

Applying the Unwilling or Unable Test: Israel Strikes Houthi Targets in Yemen

lieber.westpoint.edu/applying-unwilling-unable-test-israel-strikes-houthi-targets

August 1, 2024

by [Raul \(Pete\) Pedrozo](#) | Aug 1, 2024



On July 18, 2024, Houthi rebels conducted a drone strike in Tel Aviv, killing one person and wounding at least ten others. The attack was carried out by an Iranian Samad-3 drone that had been modified to conduct the long-range strike. The attack constitutes the first lethal strike by the Houthis into Israel since the war in Gaza began on October 7, 2023.

Two days later, the Israel Defense Forces (IDF) responded with a first lethal attack of its own in Yemen—an airstrike against targets in the Houthi-controlled port city of Hodeidah. The attack damaged the city’s power plant and destroyed several fuel storage tanks and large container cranes used to unload ships. A Houthi spokesperson indicated that the Israeli strike had also killed six people and wounded 87 more.

Although the July 20 strike was an immediate response to the July 18 drone attack against Tel Aviv, it was also in response to over 200 Houthi attacks targeting Israel since October 7. According to Israeli officials, the airstrike focused on “dual-use facilities” within the port. Hodeidah is reportedly the main entry point for Iranian weapons and other military equipment being illegally smuggled into Yemen in violation of the arms embargo imposed by UN

Security Council Resolution (UNSCR) 2216. It also provides a major source of income to fund Houthi terrorist operations. The airstrike was therefore intended to disrupt the Iranian weapons supply route to the Houthis and damage dual-use infrastructure (fuel storage and cargo unloading capabilities) used to finance terrorist attacks throughout the region.

Reaction to the Attack

Houthi spokesman Mohammed Abdul Salam condemned the attack on civilian targets as “brutal Israeli aggression.” The Houthis immediately responded to the attack by launching several ballistic missiles toward the port city of Eilat, vowing to continue their attacks on Israel. It is therefore apparent that the isolated Israeli strike, like the ongoing U.S. and UK strikes against land-based Houthi targets in Yemen since January 2024, may not deter further Houthi aggression.

Although the port is purportedly used by the Houthis to illegally receive weapons from Iran, Hodeidah is also a major entry point for humanitarian aid (e.g., food, fuel, and other commodities) and contains a number storage silos for grain and other food stuffs. Despite evidence that the Houthis are diverting significant amounts of humanitarian aid that passes through Hodeidah, humanitarian organizations continue to funnel aid through the port citing the ongoing humanitarian crisis. Moreover, Hodeidah has the capacity to receive large amounts of goods and is near population centers.

According to a Middle East expert at Navanti Group, the damage to the fuel storage tanks will result in “severe fuel shortages throughout northern Yemen,” including impacts on hospitals. The damage to the power station will likewise “further exacerbate the suffering of the local population” as temperatures in the summer can exceed 100 degrees. Although the damaged power station and fuel depot can be rebuilt, it will be an expensive and time-consuming project.

This set of facts raises a number of legal questions. May Israel conduct airstrikes in self-defense against terrorist targets in Yemen without the consent of the government of Yemen? If so, was the use of force in self-defense necessary and proportionate? Is the Port of Hodeidah (and its associated infrastructure) a military objective and, if so, did the Israeli attack result in excessive collateral damage?

Unable or Unwilling

Although States should normally not engage in military operations in the territory of another State without the consent or at the invitation of that State, there are exceptions to that rule (U.S. Department of Defense (DoD) Law of War Manual § 1.11.4.3). For example, a State has an “obligation not to allow knowingly its territory to be used for acts contrary to the rights of other States.” If a State (like Yemen) is unwilling or unable to stop armed groups (like the

Houthis) from using its territory as a base of operations from which to launch attacks against another State, the aggrieved State may exercise its right of self-help and target the armed groups in self-defense within the territory of the unwilling State.

The Yemeni landmass bordering the Red Sea is not under the control of the legitimate government of Yemen. Nor are the Houthi-controlled areas of Yemen accessible to Yemeni security forces. Accordingly, the government of Yemen has been unable or unwilling to prevent Houthi attacks against Israel or commercial shipping from these areas. Under these circumstances, Israel is legally justified in using force in self-defense against Houthi military objectives in Yemen to prevent future attacks from rebel-controlled territory. A growing number of States support such self-help measures.

Military Objectives

Only military objectives may be attacked. A military objective is “any object which by its nature, location, purpose or use makes an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage” (Additional Protocol (AP) I, art. 52(2); DoD Law of War Manual, § 5.6.3). For the United States, a military objective also includes objects that make an effective contribution to the “war-fighting or war-sustaining capability of an opposing force” (10 U.S.C. § 950p(a)(1)).

Whether an object is considered a military objective is subject to a two-part test. First, the object must make an effective contribution to military action; and second, attacking, capturing, or neutralizing the object, in the circumstances, must offer a definite military advantage (DoD Law of War Manual, § 5.6.5). The nature, location, purpose, or use of the object may contribute to it making an effective contribution to the enemy’s military action (DoD Law of War Manual, §§ 5.6.6, 5.6.6.1).

“Use” refers to the object’s present function. Thus, use of an otherwise civilian port facility to support military operations makes the port facility a military objective (DoD Law of War Manual, §§ 5.6.6, 5.6.6.1). There is ample evidence that Iran is surreptitiously providing weapons and other military equipment to the Houthis in violation of UNSCR 2216. According to the IDF, the port is being used by the Houthis to receive these weapons and other military equipment from Iran. There is also evidence that Hodeidah is a key base of operations used by the Houthis to launch missile and drone attacks against commercial shipping in the Red Sea. The port additionally serves as a major source of income to fund Houthis terrorist activities. Moreover, the IDF estimates that over 70% of the humanitarian aid that enters the port is diverted for use by the Houthis and does not reach the general civilian population. Any humanitarian aid that is diverted to the Houthis is considered a military objective and its destruction would not factor into the proportionality analysis.

Given that the port is being used by the Houthis as a transshipment point for Iranian weapons, as a base of operations to launch attacks against commercial shipping, and as a source of income to fund its terrorist operations, it is clearly making an effective contribution to their military action and would be considered a military objective by use. Disrupting this weapons supply line and significantly damaging dual-use infrastructure (fuel tanks and cargo unloading capabilities) used to finance terrorist operations clearly offer Israel a definite military advantage (DoD Law of War Manual, § 5.6.7). By attacking and shutting down these facilities, the IDF effectively denies the Houthis (now and in the future) the ability to use the port and its associated infrastructure to support their military operations until the port is rebuilt (DoD Law of War Manual, § 5.6.7.3). A post-strike battle damage assessment by the IDF concluded that the port's ability to receive goods had been "completely shut down."

Although an individual assessment must be made in each case, transportation objects, like port facilities, have historically been considered military objectives in past conflicts (DoD Law of War Manual, §§ 5.6.8, 5.6.8.3). Similarly, economic objects (e.g., electric power stations) that are or can be used to support military operations, as well as war-supporting or war-sustaining industries (e.g., fuel storage facilities), have been regarded as military objectives (DoD Law of War Manual, § 5.6.8.5).

Proportionality in Conducting Attacks

When attacking a military objective, combatants have a duty to reduce the risk of incidental harm to the civilian population and other persons or objects that may not be made the object of attack. In short, combatants must (1) take feasible precautions in planning and conducting attacks to reduce the risk of harm to civilians and other persons and objects protected from being made the object of attack; and (2) refrain from attacks in which the expected loss of civilian life, injury to civilians, and damage to civilian objects incidental to the attack would be excessive in relation to the concrete and direct military advantage expected to be gained. (AP I, art. 57(2)(a)(iii); DoD Law of War Manual, § 5.10).

The Israeli airstrike shut down the port facility, damaging several fuel storage tanks and large container cranes used to unload ships, as well as the city's power plant. Six people died and 87 were wounded. Shutting down the port will purportedly have an effect of reducing the amount of humanitarian aid that flows into the Houthi-controlled areas in Yemen. Similarly, the destruction of the fuel storage tanks will result in fuel shortages throughout northern Yemen, and the damage to the power plant may impact the civilian population during the hot summer months.

The Israeli attack was limited to the port facility (and associated infrastructure); the airstrike was not directed at the civilian population center of the city. Only military objectives were attacked—port, fuel storage tanks, and ship unloading infrastructure. Although the status of the civilian casualties is unknown, they likely included dock workers and other civilians working at the port, which is clearly a valid military objective. Although these civilians would

not be considered to be directly participating in hostilities, much like civilian workers in a munitions factory, their activities at a location that is a clear military objective exposes them to an increased risk of incidental injury or death. Given the concrete and direct military advantage gained by eliminating the port as a transshipment point for Iranian weapons and as a base of operations for attacks on shipping, the loss of civilian life, injury to civilians, and damage to civilian objects incidental to the attack were clearly not excessive. Moreover, humanitarian aid can be rerouted to the southern port of Aden.

Regarding the damage to the power plant, “electric power stations are generally recognized to be of sufficient importance to a State’s capacity to meet its wartime needs of communication, transport and industry so as usually to qualify as military objectives during armed conflicts” (Eritrea Ethiopia Claims Commission, Partial Award, ¶117; DoD Law of War Manual, § 5.6.8.5). There is no evidence that the power station was segregated from the general power grid and limited to providing power for humanitarian purposes, “such as medical facilities, or other uses that could have no effect on the State’s ability to wage war” (Eritrea Ethiopia Claims Commission, Partial Award, ¶117). Moreover, the fact that the power plant was a “dual-use” facility can be taken into consideration when determining the amount of harm to the civilian population that is expected to result from the attack on such a military objective (DoD Law of War Manual, § 5.6.1.2).

Thus, the power station was clearly a military objective and any collateral effects—e.g., loss of air conditioning—during the summer months is minimal (at best) considering the concrete and direct military advantage gained by attacking the plant. This would only be relevant if it caused loss of life or injury to civilians. An otherwise lawful attack is not rendered unlawful simply because it causes minimal discomfort to the civilian population or diminishes civilian morale (DoD Law of War Manual, § 5.6.7.3).

Deterrence

Opponents to the attack correctly state that an isolated airstrike will not deter the Houthis from conducting further attacks against Israel. Similarly, sporadic strikes on land-based targets by States participating in Operation Prosperity Guardian have not effectively deterred the Houthis from conducting further attacks on commercial shipping. In fact, the Houthis are growing bolder each day by expanding the geographic scope of their operations to the Mediterranean Sea, Israel’s Haifa port, and the Arabian Sea. Nevertheless, even if the Israeli response does not have a deterrent effect, affecting the ability of the Houthis to conduct further terrorist acts against Israel meets the necessity requirement of self-defense.

To date, actions in self-defense by Israel and other States have been reactive rather than proactive and provide the Houthis a tactical advantage. If the international community is to succeed in meaningfully reducing Houthi attacks against Israel and commercial shipping, it must apply the lessons learned from the counter-piracy operations off Somalia.

In 2008, the UN Security Council adopted the first of fifteen resolutions to combat Somali piracy off the Horn of Africa. The UN-sanctioned counter-piracy operations initially included entry into the territorial sea of Somalia. It quickly became evident, however, that operations at sea and defensive measures implemented by the shipping industry were insufficient to effectively deter pirate attacks. Accordingly, the Security Council expanded the anti-piracy authorization to include operations on land. By March 2022, the piracy threat off the Horn of Africa had been all but eliminated and the counter-piracy mission ended. In assessing the success of the operation, Admiral James Stavridis, commander of the NATO counter-piracy effort, stated that “to defeat pirates operating from bases ashore you need to go ashore and neutralize the attacks before they successfully get out to sea. . . . When we began to strike the pirate bases ashore, capture or kill the pirates and destroy their equipment, the threat gradually reduced.”

Conclusion

Since the beginning of the conflict in Gaza, Israeli Prime Minister Benjamin Netanyahu has made it clear that Israel will harm anyone who harms Israel. The attack on the port of Hodeida emphasizes that “there is no place that the long arm of the State of Israel can’t reach.” The airstrike was also intended to be “a message of deterrence to the Houthis and to everybody else who is watching in the region.” If deterrence is to work, however, Israel (and the States participating in Operation Prosperity Guardian) must be willing to engage in more than isolated, sporadic responses to Houthi aggression.

Israeli defense minister Yoav Gallant indicated that the IDF is prepared to carry out similar strikes against military objectives “in any place where it may be required.” To succeed, this will require the political will to engage in a widespread and protracted bombing campaign, in coordination with other aligned States, designed to destroy all Houthi military objectives throughout Yemen that contribute to the ability to conduct long-range strikes against Israel. These military objectives include Houthi anti-ship ballistic and cruise missile and drone production facilities, command and control centers and targeting solution radar, missile and drone storage facilities, logistics bases, air defense systems, offensive missile batteries, radar sites, and port facilities like Hodeida. Further, key individual Houthi leadership must be targeted to raise the personal costs of continued acts of terrorisms against Israel and civilian commercial shipping.

Prof. Raul (Pete) Pedrozo (CAPT, USN, Ret.) is the Howard S. Levie Professor on the Law of Armed Conflict, U.S. Naval War College, Stockton Center for International Law.

Photo credit: U.S. Air Force

SUBSCRIBE