which had been prepared by the International Law Commission in 1994 had influenced the draft of the articles of the rules related to crimes against Peace and Security of Mankind, 1991 (Report of the International Law Commission on the work of its 46th session).

Considering that the Saudi-led coalition's Attack on Yemen was followed by various catastrophes such as the death of many civilians and the destruction of civilian sites such as hospitals and schools, we seek in this paper to introduce Yemen in the first section, and then to analyze the Saudi-led coalition's Attack to this country in accordance with the jurisdiction of the International Criminal Court and mention the warnings of international organizations and institutions regarding these crimes, and finally come to an analysis of these acts in general.

1) Yemen

Yemen is an Arab country located in the southwest of Asia and in the south of the Arabian Peninsula in the Middle East, and its capital is in Sanaa. Yemen is 527, 968 square kilometers in size. The population of this country was 24,968,508 in 2014 and the population growth rate is 2.3% (according to 2014 figures). Five million out of the total population of 13,500,000 in 1995 were Shiites; that is, a minority of almost 40 percent of the population are Shiite Muslims and the majority of the population are Sunnis (Thual, 2003: 294).

Yemen has always been a destabilized region, and its distance from the major centers of the Arab world has made this land a secure place for different Islamic sects. Yemen is an unsustainable country, both for religious and ethnic reasons, and for the poverty that it suffers from. The existence of poverty in this country has led to the migration of a large number of its nationals to Saudi Arabia and Ethiopia. From a religious point of view, these emigrants are mostly Sunni, because the Shiites are reluctant to leave the habitats of their ancestors (Thual, 2003: 139).

On January 14, 2011, following the protests that took place in a number of Arab countries, the Yemeni government also faced nationwide protests that ultimately led to the resignation of its country's president, Ali Abdullah Saleh, who had ruled over that country for over years, and gave the power to Abd Rabbuh Mansur Hadi, the then vice president who wanted Mohammed Bassindawa to form a new government.

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Abd Rabbuh Mansur Hadi, the vice president of Yemen, was the only presidential candidate in Yemen and became the president with 99 percent of the votes[1]. He was the consensus candidate for the election, who was supposed to govern the country during the transitional phase. The Amnesty International announced 200 deaths in Yemen last year[2].

Yemen encountered another rebellion and demonstration by groups and people in 2014, which led to the government's loss of parts of Yemen taken by Ansar Allah who moved up to the capital and occupied the capital and seized the president. Later, the Yemeni parliament voted on August 26 to dismiss the government. Meanwhile, Saudi Arabia placed the Al-Houthi Movement on its list of terrorist organizations and formed a regional coalition on the pretext of supporting Abd Rabbuh Mansur Hadi and the ballistic missiles at the hands of the Houthis, and attacked Yemen on March 26, 2015 without the consent of the Security Council.

Considering that Yemen is the poorest Arab country and 42.7% of the population in this country are living below the poverty line, and due a history of ethnic and religious conflicts in the country even before the unification of North Yemen and South Yemen, and given that there were a lot of guns at the hands of the Yemeni people, it was foreseeable that violence would occur in this country.

2) The Saudi-led coalition's performance

In this section, we will try to express the concerns and reports about the anti-human crimes and acts which were committed by the Saudi-led coalition in the Yemeni War and which are within the jurisdiction of the International Criminal Court.

Article 8, Paragraph B, Section 7:

The attack or bombardment of towns, villages, habitations or buildings which are not defended, is prohibited[3].

The International Committee of the Red Cross (ICRC) wanted on April 4, 2015, to stop the 24-hour conflicts in order to provide emergency relief to the people under severe air strikes. The organization said that a large number of Yemeni people were wounded in the recent air and ground attacks, and they will lose their lived if they will not immediately be helped and saved. "If the battle in Yemen is not stopped immediately, then surely more people will die and the wounded people's chance of surviving will depend on our reaction within the next few hours, rather than within the next few days", said Robert Mardini, head of the International Committee for the Red Cross (ICRC) Middle East and North Africa operations. This organization said that many parts of this country were suffering from a shortage of fuel and water[4].

Moreover, according to the UN report on July 20, 2015, eighty percent of the Yemeni people need help and more than one million people have been left homeless and more than 3,700 people have been killed and over 18,000 people have been injured. The health status is in serious danger and there is an emergency status of diseases in this country. The acute malnutrition caused by food shortages is increasing in this crisis[5].

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[1] . "February 2012". Rulers.org. Retrieved 2012-06-19
[2] . https://www.amnesty.org/en/latest/news/2012/01/yemen-urged-reject-amnesty-law-president-saleh-and-aides/
[3] . Rome Statute of the International Criminal Court, 1998,Art.8)2)b) v
[4] . https://www.icrc.org/en/document/yemen-humanitarian-pause
[5] . http://reliefweb.int/report/yemen/yemen-humanitarian-emergency-situation-report-no-16-20-july-2015

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Even Adama Dieng, United Nations Special Adviser *on the* Prevention of Genocide, announced on August 14, 2015 that local markets and food-carrying trucks have been targeted by air strikes as a military strategy[6].

The worrying attacks and bombing of civilian targets by the Saudi-led coalition have been intensified to the point that Secretary-General of the United Nations expressed concerns in a statement over the intense attacks on residential areas and civilian buildings in Sanaa, including the chamber of commerce, the wedding hall and the blind center, and acknowledged the use of cluster bombs by the Saudi-led coalition as a war crime, and condemned the deportation of the UN human rights commissioner by the resigned government. This statement, issued on January 8, 2016, reported the casualties of war to be 2800 killed and 8100 wounded[7].

Article 8, Paragraph B, Section 4

Launching a deliberate attack in the knowledge that such attack will cause widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated[8].

Valerie Amos, Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator said on April 2, 2015, that 519 people were killed and nearly 1,700 were injured in Yemen over the past two weeks, and more than 90 children have died. He added that tens of thousands had escaped to Djibouti and Somalia by sea, and millions of people in the country are still severely vulnerable. He wanted the parties involved to try their best to support the Yemeni citizens[9].

In addition, according to the UN report on July 20, 2015, eighty percent of the Yemeni people need help and more than one million people have been left homeless and more than 3,700 people have been killed and over 18,000 people have been injured. The health status is in serious danger and there is an emergency status of diseases in this country. The acute malnutrition caused by food shortages is increasing.

The World Health Organization has repeatedly emphasized the humanitarian and health crisis in Yemen, a number of warnings and reports of which are presented in the following. This organization announced on May 27, 2015, that 2,000 people have been killed and 8,000 injured, including women and children, since the start of the Saudi aggression against Yemen, and eight and a half million people need urgent medical help[10].

The World Health Organization also announced on March 27, 2016, that 6200 people have been killed and thirty people have been injured since March 2015, and that 21 million people, i.e. 82 percent of the population, need humanitarian assistance. The report further warned against the lack of access of 19 million people to healthy water and against the malnourishment of 2 million children[11].

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[6] . http://www.un.org/en/preventgenocide/adviser/pdf/Op-ed%20Yemen
[7] . http://www.un.org/apps/news/story.asp?NewsID=52966#.VpfW4lKJ2Sp
[8] . Rome Statute of the International Criminal Court, 1998,Art.8)2)b) iv
[9] . http://www.un.org/apps/news/story.asp?NewsID=50496#.VbOXBvmkbIU
[10] . http://www.who.int/mediacentre/news/statements/2015/yemen-situation/en/
[11] . http://www.emro.who.int/media/news/health-situation-in-yemen-critical-as-violent-conflict-enters-second-year.html

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Article 8, Paragraph B, Section 9

Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, [or] historic monuments … provided they are not military objectives[12],,

Schools were repeatedly bombarded in attacks by the coalition led by Saudi Arabia to civilian areas, and Amnesty International announced on December 11, 2015, that the attacks have been intentional, and declared that the attacks have violated the international humanitarian laws and are to be considered crimes[13].

Médecins Sans Frontières (MSF) subsequently reported on January 10, 2016 several attacks of the hospitals of Médecins Sans Frontières by the Saudi-led coalition *strongly* condemn *this incident that confirms a* worrying pattern of attacks *to* essential medical services[14].

The World Health Organization also announced on October 27, 2016, that more than *half* of all *health facilities* in Yemen are closed or partially functioning, and reported damage to 274 medical and treatment buildings[15].

Article 8, Paragraph B, Section 25

Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions[16],,

According to the United Nations' report on June 22, 2015, more than 2,800 people were killed and nearly 13,000 were wounded, more than one million people were left homeless, and many had to leave their homes, and the health and food have an emergency status, so that thirteen million people are facing a food crisis and there is acute malnutrition amongst children. There is also a serious risk of various diseases in this country[17].

The heads of humanitarian organizations of the United Nations on November 16, 2017 called for an end to the blockade of Yemen so that humanitarian aid could be sent to this country. The leaders of the three World Food Program organizations, the UN Children's Fund and the World Health Organization (WHO) said in a joint statement that the blockade has worsened the catastrophic situation of Yemen. The situation in Yemen has been regarded in this statement as the "worst humanitarian crisis in the world" and the statement has emphasized the urgent need of 20 million people, including 11 million children, for humanitarian assistance and the 900,000 suspected outbreaks of cholera[18].

Médecins Sans Frontières (MSF) calls on the *Saudi-led coalition* on November 8, 2017 to immediately allow unhindered *access* to and within Yemen so that humanitarian assistance can reach those most in need. This organization announced that hundreds *of* hospitals *and* clinics have been destroyed or damaged and millions of people have been left homeless, and this blockade has had a massive impact on Yemen's

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[12] . Rome Statute of the International Criminal Court, 1998,Art.8)2)b) ix
[13] . https://www.amnesty.org/en/latest/news/2015/12/bombing-of-schools-by-saudi-arabia-led-coalition-in-yemen/
[14] . http://www.msf.org/article/yemen-another-msf-supported-hospital-bombed
[15] . http://www.emro.who.int/media/news/who-releases-emergency-funds-to-support-cholera-response-in-yemen.html
[16] . Rome Statute of the International Criminal Court, 1998,Art.8)2)b)xxv
[17] . http://reliefweb.int/report/yemen/yemen-humanitarian-catastrophe-situation-report-no-12-22-june-2015
[18] . http://www.un.org/apps/news/story.asp?NewsID=58101#.Whc2JDdx3IU

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men, women and children, and endangers hundreds of thousands of people, and if this blockade continues, seven million Yemenis will face hunger and famine[19].

The International Committee of the Red Cross (ICRC) announced on November 17, 2017 that *three cities* in *Yemen have* run out of clean *water* because a blockade by a *Saudi*-led coalition *has cut imports* of *fuel* needed for pumping and sanitation, and the contaminated water and food has caused an outbreak of cholera in the country, resulting in one million people susceptible to cholera. The organization further emphasized the urgent need to facilitate entry for essential imports of essential goods to Yemen[20].

According to the Statements made November 21, 2017 by the HR/VP. *Statement* by High Representative/Vice-*President Federica Mogherini* on the situation in *Yemen*, there is an essential need for a*ccess* of *humanitarian* and *commercial goods* to large parts of *Yemen* - where most of the population is concentrated - has now remained *blocked* for two weeks, despite the opening of sea and airports under the control of the Government. He also warned against the intensified critical situations in Yemen, such as famine and the prevalence of cholera due to the crimes committed by Saudi Arabia[21].

Article 8, Paragraph B, Section 20

Employing weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict, provided that such weapons, projectiles and material and methods of warfare are the subject of a comprehensive prohibition and are included in an annex to this Statute, by an amendment in accordance with the relevant provisions set forth in articles 121 and 123[22];

Following Abd Rabbo Mansour Hadi's request for help, Saudi Arabia formed a regional coalition on March 26, 2015 without the consent of the Security Council, and bombarded Yemen in air strikes called "packet storm", killing or wounding many civilians.

During these air strikes, cluster bombs were used against the Yemeni people according to Human Rights Watch reports[23]. By analyzing satellite imagery, this organization insisted that the bombs had targeted a 600-meter agricultural land and tens of buildings in four to six villages[24].

Obviously, these weapons are among international human rights violating weapons as they violate the principles of non-distinction, the prohibition of pain and suffering, and the precautionary principle in the use of arms[25], and can thus be prosecuted internationally. Some consider this concept as the only factor limiting military behavior during wartime, which is called the Principle of Distinction (Lafollette, 2005: 738)

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[19] . http://www.msf.org/en/article/yemen-saudi-coalition-urged-immediately-allow-humanitarian-access-during-blockade
[20] . https://www.icrc.org/en/document/yemen-border-closure-shuts-down-water-sewage-systems-raising-cholera-risk
[21] . https://eeas.europa.eu/headquarters/headquarters-Homepage/35941/statement-hrvp-mogherini-situation-yemen_en
[22] . Rome Statute of the International Criminal Court, 1998,Art.8)2)b)xx
[23] . https://www.hrw.org/news/2015/05/31/yemen-cluster-munitions-harm-civilians
[24] . https://www.hrw.org/news/2015/05/03/yemen-saudi-led-airstrikes-used-cluster-munitions
[25] . http://www.stopclustermunitions.org/

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Extermination

Extermination "includes the intentional infliction of *conditions* of *life*, inter alia the deprivation of *access* to *food* and *medicine*, calculated to bring about the destruction of *part* of a population[26].

The deteriorating status of the food and security of civilians in Yemen forced Hilal Elver, the Special Rapporteur on the right to food on August 11, 2015 to use the term "war crime". Mentioning the need of more than 12.9 million Yemeni people for basic food, Hilal Elver expressed concern about the probably deliberate starvation of Yemeni citizens and stated that there may be a war crime in deliberate hunger in international and domestic armed conflicts, and there can be a crime against humanity if people are deliberately deprived of food[27].

Committed crimes in the Yemeni crisis within the jurisdiction of the International Criminal Court

Considering the aforementioned cases, war crimes and, in some cases, crimes against humanity seem evident. The term "deprive" was agreed in Rome Statute to be used instead of "starving" civilians, and it includes depriving people of not only food and drink, but also of medical facilities or blankets (Dorman et al., 2003, p. 363).

The Saudi-led coalition has committed war crimes under article 8 of the ICC Statute in various ways, such as preventing food and drug entry by blocking the ports, and destroying supplies of food such as farms and water reservoirs.

If these preventive actions are committed deliberately, which is considered the mens rea of crimes against humanity, they may also be considered crimes against humanity in accordance with Article 7, Paragraph 7 of the Statute of the International Criminal Court. In other words, in order to realize the mens rea of crimes against humanity, the perpetrator must have the intent to commit these crimes; however, awareness of the details of attack is not part of the mens rea of crimes, and it is not necessary for perpetrators to have goals and motives for the attack (Blagojevic, 2008, p.548)

It is also worth noting that the parties in the war are not free to use any war instrument they like and must consider two principles of international humanitarian law: 1. Non-use of weapons that cannot distinguish between military and civilian objectives, and 2. Refraining from imposing unnecessary pain and suffering[28].

The discussion over war crimes in the Rome Statute regards as instances of war crimes the use of weapons which, by their very nature, cause serious damage and cannot separate military from civilian populations. The Rome Statute has generally addressed this issue and announced that these weapons must be subject to comprehensive prohibition. It should be noted that in customary international law and international law treaties, this can serve as evidence for the prohibition on the use of certain weapons (Triffterer, 2008, p. 424).

The cluster bombs cannot distinguish between militaries and civilians, killing and wounding civilians as a result of bombardment of various areas. The Convention on the Prohibition of Cluster Munitions was

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[26] . Rome Statute of the International Criminal Court, 1998,Art.7)2)b
[27] . http://www.un.org/apps/news/story.asp?NewsID=51605#.VdnoapdqKf4
[28] . Amnesty International, the Conflict in Gaza: January 2009, pp. 1920.

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ratified by the signing of 100 countries in 2008 and banned such cluster weapons. It is noteworthy that Saudi Arabia has not acceded to this Convention[29].

Article 8 of the Statute has regarded the destruction of places such as hospitals and schools as war crimes. As we mentioned in the previous section examples of these acts and the warnings given by various organizations against them, the Saudi-led coalition violated Article 8 of the Statute of the Court by committing a war crime as the Non-distinction Principle, and permits only attacks against military objectives. Military objectives are limited to those objects which by their nature, location, purpose or use make an effective contribution to *military* action and whose partial or total destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite *military* advantage[30].

It should be noted that attacking civilians and targeting civilian objectives is not considered part of the customary international law and has also been confirmed and regarded as a war crime by the United Nations Security Council Resolution 1674[31].

Conclusion

The Yemeni war is a clear manifestation of human rights and humanitarian violation that killed and injured hundreds of women, men and children per day and the world once again just sat watching it in a state of inaction. The Saudi-led coalition's widespread attacks to civilians and non-military objectives and their extensive use of intentionally banned weapons that killed innocent civilians, including many children, and destroyed civilian infrastructures and facilities such as schools and hospitals in the country, and the continued blockade of the country and prohibition for the entry of food and relief to this country are instances of crimes that have repeatedly been used by this Saudi-led coalition against the civilian population of Yemen.

Various international reactions have come from international organizations and institutions such as Human Rights Watch, the World Health Organization, the International Committee of the Red Cross, the United Nations, and so on against these acts.

Considering the Statute of the International Criminal Court and the compliance of the crimes committed by the Saudi-led coalition with the Statute of the International Criminal Court highlights the occurrence of war crimes by the coalition. The bombing of civilian sites such as residential buildings, hospitals and schools, as well as frequent killings of civilians via bombardment of cities and villages, as well as the use of cluster weapons that cannot distinguish between civilian and military objectives are examples of crimes that, under Article 8 of the Statute of the Court, fall within the jurisdiction of the Intentional Criminal Court.

Considering that Saudi Arabia and Yemen are not members of the International Criminal Court, the court faces challenges for the prosecution of these crimes, and the presence of Saudi Arabian allies as members with the Veto Right prohibits its prosecution in the Security Council, which, of course, requires a separate research.

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[29] . [29]https://www.unog.ch/80256EE600585943/(httpPages)/67DC5063EB530E02C12574F8002E9E49?OpenDocument

[30] . Protocol Additional to the Geneva Conventions of 12 August 1949, & Relating to the Protection of Victims of International Armed Conflict (Protocol I), 8 June 1977, Arts. 51 & 52;

[31] . Protocol Additional to the Geneva Conventions of 12 August 1949, & Relating to the Protection of Victims of International Armed Conflict (Protocol I), 8 June 1977, Arts. 51 & 52;

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At present, public opinion seems to have the significant role of exerting political and economic pressure on Saudi leaders to stop these crimes.

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