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# Drone Attacks on Saudi Aramco Oil Installations

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By Mary Ellen O'Connell

September 17, 2019

Half of Saudi Arabia's oil production has been stopped by air attacks involving drones and possibly cruise missiles on 14 September 2019. Houthi rebels in Yemen have claimed responsibility. United States Secretary of State Mike Pompeo has asserted by tweet that Iran is responsible because there is "no evidence the attacks came from Yemen" and Iran is behind "100" attacks on Saudi Arabia. The U.S. has since released satellite imagery showing immense smoke clouds. Unnamed American officials say 19 sites were struck. According to the BBC, on 16 September, 'UK, Foreign Secretary Dominic Raab said it was not yet clear who was responsible for what he described as a "wanton violation of international law"'.



Regardless of who is responsible, the attacks are unlawful for a variety of reasons. For several of those same reasons and others, however, Saudi Arabia has no right to use military force outside its territory in a response. The limits on other states responding with military force or other forms of coercion are equally restricted. Lawful responses are available, ones that would avoid further 'wanton' law violations.

The important starting place of the analysis is with the fact that the Houthi rebels are not the government in effective control of Yemen, so they do not qualify as having authority to use military force on the basis of the one relevant justification in this case, United Nations Charter exception to Article 2(4), Article 51. The fact Saudi Arabia has been attacking them in Yemen does not give rise to their right to attack Saudi Arabia.

The most accurate characterization of the Houthis is as a belligerent party engaged in internal armed conflict or civil war from which all non-Yemeni armed groups—state or nonstate—are barred. Saudi Arabia has apparently based its participation in the Yemeni civil war on an invitation from Abdrabbuh Mansur Hadi. Hadi, however, fled and thereby lost effective control or status as the government in March 2015. The conflict remains undecided with the Houthis holding the capital Sanaa as well as territory that is home to more than half the population. While Hadi continues to claim 'international recognition' plus Yemen's seat in the United Nations, under international law, the government for purposes of authorizing force in self-defence must for practical reasons and reasons of self-determination be based on the effective control rule as applied in the *Tinoco Claims Arbitration* (1 U.N. Rep. Int'l Arb. Awards 369 (1923)). The Security Council has the power to authorize Hadi's use of force

and/or Saudi Arabia's intervention, but has not. I go into more detail on these points in *Restricting Exceptions for Invitation and Insurgency in The Art of Law in the International Community*.

These same principles prohibiting the use of force and promoting self-determination also forbid foreign states from intervening militarily to impose governments, even governments that once held power but have lost it. Louise Doswald-Beck provided the analysis for this position decades ago; the support for it today is even stronger in our era of civil war as I lay out in the chapter cited above. Thus, Hadi, since the date of his flight, has had no legal standing to invite in an outside power to help him win the civil war with the Houthis and the Saudis no legal basis to be there. The rule that a government in exile may invite outside military assistance to replace it in power applies only to governments forced out by another sovereign state in violation of Article 2(4). Recall the Kuwaiti government's status following the 1990 Iraqi invasion. To this extent, as Olivier Corten strongly argues, Article 2(4) prohibiting force, except in self-defense, per Article 51 does not apply to internal armed conflict. Olivier Corten, 'La rébellion et le droit international: le principe de neutralité en tension', *Collected Courses of The Hague Academy of International Law (Receuil des Cours)* 374 (Leiden: Brill 2015), 53-312. A government forced out by internal opposition forces is no longer a government in effective control. It has no authority to consent to or invite outside military assistance.

The *jus cogens* norm prohibiting the use of force arguably applies more broadly. It restricts the Houthi right to resort to force even against a dictatorial regime like Hadi's. Their violation of the norm does not, however, affect Hadi's legal situation. Similarly, the fact that Saudi Arabia does not have a right to assist Hadi to re-take power militarily, let alone carry out massive humanitarian law violations, does not give rise to a right of Iran to assist the Houthis. They are barred from intervening in the civil war as much as the Saudis.

The United States tried to use this type of counter-intervention argument to justify support to the Mujahideen in Afghanistan after the Soviets intervention in 1979, having procured an invitation when the leader of Afghanistan was murdered and a pro-Soviet puppet took power in his place. It may seem logical to conclude that if the Soviet intervention was a violation of Article 2(4)—the Mujahedeen were fighting to rid their country of unlawful occupation—then the United States could help to enforce Article 2(4) by helping them.

I once accepted that the U.S. counter-intervention in Afghanistan was lawful based on this logic, but no longer do. Without Security Council authorization, a state may only use military force on the territory of another state in response to armed attack per the requirements of Article 51 and associated general principles of necessity and proportionality. In the case of the attacks on Saudi Arabia's company Aramco, an armed response must also be necessary for self-defense and the cost must not outweigh the injury. If the state is acting in collective

self-defense, it must have an invitation from a government in effective control at the time of the attack. The Mujahideen did not control Afghanistan at the time of the unlawful Soviet use of force. They had no authority to issue an invitation to the U.S.

The only other lawful possibility for using force on the territory of another state is when a government has requested military assistance in responding to an internal military challenge that has not reached the stage of belligerency. Belligerency is reached when the armed opponents have a genuine prospect of defeating the government's forces without outside interference. The Houthis have been at this stage for years.

If an opposition armed group has received outside military assistance that meets the conditions for triggering self-defense, then the government may request assistance in collective self-defense. This is not the case in Yemen as no group was in effective control in 2015 when Hadi fled and the civil war began. It has no government with capacity to issue such an invitation or provide consent. No outside support to the fighting should have occurred; only humanitarian assistance. Somalia is another sovereign state where no entity should be seen as having authority to invite outside military assistance with Security Council backing. The United Nations has recognized various transitional governments, including the current 'Federal Government' as part of its efforts to achieve peace. Military support for this government should arguably have express Security Council authorization. Certainly, the United States has acted on weak justifications in its regular attacks on Somalia since 2006. The legal basis, beyond the 'War on Terror', seems to Daniel Bethlehem's concept that no Somali government is "able and willing" to control armed groups. This is not, however, a basis under the Charter for the use of military force. Saudi Arabia equally has no right to attack Yemen over the air attacks of 14 September.

What about Iran, which is a sovereign state? First, regardless of Secretary Pompeo's assertion, Saudi Arabia would need clear and convincing evidence establishing the elements of attribution in the law of responsibility before concluding Iran has committed the wrong. Even if Saudi Arabia made this case, that alone would not allow an armed counter-attack in self-defense. The damage is done, and no continuing attacks or occupation have occurred or are in evidence. Any Saudi military action against Iran would be a reprisal. I have discussed the illegality of reprisals [in a post on](#) the US-France-UK missile strikes on Syria in 2018 and the US attack in 2017.

Saudi Arabia may use military force to defend its territory within its territory, air space and territorial sea. It may also use counter-measures as set out in the law of state responsibility. Countermeasures are a violation of a right in response to a prior violation, so long as the countermeasure aims at inducing compliance, is necessary and proportional to the prior wrong and does not involve certain prohibited measures such as the use of force in violation of Article 2(4).

The United States has been carrying out cyber-attacks against Iran in retaliation for the destruction of a U.S. drone. Cyber-attacks cannot meet the elements of lawful counter-measures. They rely on covert intelligence of computer vulnerabilities. Counter-measures must be publically announced to provide an opportunity for compliance. The Articles on State Responsibility explicitly require that the state taking countermeasures notify the other state of the decision to do so and offer to negotiate (Art. 52(1)(b)), though it allows urgent measures taken to preserve rights. The WTO Dispute Settlement Body has provided examples of model countermeasure regimes.

This interpretation of the law on the use of force will sound unfamiliar to many, even radical. In addition to chapter mentioned above, more details by Dire Tladi, Christian Tams, and me can be found in our new book, *Self-Defence Against Non-State Actors*. For decades, legal analysis around the use of force has tended toward removing the legal barriers. We have reached a point that governments no longer bother issuing legal justifications for their use of force and lawlessness increasingly prevails. (Some, as the UK in this case, still do issue accusations that international law has been violated by opponents.) Whether the Houthis are responsible for the attacks on Aramco or not, no one is doubting the potential of the non-state actor armed group's ability to halt 5% of the planet's oil production with 10 inexpensive drones. Secret cyber-attacks can do far worse. A wider conventional war as the result of tit-for-tat escalation is a nightmare scenario. The only way forward is to rebuild respect for a robust rule of law, which requires knowledge of the law on the use of force, countermeasures, and the peaceful settlement of disputes, within states and beyond.