



Naval Blockade in Yemen

A Case for the Revision of the Law of Blockade in Non-International Armed Conflict

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Abstract

In March 2015, a Saudi Arabia-led coalition – consisting of Saudi Arabia, the United Arab Emirates, Bahrain, Kuwait, Qatar, Egypt, Jordan, Morocco, Senegal and Sudan – acceded to the request of the government of Yemen to intervene in the conflict between the Yemeni armed forces and Houthi-rebels. Part of this intervention was the imposition of naval enforcement measures off the coast of Yemen. While the United Nations Security Council (UNSC) Resolution 2216 gave the Saudi-led coalition legal means to prevent arms trafficking bound for the Houthis, several human rights organizations claim that the naval enforcement measures have led to a *de facto* blockade of Yemen. This thesis focuses on the question to what extent the humanitarian consequences of the naval blockade in Yemen since 2015 have contributed to violations of the norms of international humanitarian law (IHL) that are applicable in non-international armed conflicts (NIACs). Based on the case of Yemen and the discourse between IHL-scholars on the applicability of IHL in NIACs, this thesis concludes that the applicability of IHL in non-international armed conflicts should be subjected to revision. The scope of this thesis was to review the status of the law of blockade, but it also raised questions regarding the general application of international humanitarian law. While it would be best to agree upon the broader application of IHL in non-international armed conflict in treaty-based sessions, this is likely too idealistic at this moment. Therefore, efforts of individual United Nations Member States, like the Netherlands who pushed for UNSC Resolution 2417 (2018) on the protection of civilians from the humanitarian implications of armed conflict, should be supported as much as possible, in order to pave the way and create support for the broader discussion of the revision of the applicability of most, if not all, norms of international humanitarian law in NIACs.

Key words: *Naval Blockade, Yemen, International Humanitarian Law, Non-International Armed Conflict, San Remo Manual, Starvation*

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List of Abbreviations

APII	Protocol II Additional to the Geneva Conventions of 1949
CA3	Common Article 3 to the Geneva Conventions of 1949
GCC	Gulf Cooperation Council
ICRC	International Committee of the Red Cross
IHL	International humanitarian law
IAC	International armed conflict
NIAC	Non-international armed conflict
UN	United Nations
UNCLOS	United Nations Convention on the Law of the Sea
UNSC	United Nations Security Council

1. Introduction

In March 2015, a Saudi Arabia-led coalition – consisting of Saudi Arabia, the United Arab Emirates, Bahrain, Kuwait, Qatar, Egypt, Jordan, Morocco, Senegal and Sudan – acceded to the request of the government of Yemen to intervene in the conflict between the Yemeni armed forces and the Houthi-rebels. Part of this intervention was the imposition of naval enforcement measures off the coast of Yemen. The stated goal of these naval operations was the prevention of arms trafficking bound for the Houthis. The United Nations Security Council (UNSC) imposed an arms embargo against the rebels, calling upon Member States to ‘immediately take necessary measures to prevent the direct or indirect supply, sale or transfer of arms to [...] Mr. Saleh, Abdullah Yahya Al Hakim, Abd Al-Khaliq Al Houthi, and the individual entities designated by the Committee’ (S/RES/2216, 2015: Par. 14). While the UNSC Resolution gave the Saudi-led coalition the means to prevent arms trafficking bound for the Houthis, several human rights organizations claim that the naval enforcement measures installed, led to the *de facto* blockade of Yemen (Fink, 2017: 292). This leads to two views on the conflict: the coalition claims that the measures are lawful, as the UNSC imposed an arms embargo on the Houthi-rebels, whereas public reports on the conflict consistently called these enforcement measures a *naval blockade*, which is a military instead of an economic exhaustion measure (Fink, 2017: 292). Believing that the blockade caused severe humanitarian distress on the civilian population of Yemen, several human rights organisations have repeatedly urged the coalition to loosen the blockade (Erickson, 2017; Walker, 2017; Aleem, 2017; Koran, 2017; Sanchez, 2017).

While many authors have written on the legality of naval blockades (Jones, 1983; Hernández-Truyol, 2009; Elleman & Paine, 2006), these authors have forgone the relation between naval blockade strategies and their (side-)effects on the humanitarian situation in targeted territories. After the *Gaza Flotilla Incident* of May 2010, where Israel used its self-imposed blockade to legitimise the attack on six civilian vessels of the *Gaza Freedom Flotilla*, the issue gained some academic attention (Ulutaş, 2011). However, an extensive debate on the humanitarian impact of naval blockades did not occur (Fink, 2017: 292). The Gaza discussion mainly focused on the legitimization of Israel’s self-imposed blockade to attack the abovementioned flotilla (Black & Haroon, 2010). While the common factor in the cases of Gaza and Yemen is the use of naval enforcement measures to prevent the ingress of certain goods; the fundamental difference is

that Israel still allowed some humanitarian aid passage through land crossings (Etkens & Zimring, 2010). Another possible explanation why the case of Gaza did not spark the ‘humanitarian’ debate, could be the difference in land mass. Humanitarian relief aid can be distributed more easily in Gaza, given that its land mass is 365 km². Putting this against the 527.968 km² of Yemen, it can be argued that the dislocation of inbound vessels to alternative ports of entry would give less problems in Gaza.

To further the academic debate, this thesis focused on the question whether the humanitarian consequences of the naval blockade in Yemen contributed to violations of the norms of international humanitarian law that are applicable in non-international armed conflicts. Assessing measures that are used in dispute resolution, as well as their legality, has a clear link with *crisis and security management*, as it evaluates the use of crisis management tools (i.e. naval enforcement measures as a means to resolve conflict). In this context, it is relevant to examine the possible humanitarian implications of naval blockade strategies, to help naval commanders and policy makers when assessing the use of these measures in future conflicts.

1.1. Naval blockade and its implications on the humanitarian situation in Yemen

Modern literature on naval blockade strategies can, to a large extent, be attributed to the British Admiralty of the nineteenth century. Rear Admiral Alfred Thayer Mahan and Sir Julian Corbett based their views on sixteenth century British naval strategists and discussed the extent to which sea power had influenced history (Heuser, 2017: 257). In absence of readily available literature from other seafaring nations, modern naval strategy continues to be based on these authors (Heuser, 2017: 258). However, the world has changed since the nineteenth century. Mahan and Corbett wrote in a time where interstate warfare between European powers was the norm. The twenty-first century has seen a large shift away from interstate warfare, to conflicts within states, or non-international armed conflict (NIACs). Today, the majority of armed conflicts are internal, while most of the rules of warfare are formally applicable only in an international context. It can be argued that, given these developments, changes towards applicability in NIACs are necessary (Sandoz, 2005: 21). It is quite particular that states can employ means of warfare against their own population, which are prohibited for use against a foreign threat. To decrease the distinction between the two, Sandoz believes new treaties should be drawn up (2005: 22). International humanitarian law (IHL) comprises a “set of rules which

seek, for humanitarian reasons, to limit the effects of armed conflict. It protects persons who are not, or are no longer, participating in the hostilities and restricts the means and methods of warfare” (ICRC, 2018). International humanitarian law is also known as the ‘law of war’ or the ‘law of armed conflict’ and is part of international law, the body of rules that govern the relations between states. International law is contained in agreements between states, in the form of treaties or conventions; in customary rules, which consist of state practice considered by them as legally binding; and in general principles. IHL includes the Geneva and Hague Conventions, as well as subsequent treaties, case law and customary international law (ICRC, 2018). Traditionally, the law of blockade grew as a balance between belligerent and neutral interests based on the situation of an international armed conflict. Apart from one rule in the Declaration of Paris (1856), which stated that “a blockade has to be effective in order for it to be lawfully established”, the law of blockade is based entirely upon customary international law (Fink, 2017: 297). The Declaration of London (1909) has been the most complete attempt to codify the law of blockade, but was never ratified (Siney, 1957: 183-185). However, many authors argue that the provisions of the London Declaration and the San Remo Manual on International Law Applicable to Armed Conflict at Sea (1994) could serve as the substantial basis for the law of blockade (Fink, 2017: 298).

The naval enforcement measures off the coast of Yemen have been used as a case to analyse the humanitarian consequences of naval blockade strategies in relation to violations of international humanitarian law and their applicability in a NIAC. The following research question was formulated to address the issues described above: ‘to what extent do the humanitarian consequences of the naval blockade in Yemen since 2015 contribute to violations of the norms of international humanitarian law that are applicable in non-international armed conflicts?’ In order to formulate a solid answer to this question, it will be divided into three sub-research questions that will each answer a segment of the main question. The first sub-research question is: ‘to what extent does the law of blockade apply in the case of Yemen, and what other legal basis exists for the enforcement of these naval measures?’ This question is relevant for assessing the legality of the establishment and enforcement of the measures imposed off the coast of Yemen. This leads to the second sub-research question: ‘given the absence of a clear statement of belligerency, to what extent has the Saudi-led coalition in Yemen overstepped the UN sanctioned arms embargo against the Houthi-rebels? and, has this led to the establishment of a *de facto* blockade in Yemen?’ This question is relevant to the main question, as it compares the UNSC sanctioned embargo to the question whether a *de facto*

blockade has been established. It serves as an example where the absence of clearly defined rules and the misinterpretation of UNSC sanctioned embargoes can lead to the establishment of *de facto* blockades. The final sub-research question focuses on the humanitarian consequences of naval blockades and their impact on the legality: ‘to what extent do the humanitarian consequences of the naval blockade in Yemen, like the loss of access to health care and food, impact on the legality of the law of blockade and other norms applicable in non-international armed conflicts?’ This links to the main question, as it will add another dimension to the legality debate by adding the ‘principle of proportionality’ and the ‘principle of military necessity’ into the mix. The principle of proportionality prohibits attacks against military objectives which are “expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated”. In short, it seeks to “limit damage caused by military operations by requiring that the effects of the means and methods of warfare must not be disproportionate to the military advantage sought” (ICRC, 2018). Even if the establishment of naval enforcement measures could be defended through the application of international law, the notion of proportionality could lead to the military advantages of the blockade not weighing up to the side-effects affecting the civilians of Yemen, which is known as the principle of military necessity (ICRC, 2018).

These three questions combined provided answers to formulate a conclusive answer to the main research question: ‘to what extent do the humanitarian consequences of the naval blockade in Yemen since 2015 contribute to violations of the norms of international humanitarian law that are applicable in non-international armed conflicts?’ Given the absence of clearly defined rules for the establishment of belligerent- or *de facto* blockades in non-international armed conflicts and the humanitarian distress that followed in the wake of the imposition of naval enforcement measures in Yemen, the law of blockade needs to be re-evaluated based on its effectiveness, legality and morality in relation to non-international armed conflict. The conclusion of this thesis is that the humanitarian consequences, like the absence of food and medical supplies, caused humanitarian distress on the Yemeni population, constituting the side-effects of the naval blockade. As the law of blockade does not apply in non-international armed conflicts, this thesis calls for the revision or new to-be-formed rules of the law of blockade, in accordance with the debate between IHL-scholars on the level of applicability of international humanitarian law in such conflicts. Given the fact that the law of blockade is currently built entirely upon customary law, I believe a solution would be for the international community to

engage in new *round table sessions*, in order to draft new treaties or protocols that take the humanitarian considerations in internal conflicts into account. To prevent these sessions becoming another Western dominated perception of law, country's like Saudi Arabia need to be at the table. This goes beyond the scope of this thesis, however. While it would be best to agree upon the broader application of IHL in non-international armed conflict in treaty-based sessions, this is likely too idealistic and far-reaching at this moment. Therefore, efforts of individual United Nations Member States, like the Netherlands who pushed for UNSC Resolution 2417 (2018) on the humanitarian implications of armed conflict on civilians, should be supported as much as possible, in order to pave the way and create support for the broader discussion of the revision of the applicability of most, if not all, norms of international humanitarian law in NIACs.

1.1. Reading guide

Concluding the introduction, the structure of the thesis will be discussed. After the introduction, where the topic was introduced, and the research question posed, *Chapter 2* focuses on the literature review. The literature review will present the relevant extant literature on international law, international humanitarian law, naval blockade strategies and the law of blockade, also outlining the norms that are applicable to non-international armed conflicts. This chapter can be seen as the backbone of the thesis, it defines the current body of knowledge and identifies the body of knowledge this thesis seeks to contribute to. *Chapter 3* will discuss the methodology used in the thesis. This chapter will be a description of the methods chosen and steps taken during this research. It covers the design, data collection, and most importantly, an evaluation of the chosen methods. *Chapter 4* covers the case study of Yemen. The chapter starts with an historic overview of the conflict in Yemen, followed by an analysis regarding the legality of the naval enforcement measures employed by the Saudi-led coalition, as well as discussing the humanitarian implications of the blockade, like the access to food and medical supplies, in relation to the norms applicable in non-international armed conflict. Moreover, this chapter provides answers to the sub-research questions. *Chapter 5* will wrap up the thesis, providing an answer to the research question and making recommendations. To quickly navigate through this document, please examine the *Table of Contents*.

2. Literature review

In order to be able to discuss the humanitarian consequences of the naval blockade in Yemen since 2015 and the contribution of these consequences, like the lack of foodstuffs and medical supplies, to violations of the norms of international humanitarian law that are applicable in non-international armed conflicts, it is first important to get an overview of international humanitarian law, how the law developed and what norms of international humanitarian law are applicable in non-international armed conflict. Before discussing these laws, it is important to establish the status of the conflict in Yemen. While a number of sources claim that the conflict in Yemen is generally characterized as a non-international armed conflict between the Yemeni armed forces on the one hand and the Houthi-rebels on the other (Bellal, 2015: 304), others classify the sustained hostilities as more than just ‘internal disturbances’ (Haddad, 2014: 20-33). While the conflict in Yemen does involve a decent number of nations, international armed conflicts are characterized by the formal declaration of war between two sovereign states. This is not the case, as the Yemeni government formally requested the aid of the Gulf Cooperation Council to intervene militarily in its conflict with the Houthi-rebels, which can be seen as a ‘non-governmental armed organization’. Therefore, the conflict in Yemen can either be seen as a non-international armed conflict between the Yemeni government and the Houthis, or between the Saudi-led coalition and the Houthi-rebels (Fink, 2017: 297). The establishment of the conflict in Yemen as a NIAC is important, as most rules of international humanitarian law do not apply in these conflicts. However, it is still important to have a general view of IHL and its existing treaties, principles and customary rules, so that the norms applicable in non-international armed conflict can be discussed. Therefore, *Section 2.1* focused on general international humanitarian law and the norms applicable in non-international armed conflict, whereas *Section 2.2* zoomed in on naval blockade strategies and the development of the law of blockade. This information will then be applied to the case of Yemen in *Chapter 4*.

2.1. International Law

The laws of war originated on the battlefield, where armed forces engaged one another. Hugo Grotius, among other founding fathers of public international law, argued that international law was a matter to be agreed between sovereigns, by basing these arguments on state practice and consent (Kellenberger, 2005: 15). Therefore, international law can be seen as a “system of rules, principles and concepts, governing relations among states, and increasingly,

intergovernmental and nongovernmental organizations, individuals and other actors in world politics” (Scott, 2017: 1). When Henry Dunant, one of the founders of the *International Committee of the Red Cross* (ICRC), called for “some international principle, sanctioned by a Convention and inviolate in character, to protect the wounded and all trying to help them”, he would become the true pioneer of international humanitarian law (Kellenberger, 2005: 15).

International Humanitarian Law

International humanitarian law, generally known as *jus in bello*, regulates the conduct of war in armed conflict. This is separated from *jus ad bellum*, or the ‘right to war’. *Jus ad bellum* is concerned with the question whether the resorting to violence was legitimate. Together, *jus in bello* and *jus ad bellum* are necessary for all aspects of international armed conflict (Haider, 2013: 6). IHL “comprises a set of rules, established by treaty, custom and principle, that seeks to protect persons and objects that are (or may be) affected by armed conflict”, and seeks to limit the rights of parties to a conflict to use all methods of warfare of their choice”; “violations of these rules constitute to war crimes” (Haider, 2013: 7). The *Geneva Convention for the amelioration of the condition of the wounded and sick in armed forces in the field* of 1864, laid the foundations of treaty-based international humanitarian law. This Convention was revised in 1906, 1929 and 1949 to include the protection of hospital ships, prisoners of war and civilians, resulting in the four Geneva Conventions of 1949. Governments also adopted several treaties that governed the rules of hostilities, for example the St. Petersburg Declaration of 1869, The Hague Conventions of 1899 and 1907, and the Geneva Protocol of 1925. In 1977, these trends led to the adoption of two Protocols additional to the 1949 Geneva Conventions, updating both the rules in armed conflict and the protection of victims of war (Kellenberger, 2005: 15). Multiple important conventions have been added since then. Examples are the 1997 Ottawa Convention on the Prohibition of Anti-personnel mines, the 1997 Statute of the International Criminal Court and the 1999 Protocol to the 1954 Convention for the protection of cultural property in the event of armed conflict (Kellenberger, 2005: 16). While the codification of international humanitarian law has expanded over the last hundred years, customary humanitarian law is equally important. Unlike treaties that apply only between or within states that ratified them, the rules of customary international humanitarian law bind all states and parties to the international armed conflict. However, international humanitarian law applicable to non-international armed conflict falls short in meeting the protection needs that have risen from these conflicts. Article 3 common to the Geneva Conventions and Protocol II

additional to those Conventions only covers the most rudimentary norms applicable to NIACs. Therefore, state practice could have a leading role in establishing a customary base, for both international and non-international armed conflict. Another benefit of customary international humanitarian law is the help it can provide in interpreting treaty law (Kellenberger, 2005: 16-17). Lastly, international humanitarian law comprises general, fundamental principles. The most important of these, are the principles of distinction, military necessity, proportionality, humanity and respect for humanitarian aid agencies. These principles protect civilian targets from attack, prohibits indiscriminate attacks, and ensure that the ICRC and UN insignias will be respected (Henckaerts & Doswald-Beck, 2005: 105). The ‘principle of distinction’ provides that parties to an armed conflict must “at all times distinguish between the civilian population and combatants and between civilian objects and military objectives”. This implies that indiscriminate attacks and the use of indiscriminate means and methods of warfare are prohibited (ICRC, 2018). The ‘principle of military necessity’ is, like the related principle of proportionality, an essential component of international humanitarian law. The principle of military necessity permits measures which are actually necessary to accomplish a legitimate military purpose and are not otherwise prohibited by international humanitarian law. In the case of an armed conflict, the only legitimate military purpose is to weaken the military capacity of the other parties to the conflict. The purpose of humanitarian law is to strike a balance between military necessity and humanitarian needs (ICRC, 2018). The ‘principle of proportionality’ prohibits attacks against military objectives which are “expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated”. It seeks to limit damage caused by military operations, by requiring that the effects of the means and methods used must be proportionate to the military advantage sought (ICRC, 2018). The ‘principle of humanity’ is not clearly defined by the International Committee of the Red Cross. However, it can be described as “the desire to bring assistance without discrimination to the wounded on the battlefield, endeavours – in its international and national capacity – to prevent and alleviate human suffering wherever it may be found. Its purpose is to protect life and health and to ensure respect for the human being” (Durand, 1981: 54). The ‘principle of respect for humanitarian aid agencies’ states that humanitarian relief personnel must be respected and protected (Henckaerts & Doswald-Beck, 2005: 105).

International humanitarian law applicable in non-international armed conflicts

The 1974-1977 *Diplomatic Conferences* negotiated the draft of what would become Protocol II Additional to the Geneva Conventions of 1949 (APII). These conferences discussed that the existence of a non-international armed conflict is not determined by a state's recognition or acknowledgement of the conflict, but that the international classification criteria under Article 3 common to the Geneva Conventions of 1949 (CA3) determine the legitimacy of an opposing group, therefore establishing a base for some rules of international humanitarian law to apply (Crawford, 2008: 30). Common Article 3 states that for the Article to apply, the violence must have "reached a minimum level of intensity and duration, and the opposing armed group must be organized and have the capacity to engage in military operations" (Geneva Conventions, 1949). The fighting can be between governmental and non-governmental forces, but also applies to multiple non-governmental groups (Crawford, 2008: 31). CA3 states that certain basic humanitarian rules must protect those who are not participating in a conflict, i.e. civilians, but also those who have laid down their arms, and that those must be respected, protected and treated humanely (Geneva Conventions, 1949). Moreover, CA 3 states that the following acts are, and shall remain prohibited at any time and in any place with respect to the abovementioned persons: "violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; taking of hostages; outrages upon personal dignity; the passing of sentences or executions without previous judgment" (Geneva Conventions, 1949). APII expanded on these provisions, offering more substantive rules to the protection of civilians and upholding a minimum standard of living for the duration of the conflict. APII provides fundamental guarantees to all persons who do not take direct part or no longer take part in hostilities. In particular, APII states that "medical units and transports shall be respected and protected at all times and shall not be the object of attack, protections to which medical units and transports are entitled shall not cease unless they are used to commit hostile acts, outside of their humanitarian function" (Additional Protocol II, 1977). APII also provided protection for the civilian population, stating that "civilian populations and individual civilians shall enjoy general protection against the dangers arising from military operations" (Additional Protocol II, 1977). Article 14 states that "starvation of civilians as method of combat is prohibited. It is therefore prohibited to attack, or destroy, remove or render useless, for that purpose, objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies, and irrigation works" (Additional Protocol II, 1977). Article 18 states that if the

civilian population is suffering undue hardship owing to a lack of the supplies essential for its survival, such as foodstuffs and medical supplies, relief actions for the civilian population which are of an exclusively humanitarian and impartial nature, and which are conducted without any adverse distinction shall be undertaken subject to the consent of the *High Contracting Party* concerned” (Additional Protocol II, 1977).

Now that the developments of international humanitarian law have been discussed, and the norms applicable to non-international armed conflict have been identified, the next section will zoom in on naval blockades and the law of blockade.

2.2. Naval blockades: developments of the law, strategy and practice

Naval blockades have been used for centuries. Documents describing blockade strategies can be traced back to Thucydides’ description of the Peloponnesian War (Heuser, 2017: 227). According to Geoffrey Till (2013) and Beatrice Heuser (2017), modern naval theory can, to a large extent, be attributed to US Rear Admiral Alfred Thayer Mahan, author of *The Influence of Sea Power upon History, 1660-1783* (1890), and to Sir Julian Corbett, a renowned British naval historian and geostrategist in the late nineteenth and early twentieth century. A legal definition of naval blockades can be found in the San Remo Manual, a leading piece of customary international humanitarian law on the rules of naval warfare, which defines blockades as “the blockading of the approach to the enemy coast, or a part of it, for the purpose of preventing ingress and egress of vessels or aircraft of all states” (Doswald-Beck, 1995: 620-621). A comparable definition would be “a belligerent operation intended to prevent vessels of all states from entering or leaving specified coastal areas which are under the sovereignty, under the occupation, or under the control of an enemy” (Jones, 1983: 762).

Historical development of naval blockades

Corbett stated that naval blockades are a method of securing ‘command of the sea’. He implied that having command of the sea offered strategic superiority over the enemy: the commercial and military vessels of the enemy could be attacked, while friendly vessels were protected (Corbett, 1988: 167). Historically, naval blockades were differentiated in two categories: the *fleet blockade*, which was a military measure aimed at limiting or preventing the enemy’s command of the sea while securing one’s own, and the *economic blockade*, which had the intention to cut off the enemy of its trade routes and denying essential supplies. While the

distinction between the two categories was noted, usually the same ships were used to execute both types of blockades at the same time and place. The general military object of the fleet blockade was therefore to secure command of the sea, so that surplus ships – not involved in the operation – would be enabled to exercise that command (Till, 2013: 178). Mahan believed that the strength of blockades and the command of the sea it provided lay in the strategic advantage of knowing the location of the enemy (Mahan, 1911: 183). According to Corbett, *commercial* or *economic blockades* were essentially a form of exercising command of the sea: the immediate object of a commercial blockade was to stop the flow of the enemy's sea-borne trade (Till, 2013: 172-173). Corbett described the effect of economic blockades as “the choking of the flow of national activity, in the same way as the military occupation of his territory chokes it ashore, will in the long run exhaust the enemy more than the blockading party, leading to a far costlier end”. Corbett saw naval blockades as a way to paralyse the enemy commerce and defended blockades by arguing that wars have to be waged in such a way as to “exert pressure on the citizens and their collective life”, so as to bring conflict to an end. Mahan argued that the 1812 British blockade of the United States would never lead to a situation where people would starve, as the blockade still allowed commercial neutral vessels to enter other parts of the United States. However, the dislocation of supplies would still cause damage on the blockaded population. Ships that were allowed entry were often diverted to an alternate harbour, which meant that essential supplies did not arrive at the intended destination in time (Till, 2013: 173). As the purpose of establishing a blockade is the exercise of the command of the sea, and impacts on the commercial relations between the blockaded belligerents and neutrals, blockades are regularly considered methods of *economic warfare*, meaning that they are evaluated in the context of the law of neutrality (Heintschel von Heinegg, 2015: 2). As Till (2013: 178) argued, the distinction between the two categories was noted, but usually the same ships were used to execute both types of blockades *fleet* and *commercial* at the same time and place. No matter which purpose is pursued by the establishment of a blockade, it will always involve the use of military force directed against the enemy's coastline or ports (Colombos, 1976: 716-717). This means blockades are a method of warfare to which the general principles and rules of international humanitarian law apply (Heintschel von Heinegg, 2015: 2).

The law of blockade

Blockades are seen as the only legal method of warfare where a state is enabled to prevent the enemy's trade. The establishment and maintenance of a naval blockade is either an ‘act of war’,

as it involves the use of military force by one state against another, or the UN Security Council can authorize military or non-military enforcement measures. In the first case, the international law of blockade applies, while in the case of UNSC Resolutions, the law can be modified by that Resolution (Heintschel von Heinegg, 2015: 2). Naval blockades became an internationally recognized method of warfare at the end of the sixteenth and during the seventeenth century. The 1853-1856 Crimean War led to the first establishment of the law of blockade. In the Paris Declaration of 1856, Austria, Great Britain, Prussia, Russia, Sardinia and Turkey, declared that “blockades, in order to be binding, must be effective, that is to say, maintained by a force sufficient to prevent access to the coast of the enemy”. At the Second Hague Conference of 1907, the Paris Declaration of 1856, no additional rules were developed (Heintschel von Heinegg, 2015: 3). The London Declaration of 1909 was the first product of a conference to codify the law applicable to blockades. The twenty-one provisions of the Declaration can be summarized as follows: “a blockade, in order to be binding, must be effective, that is to say, it must be maintained by a force sufficient to prevent access to the enemy coastline”. Moreover, blockades could only be legal if a declaration of notification was made by either the blockading power, or by the naval authorities acting in its name, requiring the specification of “the date when the blockade begins, the geographical limits of the coastline under blockade, and the period within which neutral vessels could come out (London Declaration, 1909). While the London Declaration was never ratified, due to resistance of the British House of Lords, it remains to this date one of the only authoritative statements on naval warfare (Heintschel von Heinegg, 2015: 4).

During the beginning of World War I, the provisions of the London Declaration were generally regarded as customary in character (Malkin, 1922: 93; Tucker, 1957: 285). However, over the course of the war, extensive minefields and warzones were established. Great Britain enforced a long-distance blockade on Germany, aimed at the prevention of all imports and exports of Germany. Neutral trade was also subjected to far reaching control measures, leading to the diversion or capture of vessels bound for Germany (Tucker, 1957: 296; Elleman & Paine, 2006: 6). During World War II, this practice was continued (Oppenheim & Lauterpacht, 1952: 795-797). During the Korean War of 1950-1953, the superior naval forces of the United States enforced a blockade on Korea, that was in full compliance with the London Declaration (Cagle & Manson, 1957: 281). On 13 July 2006, Israel imposed a full ground, air and sea blockade on Lebanon, aimed at the blocking of arms trafficking to terrorist organisations operating in Lebanon. The Israeli navy successfully maintained and enforced the blockade, until it was lifted

on 7 September 2006. During this period, the Israeli government established a humanitarian corridor between Lebanon and Cyprus (Heintschel von Heinegg, 2015: 6). Another case with Israel was the *Gaza Flotilla Incident* of May 2010. In this case, Israel used its self-imposed blockade to legitimise the attack on six civilian vessels of the *Gaza Freedom Flotilla* (Ulutaş, 2011). The Gaza discussion mainly focused on the legitimization of Israel's self-imposed blockade to attack the abovementioned flotilla (Black & Haroon, 2010).

Contemporary law of blockade

The contemporary law of naval warfare, including the law of blockade, has been summarized in the 1994 San Remo Manual, which is a leading piece of customary international humanitarian law (Heintschel von Heinegg, 2015: 7). Given the multitude of state practice shown above, states will continue to make use of blockades, predominantly in cases where they possess over superior naval and air forces. Moreover, as blockades remain the only method of warfare that allows belligerents to prevent the enemy's trade – both import and export – these methods are expected to be of continued use (Heintschel von Heinegg, 2015: 8). The *San Remo Manual* was prepared during the period 1988-1994 by a group of legal and naval experts participating in a series of *round tables* organized by the International Institute of Humanitarian Law. The purpose of the manual was to provide a contemporary restatement of international law applicable to armed conflicts at sea (International Committee of the Red Cross, 1994, June 12). Given the fact that the manual included provisions which were considered progressive developments of the law, most provisions were considered a restatement of the laws that were and are currently applicable. The participants to the round tables viewed the manual as a modern equivalent to the *Oxford Manual on the Laws of Naval War, Governing the Relations Between Belligerents* that was adopted by the Institute of International Law in 1913. A contemporary manual was considered necessary, as developments in the law since 1913, had and have still not been incorporated into recent treaty law. The Second Geneva Convention of 1949 only focused on the protection of the wounded, sick and shipwrecked at sea. In particular, there has not been a development for the law of armed force at sea, similar to that for the law of armed conflict on land with the conclusion of Protocol I of the 1977 additions to the Geneva Conventions of 1949 (International Committee of the Red Cross, 1994, June 12). A preliminary round table on the *International Humanitarian Law Applicable to Armed Conflicts at Sea*, held in San Remo in 1987, began the abovementioned process of restating the laws of armed conflict at sea. In 1994, basing themselves on thorough reports made by rapporteurs between the

meetings, presented the finalized San Remo Manual that was adopted in Livorno on June 1994 (International Committee of the Red Cross, 1994, June 12).

The *San Remo Manual* addresses several paragraphs to the law of blockade. Paragraph 93 and 94 state that blockades should be declared and notified to all belligerent and neutral states, specifying the commencement, duration, location and extent of the blockade and the period within which vessels of neutral states may leave the blockaded coastline (San Remo Manual, 1994: Par. 93 & 94). Moreover, Paragraph 101 argues that the cessation, temporary lifting re-establishment, extension or other alteration of a blockade must be declared and notified as in paragraphs 93 and 94. Under Paragraph 102, the establishment of a blockade is prohibited if: (a) it has the sole purpose of starving the civilian population or denying it other objects essential for its survival; or (b) the damage to the civilian population is, or may be expected to be, excessive in relation to the concrete and direct military advantage anticipated from the blockade (San Remo Manual, 1994: Par. 102). Paragraph 103 adds that if the civilian population of the blockaded territory is inadequately provided with food and other objects essential for its survival, the blockading party must provide for free passage of such foodstuffs and other essential supplies, subject to: (a) the right to prescribe the technical arrangements, including search, under which such passage is permitted; and (b) the condition that the distribution of such supplies shall be made under the local supervision of a Protecting Power or a humanitarian organization which offers guarantees of impartiality, such as the International Committee of the Red Cross (San Remo Manual, 1994: Par. 103). Moreover, Paragraph 104 states that blockading belligerent shall allow the passage of medical supplies for the civilian population or for the wounded and sick members of armed forces, subject to the right to prescribe technical arrangements, including search, under which such passage is permitted (San Remo Manual, 1994: Par. 104).

These paragraphs offer the guidelines by which one can measure the use and possible violations of blockades in international armed conflict. Paragraph 102 and 103 can be used to discuss the humanitarian consequences of the naval blockade in Yemen. As the San Remo Manual is not applicable in Yemen, the provisions on blockades will be compared to Common Article 3 to the Geneva Conventions of 1949 and the Additional Protocol II of 1977, to see whether connections are possible.

2.3. Knowledge gap

So why is the previous literature review relevant for the evaluation of the extent to which the humanitarian consequences of the naval blockade in Yemen since 2015 have contributed to violations of the norms of international humanitarian law that are applicable in non-international armed conflicts? And what is the *knowledge gap*, or *research gap*, that this thesis seeks to fill? As stated in the introduction, many authors have written on the legality of naval blockades (Jones, 1983; Hernández-Truyol, 2009; Elleman & Paine, 2006), these authors have forgone the relation between naval blockade strategies and their (side-)effects on the humanitarian situation in targeted territories. After the *Gaza Flotilla Incident* of May 2010, where Israel used its self-imposed blockade to legitimise the attack on six civilian vessels of the *Gaza Freedom Flotilla*, the issue gained some academic attention (Ulutaş, 2011). However, an extensive debate on the humanitarian impact of naval blockades did not occur (Fink, 2017: 292). The Gaza discussion mainly focused on the legitimisation of Israel's self-imposed blockade to attack the abovementioned flotilla (Black & Haroon, 2010). While the common factor in the cases of Gaza and Yemen is the use of naval enforcement measures to prevent the ingress of certain goods; the fundamental difference is that Israel still allowed some humanitarian aid passage through land crossings (Etkens & Zimring, 2010). To further the academic debate, this thesis focused on the question whether the humanitarian consequences of the naval blockade in Yemen contribute to violations of the norms of international humanitarian law that are applicable in non-international armed conflicts.

The literature review above outlined the development of both treaty-based international humanitarian law, but also the customary rules that comprise the law of blockade. It stated its developments, and the discourse regarding applicability in non-international armed conflict. As stated, international humanitarian law applicable to non-international armed conflict falls short in meeting the protection needs that have risen from these conflicts. Article 3 common to the Geneva Conventions and Protocol II additional to those Conventions only covers the most rudimentary norms applicable to NIACs. Therefore, state practice could have a leading role in establishing a customary base, for both international and non-international armed conflict. Another benefit of customary international humanitarian law is the help it can provide in interpreting treaty law (Kellenberger, 2005: 16-17). Common Article 3 to the Geneva Convention, as well as Additional Protocol II to the Geneva Conventions, provide the norms that are applicable in non-international armed conflict (Crawford, 2008: 31). Today, the

majority of armed conflicts are internal, while most of the rules of warfare are formally applicable only in an international context. It can be argued that, given these developments, changes towards applicability in NIACs is necessary (Sandoz, 2005: 21). It is strange that states can employ means of warfare against their own population, which are prohibited for use against a foreign threat. To decrease the distinction between the two, Sandoz believes new treaties should be drawn up (2005: 22).

This thesis contributed to the knowledge gap on the applicability of international humanitarian law, the law of blockade in particular, in non-international armed conflict. This thesis used the case of Yemen to see how the humanitarian consequences of the naval blockade in Yemen since 2015 have contributed to violations of the norms of international humanitarian law that are applicable in non-international armed conflicts. In the case study, these norms will be compared to the San Remo Manual, which comprised all customary international humanitarian law on naval warfare up until 1994, to see whether a connection can be established between the norms applicable and some of the provisions in the San Remo Manual. This will then contribute to the discourse of international scholars on the applicability of IHL in non-international armed conflict. As, given the shift away from interstate warfare, it is necessary to review the norms applicable to NIACs. It is strange that states can employ means of warfare against their own population, which are prohibited for use against a foreign threat. To decrease the distinction between the two, Sandoz believes new treaties should be drawn up (2005: 22).

3. Methodology

This study was conducted in order to assess the humanitarian consequences of naval blockades and the corresponded impact on international humanitarian law applicable to non-international armed conflicts. In this section, the chosen methods will be clarified and defended. In this research, I used explanatory research methods to explain how a known measure (i.e. naval blockade) can impact the humanitarian situation of a targeted country, and how such a blockade relates to norms of international humanitarian law. The section will be divided into three parts. *Section 1* explains the research design and methods chosen; *Section 2* focuses on data collection; and *Section 3* evaluates the chosen methods and discusses the potential pitfalls of this research.

3.1. Research design

The twenty-first century has seen a large shift away from interstate warfare, to conflicts within states, or non-international armed conflict. Today, the majority of armed conflicts are internal, while most of the rules of warfare are formally applicable only in an international context. Given this observation, this thesis used qualitative research methods to investigate what humanitarian consequences of naval blockades, like the lack of foodstuffs and medical supplies, contributed to the violations of the norms of international humanitarian law that are applicable in non-international conflict. Qualitative research methods allow the researcher to analyse several phenomena inside a single case, in order to find a deeper understanding of the problems observed; obtain more realistic views of the world that cannot be explained in numerical data and statistical analysis; and allows for flexible ways to perform data collection, subsequent analysis and interpretation of the collected information (Claire, 2010: 4-6). The research design chosen is the *embedded single-case study design*. The embedded single-case study design includes multiple units of analysis and enjoys the possibility to look for consistent patterns of evidence across units, within a single case (Yin, 1994: 3). Single-case studies are used when a case seems to represent a critical test to existing theory or is subject to a rare or unique series of events (Yin, 1994: 2).

This thesis contributed to the knowledge gap of the applicability of international humanitarian law, the law of blockade in particular, in non-international armed conflict. The *embedded single-case* selected for the case-study is the conflict in Yemen since 2015. There are two units

of analysis, namely: international humanitarian law and non-international armed conflict. The case of Yemen was selected, as it served as an example of how the absence of clearly defined rules for the establishment of naval blockades in non-international armed conflicts can contribute to humanitarian distress in the blockaded country. It is a unique case, as it is different from the *Gaza Flotilla Incident* of May 2010, where Israel used its self-imposed blockade to legitimize the attack on six civilian vessels of the *Gaza Freedom Flotilla* (Ulutaş, 2010). This did not spark an extensive debate on the humanitarian impact of naval blockades (Fink, 2017: 292). While the common factor in the cases of Gaza and Yemen is the use of naval enforcement measures to prevent the ingress and egress of certain goods; the fundamental difference is that Israel still allowed some humanitarian aid passage through land crossings (Etkens & Zimring, 2010). The case of Yemen served as a critical test on how the naval blockade violated the norms applicable in non-international armed conflict.

3.2. Data collection

The method of data-collection was the *triangulation of methods* framework. This method entails both document analysis, media analysis and interviews (Patton, 2001: 236). Data used in this thesis was collected from official (government) documents, reports, media and academic sources, as well as international humanitarian law treaties and sources of customary law. The use of these sources had numerous uses: the analysis of extant literature provided an academic background; government reports (or lack thereof) gave insight into the perspective of the Saudi-led coalition; media and humanitarian organizations reports provided information on the conflict; and international law, both the San Remo Manual and the norms applicable to NIACs provided the necessary information to evaluate the legality. The interviews conducted with a Dutch Navy Captain at Sea and a human rights expert on Yemen of Amnesty International were supplementary and helped me shape my research project in the early stages. These sources were therefore used to provide a background and allow for the analysis of the humanitarian consequences of the naval blockade in Yemen since 2015 and the contribution of these consequences, like the lack of food and medical supplies, to violations of the norms of international humanitarian law that are applicable in non-international armed conflicts. Media and document analysis has been described above. these conversations have helped me shape my research project in the early stages.

3.3. Evaluation of chosen methods and limitations of the study

In this section, the chosen methods and limitations of the study will be discussed. I have selected a qualitative research method, with a single-case study design. As stated above, a qualitative research method allows the researcher to analyse several phenomena inside a single case, in order to find a deeper understanding of the problems observed. At first, I intended to examine two cases, Yemen and Gaza, followed by a comparison of the blockade used in both conflicts. However, as stated above, Yemen proved to be a unique case, as the *Gaza Flotilla Incident* focused mainly on the legitimization of Israel's self-imposed blockade to attack the Gaza Freedom Flotilla. Therefore, there was a fundamental difference between the two cases. In Yemen the discussion focused completely on the legality and the humanitarian consequences of the naval blockade. The downside of qualitative research, especially when using only one case, is that it is often not possible to derive generalizations based on only one case. However, the research question focused on the applicability of IHL in non-international armed conflict. The thesis concluded that it would be best to agree upon the broader application of international humanitarian law in NIACs, preferably in treaty-based sessions. These recommendations can still be made, even though only one case was used.

Three other limitations were identified. The first is that the effect of naval blockades cannot be isolated from other methods of warfare in Yemen, such as air strikes and warfare on the ground. However, since the naval blockade aimed at preventing certain goods from reaching ashore, severely limiting or preventing commercial import of foodstuffs and medical supplies, a strong case could be made that the blockade did have the effects stated in this thesis. A second limitation is data accessibility. Given that data in possession of the governments of Saudi Arabia and Yemen are classified, it was not possible to use all information requirement, leading to basing arguments on Western-based, humanitarian biased views. The final limitation that I identified, is the time and scope of this thesis. It was not realistic to do field research in Yemen, therefore the conclusions are based on legal documents and media arguments, instead of learning it first-hand of the actors involved. However, that would be beyond the scope of a *master thesis*.

4. Analysis: case study Yemen

This section will analyse the case of Yemen. It will be divided into three sections. *Section 4.1* discusses the history of the conflict in Yemen. It describes the precedents that led to the conflict between the Yemeni government and the Houthi-rebels and how the Saudi-led coalition got involved. It also introduces the naval enforcement measures imposed by the coalition and the UN Security Council Resolution 2216 that was adopted. *Section 4.2* discusses the legality of the blockade, touching upon the applicability of the law of blockade in the conflict in Yemen, as well as examining alternative bases for the legality of the enforcement measures. Moreover, it seeks to assess whether the Saudi-led coalition overstepped the bounds of UN Security Council Resolution 2216. *Section 4.3* discusses the humanitarian consequences of the blockade, like the loss of access to food and medical supplies, by reflecting this on the legality of the blockade. Together, these sections provide answers to the sub-research question, so that a conclusive answer to the main research question can be presented in the conclusion.

As discussed before: the conflict in Yemen can be characterized as a non-international armed conflict. While the conflict in Yemen does involve a decent number of nations, international armed conflicts are characterized by the formal declaration of war between two sovereign states. This is not the case, as the Yemeni government formally requested the aid of the Gulf Cooperation Council to intervene militarily in its conflict with the Houthi-rebels, which can be seen as a ‘non-governmental armed organization’. Therefore, the conflict in Yemen can either be seen as a non-international armed conflict between the Yemeni government and the Houthis, or between the Saudi-led coalition and the Houthi-rebels (Fink, 2017: 297). The establishment of the conflict in Yemen as a NIAC is important, as most rules of international humanitarian law do not apply in these conflicts.

4.1. History of conflict in Yemen

The roots of the existing conflict between the Yemeni government and the Houthi rebels can be traced back to the independence of North Yemen from the Ottoman Empire in 1918. In 1967, the British left their protectorate area around the southern port of Aden, which also caused the independence of South Yemen (CIA Factbook, 2018). In 1990, the two countries were unified as the Republic of Yemen. While a brief civil war occurred in 1994 – initiated by a southern secessionist movement, this conflict was quickly resolved. When Saudi Arabia and

Yemen agreed to delineate their border in 2000, the Houthis, a Shia Muslim minority based on Zaydi Islam, engaged in a military conflict with the Yemeni government, leading to six rounds of fighting that ended in 2010 through a cease-fire (Salisbury, 2015: 2). In January 2011, the Yemeni population, inspired by similar Arab Spring movements, started complaining about high unemployment, poor economic conditions and government corruption, leading to protests that called for the removal of former President Saleh. The GCC attempted to mediate in the crisis and proposed a solution where the President would step down in exchange for immunity. Saleh refused, leading to further violence. In October 2011, the United Nations Security Council passed Resolution 2014, calling for a power transfer deal and the cessation of violence. As a result, President Saleh transferred a part of his power to Vice-president Abd Rabuh Mansur Hadi. In February 2012, Hadi won the elections and Saleh formally transferred his powers (CIA Factbook, 2018). However, the Arab Spring led to other developments in Yemen. The Houthi-rebels gained a lot of influence since 2011, culminating in a major offensive against military units and tribes that were affiliated with their rivals, leading to an assault on the capital Sana'a in September 2014. In January 2015, the Houthis attacked President Hadi's residence, the presidential palace and surrounding government buildings, which led Hadi and his cabinet to submit their resignation. However, after Hadi fled to Aden in February 2015, he withdrew his resignation. From Aden, Hadi moved to Saudi Arabia and requested the formal aid of the GCC to intervene militarily in Yemen (Ruys & Ferro, 2016: 65).

In March 2015, a coalition of Saudi Arabia, Egypt, Morocco, Jordan, Sudan, United Arab Emirates, Kuwait, Qatar and Bahrain acceded to this request and began military operations against the Houthi-rebels. Saudi Arabia issued a statement to the UN Security Council, requesting support for the intervention in Yemen based on the right to self-defence, as outlined in Article 51 of the Charter of the United Nations, which constituted the *jus ad bellum* of the intervention in Yemen (Charter of the United Nations, 1945). Following the decision to intervene, the coalition stated its intentions to impose a naval blockade on Yemen's main ports, to stop the influx of arms bound for the Houthi-rebels (Borger, 2015). On April 10, 2015, the Yemeni government stated that it would close its territorial waters to commercial and humanitarian aid shipping: permission was to be requested at, and acceded by the Yemeni government (Fink, 2017: 293). The Yemeni government stated that "all commercial and military vessels cannot enter the designated zones without getting permission from the legitimate Yemeni government, [...] permitted ships will be subject to inspection prior to heading to Yemeni ports" ('Naval embargo takes effect', 2015).

This statement led the coalition to enforce naval measures that were aimed at the inspection of all ingress vessels bound for the ports of Yemen. This measure led to the queuing of ships, with no clarity on the ability to dock and the products that could enter. Human Rights Watch reported that a vessel attempted to contact the coalition forces on numerous occasions without getting an answer on whether permission to enter had been granted. While the ship was bound for the port of Hodeida, it was redirected to dock at the port of Aden (Human Rights Watch, 2015). The spokesperson of the coalition forces, Major General Ahmad Assiri confirmed on 12 April 2015 that a naval blockade had come into force (Al-Salmi, 2015). It did not stop the Houthis from taking control of the port city Hodeida. This led to an even tighter blockade on the western coast ('Yemen bans entry into its territorial waters', 2015).

Two days later, on 14 April 2015, UN Security Council Resolution 2216 (2015) was adopted, establishing an arms embargo to prevent the influx of arms to the Houthi-rebels. Paragraph 14 and 15 of the Resolution state:

14. "Decides that all Member States shall immediately take the necessary measures to prevent the direct or indirect supply, sale or transfer to, or for the benefit of Ali Abdullah Saleh, Abdullah Yahya Al Hakim, Abd Al-Khaliq Al-Huthi, and the individuals and entities designated by the Committee established pursuant to paragraph 19 of resolution 2140 (2014) (hereinafter referred to as "the Committee") pursuant to paragraph 20 (d) of this resolution, the individuals and entities listed in the annex of this resolution, and those acting on their behalf or at their direction in Yemen, from or through their territories or by their nationals, or using their flag vessels or aircraft, of arms and related materiel of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts for the aforementioned, and technical assistance, training, financial or other assistance, related to military activities or the provision, maintenance or use of any arms and related materiel, including the provision of armed mercenary personnel whether or not originating in their territories";

15. "Calls upon Member States, in particular States neighbouring Yemen, to inspect, in accordance with their national authorities and legislation, and consistent with international law, in particular the law of the sea and relevant international civil aviation agreements, all cargo to Yemen, in their territory, including seaports and airports, if the State concerned has information that provides reasonable grounds to believe the cargo contains items the supply, sale or transfer of which is prohibited by

Paragraph 14 of this resolution, for the purpose of ensuring strict implementation of those provisions”.

The enforcement measures imposed by the Saudi-led coalition did not change after the adoption of the resolution. If anything, it led to the continued enforcement of blockading naval measures. On 22 April 2015, the Saudi Ambassador released a press statement, where he stated that the objectives of *Operation Decisive Storm* “had been achieved”, leading to the inception of *Operation Renewal of Hope*. However, in this statement the Ambassador continued to express the necessity of upholding UN Resolution 2216 in an international coalition, to “prevent the shipment of weapons by sea or air” (‘Saudi Ambassador: Operation Decisive Storm Achieved its Objectives’, 2015). According to shipping logs, however, since April 16, the coalition had granted entry permits for nineteen ships carrying rice, grain and other products for the Hodeida and Saleef ports. While these ships were eventually allowed passage, they arrived much later than originally planned. Data also showed that since 28 March 2015, no fuel tankers were allowed to dock in Yemen and on 20 April, permission was denied for the docking of three container vessels (Human Rights Watch, 2015).

In July 2015, the European Parliament issued a statement where it condemned the destabilising and violent actions taken by the Houthi-rebels and military units loyal to former-President Saleh. Moreover, the European Parliament condemned the air strikes by the Saudi-led coalition and the naval blockade it had imposed on Yemen, which had led to thousands of deaths and the further destabilisation. This further exacerbated an already critical humanitarian situation (European Parliament, 2015). In the latest UN Security Council Resolution regarding Yemen, Resolution 2342 (2017), the Security Council did not explicitly judge the naval measures, yet included a paragraph where it expressed its concerns over the deterioration of the humanitarian situation in Yemen, including the discussion of limitations in the delivery of vital goods to the civilian population of Yemen. From the Security Council stance, it can be concluded that the Council does not disapprove of the naval enforcement measures themselves, but is rather concerned with the effect the measures have on humanitarian aid shipments (Fink, 2017: 295). However, the UN High Commissioner for Human Rights reported in April 2017 that the blockade “led to famine, and that the blockade therefore ‘infringes on the right to food’ of the Yemeni population” (Al-Zekri, 2017). One team of UN officials was sent to Riyadh, trying to discuss lifting the blockade of Yemen’s Red Sea ports and calling for the “urgent and unimpeded access for imports that are a lifeline for millions of people”. The coalition

responded with partially lifting the blockade, to let humanitarian aid organizations resume life-saving assistances. However, the UN officials believed that this would not be enough to prevent Yemen from collapsing towards a massive humanitarian tragedy that would cost millions of lives (Al-Zekri, 2017). After the past three years of conflict between the Saudi-led coalition and the Houthi-rebels, millions of lives have been devastated. Up to twenty-one million Yemenis are in need of some sort of humanitarian assistance, with over ten million in acute need of support ('Yemen: A Growing Humanitarian Crisis - Access Constraints', 2017). UN officials stated that without resuming commercial imports through Red Sea ports, an additional three million people will be pushed into starvation. Before the conflict started, already 70 percent of Yemen was dependent on food imports. Now, three years later, this percentage has increased to 90 ('Yemen: A Growing Humanitarian Crisis - Access Constraints', 2017). Bettina Luescher, spokesperson for the World Food Programme (WFP) said that "the situation in Yemen is currently the biggest humanitarian crisis in the world and aid is urgently required in order to avoid famine" ('Easing of blockade enables UN aid to enter Yemen, but agencies say imports must also be allowed', 2017).

4.2. Legality of naval enforcement measures in Yemen

Now that the historical context of the conflict in Yemen has been covered, including the more recent developments regarding the naval enforcement measures in Yemen, it is time to tackle the questions of legality. In this section, the extent to which the law of blockade applies in the case of Yemen will be discussed, as well as other legal bases that may exist for the enforcement of these naval measures. The question of legality will be split up in the coming two sections. *Section 4.2* will address the legality of the establishment and enforcement of the blockade, whereas *Section 4.3* will discuss how the humanitarian consequences impact on the legality of the blockade and whether these consequences will make the establishment of these measures unlawful.

Based on Heintschel von Heinegg's argument, the legal status of a NIAC will make the application of the law of blockade difficult (2010: 325). Given that the purpose of a blockade is to prevent the access or entry of all vessels or aircraft, a blockade is by necessity located in the areas beyond the territorial sea. In the contemporary law of blockade, the absence of the recognition of belligerency causes parties involved in non-international armed conflicts to not be entitled to establish and enforce naval blockades against foreign flagged vessels (Heintschel

von Heinegg, 2012: 228). This leads to the observation, that this method of naval or aerial warfare is unavailable to parties involved in non-international armed conflicts, as states have no jurisdiction outside of their territorial waters unless stated otherwise. Therefore, the blockade that was established in 2015 by the Saudi-led coalition off the coast of Yemen would lack a legal basis in the strict sense of the law of blockade, as we have established that the conflict is characterized as non-international (Heintschel von Heinegg, 2015: 14). However, as discussed before, military or economic enforcement measures authorized by UN Security Council Resolutions can receive a special legal status that can modify the laws specified in that Resolution (Heintschel von Heinegg, 2015: 2). Article 42 of the Charter of the United Nations enables the UN Security Council to decide upon the establishment and maintenance of a blockade, it states:

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

However, such an imposition raises the question whether, or to what extent, UN Security Council sanctioned blockades are governed by traditional rules. UNSC Resolution 2216 (2015) imposed an arms embargo on Yemen, enabling states neighbouring Yemen, to inspect all cargo bound for Yemen if there was information that provided reasonable ground to believe the cargo contained items aimed for the supply, sale or transfer of arms bound for the Houthi-rebels, as stated in Paragraph 14 and 15 of the Resolution. Based on Heintschel von Heinegg’s argument (2015: 2), this could have given some legality to the enforced measures, however, Resolution 2216 authorized the use of an ‘embargo’, not a blockade. Shambaugh (2002) differentiated three forms of embargoes: ‘trade embargoes’, ‘strategic embargoes’ and ‘broad embargoes’. In this description, trade embargoes are seen as a ban on all commerce; strategic embargoes restrict the sale of goods that make a direct or specific contribution to a country’s military power; and broad embargoes allow the export of certain goods to continue for humanitarian purposes. Till (2013: 183) concluded that ‘blockade’ is rarely used as a word anymore, with states and organizations preferring the terminology of *economic exclusion zones*. Comparing the definition of blockade, “a belligerent operation intended at preventing vessels of all states from entering or leaving specified coastal areas which are under the sovereignty, under the

occupation, or under the control of an enemy” (Jones, 1983: 762), to the definitions of embargo as described by Shambaugh; it becomes clear that these are very similar. Till stated that “while the language might be different, blockade and counter-blockade operations should not conceal the fact that these are traditional naval activities, with aims, problems and prospects, that would not altogether surprise the great maritime strategists of the past” (Till, 2013: 183). These observations result in an answer to the question ‘to what extent does the law of blockade apply in the case of Yemen, and what other legal basis exists for the enforcement of these naval measures?’ It can be concluded that the law of blockade, as defined in customary international humanitarian law, does not apply in the case of Yemen, as these rules do not apply in non-international armed conflict. Therefore, as an answer to the first part of the question, the jurisdiction of enforcing a blockade in the territorial waters of Yemen would be put on the government of Yemen, and by extension to the Saudi-led coalition. This would only count for the enforcement of the blockade in the territorial waters of Yemen. However, some legal basis for the enforcement of the blockade out of the territorial waters can be derived from UNSC Resolution 2216. This leads to the second sub-research question: ‘given the absence of a clear statement of belligerency, to what extent has the Saudi-led coalition in Yemen overstepped the UNSC sanctioned arms embargo against the Houthi-rebels? and, has this led to the establishment of a *de facto* naval blockade in Yemen?’

While Major General Ahmad Assiri, the coalition spokesperson, confirmed on 12 April 2015 that a naval blockade had come into force, the Yemeni government confirmed that commercial and military vessels could not enter the designated zones without the permission of the legitimate Yemeni government and the inspection regime (Al-Salmi, 2015; ‘Naval embargo takes effect’, 2015). Part IV, Section II of the San Remo Manual outlines the provisions of the law of blockade. Paragraph 93 and 94 state that blockades shall “be declared and notified to all belligerent and neutral states and the declaration shall specify the commencement, duration, location and extent of the blockade, including the period within which vessels of neutral states may leave the blockaded coastline”. While the coalition spokesperson did state that a blockade came into effect, an official declaration of the enforcement measures, including statements on the duration and geographical scope of the blockade was not issued. However, as the conflict in Yemen is non-international, the provisions of the San Remo Manual, which is customary international humanitarian law, do not allow for definitive statements on the establishment of the blockade in this case. Given that Yemen has ratified the United Nations Convention of the Law of the Sea (UNCLOS), the provisions included in this treaty could be of some help (‘The

United Nations Convention on the Law of the Sea', 2009). Within the limitations of Article 25, Paragraph 3 of UNCLOS, a state can temporarily suspend the right of innocent passage. This Article reads:

25(3). The coastal State may, without discrimination in form or in fact among foreign ships, suspend the temporarily in specified areas of its territorial sea the innocent passage of foreign ships if such suspension is essential for the protection of its security, including weapons exercises. Such suspension shall take effect only after having been duly published.

Such a suspension, however, has not been duly reported to the parties involved, unless the UNSC Resolution on the arms embargo is again taken into consideration. Moreover, UNCLOS does not address the state of the laws of naval warfare. Sand et al. (2015) stated that the intensity of the blockade had varied over the course of time. The enforcement measures shifted from a full blockade of the ports of Yemen, allowing no vessels to enter or leave, to the prohibition of but a limited number of humanitarian aid shipping that were subjected to the inspection-regime of the coalition forces. Human Rights Watch reported that humanitarian aid vessels had attempted to contact the coalition forces on numerous occasions, without getting an answer on whether permission to enter had been granted (Human Rights Watch, 2015). What can be derived from this 'state practice' of the Saudi-led coalition, is that the absence of a clear statement of belligerency, that specified the commencement, duration, location and extent of the blockade, including the period within which vessels of neutral states could leave the blockaded coastline, the notion that "such suspension shall take effect only after having been duly published", negatively impacts on the legality of the blockade which relates to Paragraph 93 and 94 of the San Remo Manual calling for the notification to all belligerent and neutral states the commencement, duration, location and extent of the blockade. Based on both the provisions of UNCLOS Article 25, Paragraph 3 and Paragraph 93 and 94 of the San Remo Manual, the coalition did not meet the requirements of 'notification', meaning that the Saudi-led coalition had no jurisdiction based on international law to enforce the blockade (Heintschel von Heinegg, 2015: 14).

Wrapping up both of the abovementioned sub-research questions, it can be concluded that the coalition forces did not *stricto sensu* impose a naval blockade against Yemen. However, given that the language concerning an 'arms embargo' is very similar to the language describing blockades, it could be that the Saudi-led coalition overstepped the bounds of the embargo. Till

(2013: 183) concluded that ‘blockade’ is rarely used as a word these days, with people seeming to prefer phrases like ‘economic exclusion zones’ or ‘choke point control’. Till stated that “while the language might be different, blockade and counter-blockade operations should not conceal the fact that these are traditional naval activities, with aims, problems and prospects, that would not altogether surprise the great maritime strategists of the past”. Therefore, given the absence of a clear statement of belligerency, it can be argued that after the UNSC Resolution was adopted, the Saudi-led coalition continued to impose the naval blockade that entered into force on 12 April 2015, leading to the establishment of a *de facto* blockade (Al-Salmi, 2015). What this shows is that the legal basis for enforcing this blockade, is limited. While Paragraph 14 of the UNSC Resolution 2216 (2015) did state that “all Member States shall immediately take the necessary measures to prevent the direct or indirect supply, sale or transfer of arms” bound for the Houthi-rebels, and Paragraph 15 of Resolution 2216 stated that it “called upon Member States, in particular States neighbouring Yemen, to inspect, in accordance with their national authorities and legislation, and consistent with international law, in particular the law of the sea and relevant international civil aviation agreements, all cargo to Yemen”, it did not provide the legitimation of enforcing a naval blockade. Given all the humanitarian questions raised, the next section will cover the humanitarian consequences of the blockade and discuss the impact of the blockade on the norms that are applicable in non-international armed conflict.

4.3. Humanitarian consequences of naval enforcement measures in Yemen

This last section focuses on the humanitarian situation in Yemen. As mentioned, there is a wide view that the naval enforcement had a great impact on civilians (Erickson, 2017; Walker, 2017; Aleem, 2017; Koran, 2017; Sanchez, 2017). In order to answer the question ‘to what extent the humanitarian consequences impacted on the legality of the blockade’, it is important to assess the criteria applicable to non-international armed conflicts. As established, Article 3 common to the Geneva Conventions and the provisions of Additional Protocol II are applicable in NIACs when the conditions of Common Article 3 have been met. These conditions state that in order for these specific rules of international humanitarian law to apply, the violence must have “reached a minimum level of intensity and duration, and the opposing group must be organized and have the capacity to engage in military operations” (Crawford, 2008: 31). Given the influence of the Houthi-rebels, the fact that they were able to attack and capture the presidential palace in the Yemeni capital Sana’a and the fact that they have been able to sustain

military operations since 2014 (Ruys & Ferro, 2016: 65), it can be concluded that the norms applicable to NIACs, as outlined in Common Article 3 and APII, apply to the conflict in Yemen.

In order to describe and understand the impact of the naval blockade in Yemen on the humanitarian situation, it is important to first examine its economic and societal information. Yemen is a low-income country that has faced difficult long-term challenges in stabilizing and growing its economy, problems that became rather impossible to solve after the conflict started in 2014 (Ghobari, 2018). Before the conflict started, Yemen was dependent on its oil resources for gathering national revenue, accounting 25 percent of the GDP and 65 percent of government income. The Houthi-rebels interfered with the Ministry of Finance, causing the Central Bank to lay taxes on products that entered through the port of Hodeida, which handled 60 percent of Yemen's commercial traffic, including 80 percent of the country's food import. When this port was partly destroyed in 2015, it continued operating at less than 50 percent capacity (Ghobari, 2018). In December 2017, top officials of multiple UN agencies issued a joint statement, warning that the blockade of Yemen could lead to "one of the largest famines in modern times". The ICRC reported that the blockade was hindering the import of food, medical supplies and fuel, with the risk of cholera on the rise ('Yemen: as threat of famine looms, UN urges Saudi-led coalition to full lift blockade of Red Sea ports', 2017). In addition, the World Health Organization called the outbreak of cholera in Yemen the "worst case currently occurring the world", with over 300.000 infected people and numbers rising. Because of the lack of food and the lack of medical supplies, "both parties to the conflict are to blame for the consequences" ('UN: Yemen faces world's worst cholera outbreak', 2017). The World Food Programme reported that 17 million people (65 percent of the population) are food insecure, with 6.8 million people in need of life-saving emergency support. Around 67 percent of children are chronically malnourished, making Yemen the country with one of the highest rates of malnutrition in the world ('World Food Programme Yemen: facts and figures', 2017). Baro and Deubel (2006, 524) stated that starvation occurs when a person does not have access to enough food, often despite the availability of food in a given state. Therefore, market functioning is a key part to an individual's access to food and starvation can even occur in cases when food is readily available at local markets. It is therefore critical, in examining famines, whether an individual has the ability to obtain access or control over their food resources. This means that food access is often more important than food availability (Webb, 1993). When linking these observations to the abovementioned statement that at least 82 percent of the

population in Yemen is in need of humanitarian assistance and that the access to food and medical supplies is limited across the country, the effects of the conflict can be distinguished (Ghobari, 2018).

Due to these appalling numbers and developments, several sources quoted Paragraph 102 of the San Remo Manual when referring to the unlawfulness of the naval enforcement measures in Yemen (Erickson, 2017; Walker, 2017; Aleem, 2017; Koran, 2017; Sanchez, 2017). This Paragraph states that “the declaration or establishment of a blockade is prohibited if: (a) it has the sole purpose of starving the civilian population, or denying it other objects essential for its survival; or (b) the damage to the civilian population is, or may be expected to be, excessive in relation to the concrete and direct military advantage anticipated from the blockade”. Obviously, no state will claim their blockade leads to the starvation of the population, yet it should be questioned whether enough food and supplies are entering Yemen (Henckaerts & Doswald-Beck, 2005: 189). Due to the status of the conflict in Yemen, the San Remo Manual cannot be used to derive legal conclusions on Yemen. However, Paragraph 102 of the San Remo Manual is actually very similar in content and context to Article 14 of Additional Protocol II, which states that “starvation of civilians as a method of combat is prohibited. It is therefore prohibited to attack, destroy, remove or render useless, for that purpose, objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and irrigation works” (Additional Protocol II, 1977). As established, APII applies to the conflict. Historically, Corbett defended blockades by arguing that wars have to be waged in such a way as to “exert pressure on the citizens and their collective life”, so as to bring conflict to an end. Mahan argued that the British blockade of the United States (1812) would never lead to a situation where people would starve, yet stated that “they may suffer grievously”. While the British blockade of 1812 allowed commerce through neutral ships to enter other parts of the United States, Mahan argued that the dislocation of supplies would still inflict damage on the targeted country (Till, 2013: 173). Given the appalling numbers described above, it can be argued that the blockade in Yemen does exert considerable pressure on citizens and their collective life. Even the translocation of transport to other docks and warehouses, could still lead to damage, as can be derived from the argument of Mahan, but also the argument that food access is often more important than food availability (Webb, 1993). This would lead to a debate whether enough is done to allow humanitarian aid shipping through the inspection regime (Akande & Gillard, 2017).

Again, it is possible to compare the San Remo Manual to Additional Protocol II. Article 18, Paragraph 2 of APII states that “if the civilian population is suffering undue hardship owing to a lack of the supplies essential for its survival, such as foodstuffs and medical supplies, relief actions for the civilian population which are of an exclusively humanitarian and impartial nature and which are conducted without any adverse distinction shall be undertaken subject to the consent of the *High Contracting Party* concerned” (Additional Protocol II, 1977). Paragraph 103 of the San Remo Manual states that “if the civilian population of the blockaded territory is inadequately provided with food and other objects essential for its survival, the blockading party must provide for free passage of such foodstuffs and other essential supplies, subject to (a) the right to prescribe the technical arrangements, including search, under which such passage is permitted; and (b) the condition of a protecting power or humanitarian organization which offers guarantees of impartiality, such as the International Committee of the Red Cross” (San Remo Manual, 1994). Paragraph 104 adds that “the blockading belligerent should allow the passage of medical supplies for the civilian population or for the wounded and sick members of armed forces, subject to the right to prescribe technical arrangements, including search, under which such passage is permitted” (San Remo Manual, 1994). This leads to questions regarding the ‘principle of military necessity’ and the ‘principle of proportionality’. The principle of military necessity permits measures which are actually necessary to accomplish a legitimate military purpose and are not otherwise prohibited by international humanitarian law (ICRC, 2018). The principle of proportionality, on the other hand, prohibits attacks against military objectives which have “expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated” (ICRC, 2018). Under one view, a blockade is only intended to cut off weapons or resources aimed for the supply of opposing armed forces, not targeting civilians – impediments of humanitarian access would therefore be incidental. However, relevant actors should know the consequences of the measures they impose, and based on intelligence gathered foresee the possible impediments for humanitarian access (Zheng, 2018). Moreover, Zheng argues that “an ordinary person with similar knowledge to the relevant actors, in a similar situation, can and should reasonably foresee such consequences of the blockades continue” (Zheng, 2018). With regard to the military necessity it can be argued that while the blockade may cut off weapons or resources that were aimed to be used by the Houthi-rebels, this necessity is not proportional to the impact on the civilians of Yemen. With all the reporting on the humanitarian crisis in Yemen (Erickson, 2017; Walker, 2017; Aleem, 2017; Koran, 2017; Sanchez, 2017), preventing

a number of weapons from reaching the shore to be used by the Houthi-rebels does not weigh up against the humanitarian implications of the blockade.

With regard to the sub-research question – ‘to what extent do the humanitarian consequences of the naval blockade impact on the legality?’ – it can be argued that the lack of foodstuffs and medical supplies have contributed to the famine and cholera epidemic as stated by the WFP and WHO. With over 17 million people, 65 percent of the population being food insecure, and 6.8 million in need of life-saving emergency support, the numbers do not lie (‘World Food Programme Yemen: facts and figures’, 2017). Additional Protocol II to the Geneva Conventions of 1949 states in Article 18 that when the civilian population is suffering undue hardship owing to a lack of the supplies essential for its survival, such as foodstuffs and medical supplies, relief actions for the civilian population, being humanitarian and impartial in nature should be allowed. However, this is based on the consent of the *High Contracting Party* concerned, being the Yemeni government in the case of Yemen. The San Remo Manual Paragraph 103 states that if the civilian population of the blockaded territory is inadequately provided with food and other objects essential to its survival, the blockading party must provide for free passage of such foodstuffs. Again, based on the consent of the blockading party. In this context, it can be argued that the San Remo Manual makes the provisions in APII explicit for the in evaluation the legality of blockades. It can be interpreted, that APII therefore links to blockades as well. Moreover, APII states in Article 14 that the “starvation of civilians as a method of combat is prohibited”, paragraph 102 San Remo states that the declaration or establishment of blockades is prohibited “if it has the sole purpose of starving the population, or denying it other objects essential for its survival; or if the damage to the civilian population is, or may be excessive in relation to the concrete and direct military advantage anticipated from a blockade”. Given the link between military necessity and proportionality, it was just argued that the blockading parties should be able to foresee the consequences of a blockade. Obviously, no state will claim that their blockade leads to the starvation of the population, however, given the reporting on the conflict, it can be argued that the blockade leads to damage that is excessive in relation to the concrete and direct military advantage anticipated from a blockade. While it is not possible to go so far as to state that the Saudi-led coalition deliberately starved the population, the delay or denial of permits for humanitarian aid vessels bearing the insignia of the International Committee of the Red Cross, contribute to the ‘excessive damage on the civilian population’.

What this means for the legality of the blockade, which as concluded, already had a vague legal status due to overstepping the bounds of UNSC Resolution 2216, is that the humanitarian consequences of the blockade have a negative impact on its legality. Given the fact that since the conflict started, 90 percent of the population is dependant on food imports, the access to food is severely limited by the enforcement of the blockade (has increased to 90 ('Yemen: A Growing Humanitarian Crisis - Access Constraints', 2017). Based on Zheng's argument, the Saudi-led coalition should have expected the blockade to have certain effects and anticipated on its implications (2018).

5. Conclusion

The scope of this thesis was to review the status of international humanitarian law in non-international armed conflict, in specific, the law of blockade in the conflict in Yemen. As argued, the law of blockade is entirely based upon customary international humanitarian law, with the San Remo Manual of 1994 being a compilation and restatement of the laws of naval warfare up until that moment. As established, most norms of international humanitarian law do not apply in non-international armed conflict, with the exception of Common Article 3 to the Geneva Conventions of 1949 and Additional Protocol II of 1977. The naval enforcement measures off the coast of Yemen were used as a case to analyse the humanitarian consequences of naval blockade strategies in relation to violations of the norms of international humanitarian law that are applicable in non-international armed conflict. Given the internal character of the conflict in Yemen, most norms of international humanitarian law did not apply, making it hard to discuss the legality of the naval enforcement measures. The following research question was formulated to address the issues described above: ‘to what extent do the humanitarian consequences of the naval blockade in Yemen since 2015 contribute to the violations of the norms of international humanitarian law that are applicable in non-international armed conflicts?’ In addition, three sub-research question were formulated to each answer a segment of the abovementioned question. In *Chapter 4*, these questions have been answered and will now provide the background by which to answer the main question. It was concluded that the coalition forces did not *stricto sensu* impose a naval blockade on Yemen, meaning that the law of blockade as formulated in customary international humanitarian law, did not apply. However, I argued that the Saudi-led coalition derived some legal basis from UNSC Resolution 2216, which imposed an arms embargo on Yemen, stating that all Member States should take immediate and necessary measures to prevent the direct or indirect supply, sale or transfer of arms to the Houthi-rebels. In this sense, I concluded that the language concerning arms embargoes is very similar to the language of blockades, leading to the argument that the Saudi-led coalition overstepped the bounds of the UNSC Resolution. Given the lack of a clear statement of belligerency, clearly stating the time and scope of the blockade, the Saudi-led coalition established a *de facto* blockade on Yemen. Given all the humanitarian questions raised, the next section examined the humanitarian consequences of the blockade and how this further impacted on the legality. As discussed, the Saudi-led coalition should have foreseen the impact of the blockade on the civilian population. Based on Additional Protocol II – which

states that the deliberate starvation of the civilian population is prohibited as a method of warfare, and that when the population is suffering undue hardship owing to a lack of supplies essential for its survival, relief action shall be undertaken – it was argued that the humanitarian consequences of the blockade negatively impacted on the legality.

Therefore, in relation to the research question – ‘to what extent do the humanitarian consequences of the naval blockade in Yemen since 2015 contribute to the violations of the norms of international humanitarian law that are applicable in non-international armed conflicts?’ – it can be concluded that the humanitarian consequences, being the lack of sufficient foodstuffs and medical supplies, of the naval blockade, contributed to an unfolding humanitarian crisis in Yemen, with 17 million people (65 percent of the population) being food insecure and 6.8 million in need of life-saving emergency support (‘World Food Programme Yemen: facts and figures’, 2017). The norms of international humanitarian law applicable in non-international armed conflicts, in this case Additional Protocol II, clearly state that the deliberate starvation of the civilian population is prohibited as a method of warfare, and that when the population is suffering undue hardship owing to a lack of supplies essential for its survival, relief action shall be undertaken. Given the repeated calls of the international community to ease or lift the blockade, it can be concluded that not enough is done to allow humanitarian aid shipping through the blockade (Akande & Gillard, 2017). Therefore, the humanitarian consequences of the naval blockade in Yemen since 2015, have contributed to the violations of some of the limited norms of international humanitarian law that are applicable in non-international armed conflict.

Following up on this conclusion, there are two recommendations to be made. The first recommendation is that the disparity between the concepts ‘blockade’ and ‘embargo’ should be researched. As these two measures are so similar in definition, the case of Yemen showed that they can also lead to similar practice. What can be seen in the case of Yemen, is that the Saudi-led coalition used UNSC Resolution 2216, to legitimize the use of naval blockade measures aimed at preventing arms export into the hands of the Houthi-rebels. Therefore, it would be preferable if this received some attention both of scholars, but also of policymakers, given the consequences of it in the case of Yemen. The second recommendation is that given the observation that the twenty-first century has seen the shift away from interstate conflicts, to non-international armed conflict, this thesis attempted to contribute to the discussion that the norms applicable to non-international armed conflict should be expanded. It is strange that the

laws and norms of IHL, that seek to protect foreign invaders and limit the means of warfare that your own armed forces may use, do not apply to those in internal conflicts. As discussed, currently only Additional Protocol II applies in NIACs, when the conditions laid out in Common Article 3 have been met. I already argued that APII has some links with the San Remo Manual. Since this is the case with the law of blockade, it can be argued that similarities may also occur in other areas of IHL. This could be subject to further investigation, but went beyond the scope of this thesis. While it would be best to agree upon the broader application of IHL in non-international armed conflict in treaty-based sessions, this is likely too idealistic at this moment. Therefore, efforts of individual United Nations Member States, like the Netherlands, who pushed for UNSC Resolution 2417 (2018) on the protection of civilians from the humanitarian implications of armed conflict, should be supported as much as possible, in order to pave the way and create support for the broader discussion on the revision of the applicability of the norms of international humanitarian law in non-international armed conflict. However, in order for this to be successful, it is rather important that states like Yemen, or Saudi Arabia are at the table. As the international legal system is very much Western dominated, the key to success of international law, is no longer in the hands of the West.

6. References

- Akande, D. & Gillard, E. (2017). Promoting compliance with the rules regulating humanitarian relief operations in armed conflict: some challenges. *ISR Law Review*, 50(2), 119-137.
- Aleem, Z. (2017, November 22). Saudi Arabia's new blockade is starving Yemen. *Vox*. Retrieved from <https://www.vox.com>
- Al-Salmi W (2015, April 12) Yemen authorises Arab naval blockade. *The New Arab*. Retrieved from <https://ww.alaraby.co.uk>
- Al-Zekri, M. (2017, December 2). Yemen: As threat of famine looms, UN urges Saudi-led coalition to fully lift blockade of Red Sea ports. *UN News*. Retrieved from <https://www.news.un.org>
- Bellal, A. (2015). *The war report: armed conflict in 2014*. Oxford University Press, Oxford.
- Black, I. & Haroon, S. (2010). Q&A: The Gaza Freedom flotilla. *The Guardian*. Retrieved from <https://www.theguardian.com>
- Borger, J. (2015, June 5). US Backed Saudi Naval Blockade Leaves 20 Million Inside Yemen Facing Humanitarian Disaster. *The Guardian*. Retrieved from <https://theguardian.com>
- Cagle, M.W. & Manson, F.A. (1957). *The Sea War in Korea*. Naval Institute Press, Annapolis.
- CIA Factbook (2018). Middle East Yemen. *CIA Factbook*. Retrieved from <https://www.cia.gov/library/publications/the-world-factbook/geos/ym.html>
- Claire, A. (2010). Presenting and Evaluating Qualitative Research. *American Journal of Pharmaceutical Education*, 74, 1-7.
- Colombos, C.J. (1967). *The International Law of the Sea*. Longmans, London.
- Corbett, J. (1911). *Some Principles of Naval Strategy*. Longmans, London.

- Crawford, E. (2008). Blurring the Lines between International and Non-International Armed Conflicts – The Evolution of Customary International Law Applicable in Internal Armed Conflicts. *Australian International Law Journal*, 15(1), 29-54.
- Doswald-Beck, L. (1995). *San Remo Manual on international law applicable to armed conflicts at sea*. Cambridge University Press, Cambridge.
- Durand, A. (1981). *The International Committee of the Red Cross*. ICRC, Geneva.
- Easing of blockade enables UN aid to enter Yemen, but agencies say imports must also be allowed (2017, November 28). UN News. Retrieved from <https://www.news.un.org>
- Elleman, B.A. & Paine, S.C.M. (2006). *Naval Blockades and Seapower: Strategies and Counter-Strategies. 1805-2005*. London: Routledge.
- Erickson, A. (2017, November 19). “Yemen is on the brink of a horrible famine, here’s how things got so bad”. *Washington Post*. Retrieved from <https://www.washingtonpost.com>
- Etkens, H & Zimring, A. (2010). When trade stops: Lessons from the Gaza blockade 2007–2010. *Journal of International Economics*, 95(1), 16-27.
- Fink, M. D. (2017). Naval Blockade and the Humanitarian Crisis in Yemen. *Netherlands International Law Review*, 64(2), 291-307.
- Ghobari, M. (2018, March 31). Major fire at Yemen's Hodeidah port destroys aid supplies. *Reuters*. Retrieved from <https://reuters.com>
- Haddad, S. (2014). Yemen. In: Arimatsu, L., Choudbury, M. (eds.). *The legal classifications of the armed conflicts in Syria, Yemen and Libya*. Chatham House, London, 20-33.
- Heintschel von Heinegg, W. (2010). The law of military operations at sea. In: Gill, T.D., Fleck, D. (eds.). *The handbook of international law of military operations*. Oxford University Press, Oxford, 325-374.

- Heintschel von Heinegg, W. (2012). Methods and means of naval warfare in non-international armed conflict. In: Watkin, K., Norris, A.J. (eds.), *Non-international armed conflict in the twenty-first century*, 88, 211-236.
- Heintschel von Heinegg, W. (2015). Blockade. *Oxford Public International Law*. Oxford University Press, Oxford.
- Henckaerts, J.M. & Doswald-Beck, L. (2005). Customary International Humanitarian Law. *ICRC*. Cambridge University Press, Cambridge.
- Hernández-Truyol, B. E. (2009). Embargo or Blockade? The Legal and Moral Dimensions of the US Economic Sanctions on Cuba. *Intercultural Human Rights Law*. Retrieved from <http://scholarship.law.ufl.edu/facultypub/192>
- Heuser, B. (2017). Regina Maris and the Command of the Sea: The Sixteenth Century Origins of Modern Maritime Strategy. *Journal of Strategic Studies*, 40(1-2), 225-262.
- Human Rights Watch (2015, May 10). Yemen: coalition blocking desperately needed fuel. *Human Rights Watch*. Retrieved from <https://www.hrw.org>
- ICRC (2018). Fundamental of International Humanitarian Law. *International Committee of the Red Cross*. Retrieved from https://casebook.icrc.org/law/fundamentals-ihl#d_iii
- Jones, T.D. (1983). The International Law of Maritime Blockade – A Measure of Naval Economic Interdiction. *Howard LJ*, 26, 759-779.
- Kellenberger, J. (2005). Foreword. In: Henckaerts, J.M. & Doswald-Beck, L. (2005). Customary International Humanitarian Law. *ICRC*. Cambridge University Press, Cambridge. 15-18
- Koran, L. (2017, December 6). “Trump calls on Saudi Arabia to end Yemen blockade”. *CNN*. Retrieved from <https://www.edition.cnn.com>
- Mahan, A. T. (1890). *The influence of sea power upon history*. Little Brown and Company, Boston.
- Malkin, H.W. (1922). *Blockade in Modern Conditions*. British Yearbook of International Law. Clarendon Press, Oxford.

- Naval embargo takes effect (2015, April 12). *Yemen Times*. Retrieved from <http://www.yementimes.com/en/>
- Oppenheim, L.F. & Lauterpacht, H. (1952). *International Law Vol. II – Disputes, War and Neutrality*. Longmans, London.
- Patton, M. Q. (2001). *Qualitative Research & Evaluation Methods*. Thousand Oaks: Sage Publications.
- Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of non-international armed conflicts (Protocol II) (1977, June 10). *United Nations*. Geneva
- Ruys, T., & Ferro, L. (2016). Weathering the storm: legality and legal implications of the Saudi- led military intervention in Yemen. *International and Comparative Law Quarterly*, 65(01), 61-98.
- Salisbury, P. (2015). Yemen and the Saudi–Iranian ‘Cold War’. *Research Paper, Middle East and North Africa Programme*, Chatham House, the Royal Institute of International Affairs.
- Sanchez, R. (2017, November 15). “More than 50,000 Yemeni children 'will die by the end of the year'”. *The Telegraph*. Retrieved from <https://www.thetelegraph.co.uk>
- Sand, P., Clapham, A. & Ni’ Ghra’laigh, B. (2015). The lawfulness of the authorization by the United Kingdom of weapons and related items for export to Saudi Arabia in the context of Saudi Arabia’s military intervention in Yemen. *Amnesty United Kingdom*. Retrieved from <https://www.amnesty.org.uk/>
- Sandoz, Y. (2005). Foreword. In: Henckaerts, J.M. & Doswald-Beck, L. (2005). *Customary International Humanitarian Law*. ICRC. Cambridge University Press, Cambridge. 15-18
- Saudi-led coalition lashes out at reports of Yemen aid blockade. (2016, July 30). *Middle East Eye*. Retrieved from <http://www.middleeasteye.net/>

- Saudi Ambassador: Operation Decisive Storm Achieved its Objectives. (2015, April 22). *Press Briefing Operation Renewal of Hope*. Retrieved from <http://www.operationrenewalofhope.com/>
- Shambaugh, G. (2002, May 29). Embargo: International Law. *Encyclopaedia Britannica*. Retrieved from <https://www.britannica.com/topic/embargo-international-law>
- Till, G. (2013). *Seapower: A guide for the twenty-first century*. Routledge, Abingdon.
- The Geneva Conventions (1949, August 12). *International Committee of the Red Cross*. Geneva
- Tucker, R.W. (1957). *The Law of War and Neutrality at Sea*. US Government Printing Office, Washington DC.
- Ulutaş, U. (2011). A Raid from the Sea: The Gaza Flotilla Attack and Blockade under Legal Scrutiny. *SETA Policy Brief*, 55, 3-13.
- UN: Yemen faces world's worst cholera outbreak (2017, June 25). *Al Jazeera*. <https://aljazeera.com>
- United Nations (1945, October 24). Charter of the United Nations. *I UNTS XVI*. Retrieved from <https://treaties.un.org/doc/publication/ctc/uncharter.pdf>
- United Nations Convention on the Law of the Sea (1982, December 10). *United Nations*. Jamaica
- United Nations Security Council Resolution 2216 (2015, April 14). Retrieved from [http://undocs.org/S/RES/2216\(2015\)](http://undocs.org/S/RES/2216(2015))
- United Nations Security Council Resolution 2342 (2017, February 23) [http://undocs.org/S/RES/2342\(2017\)](http://undocs.org/S/RES/2342(2017))
- United Nations (2015, September 7). Situation of Human Rights in Yemen. *Report of the United Nations High Commissioner for Human Rights, A/HRC/30/31*. Retrieved from undocs.org/A/HRC/30/31.

- Walker, C. (2017, August 30). “Yemen conflict: human rights groups urge inquiry into Saudi coalition abuses”. *The Guardian*. Retrieved from www.theguardian.com
- Webb, P. (1993). Coping with drought and food insecurity in Ethiopia. *Disasters*, 17(1), 33-47.
- Wilbertz, J. (2013). *Evaluating societal relevance of research*. S.N.
- World Food Programme Yemen: facts and figures (2017, June 5). *World Food Programme*. Retrieved from <https://www.wfp.org/content/2017-yemen-factsheets>
- Yemen: A Growing Humanitarian Crisis - Access Constraints (2018, January 2). *Relief Web*. Retrieved from <https://reliefweb.int>
- Yemen bans entry into its territorial waters (2015, April 13). *World Maritime News*. Retrieved from <https://worldmaritimenews.com>
- Yemen: forgotten war. (2017). *Amnesty International*. Retrieved from <https://www.amnesty.org/en/latest/news/2015/09/yemen-the-forgotten-war/>
- Yemen fuel subsidy cuts hit poor hardest (2014, August 25). *IRIN News*. Retrieved from <http://www.irinnews.org/>
- Yin, R. K. (2003). *Case study research: Design and methods* (3rd ed.). Thousand Oaks, CA: Sage.
- Zheng, J. (2018). Unlawful Blockades as Crimes Against Humanity. *American Society of International Law*, 22(5). Retrieved from <https://www.asil.org>