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Talking Foreign Policy: Untangling the Yemen Crisis

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TALKING FOREIGN POLICY - APRIL 24, 2019 BROADCAST: “UNTANGLING THE YEMEN CRISIS”¹

Michael Scharf: According to a recent UN report, the war in Yemen has become the worst humanitarian crisis on the planet. Welcome to Talking Foreign Policy. I'm your host Michael Scharf,² Dean of Case Western Reserve University School of Law. In this broadcast our expert panelists will be discussing the history of the Yemen conflict, the challenges to resolving it, and the prospects for achieving accountability for the war crimes that have been committed there. Joining us for the second segment today, as soon as his cab arrives, is Dr. Paul Williams,³ the President of the Public International Law and Policy Group, a Nobel Peace Prize nominated NGO that has provided legal counsel to a dozen peace negotiations over the past 22 years, including in Yemen. We're also joined and they're already here by Professor Milena Sterio,⁴ the Associate Dean of Cleveland State's Marshall College of Law and a renowned international law expert. Milena just returned from a meeting in Jordan with Yemeni prosecutors and judges, to discuss accountability options for Yemen. It's good to have you back on the show.

Milena Sterio: It is great to be here.

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1. Transcript edited and footnotes added by Cox Center Fellow Andrea Shaia.
 2. Michael Scharf is the Dean of Case Western Reserve University School of Law. He has also written and published extensively in the area of international law. *Michael Scharf*, CASE W. RES. UNIV. SCHOOL OF L., <https://case.edu/law/our-school/faculty-directory/michael-p-scharf> [<https://perma.cc/V62W-MYM9>].
 3. Paul Williams is a professor at American University Washington College of Law. He is also the president of the Public International Law & Policy Group, a Nobel-Peace-Prize-nominated NGO that has provided legal counsel in a dozen peace negotiations over the past twenty-two years. *Paul Williams*, AM. UNIV. WASH. COLLEGE OF L., <https://www.wcl.american.edu/community/faculty/profile/pwilliams/bio/> [<https://perma.cc/GZE7-5UKK>].
 4. Milena Sterio is the Associate Dean of Cleveland Marshall College of Law and a renowned international law expert. *Milena Sterio*, CLEV. MARSHALL COLLEGE OF L., <https://www.law.csuohio.edu/newsevents/featuredfaculty/milena-sterio> [<https://perma.cc/565E-5J8M>].

Michael Scharf: We also have Professor Colonel Jim Johnson,⁵ the director of the Case Western Reserve University war crimes research office and a former chief of prosecutions of the special court for Sierra Leone. Jim recently launched the Yemen Accountability Project at Case Western which aims to map the war crimes committed during the conflict. Welcome back to the show Jim.

Jim Johnson: Thank you Michael. It's great to be here.

Michael Scharf: And finally, we have a new guest. Dr. Laura Graham,⁶ a former professor of genocide studies at Tufts University, who is currently a student at Case Western Reserve University School of Law. Laura is the director of the Yemen Accountability Project which has a staff of 70 student volunteers. Welcome to Talking Foreign Policy Laura.

Laura Graham: Thanks for having me.

Michael Scharf: Let's start with a refresher on the history of the Yemen situation. It's a complex war and you practically need to have a scorecard to keep track of the warring parties. Milena Sterio you were meeting with representatives of Yemen just a month ago. Can you tell us about the different sides and the conflicts and what they are fighting for?

Milena Sterio: Sure, so just to explain where this all started Yemen the current state of Yemen wasn't created until 1990 when the northern part of Yemen, which until that point had been called the Yemeni Arab Republic, and had been backed by the US and Saudi Arabia, was United with the southern part of Yemen, which at the time was called the People's Democratic Republic of Yemen and it had been backed by the USSR.⁷ From 1990 up until the Arab Spring in 2011,

5. Jim Johnson is a former prosecutor for the court of Sierra Leone, and now is an adjunct professor at Case Western Reserve School of Law where he teaches classes on international law and is the faculty advisor for the Yemen Accountability Project. *Jim Johnson*, CASE W. RES. UNIV. SCHOOL OF L., <https://case.edu/law/our-school/faculty-directory/adjunct-faculty> [<https://perma.cc/47VD-7MWR>].

6. Laura Graham has a Ph.D. and used to be a professor at several universities teaching class relating to justice studies and conflict studies. Laura is currently a first-year law student at Case Western University School of Law and is the director of the Yemen Accountability Project. Laura Graham, LINKEDIN, <https://www.linkedin.com/in/laura-graham-ph-d-9562085/> (last visited Feb 17, 2020).

7. Zachary Laub, *Yemen in Crisis*, COUNCIL ON FOREIGN REL. (Apr. 19, 2016), <https://www.cfr.org/background/yemen-crisis> [<https://perma.cc/CK7X-YR7U>].

Yemen was ruled by a dictator called Saleh, and there were widespread allegations of corruption human rights abuses; things were relatively stable but the regime was certainly corrupt and doing lots of bad things.⁸ In the wake of the Arab Spring, there was also a revolution in Yemen which ousted Saleh from power, but instead of Saleh the new person who came to power was Al Hadi who used to be Saleh's vice president.⁹ He was perceived as a much weaker leader and that resulted in a rebellion by the Houthi rebels, who are supported by Iran.¹⁰ So right now on the one side there the Houthi rebels supported by Iran and on the other side there's the president Al Hadi who's supported by Saudi Arabia and really backed by most of the Western world including the United States, the UK, and France.¹¹ And to top it all off there's also al Qaeda and ISIS which are also present mostly in the southern part of Yemen.¹²

Michael Scharf: So, Jim Johnson as someone, who has personally prosecuted war crimes and crimes against humanity before international tribunals, who are the victims of the Yemen conflict?

Jim Johnson: Well as in most of these conflicts Michael the victims are civilians. They're the young, the old. They are those who are not taking any active part in the hostility. In the worst cases you have these civilians being targeted intentionally, and in many many other cases, you have no effort by the warring factions to discriminate between civilians and what might be legitimate military targets.¹³ Civilians may be attacked because of their religious affiliation, of what ethnic group they belong to, of who their purser who they are perceived to support in this conflict aren't just on what side of these of the conflict they're on.¹⁴ So it's civilians, it's the innocents that are the victims of this conflict.

Michael Scharf: So, as I said at the top of the broadcast the UN is characterizing Yemen as the worst humanitarian crisis on the planet

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.*

12. *See generally id.*

13. *Yemen Events of 2017*, HUM, RTS. WATCH, <https://www.hrw.org/world-report/2018/country-chapters/yemen> [<https://perma.cc/KVE4-89RJ>].

14. *See id.*

today.¹⁵ Milena how does the Yemen carnage that Jim was describing compared with places like Syria, Afghanistan, Libya, and Burma?

Milena Sterio: Sure, so you know it is very hard to place a value on different crises and say that Libya is a two and Yemen is a three and Syria is a four. But I do believe that the Yemen crisis right now is one of the worst, and I think the world really wasn't paying much attention to it until very recently. Maybe because we were so focused on Syria where we definitely experienced the very serious crises¹⁶ but the one in Yemen right now is just as serious. Afghanistan you know was a serious perhaps in the 90s. In post 9/11, things seem to be perhaps a little bit better there now. Libya though is unraveling, and we might unfortunately we might see a large humanitarian crisis in full unfolding there. In Burma, we know that the Rohingya population was persecuted and we saw a serious crisis there.¹⁷ But I would say that Yemen definitely is in a very difficult situation right now.

Michael Scharf: Well last week there were terrorist incidents in Sri Lanka, three hundred people died, and the world took note.¹⁸ There have been sixty thousand casualties in the Yemen crisis.¹⁹ Laura Graham why do you think most Americans aren't paying attention to the Yemen situation.

Laura Graham: Well I think most Americans don't really see how this conflict affects their lives and until last fall when the New York Times started to publish photos of what mass starvation looks like in Yemen, people really didn't have much of an interest in it and in part

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15. *Humanitarian Crisis in Yemen Remains the Worst in the World, Warns UN*, U.N. NEWS (Feb. 14, 2019), <https://news.un.org/en/story/2019/02/1032811> [<https://perma.cc/3RXZ-Z4DN>] [hereinafter *U.N. Warning on Yemen*].
 16. *Grave Concern Over Escalating Humanitarian Crisis, Casualties, Displacement Across Northwest Syria: UN*, U.N. NEWS (May 2, 2019), <https://news.un.org/en/story/2019/05/1037771> [<https://perma.cc/5FAJ-BPJS>].
 17. *Rebecca Ratcliffe, Who are the Rohingya and What is Happening in Myanmar?*, THE GUARDIAN (Sept. 5, 2017), <https://www.theguardian.com/global-development/2017/sep/06/who-are-the-rohingya-and-what-is-happening-in-myanmar> [<https://perma.cc/2HHM-FXBJ>].
 18. *Grief, Anger and Recriminations in Sri Lanka as ISIS Claims It Staged Bomb Attacks*, N.Y. TIMES (Apr. 23, 2019), <https://www.nytimes.com/2019/04/23/world/asia/sri-lanka-bombing.html?module=inline> [<https://perma.cc/UKX2-BZXG>].
 19. *Ceasefire Ends Intense Fighting in Yemen Port City*, CBC (Dec. 17, 2018), <https://www.cbc.ca/news/world/yemen-ceasefire-1.4950195> [<https://perma.cc/FD86-ZG75>].

that goes back to Milena's point that what was happening in Syria at the time and fighting against ISIS it has just been more important to the American public.

Michael Scharf: Well so Milena, in addition to the number of victims and the photos of mass starvation why should we as Americans care about Yemen? Are their strategically important interests at stake here?

Milena Sterio: Sure, so because this conflict has truly emerged as a proxy war between Houthi rebels backed by Iran and then the official government backed by Saudi Arabia, I would say that there's definitely a big threat in Yemen to Saudi Arabia and countries that back Saudi Arabia including the United States. To the extent that we care about containing the influence of Iran in the region, we really should care about what's going on in Yemen because the Houthi rebels had overtaken a very large part of the Yemeni Yemeni territory.²⁰ There's also a geographic strategic importance here because the Houthi rebels for a while had been controlling the Red Sea port of Hodeidah which is a very important strategic point.²¹ And then the other very important reason to pay attention is that we have seen a resurgence of al Qaeda and ISIS forces in Yemen.²² We know that ISIS for now has been defeated in Syria, but most experts agree that Isis will re-emerge whether it's in Syria, Iraq, or in Yemen.²³ And so I think we definitely should be paying attention.

Michael Scharf: Are there also a lot of refugee flows that we should be concerned about?

Milena Sterio: Definitely. So because of the situation in Syria there have been very large refugee flows coming out of Syria and now

20. *Yemen's Houthi Rebels Hand Over Control of Port City of Hodeidah*, CBC (Dec. 29, 2018), <https://www.cbc.ca/news/world/yemen-houthi-ceasefire-exchange-1.4961426> [https://perma.cc/BY99-LHVT] [hereinafter *Rebels Hand over Control of Hodeidah*].

21. *Id.*

22. Sudarsan Raghavan, *With the ISIS Caliphate Defeated in Syria, an Islamist Militant Rivalry Takes Root in Yemen*, WASH. POST (Apr. 14, 2019), https://www.washingtonpost.com/world/middle_east/with-the-once-declared-caliphate-of-isis-defeated-in-syria-an-islamist-militant-rivalry-takes-root-in-yemen/2019/04/13/d54148a6-34d3-4a67-a40a-9dc4f783338e_story.html?utm_term=.39d9c37b9a73 [https://perma.cc/P8F2-TM8F].

23. *The Current State of ISIS*, NPR (July 21, 2018), <https://www.npr.org/2018/07/21/631089434/the-current-state-of-isis> [https://perma.cc/92PK-NSQC].

with the situation in Yemen there have been refugee flows coming out of Yemen.²⁴ And all of that is a big threat to the overall stability in the Middle East.²⁵

Michael Scharf: You know to put that in perspective I was reading recently that you can connect the dots between the refugee flows out of Syria and Brexit and so when you talk about the threat to stability in the Middle East it could be also to Europe.²⁶

Milena Sterio: Absolutely

Michael Scharf: Right. So, you were talking about sort of a greater struggle, a proxy war between Iran and Saudi Arabia. Tell us more about what's going on in the Middle East with respect to those two countries.

Milena Sterio: Sure so the Houthi rebels in Yemen are backed by Iran.²⁷ Iran officially denies it, but most experts agree that Iran is backing the Houthi rebel movement and most of those individuals are Shia Muslims and in Iran is a predominantly Shia country.²⁸ The official government is backed by Saudi Arabia and its allies including the United States, United Kingdom, and France²⁹ and most of the allies.

Michael Scharf: And there's a Sunni government so they have an affinity with Saudi Arabia

Milena Sterio: Exactly so this is Sunni majority government has an affinity with Saudi Arabia and because of the Saudi Arabian involvement in the conflict, most of the weapons and other training logistical support has been provided by countries like the United States,

24. *Refugee Crisis Poses Long-term Threats to the Middle East*, ARAB WEEKLY (Nov. 25, 2018), <https://the arabweekly.com/refugee-crisis-poses-long-term-threats-middle-east> [<https://perma.cc/Y425-WQKN>].

25. *Id.*

26. See Esther Yu Hsi Lee, *Brexit Is Very Bad News for Refugees*, THINKPROGRESS (June 24, 2016), <https://thinkprogress.org/brexit-is-very-bad-news-for-refugees-d43c8800f9b4/> [<https://perma.cc/8XLS-5M27>].

27. Bruce Riedel, *Who are the Houthis, and Why are We at War with Them?*, BROOKINGS (Dec. 18, 2017), <https://www.brookings.edu/blog/markaz/2017/12/18/who-are-the-houthis-and-why-are-we-at-war-with-them/> [<https://perma.cc/VKP8-VR9Y>].

28. *Id.*

29. Laub, *supra* note 7.

the UK, and France.³⁰ And so it is going to be very difficult to stabilize the conflict without trying to contain Saudi Arabia's involvement, but again Saudi Arabia's involvement is linked to the involvement of countries like the U.S. the UK and France.

Michael Scharf: You know in thinking about this proxy war I think there are some good reasons to be worried about Iran. They've been meddling in Syria.³¹ They've been meddling elsewhere.³² They've been supporting some terrorist groups.³³ There have been arguments about why the Iranian nuclear deal should be discontinued.³⁴ Do you feel that it is a good policy for the United States to support the other side whenever Iran is involved?

Milena Sterio: No I don't think it's a good policy because the problem with this, although we should be worried about what Iran is doing and containing Iran, I also think that we shouldn't be giving carte blanche to Saudi Arabia because especially in this conflict, the Saudis have been accused of launching indiscriminate attacks and committing atrocities against civilians in Yemen.³⁵ And so I think that's a very dangerous policy to say we're going to support Saudi Arabia, provide them with weapons, do anything we can to support them without really trying to contain what they are doing.

Michael Scharf: And Laura your team has been documenting the kinds of victimization that is occurring because of these bombings. What can you tell us about it? How can you quantify that for us?

Laura Graham: That's right well we've been looking at the armed conflict location and event data projects and trying to corroborate that and we found that there have been over 67,000 civilian casualties since

30. *Id.*

31. Martin Reardon, *Saudi Arabia, Iran and the 'Great Game' in Yemen*, AL JAZEERA (Mar. 26, 2015), <https://www.aljazeera.com/indepth/opinion/2014/09/saudi-arabia-iran-great-game-ye-201492984846324440.html> [<https://perma.cc/M3HQ-XXVM>].

32. *Id.*

33. *Id.*

34. Jonathan Tirone, *Iran's Nuclear Program*, BLOOMBERG (May 8, 2019), <https://www.bloomberg.com/quicktake/irans-uranium-enrichment> [<https://perma.cc/5E8Z-ZLVW>].

35. Thanassis Cambanis & Michael Wahid Hanna, *The War in Yemen Is a Tragedy and America Can End Its Complicity*, CENTURY FOUND. (Oct. 24, 2018), <https://tcf.org/content/commentary/war-yemen-tragedy-america-can-end-complicity/?agreed=1> [<https://perma.cc/XY3T-B5NB>].

2016.³⁶ And there are an additional 10 million people who are at risk of mass starvation.³⁷ And so this is all a combination of attacks against civilians that are being committed by the Saudi-led coalition as well as the Houthi rebels with about two-thirds of those casualties being attributed to the Saudi-led coalition³⁸ and the other third attributed to Houthi rebels.

Michael Scharf: And let me ask Colonel Jim Johnson a question about that. So the U.S. has reportedly provided 4.5 billion dollars in arms to Saudi Arabia within the last year.³⁹ With your experience, 30 years in the military and as an international prosecutor, do you believe that those arms that are coming from the United States are being used to facilitate the war crimes in Yemen?

Jim Johnson: Yes. There is ample evidence to show that U.S. arms are indeed being used by the Saudi-led coalition in their actions in Yemen and of course many of these actions are causing civilian casualties and potentially war crimes.⁴⁰ The U.S. is if not the largest supplier certainly one of the largest suppliers of arms and ammunition to the Saudi Arabians and to other members of the Saudi-led coalition.⁴¹ In addition, we of course have U.S. providing spare parts for the weapons systems, for the airplanes that are U.S. made airplanes being

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36. *More than 70,000 Killed in Yemen's Civil War: ACLED*, AL JAZEERA (Apr. 19, 2019), <https://www.aljazeera.com/news/2019/04/yemen-war-death-toll-reaches-70000-report-190419120508897.html> [<https://perma.cc/MP37-EM4V>].
37. *14 Million People in Yemen Face 'Imminent and Great Big Famine'*, NBC (Oct. 24, 2018), <https://www.nbcnews.com/news/world/14-million-people-yemen-face-imminent-great-big-famine-n923756> [<https://perma.cc/L664-B9P5>].
38. Robbie Gramer & Lara Seligman, *Trump's Yemen Veto Could Still Cost Saudis*, FOREIGN POLICY (Apr. 18, 2019), <https://foreignpolicy.com/2019/04/18/trumps-yemen-veto-could-still-cost-saudis-middle-east-congress-lawmakers-after-veto-sanctions-saudi-officials-arms-sales-humanitarian-crisis/> [<https://perma.cc/9PC5-CUMD>].
39. WILLIAM HARTUNG & CHRISTINA ARABIA, CTR. INT'L POL'Y, TRENDS IN MAJOR U.S. ARMS SALES IN 2018: THE TRUMP RECORD RHETORIC VERSUS REALITY 2 (2019).
40. Declan Walsh & Eric Schmitt, *Arms Sales to Saudis Leave American Fingerprints on Yemen's Carnage*, N.Y. TIMES (Dec. 25, 2018), <https://www.nytimes.com/2018/12/25/world/middleeast/yemen-us-saudi-civilian-war.html> [<https://perma.cc/4Q79-VU5D>].
41. Angela Dewan, *These are the Countries still Selling Arms to Saudi Arabia*, CNN (Nov. 23, 2018), <https://www.cnn.com/2018/11/22/middleeast/arms-exports-saudi-arabia-intl/index.html> [<https://perma.cc/VG3D-SW59>].

used in those airstrikes, maintenance, technical assistance, as well as intelligence support, and refueling.⁴²

This is of course so much that you've seen the action by the U.S. Congress just lately and we'll be talking about more concerns on how U.S. weapons are being used.

Michael Scharf: Well, I do want to ask you this, if the U.S. is facilitating Saudi war crimes as a criminal prosecutor does that implicate the United States in those crimes?

Jim Johnson: That raises many, many red flags as far as to the extent the U.S. may be aiding and abetting in the commission of war crimes.⁴³

Michael Scharf: All right. Well with that sober thought, it is time for a short station break. When we return, we'll be talking about the prospects for peace in Yemen. We'll be back in just a moment.

BREAK

Michael Scharf: Welcome back to talking foreign policy, brought to you by Case Western Reserve University and WCPN 90.3 ideastream. I'm Michael Scharf, Dean of Case Western Reserve University School of Law, and your host. We're talking today about the bloody conflict in Yemen which most Americans don't know much about. Before the break we were discussing the causes of the conflict. Now let's turn to the prospects for peace. Milena Sterio, you just returned from meetings in Jordan with individuals involved in the Yemen peace process. What is the current status of peace negotiations in that country?

Milena Sterio: So, in December of 2018, the representatives from the official government as well as the Houthi rebels actually met for peace talks in Sweden and these peace talks were sponsored by the United Nations.⁴⁴ And both sides agreed to a number of things. So they agreed for example, that Houthi rebels were supposed to withdraw from the Hodeidah seaport which had been under siege.⁴⁵ And that was hugely important because humanitarian shipments, food, medicine all

42. Cambanis & Hannah, *supra* note 35.

43. *Id.*

44. Declan Walsh, *Yemen Peace Talks Begin with Agreement to Free 5,000 Prisoners*, N.Y. TIMES (Dec. 6, 2018), <https://www.nytimes.com/2018/12/06/world/middleeast/yemen-peace-talks.html> [<https://perma.cc/APP2-7R6H>].

45. *Rebels Hand over Control of Hodeidah*, *supra* note 20.

of that had been arriving through the Hodeidah seaport and that was under siege.⁴⁶ So they're supposed to withdraw and the UN is supposed to supervise and make sure that their humanitarian corridors there.⁴⁷ They also agreed on the creation of additional humanitarian corridors in other parts of the country, and they also agreed to a large prisoner swap.⁴⁸ The problem today is that most people think that these the things that the parties agree to are not being properly implemented.⁴⁹ That the parties are actually not sticking to their promises.

Michael Scharf: Alright and as promised Paul Williams has just arrived. Paul you were involved in peace talks in Yemen between 2011 and 2014 as the legal adviser to U.N. envoy Jamal Benomar. Tell us about that experience.

Paul Williams: The experience working as a legal adviser on the peace process was quite frankly astounding. It was almost as if the peace process was a Rubik's Cube and just as you lined up one of the colors on one of the sides and had some progress on the Constitution or a ceasefire, you'd look at the rest of the process. And it was that total mess with all the different colors you trying to get all of the different factions, the different parties, the different issues, the different interests aligned is hugely complicated.

Michael Scharf: So, Milena was telling us about the current status. What do you think were the lessons learned from the 2011, 2014 peace talks and how do you think those should inform the current peace process?

Paul Williams: The that we learned from the earlier peace process was that you need to heavily incentivize the parties towards peace and not towards war. There was never a full commitment by the members of the Security Council or by the sponsors of the various factions to commit fully to peace. They always kept conflict in their back pocket, and in fact, on the way to the Parliament, the special representative, the president who was carrying the Constitution to the Parliament for

46. *Id.*

47. *Id.*

48. Walsh, *supra* note 44.

49. *London Meeting to Discuss 'Next Steps' for Yemen Peace Process*, AL JAZEERA (Apr. 26, 2019), <https://www.aljazeera.com/news/2019/04/london-meeting-discuss-steps-yemen-peace-process-190426093936744.html> [https://perma.cc/LTA2-C97F].

approval was kidnapped.⁵⁰ The Houthis grabbed the Constitution and tore it up because they opted to go with their backers the Iranians on the use of force. And it had never been made explicitly clear that the use of force is off the table. We see the consequences of that. This next round has to be full and commitment to peace with the parties backing down from this notion of supporting the armed struggle.

Michael Scharf: Well, let me ask you a follow-up. Some experts believe that the best chance of winding down the war is to increase U.S. pressure on Saudi Arabia to end its aerial bombing campaign and also to more actively pursue a peace deal with the Houthi rebels.⁵¹ What's your take on that?

Paul Williams: That's correct.

Michael Scharf: And how would that be accomplished?

Paul Williams: This conflict cannot be won militarily. Just the nature of the terrain, the nature of the fractionalization of the population, and the inability of the Saudis, the UAE to commit any sense of serious ground support, makes this an unwinnable conflict. And you'll simply have 24 million Yemeni victims as the parties' sort of, you know, try to work it out on the battlefield. That is not going to work you need to retrench from that aggressive perspective and throw the lot completely in for peace talks.

Michael Scharf: So, we were talking earlier about the moral problems and even the legal problems of the U.S. supplying so many arms to Saudi Arabia which are being used against victims in Yemen. The houses of Congress in the United States recently voted to end American military assistance for Saudi Arabia's war in Yemen. And the vote was 257 to 176⁵² in the House of Representatives so that was

50. Nick Paton Walsh et al., *Shiite Rebels Abduct Yemeni President's Chief of Staff*, CNN (Jan. 17, 2015), <https://www.cnn.com/2015/01/17/world/yemen-abduction/index.html> [https://perma.cc/KHT3-83FN].

51. See Mohamad Bazzi, *The United States Could End the War in Yemen if it Wanted to*, ATLANTIC (Sept. 30, 2018), <https://www.theatlantic.com/international/archive/2018/09/iran-yemen-saudi-arabia/571465/> [https://perma.cc/R8JM-FBCC].

52. Jacob Pramuk, *House Votes to End U.S. Support for Yemen Conflict, Setting up Trump's Second Veto*, CNBC (Apr. 4, 2019), <https://www.cnbc.com/2019/04/04/house-passes-yemen-war-powers-resolution-setting-up-trump-veto.html> [https://perma.cc/69EY-E6R8].

bipartisan, and it was 54 to 46 in the Senate,⁵³ a little bit closer more Republicans hung together, but still some departed. Now President Trump just vetoed that legislation.⁵⁴ Let's go to Milena. Is there anything that Congress can do at this point to prevent continued provision of arms to Saudi Arabia for use in Yemen?

Milena Sterio: So, while Congress can for the listeners who might not be familiar with this, Congress can actually override the president with a two-thirds vote⁵⁵ So first I ...

Michael Scharf: They don't seem to have the votes for that.⁵⁶

Milena Sterio: Well, so right so they don't.⁵⁷ But they could right so if we had a two-thirds vote that could override the presidential veto. The other thing would be to try to draft a different bill that's a little bit different, that might get you more support. And I think the trick might be to actually come up with provisions that are very specific that would prohibit all sorts of support for the Saudi-led coalition, not just arm sales, but all sorts of logistical support because there are things that are not covered by this bill that even if this bill had been voted our government, our executive branch, could still say well, you didn't prohibit us from providing logistic support. You only prohibited us from selling arms. So, there are more, you know, different kinds of bills that can be drafted.

Michael Scharf: What is the general authority that gives the president the right to give four billion dollars in arms to the Saudis? That that has to come from legislation, right?

53. Catie Edmondson, *Senate Votes Again to End Aid to Saudi War in Yemen, Defying Trump*, N.Y. TIMES (Mar. 13, 2019), <https://www.nytimes.com/2019/03/13/us/politics/yemen-saudi-war-senate.html> [https://perma.cc/5UB5-YE5U].

54. Felicia Sonmez et al., *Trump Vetoes Resolution to End U.S. Participation in Yemen's Civil War*, WASH. POST (Apr. 16, 2019), https://www.washingtonpost.com/politics/trump-vetoes-resolution-to-end-us-participation-in-yemens-civil-war/2019/04/16/0fab312-60a1-11e9-bfad-36a7eb36cb60_story.html [https://perma.cc/875E-JWPU].

55. Karoun Demirjian & Missy Ryan, *Senate Fails to Override Trump's Veto of Resolution Demanding End to U.S. Involvement in Yemen War*, WASH. POST (May 2, 2019), https://www.washingtonpost.com/world/national-security/senate-fails-to-override-trumps-veto-of-resolution-demanding-end-to-us-involvement-in-yemen/2019/05/02/4bd0a524-6cf9-11e9-8f44-e8d8bb1df986_story.html?utm_term=.ccc8f1eda04e [https://perma.cc/2FCL-6YX3].

56. *Id.*

57. *Id.*

Milena Sterio: Well, so, there is the authorization for the use of military force that have been passed in the wake of 9/11 which President Obama, and then the Trump administration, had used very broadly had relied on very broadly to say basically so long as there is al Qaeda or any other associated forces anywhere in the world we can still rely on this 2002 authorization for the use of force to do things.⁵⁸ Right. There's also the president's inherent constitutional authorities or commander-in-chief that the executive branch can rely on so unless our Congress passes laws that specifically limit the president from doing things, the president can say but I'm the commander-in-chief and I can do this.⁵⁹

Michael Scharf: I was thinking, there's also military spending bills that give the president's the ability to buy arms and to provide them where he wants. Why can't we, the next time the military spending bill is up, why couldn't Congress you know put a tweak in that and say none of it can be used for Saudi Arabia, and then if the president did a veto it wouldn't just be a single bill he'd have to veto all of his spending around the world.

Milena Sterio: Sure, I mean that is absolutely a possibility, but I would say that when these especially large bills are passed that have to do with military spending, often they're not single item bills. They're bills that have lots of different items within them that could be somewhat fungible and so the executive branch has some discretion as to how money is spent. But definitely Congress has the power of the person and can limit spending.⁶⁰

Michael Scharf: All right, and I guess everybody here is convinced that the provision of assistance to Saudi Arabia and the continued bombing is not going to solve this. That's what you've all said. Does anybody have a different view on that?

58. See Jenna Portnoy, *Kaine Hopeful that Senators will Warm to New Military Force Authorization after Yemen Vote*, WASH. POST (Dec. 2018), https://www.washingtonpost.com/local/virginia-politics/kaine-hopeful-that-senators-will-warm-to-new-military-force-authorization-after-yemen-vote/2018/12/08/68496164-f8c8-11e8-863c-9e2f864d47e7_story.html?utm_term=.31b2c57ea713 [https://perma.cc/VK8B-WYSU].

59. Jonathan Masters, *U.S. Foreign Policy Powers: Congress and the President*, COUNCIL ON FOREIGN REL. (Mar. 2, 2017), <https://www.cfr.org/backgrounder/us-foreign-policy-powers-congress-and-president> [https://perma.cc/QG4Z-YP4Z].

60. *Id.*

Paul Williams: I would, this is Paul. I would just add to that. What's shocking is it's clear that the Saudis and the UE don't actually have a plan for winning the war or quite frankly winning the peace.

Michael Scharf: Just bombing, bombing, bombing.

Paul Williams: Yep, and so we're providing refueling, we're providing intelligence, we're providing these weapons as part of the Saudi initiative to fight the Houthis. But it's without a plan. And that's what's shocking, in addition to the possibility of being complicit in the various atrocities and other things, there's no one end in sight to this conflict. Because they don't simply have a roadmap for how they're going to win this war.

Michael Scharf: Alright. Well Paul, you as your job, and for 22 years you've been building these road maps. Let's start out with the question of how can the malleh, the militias, be convinced to give up their arms?

Paul Williams: This is all about power sharing. There are so many factions in so many dimensions to the conflict. You're going to need some type of highly decentralized state structure for Yemen.⁶¹ It's been a unitary state for decades.⁶² There's all kinds of local grievances. The need for local wealth sharing, it has a tremendous amount of oil resources, but it has never been distributed fairly and equitably. It's highly difficult to go from unitary state and a post-conflict state into a democratic or semi Democratic decentralized state.⁶³ But that's where the path to peace path to peace lies that's the solution.

Michael Scharf: Based on past precedents, what would you say is a concrete example of what you're talking about?

Paul Williams: So, you'd want to look at Bosnia as a situation. It's highly complex governing structure and it isn't a flourishing democratic or economic state, but it has kept the lid on the conflict and it's allowed for a degree of normalization in Bosnian in the surrounding states and the Balkans, many of whom are now European Union member states, are on that path. And it was a way in which everyone got a piece of the pie, and that's how you're gonna bring this conflict to an end. To initially give everyone a piece of the pie and then

61. Paul Williams et al., *A Legal Perspective on Yemen's Attempted Transition from a Unitary to a Federal System of Government*, 33 UTRECHT J. OF INT'L & EUR. L. 4, 5 (2017).

62. *Id.* at 6.

63. *Id.* at 11.

to work to develop an identity as Yemenis. The Yemen population has not had a coherent national identity for many decades.⁶⁴ It's been about the political elite trying to squeeze as much as they can out of the country, and basically you know ignoring the 24 million Yemenis.

Michael Scharf: And Milena, Yemen has been described as one of the poorest countries in the entire planet.⁶⁵ How should the international community approach its reconstruction as part of the peace process?

Milena Sterio: Sure. So just following up on what Paul said, that Yemen is actually not a resource poor country. There's oil.⁶⁶ There are other natural resources there.⁶⁷ So I think the trick to having peace and sustainable peace is making sure that there is actually a basic minimum standard of living for the Yemeni people which would have to involve making sure that those natural resources are used in a productive way and that they actually reach the local population. So, I think the peace sharing plan would have to involve an economic component, where there's actually, you know, a structural reform. Where there's actually a plan for how the economy is going to develop going forward.

Michael Scharf: And what role will the United Nations Security Council play in all of this?

Milena Sterio: Well, I mean so the Security Council is supposed to act when there is a threat to international peace and security.⁶⁸ So I think getting into economic reform, you get into this issue of is the Security Council acting outside of its mandate. But I would argue that it--so long as that economic restructuring is part of peacebuilding--the Security Council can actually act.

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64. Afrah Nasser, *Realignment of Yemen's Identity Politics*, AL JAZEERA (Aug. 26, 2015), <https://www.aljazeera.com/indepth/opinion/2015/08/realignment-yemen-identity-politics-150826125518647.html> [https://perma.cc/ZYL2-SND9].
65. *About Yemen*, U.N. DEVELOPMENT PROGRAMME, <http://www.ye.undp.org/content/yemen/en/home/countryinfo.html> [https://perma.cc/D73T-JL DL].
66. *What Are the Major Natural Resources of Yemen?*, WORLD ATLAS, <https://www.worldatlas.com/articles/what-are-the-major-natural-resources-of-yemen.html> [https://perma.cc/QG7P-6Z9N].
67. *Id.*
68. *Role of the Security Council*, U.N. PEACEKEEPING, <https://peacekeeping.un.org/en/role-of-security-council> [https://perma.cc/J9HT-M6CQ].

Michael Scharf: And I was actually asking the question in the broader context. What can the Security Council do at all to start to implement the kind of roadmap toward peace that Paul was describing?

Paul Williams: Well one of the very practical things that the Security Council can do is to undo an earlier resolution. When the conflict first started the Security Council members . . . which actually, this is one of the only conflicts where the permanent five work in a very collaborative fashion. You don't have these traditional divides that you see in Libya or in Syria or in Burma, and they thought that there would be a quick end to this conflict.⁶⁹ In part because the French, the British, the Americans were on the side of the Saudis.⁷⁰ And they passed a resolution which was essentially the Saudi roadmap to peace which is Houthis give up, go back to your two or three provinces, and let's go back to the old way that we were doing business in Yemen.⁷¹ That is a chapter seven Security Council resolution on the table that constrains what the negotiator can do and quite frankly what the parties at the table can do.⁷² The Security Council hardly unwinds, or seldom unwinds, its resolutions, but the very first thing it can do is say there's been a fundamental change in circumstances, and in order to promote peace we have to reconsider the options for what the framework for the peace plan might look like.

Michael Scharf: And politically you know the Security Council is really influenced by the five permanent members: the United States, Russia, China, the United Kingdom, France.⁷³ Which of those members would be interested in unwinding the former Security Council resolutions and setting this new path that you've described?

Paul Williams: Ironically, this would be a place where you would need the Russians or the Chinese to take the lead. Both of them have been heavily involved and, at the time when I was engaged in the peace process, were surprisingly constructive. The British, the French, the

69. *Yemen Crisis: Why is There a War?*, BBC (Mar. 21, 2019), <https://www.bbc.com/news/world-middle-east-29319423> [<https://perma.cc/CFP5-KYVB>] [hereinafter BBC, *Yemen Crisis*].

70. *Yemen Events of 2017*, *supra* note 13.

71. Afrah Nasser, *The Unfolding UN Failure in the Yemen War*, ATLANTIC COUNCIL (Sept. 21, 2017), <https://www.atlanticcouncil.org/blogs/menasource/the-unfolding-un-failure-in-the-yemen-war> [<https://perma.cc/BT3S-PXZG>].

72. *Id.*

73. *United Nations Security Council Fast Facts*, CNN (Apr. 2, 2019), <https://www.cnn.com/2013/09/03/world/united-nations-security-council-fast-facts/index.html> [<https://perma.cc/3FZB-L4SA>].

Americans, until they've reversed this process of being all in with the Saudis, I don't think are gonna take that initiative.

Michael Scharf: And this cozy relationship between the United States, France, the UK, and Saudi Arabia, is it all oil?

Paul Williams: Its oil and its opposition to Iran.

Michael Scharf: Okay.

Paul Williams: Saudi Arabia's the cornerstone of our policy. It would be easy for the Iranians and we're continuing to go all in on that.

Michael Scharf: So, I'd like to end this segment with a discussion of the tension between accountability and peace. Jim Johnson, from your experience as a prosecutor at the special court for Sierra Leone, do you think the imposition of accountability on those responsible for atrocity crimes in Yemen would hinder the chances for achieving the peace that Paul and Milena have been describing?

Jim Johnson: Well Michael, in my view, in the terms to bringing a long-term peace and a long-term solution justice, and accountability are very much a part of that process. There's always this tension after conflicts of this nature. Particularly where there are war crimes that have been or are being committed, war crimes and crimes against humanity, to trade justice for peace, in other words to bring everybody to the table, we will give amnesties. We will immunize those who have committed these crimes from any kind of justice or accountability mechanisms in the first. I think in the long-term solution that's not part of the solution. It was Daniel Webster who said 'justice sir is the greatest interest of man on earth it is the ligament which holds civilized beings and civilized nations together'. A component of justice has to be there. As prosecutors we were one of the few entities that were truly looking at the victims and bringing some kind of measure of justice to the victims. Nobody else is doing that. Typically, it's the victims in their interest that's the first casualty of trading justice for peace.

Michael Scharf: All right. So, let's make this more practical. If the Houthi rebel Houthi rebel leader is accused of war crimes for example, how do you negotiate with him a peace treaty were at the end of the day he's going to go to jail?

Jim Johnson: That's very difficult and fortunately I have someone here and then with Dr. Paul Williams that has tried to do just that but.

Michael Scharf: Let's talk about that Paul. So, you had that exact challenge when you were representing the Bosnian Muslims at the Dayton Peace Accords in those negotiations. How did that work out?

Paul Williams: Well let's pick this up on Yemen because there's interesting facts that I think frames this debate of peace verses justice as Jim just pointed out. In 2011, there was an initial peace agreement.⁷⁴ Article 1 of the peace agreement specifically provided for immunity for President Saleh and those associated with him in the crimes that he had committed.⁷⁵ When the war started again and so they traded, they wiped away justice for peace with a UN stamp on the top of it. When the conflict, when the Houthis were looking for an ally, they found President Saleh and the GPC, and their weapons caches, and their infrastructure, and it was President Saleh who reemerged with the Houthis to start this conflict that has plunged Yemen back into chaos.⁷⁶ So we know what happens in Yemen when you trade justice for peace, yet don't actually get justice and you don't actually get peace.

Michael Scharf: Now tell us about how it worked out in Bosnia?

Paul Williams: Okay so in Bosnia it was crucial because Karadzic and Mladic, who were the primary antagonists in Bosnia, were indicted by justice Goldstone of the Yugoslav tribunal in the summer before the Dayton Accords.⁷⁷ And they were excluded from the peace process. Milosevic was subsequently indicted after the negotiations for his role in the atrocities in Kosovo and the atrocities in Bosnia.⁷⁸ So you were able to in parallel, negotiate and at the same time build momentum with justice. So first carried it to Mladic, then the Dayton Peace Accords, and then Milosevic which was brought in. You can do these things in parallel same right now Bashir everyone said if you indict the President of Sudan, Omar Bashir, for genocide crimes against humanity how are you going to get peace in Sudan. Well he was toppled by his own people and they've had an oar in the process of democratic

74. *Yemeni President Saleh Signs Deal on Ceding Power*, BBC (Nov. 23, 2011), <https://www.bbc.com/news/world-middle-east-15858911> [<https://perma.cc/YLN2-BXJN>].

75. *Id.*

76. *See Faisal Edroos, Yemen: Who was Ali Abdullah Saleh?*, AL JAZEERA (Dec. 5, 2017), <https://www.aljazeera.com/indepth/spotlight/yemen/2011/02/201122812118938648.html> [<https://perma.cc/FUF8-QFEB>].

77. *See* DIANE F. ORENTLICHER, *THAT SOMEONE GUILTY BE PUNISHED THE IMPACT OF THE ICTY IN BOSNIA* 24-25 (2010).

78. *Id.* at 25, 69.

transformation in Sudan⁷⁹ and the barrier, the indictment was not a bar to the people picking up and basically changing their regime. It's not a magic wand, but you can certainly have justice woven into the peace process and without it you're not gonna get a durable peace.

Michael Scharf: So, Milena, at the risk of a shameless plug you and I have just published a book with Cambridge University Press about the legacy of the Yugoslavia and Rwanda Tribunal's. What's your take from that experience writing that book, dealing with those issues, putting it in the big context? What does that tell you about the big picture of trading justice for peace?

Milena Sterio: Well so I absolutely agree with Paul that pursuing justice is not a bar to having peace as the experience of the Yugoslavia and the run the tribunal have shown. And I think to go back to your question about you know peace and justice; I think that the most important question to ask is how to sequence the two. Right whether you pursue both at the same time, whether you pursue justice first and then pursue peace negotiations. But I think the experience from Yugoslavia and Rhonda shows that you can have both as long as you time it properly.

Michael Scharf: Okay well it's time for another short break. When we return, we'll talk about efforts to achieve accountability for the terrible atrocities in Yemen. Back in a moment.

BREAK

Michael Scharf: This is Michael Scharf and we're back with Talking Foreign Policy. I'm joined today by some of the world's foremost international law experts, and we've been talking about Yemen, the worst humanitarian crisis on the planet.⁸⁰ In this final segment of our broadcast we'll be looking at efforts to bring the perpetrators of some of the worst imaginable crimes seen in years to justice. Let's begin with Laura Graham and Jim Johnson. The two of you have launched the Yemen Accountability Project at Case Western Reserve University School of Law.⁸¹ Laura let's start with you; can you tell us about that?

79. *Omar al-Bashir Ousted: How Sudan Got Here*, BCC (Apr. 11, 2019), <https://www.bbc.com/news/world-africa-47892742> [<https://perma.cc/PA8H-GVQ5>].

80. *U.N. Warning on Yemen*, *supra* note 15.

81. *CWRU Law Launches Yemen Accountability Project to Document War Crimes for Future Prosecution*, CASE W. RES. UNIV. SCHOOL OF L. (Jan. 11, 2019), <https://law.case.edu/Academics/Centers-and-Institutes/Cox->

Laura Graham: Sure, well the Yemen accountability project is a student-run organization and we document evidence of war crimes, and we analyze that, and produce white papers and sample indictments.⁸² And so some of the things that we've seen specifically are use of starvation as a means of war.⁸³ We've seen targeting of civilians and indiscriminate bombings on civilians as well as targeting of forbidden sites such as religious sites and hospitals.⁸⁴ And so all of this counts as war crimes.⁸⁵

Michael Scharf: And Jim, this was your brainchild. You said one day let's create the Yemen Accountability Project. How did this all unfold?

Jim Johnson: Well I'd like to take full credit for it but we did have an example of a very similar project initiated by David Crane, a prosecutor at the special court for Sierra Leone, at Syracuse University with the Syrian Accountability Project.⁸⁶ And they have been working now for eight years to document crimes in the Syrian conflict, to identify those crimes, to build a number of different products, and help facilitate really what this is about is to help facilitate future prosecutions for those that have committed these crimes in Syria for the Syrian project and of course in Yemen for our project.⁸⁷

Michael Scharf: And I think Paul was mentioning what happens when you don't prosecute. It's sort of that old Hitler quote that everybody knows you know 'who after all remembers the fate of the Armenians' he said in 1939 as a way of saying let's go do horrible things

International-Law-Center/News/ArtMID/791/ArticleID/1691
[<https://perma.cc/W4TA-86VX>] [hereinafter *Case Western YAP*].

82. *Id.*

83. Emily Thornberry, *The Famine Facing Yemen is a War Crime it Must be Investigated*, *GUARDIAN* (Nov. 22, 2018), <https://www.theguardian.com/commentisfree/2018/nov/22/famine-yemen-war-crime-civilians-saudi-coalition> [<https://perma.cc/8P75-MTXK>].

84. Patrick Wintour, *All Sides in Yemen may be Responsible for War Crimes, Say UN Experts*, *THE GUARDIAN* (Aug. 28, 2018), <https://www.theguardian.com/world/2018/aug/28/all-sides-in-yemen-may-be-responsible-for-war-crimes-say-un-experts> [<https://perma.cc/FTY9-QFCR>].

85. *Id.*

86. *The Syrian Accountability Project*, SYRACUSE UNIV. COLLEGE OF L., <http://syrianaccountabilityproject.syr.edu/> [<https://perma.cc/HF86-LXF3>].

87. *See id.*

and nobody will ever prosecute us.⁸⁸ And that's the concern if the people who've committed these war crimes and crimes against humanity in Yemen are not prosecuted they'll do what you were describing Paul, they'll just launch more war crimes with impunity. And I suppose the other problem is that there will be revenge killing. If they're not held responsible, then people will take justice into their own hands.

Jim Johnson: That's right. I mean you like to hope that you can forgive and forget is very much kind of the idea behind trading peace for justice. But practically that doesn't happen. They don't. hey may forgive initially, but they certainly don't forget. And if you don't bring these perpetrators to justice, as Paul has mentioned, they come back.

Paul Williams: Yeah

Michael Scharf: Well the Yemen Accountability Project reminds me a little bit of the movie *Field of Dreams* with Kevin Costner. "If you build it, he will come" the voice would say.⁸⁹ But there's no real guarantee that anybody's going to use the materials that Laura, you and the students have been producing. Milena, what are the potential mechanisms for accountability for those alleged to have committed atrocity crimes in Yemen?

Milena Sterio: Sure, so there are different accountability mechanisms that you can explore in any conflict and so then we just briefly mention some of those. One option obviously is to have national prosecutions.⁹⁰ So you could prosecute individuals who commit across its atrocities in Yemen. In light of the fact that right now there's a conflict in Yemen that doesn't seem likely to happen in the near future. You could also have a regional court prosecutor. For example, in Africa the former dictator from Chad, Habré, was prosecuted in a Regional Court so that's always an option.⁹¹ You could set up a hybrid tribunal

88. Geoffrey Robertson, *The Armenians Want an Acknowledgment that the 1915 Massacre was a Crime*, THE GUARDIAN (Jan. 23, 2015), <https://www.theguardian.com/books/2015/jan/23/armenians-want-acknowledgment-that-1915-massacre-was-crime-geoffrey-robertson> [<https://perma.cc/5UGC-KNRS>].

89. *Field of Dreams*, IMBD, <https://www.imdb.com/title/tt0097351/trivia> [<https://perma.cc/JW72-9V5X>].

90. *Rule 158 Prosecution of War Crimes*, ICRC, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule158 [<https://perma.cc/4GDQ-APCB>] [hereinafter *Rule 158*].

91. See Ruth Maclean, *Ex-Chad Dictator's Conviction for Crimes Against Humanity Upheld by Dakar Court*, THE GUARDIAN (Apr. 27, 2017), <https://www.theguardian.com/world/2017/apr/27/conviction-chad->

which is typically established through the agreement of the host country in the UN and we saw that in Sierra Leone and in Lebanon.⁹² You could establish an international ad hoc tribunal, like what we saw in the former Yugoslavia and Rwanda and for that you typically need a Security Council resolution.⁹³ And then we could also talk about the International Criminal Court as an option,⁹⁴ although Yemen is not a member state of the ICC.⁹⁵ So you could really only prosecute so-called foreign fighters, those who are fighting in Yemen but who are Nationals of member states of the International Criminal Court.⁹⁶

Michael Scharf: And when you mentioned the national courts, I think you were focusing on Yemen, but couldn't they also be prosecuted in far off places like in Europe? Isn't that what's happening to the Syrians today?

Milena Sterio: Absolutely. So, with regard to Syrian nationals there are actually now prosecutions in Sweden and Germany.⁹⁷ I think most of them are actually in Germany where individuals are being prosecuted for atrocities that they committed in Syria. There are countries that have the so-called universal jurisdiction statutes.⁹⁸ And then there are countries that are prosecuting individuals who are dual national.⁹⁹ So you might have someone who's a dual German and Syrian

hissene-habre-crimes-against-humanity-upheld [<https://perma.cc/H5YP-BWJ7>].

92. *International and Hybrid Criminal Courts and Tribunals*, U.N., <https://www.un.org/ruleoflaw/thematic-areas/international-law-courts-tribunals/international-hybrid-criminal-courts-tribunals/> [<https://perma.cc/6MN2-7Z56>].

93. *Ad Hoc Tribunals*, ICRC, <https://www.icrc.org/en/doc/war-and-law/international-criminal-jurisdiction/ad-hoc-tribunals/overview-ad-hoc-tribunals.htm> [<https://perma.cc/4GV2-LM7U>].

94. *Rule 158*, *supra* note 90.

95. *The States Parties to the Rome Statute*, ICC, https://asp.icc-cpi.int/en_menus/asp/states%20parties/pages/the%20states%20parties%20to%20the%20rome%20statute.aspx [<https://perma.cc/T3V7-T7Y3>].

96. *See generally How the Court Works*, ICC, <https://www.icc-cpi.int/about/how-the-court-works> [<https://perma.cc/9A33-AJ2M>].

97. Maria Elena Vignoli, *These are the Crimes we are Fleeing: Justice for Syria in Swedish and German Courts*, HUM. RTS. WATCH (Oct. 3, 2017), <https://www.hrw.org/report/2017/10/03/these-are-crimes-we-are-fleeing/justice-syria-swedish-and-german-courts> [<https://perma.cc/J38E-3JVS>].

98. *Id.*

99. *Id.*

national and now they're being prosecuted in Germany. So yes, there could be national prosecutions elsewhere.

Michael Scharf: And you wanted to chime in Paul.

Paul Williams: Yeah Mike. I just want to jump in here that it's important to keep this in perspective. In every conflict that I've been engaged in, we have this question of well where's the mechanism are we really going to have justice. Okay you've convinced me we can't have peace without justice but what's the mechanism. And you remember when you and I were at the State Department in the office of legal advisors in the early 90s, we were part of a group that was saying we ought to have accountability in Yugoslavia. We were scoffed at. And then we helped partake in sort of building that tribunal which eventually indicted over 161 individuals including the first head of state.¹⁰⁰ And then there was the Sierra Leone tribunal, and the Rwanda tribunal, the Cambodia tribunal, and the Special Tribunal for Lebanon the International Lebanon, the International Criminal Court. You don't always see justice right in front of you at any moment of a conflict, but it is such a different universe than when we grew up as young lawyers. There is this desire for accountability. People don't forgive and forget and there are plenty of mechanisms that are continuing it's a very entrepreneurial field. I'm surprised. They're always finding ways to hold people accountable for their atrocities, and that's what's so you know engaging on this.

Michael Scharf: And one of the interesting dynamics is at the Security Council and the UN where the Security Council members have been vetoing efforts to have accountability mechanisms, for example for Syria or for Burma¹⁰¹ and yet the UN General Assembly created a mechanism for the investigation for ultimate prosecutions of the perpetrators in Syria.¹⁰² And the UN Human Rights Commission has

100. *The Fugitives*, U.N. INT'L. CRIM. TRIB. FOR THE FORMER YUGOSLAVIA, <http://www.icty.org/en/about/office-of-the-prosecutor/the-fugitives> [<https://perma.cc/M9T7-AZ8H>].

101. *Russia and China Veto UN Resolution Against Syrian Regime*, THE GUARDIAN (Oct. 4, 2011), <https://www.theguardian.com/world/2011/oct/05/russia-china-veto-syria-resolution> [<https://perma.cc/P4DR-D4LV>].

102. Press Release, General Assembly, Head of International Mechanism on Syria Describes Progress Documenting Crimes Committed by Both Sides, as General Assembly Takes Up Report, U.N. Press Release GA/12139 (Apr. 23, 2019).

done the same thing recently for Burma.¹⁰³ Has there been any efforts or talk about doing something like that for Yemen?

Paul Williams: Yeah, the genie of justice is clearly out of the bottle. And I think that's what we're learning is even if the Security Council is not cooperating and is trying to stifle efforts, justice will find a way of making its voice heard. And you're seeing that you're seeing that in Yemen. There's the accountability project that is being run out of Case Western. There's talk about now that you've got a triple I for Syria¹⁰⁴ and a double I for Burma.¹⁰⁵ There's you know talk about doing something similar for Yemen.¹⁰⁶

Michael Scharf: So that I just want to cover for our listeners who don't know...

Paul Williams: I can never all three "I's".

Michael Scharf: I think its international independent investigatory mechanism, right?

Milena Sterio: In part

Michael Scharf: Yeah. All right. So, Laura, Paul just sort of handed it to you by saying that you guys are starting this process out. Tell us about the kinds of products that your Yemen Accountability Project are creating.

Laura Graham: Well as I said before we do investigations and analysis. One of the products is we are developing a crime base matrix and so what this is a document where we contain various crimes that we've investigated and have analyzed.¹⁰⁷ And we situate them under

103. Press Release, Security Council, Head of Human Rights Fact-Finding Mission on Myanmar Urges Security Council to Ensure Accountability for Serious Violations against Rohingya, U.N. Press Release SC/13552 (Oct. 24, 2018).

104. *Mandate*, INT'L, IMPARTIAL INDEP. MECHANISM, <https://iiim.un.org/mandate/> [<https://perma.cc/7TZ4-NUEL>].

105. See GLOBAL JUST. CTR., FACT SHEET: STRUCTURAL BARRIERS TO ACCOUNTABILITY FOR HUMAN RIGHTS ABUSES IN BURMA (Oct. 2018), <http://globaljusticecenter.net/files/Structural-Barriers---Burma.pdf>.

106. *Urgent Need for Independent International Inquiry on Yemen*, HUM. RTS. WATCH (Aug. 29, 2017), <https://www.hrw.org/news/2017/08/29/urgent-need-independent-international-inquiry-yemen#> [<https://perma.cc/5W5J-BVRN>].

107. *Case Western YAP*, *supra* note 81.

the statutes or treaties where those crimes can be prosecuted.¹⁰⁸ So we have the relevant articles of the Geneva Conventions, we have the relevant articles of the ICC.¹⁰⁹ And then we also will in time be putting together representational indictments as well as white papers.¹¹⁰ We're currently working on a white paper at the moment that is looking at aiding and abetting

Michael Scharf: And again, because we're using a lot of expressions here that are jargon-y aren't all papers white I mean the white paper. What is the significance of a white paper?

Laura Graham: A white paper is just a policy paper and it's something that policymakers can use to inform their decisions.¹¹¹

Michael Scharf: And Jim why these particular products?

Jim Johnson: These products are based directly on our experiences when we set up the office of the prosecutor for the special court of Sierra Leone. and looking at what we needed or what we wished we would have had when we got to Sierra Leone because you have to remember when you look at a country like Sierra Leone, when you look at Yemen, when you look at Syria, and you're going in there to begin an investigative process. The whole country is a crime scene. You have thousands of crime locations. You have tens of thousands of victims, and you need some place to start. and so, when you look at the conflict narrative that helps you to track the flow of the contract conflict, to look at the trends, a crime base matrix, and a major incidents index helps us to focus our investigations as we go forward. And also helps you to look at what are the trends, what are possibly the signature crimes coming out of this conflict. When we went into Yemen. hen we went into Sierra Leone we could quickly identify that some of the scene signature crimes were gender violence.¹¹² The this phenomenon of forced marriage, and sexual slavery, and the amputation phenomenon, and inhumane treatment.¹¹³ So these are exactly the products that help you to begin an investigation. When you're looking at the whole country is a crime scene and you're looking at tens of thousands of victims.

108. *Id.*

109. *Id.*

110. *Id.*

111. *Id.*

112. "We'll Kill You If You Cry" *Sexual Violence in the Sierra Leone Conflict*, HUM. RTS. WATCH (Jan. 16, 2003), <https://www.hrw.org/report/2003/01/16/well-kill-you-if-you-cry/sexual-violence-sierra-leone-conflict> [<https://perma.cc/LEC3-EE9E>].

113. *Id.*

Michael Scharf: So how is your project different from what other organizations and NGOs that have been advocating for the victims and Yemen from what they're doing?

Jim Johnson: Well it's kind of the whole we're trying to bring many things together. One thing you do have to remember is that we're taking an impartial look. We're looking at all sides to the conflict. We're not looking at only at crimes being committed by Saudi Arabia or we're not looking at only at crimes being committed by the rebel faction in Yemen. We're looking across the board. And so, we are very impartial in that respect. But not only are we collecting the data on incidents and alleged crimes or alleged atrocities, but we're also matching that incident to customary international law.¹¹⁴ There's a war crime, a crime against humanity. What violation of the Geneva Convention is it? What violation of the International Criminal Courts statute? So, we're looking at much broader look. And then of course, as Laura has mentioned, we're taking specific, possibly signature crimes or very important issues and looking at it closely. We're looking at aiding and abetting, something that's probably the U.S. involvement, we should be, the U.S. should be concerned about this.¹¹⁵ Are they committing the crime of aiding and abetting with what they're providing to the Saudi-led coalition?

Michael Scharf: All right well what you're describing is a huge undertaking. And I know when you approached me to describe what you had in mind you said well maybe I'll get a dozen students to help out with this. Laura can you tell us how the students have responded to the call for action?

Laura Graham: We have had an overwhelming response from students. So, we currently have about 12 that are on the leadership team that run various parts of the project. And we have 70 students in the general body that are JD and LLM and SJD students at Case.¹¹⁶ And then we also ...

Michael Scharf: Again, these are all initials, so these are foreign graduate students.

Laura Graham: Yeah

114. *Case Western YAP*, *supra* note 81.

115. Kristine Beckerle, *US Officials Risk Complicity in War Crimes in Yemen*, HUM. RTS. WATCH (May 4, 2017), <https://www.hrw.org/news/2017/05/04/us-officials-risk-complicity-war-crimes-yemen#> [https://perma.cc/635E-CUU9].

116. *Case Western YAP*, *supra* note 81.

Michael Scharf: Speak Arabic and can write and actually read the Arabic language materials and translate it for you?

Laura Graham: Yes, and they and one of them actually did translate the Yemeni Penal Code for us.

Michael Scharf: Wow okay. So, Jim you told us that the precedent for this was the Syria Accountability Project, but you're a big thinker. And you've put this into an even larger context. What is the larger initiative that you're involved in and how does this fit into that puzzle?

Jim Johnson: We've created an NGO called the Global Accountability Initiative. And this is really an umbrella organization that we've created for the Syrian Accountability Project, the Yemen Accountability Project, and we're looking at other schools, other law schools, that have very much an interest in being involved in these kind of accountability projects. And of course, this brings something to their schools. These students are working on something that they can see. I mean they may not see the product of the results of their products because they may not see an accountability mechanism for a number of years. We hope they do eventually see an accountability major mechanism. But they're doing something right now that has real-world implications and may help bring justice to millions of people.

Michael Scharf: And what I've noticed as a Dean recruiting, you know, the new law students is that this cohort is more interested than any that I can remember in having an impact when they get out of law school and changing the world, changing society. And what you are doing, and what Laura is experiencing, is that you don't have to wait till you graduate. You're having an impact right now as a first-year law student. Now, in addition to documenting the crimes we've been talking a little bit about, some of the legal issues like aiding and abetting. I understand Laura that you're looking at some other legal issues and one of those in the Yemen conflict is whether it is an internal or international armed conflict and what law should apply. What is your team concluded about that and why is that important?

Laura Graham: Well there's certainly evidence that it looks like an international armed conflict, but then there's not consensus in the international community to call it that.¹¹⁷ And so we are looking at it as though it is a civil war but we are also analyzing it as an

117. See Natalie McIntosh, *GRC's Submissions to the Human Rights Council Group of Eminent Experts on Yemen*, GLOBAL RTS. COMPLIANCE (May 6, 2018), <https://www.globalrightscpliance.com/en/news/grcs-submissions-to-the-human-rights-council-group-of-eminent-experts-on-yemen> [https://perma.cc/FAT7-FQSA].

international armed conflict. And so, the implications of that is that we have to look at both the first and second additional protocols to the Geneva Conventions and how we assess these crimes. So for example, mass starvation under article 54 of the first Additional Protocol to the Geneva Conventions, has very strict prohibitions against the use of starvation as a weapon of war.¹¹⁸ But under the second Additional Protocol, which pertains to civil conflicts, it doesn't have those same stringent prohibitions.¹¹⁹ And so the way that we analyze the evidence and the sample indictments that we will produce may have different levels of accountability attached to them.

Michael Scharf: And then what are the next steps for the Yemen accountability project Jim?

Jim Johnson: Well of course we have some catching up to do because the Yemeni conflict as we know dates clear back to 2011 but it got pretty hot in 2015.¹²⁰ And so we of course want to be documenting what's going on right now but we have some catching up to do. And as we build our crime base marriage narratives and matrixes we will eventually be making these available to United Nations organizations, to interested governments, to other NGOs that are that have a similar interest, so that we can get our information out there.¹²¹ Possibly just one example, the Syrian accountability project has been going on now for eight years, and they have amassed nearly 30,000 pages of evidence concerning crimes that took place in Syria during that conflict. And so that's the direction we're going.¹²²

Michael Scharf: And everything you're looking at is public source material. So, I'm talking about like newspaper articles and public accounts on the Internet, right?

Jim Johnson: That's correct. That's correct.

Michael Scharf: So, let me ask Paul, your NGO the Public International Law and Policy Group, you just concluded a major

118. Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflict art. 54, June 8, 1977, 1125 U.N.T.S. 3.

119. *See generally* Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), June 8, 1977, 1125 U.N.T.S. 609.

120. BBC, *Yemen Crisis*, *supra* note 69.

121. *Case Western YAP*, *supra* note 81.

122. *Id.*

empirical study of the crimes committed by Burma against the Rohingya people.¹²³ And you did this with funding by the State Department. You sent a team in that interviewed 1100 Rohingya refugees, and you got actual evidence not just newspaper accounts but first-hand documentary evidence of testimonials.¹²⁴ And what did you conclude based on that?

Paul Williams: We pulled together a team of a dozen and a half former investigators from these tribunals around the globe and actually went and spent two months in the camp doing an investigation in the same way that you would do if you were investigating for war crimes for these tribunals.¹²⁵ And what we found was frankly genocide.¹²⁶ We had the investigators who work for these tribunals and then their work was reviewed by former US government and British government and other government officials and said look apply the standard as if you were still in the government. Because we don't to be an NGO going around and say well genocide. But we looked at it and it was clear that the government of Burma and the armed forces were committing genocide against the Rohingya population.¹²⁷ And what was stunning is our investigators who worked on the genocide in Bosnia, worked on the Srebrenica Massacre, worked on a number of these other cases, had said this was by far and away the most planned, most brutal, most systematic approach to basically moving a million people out of the country by killing them.

Michael Scharf: And you didn't get that from public sources you had to go on the scene to do those interviews. So, is something like that likely and we only have a minute or less, but do you think something like that could work for Yemen?

Paul Williams: It's possible because these conflicts generate high levels of refugees. And the refugees are accessible when they're outside of the country and they're willing to tell their story.

Michael Scharf: Well we're just about out of time. This has been incredible, especially because it's the story not just of a crisis gone awry, but of a local educational institution and what students can do to make a difference and the place that they can play in changing the world.

123. See *Documenting Atrocity Crimes Committed Against the Rohingya in Myanmar's Rakhine State*, PILPG, <https://www.publicinternationallawandpolicygroup.org/rohingya-report> [<https://perma.cc/L95E-N72P>].

124. *Id.*

125. *Id.*

126. *Id.*

127. *Id.*

Well Paul Williams, Milena Stereo, Jim Johnson, and Laura Graham, thank you so much for providing your insights on the crisis in Yemen. You gave us all a lot to think about. I'm Michael Scharf. You've been listening to talking foreign policy.

END OF BROADCAST AS PUBLISHED

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