

THE POLITICS OF IMPUNITY AND THE PURPORTED ‘YEMEN MODEL’
Why the ‘Amnesty’ to Former President Saleh Not Only Violated International Law,
But Was One of the Conditions for the Dramatic Eruption of the Armed Conflict

DAVID DONAT CATTIN*

ABSTRACT: Hailed for years as a “model”, Yemen has progressively entered into the tunnel of internal strife and non-international armed conflicts, which have been suddenly transformed into a fully-fledged international armed conflict in March 2015 with the military intervention of a coalition of States led by Saudi Arabia. The consequences of this conflict are extremely serious, encompassing the commission of serious war crimes and crimes against humanity by all sides to the conflict, namely the officially recognized Government and the Saudi-led Coalition of States on one side, and the Houtis rebels allied with other insurgents under the authority of the former Yemeni President Saleh on the other side. A third entity present in Yemen, Al Qaeda in the Arabian Peninsula (AQAP), has been taking advantage of the military confrontation to extend and consolidate its territorial control over large portions of territory. With this brief article, the author tries to demonstrate how an “impunity deal” facilitated by a regional power (Saudi Arabia) and endorsed by the United Nations Security Council in 2011 has, in turn, contributed to the progressive destabilization of an already critical situation, showing how a peace-process without justice and accountability may not only be unlawful, but also counter-productive and criminogenic.

* Secretary-General, Parliamentarians for Global Action; Adjunct Professor of International Law, Center for Global Affairs, New York University. The views expressed here are solely those of the Author in his private capacity and do not necessarily represent the views of the Organization for which he works.

DAVID DONAT CATTIN

SUMMARY: 1. *Yemen's Current Situation*. 2. *The so-Called 'Arab Spring' and its Main Consequences in Yemen: The Fall of President Saleh and the Amnesty-Deal Brokered by Saudi Arabia*. 3. *The Role of Former President Saleh Vis-à-Vis the 'New' Regime*. 4. *The Houtis' and Saleh's Backed Rebellion and the Fully-Fledged Armed Conflict With a Coalition of States Led by Saudi Arabia*. 5. *The Consolidation of Territorial Control by Al-Qaeda in the Arabic Peninsula and the Risk of Expansion of the Self-Described 'Islamic State'*. 6. *Conclusion: Impunity as a Concurrent Cause for the Recurrence of Mass-Atrocities and the Eruption of Conflict*.

1. *Yemen's Current Situation*

The year 2015 has seen the opening of a new devastating war-front for the International Community: Yemen. Hailed for years by the pundits of counter-terrorism and stabilization as a “model”¹, Yemen has progressively entered into the tunnel of

¹ See, for all, the rather isolated critical position taken in 2012 by HELEN LACKNER, ‘Yemen’s Transition: A Model to be followed?’, in *Open Democracy*, 19 June 2012, www.open_democracy.net/helen-lackner/yemen%E2%80%99s-transition-model-to-be-followed. See also the enlightening article of *The Los Angeles Time*, ‘In devising a plan in Iraq, U.S. looks to its Yemen model’ (HENNESSEY K., 22 June 2014), www.latimes.com/world/middleeast/la-fg-obama-iraq-yemen-20140622-story.html, which includes the following assertion from one of the many ‘security think-tanks’ that are often cited in the media: “*Yemen so far has worked. It's not stable. It's not clear what direction it is moving in, but the U.S.*”

Peace Processes Online Review
www.peaceprocesses.it

Vol. 1 N. 1

Summer Autumn 2015

THE POLITICS OF IMPUNITY AND THE PURPORTED 'YEMEN MODEL'

internal strife and non-international armed conflicts, which have been suddenly transformed into a fully-fledged international armed conflict. While political instability and turmoil, coupled with the emergence of violent extremism stemming from Islamic fundamentalism and a certain degree of sectarian divisions had characterized the years following the so-called “Arab Spring” of 2011, the decision of Saudi Arabia and its military allies to undergo a campaign of massive aerial bombings marked the commencement of an international armed conflict in March 2015. The consequences of this conflict have been denounced by relevant International and Non-Governmental Organizations as “human carnage”² encompassing the commission of serious war crimes and crimes against humanity by all sides to the conflict itself³ and “devastating obstruction of humanitarian aid”⁴. In the meantime, given that the main actors of this international conflict are the officially recognized Government and the Saudi-led Coalition of States invited by the Government on one side, and the Houtis rebels allied with other insurgents under the authority of the former Yemeni President Saleh on the other side, the largest ‘group’ belonging to the Al Qaeda network, Al Qaeda in the

has exercised considerable influence there.” - ANTHONY CORDESMAN, Center for Strategic and International Studies.”

² Cf. Amnesty International, “The human carnage of Saudi Arabia’s war in Yemen”, London, August 2015: www.amnesty.org/en/latest/news/2015/08/the-human-carnage-of-saudi-arabias-war-in-yemen/.

³ *Id.*; *New York Times*, ‘Amnesty International says all sides in Yemen have committed war crimes’ (Rick Gladstone, August 2015): www.nytimes.com/2015/08/19/world/middleeast/amnesty-international-says-all-sides-in-yemen-have-committed-war-crimes.html?_r=0.

⁴ Cf. UN Office of the High Commission for Human Rights, *Opening Statement by UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein at the 30th session of the Human Rights Council*, Geneva, 15 September 2015 (visited on 15 September 2015): www.ohchr.org/EN/NewsEvents/Pages/Media.aspx#sthash.O4ukA1jr.dpuf.

Peace Processes Online Review
www.peaceprocess.it

DAVID DONAT CATTIN

Arabian Peninsula (AQAP), extended and consolidated its territorial control over large portions of the Yemeni territory.⁵

With this brief article, the author –who had the chance to cooperate for several years with Yemeni Parliamentarians and NGOs on the process of accession to the Rome Statute of the International Criminal Court (ICC) by Yemen– will try to demonstrate how an “impunity deal” facilitated by a regional power (Saudi Arabia) and endorsed by the United Nations Security Council has, in turn, contributed to the progressive destabilization of an already critical situation,⁶ showing how a peace-process without justice and accountability may not only be unlawful, but also counter-productive and criminogenic.

2. The So-Called ‘Arab Spring’ and its Main Consequences in Yemen: The Fall of President Saleh and the Amnesty-Deal Brokered by Saudi Arabia

Yemen is the only country of the Arabic peninsula in which the popular protests of the so-called ‘Arab Spring’ of 2011 resulted in a negotiated regime-change facilitated by mediation of the relevant sub-regional organization, the Gulf Cooperation Council (GCC), under the strong influence exercised by the regional power neighboring

⁵ *New York Times*, ‘War in Yemen is allowing the Qaeda group to expand’ (AL-BATATI S. AND FATIH K., 17 April 2015): www.nytimes.com/2015/04/17/world/middleeast/khaled-bahah-houthi-rebel-yemen-fighting.html? r=1; Council on Foreign Relations (July 2015), “Backgrounder: Al Qaeda in the Arabic Peninsula”: www.cfr.org/yemen/al-qaeda-arabian-peninsula-aqap/p9369 .

⁶ International Bar Association (June 2015), ‘Yemen conflict ‘clearly arose’ out of UN-backed amnesty deal’: www.ibanet.org/Article/Detail.aspx?ArticleUid=8ddc317a-0ed0-499e-ab60-f696363d0c1f.

Peace Processes Online Review
www.peaceprocesses.it

Vol. 1 N. 1

Summer Autumn 2015

THE POLITICS OF IMPUNITY AND THE PURPORTED ‘YEMEN MODEL’

with Yemen, the Kingdom of Saudi Arabia.⁷ As Edward Blake lucidly wrote in 2012, “the GCC is made up of Bahrain, Kuwait, Qatar, Oman, Saudi Arabia and the United Arab Emirates, with a secretariat based in Riyadh. The GCC is a loose political and economic alliance. However, its success has primarily been in the establishment of a common market.”⁸ The relationship between Yemen and Saudi Arabia has been extremely complex and controversial, including during the historic phase of the Cold War in which Yemen consisted of two separated States. One the main causes of tension between the powerful and oil-rich Kingdom on one side, and the poor and relatively weak Republic on the other, is to be found in the nature of the two States, Yemen having being the only State in the Peninsula that embraced a quasi-democratic republican system in the last two decades.

Between October 2011 and February 2012, the UN Security Council endorsed and ratified a peace-process that, in essence, departed from the well-established practice that followed the failure of the Lomé peace-agreement for Sierra Leone of May 1999. This was the last peace-deal that contained an impunity clause for the leaders of a rebel

⁷ BURKE E., “‘One Blood and One Destiny’? Yemen’s Relations with the Gulf Cooperation Council” (Research Paper, Kuwait Programme on Development, Governance and Globalisation in the Gulf States), London School of Economics, 2012: <http://www.lse.ac.uk/middleEastCentre/kuwait/documents/yemen-and-the-gcc.pdf>. The correctness of Prof. Burke’s analysis can be condensed in this almost prophetic sentence: “The main Saudi strength in achieving its objectives – the weakening of the Yemeni state and military in favour of strengthening the tribes – has paradoxically proved to be a critical weakness in defeating both AQAP and an insurgency, led by the al-Houthi family, in the north of the country.” *Id.*, p. 11.

⁸ *Id.*, footnote 2. See also *Economic Agreement Between the Gulf Cooperation Council States* signed on 31 December 2001, Muscat, Sultanate of Oman, replacing the treaty establishing the GCC of 1981: <file:///C:/Users/Ddc/Downloads/1274258747.pdf>. Yemen applied for membership in the GCC and was given observer’s status.

DAVID DONAT CATTIN

movement. Mr. Foday Sankoh, Head of the sanguinary Revolutionary Patriotic Front (RUF) sponsored by Liberian President Charles Taylor: Mr. Sankoh was promoted by the peace-deal to the role of Vice-President in a so-called ‘national unity’ Government that disintegrated itself a few months later⁹, when the RUF resorted to its large-scale inhumane acts of, inter alia, mutilation of perceived enemies, enslavement of children and their use as child-soldiers. Peace was finally brought to Sierra Leone with the intervention of humanity of British Special troops, which created the conditions for the arrest and detention of Mr. Sankoh and his removal from any formal or de facto position of authority. This was an essential pre-condition for genuine peace with justice, which allowed the Sierra Leonean Government to start negotiating with the United Nations Security Council the establishment of an independent judicial mechanism, the Special Court for Sierra Leone.¹⁰ The jurisprudence of the Special Court then built the foundations of a new Sierra Leone based on the Rule of Law and human rights.

In respect of Yemen, the Security Council forgot the lesson that should have learned from Sierra Leone. On 21 October 2011, the Council adopted Resolution 2014 through which it endorsed a framework agreement for the removal from office of President Saleh in exchange of a de facto ‘immunity’ from prosecution in respect of the widespread acts of violence against protesters that had been attributed to the Saleh’s

⁹ Cf. ABDULLAH I., “Between Democracy and Terror: The Sierra Leone Civil War”, Council for the Development of Social Science Research in Africa (Dakar), 2004.

¹⁰ Cf. WILLIAMS S., *Hybrid and Internationalised Criminal Tribunals: Selected Jurisdictional Issues*, Oxford/Portland, 2012, p. 69.

Peace Processes Online Review
www.peaceprocesses.it

Vol. 1 N. 1

Summer Autumn 2015

authoritarian regime, alongside alleged charges of corruption.¹¹ The text of the Resolution 2014 (2011) states:

“The Security Council” [...] “taking note of the Human Rights Council resolution on Yemen (A/HRC/RES/18/19), and underlining the need for a comprehensive, independent and impartial investigation consistent with international standards into alleged human rights abuses and violations, with a view to avoiding impunity and ensuring full accountability”, [...] “strongly condemns the continued human rights violations by the Yemeni authorities, such as the excessive use of force against peaceful protestors as well as the acts of violence, use of force, and human rights abuses perpetrated by other actors, and stresses that all those responsible for violence, human rights violations and abuses should be held accountable” (operative para. 3).

However, the Council failed to take any meaningful measure in this domain, as “underlining the need” to combat impunity is one of those political statements with limited practical consequences and, in the absence of concrete measures, no legal implications. Conversely, with its following operative paragraphs, Resolution 2014 (2011) endorsed the implementation of the peace-deal facilitated by the Gulf Cooperation Council, which incorporated a controversial impunity clause for the Head of State.

¹¹ See LYNCH C., “Did the Security Council just granted amnesty to Yemen’s Saleh?”, in *Foreign Policy* (22 October 2011), reproduced in www.globalpolicy.org/security-council/50897-did-the-un-security-council-just-grant-amnesty-to-yemens-saleh-.html?itemid=id. The praxis of the Security Council on Yemen can be viewed in the sequencing of Resolutions published by the NGO Security Council Report in the extremely useful webpage www.securitycouncilreport.org/un-documents/yemen/.

DAVID DONAT CATTIN

An additional external factor that helped destabilize Yemen has been the continued and extended policy of ‘targeted-killings’ undertaken by the United States of America¹², with the express consent of the State of Yemen, against identified Al-Qaeda targets, which has been primarily conducted through the use of drones.¹³ As one commentator recently wrote, “journalistic and think-tank reporting has tended to overlook the deleterious effects of US counter-terror airstrikes against al-Qaeda targets on state sovereignty and regime legitimacy”.¹⁴ In fact, the amnesty-deal with President Saleh took place in a context in which the essential parameters of the Rule of Law had been significantly degraded by almost 10 years of repeated ‘targeted assassinations’ for counter-terrorism purposes, which certainly brought about a devaluation of the

¹² Cf. BLUM G. and HEYMANN P.B., “Law of Policy of Targeted Killing”, in *Harvard National Security Journal* 145 (2010), available at http://harvardnsj.org/wp-content/uploads/2015/01/Vol-1_Blum-Heymann_Final.pdf. At page 150, the authors write: “The first publicly known targeted killing of terrorists outside a theater of active war under the most recent presidential finding was in Yemen in November 2002, when a Predator (unmanned and remotely operated) drone was launched at a car carrying Al-Harethi, suspected of the USS Cole bombing, along with four others, one of whom was an American citizen. The attack in Yemen was executed with the approval of the government of Yemen, thereby eliminating some of the international legal difficulties associated with employing force in another country’s territory.” Yemen has been the first scenario for the current US policy on targeted killings.

¹³ The most comprehensive study on this alarming phenomenon has been published by *Open Society Justice Initiative*, “Death by Drone - Civilian Harm Caused by U.S. Targeted Killings in Yemen”, New York, April 2015, available at www.opensocietyfoundations.org/reports/death-drone.

¹⁴ Cf. YADAV S.P. and CARAPICO S., “The Breakdown of the GCC Initiative”, in *Middle East Research and Information Project* (vol. 44, winter 2015), available at www.merip.org/mer/mer273/breakdown-gcc-initiative.

Peace Processes Online Review
www.peaceprocesses.it

Vol. 1 N. 1

Summer Autumn 2015

credibility and authoritativeness of the State and its ability to place all individuals and communities living in Yemeni under the equal protection of the law.

3. The Role of Former President Saleh Vis-à-Vis the 'New' Regime

While the terms amnesty, pardon, clemency or forgiveness do not appear be contained in the text of the “peace-agreement” that governed the Yemeni transition between the end of 2001 and 2012, the arrangement regarding President Saleh appeared clear to all participants in the national political process, as it allowed him to remain active in politics notwithstanding his agreed removal from office.¹⁵ Two facts illustrated the central role that the former President was allowed to play, with impunity, in the new institutional scenario of the Republic of Yemen: Firstly, his son maintained the position of Head of the Intelligence Services of Yemen. Secondly, his residence was symbolically placed in front of the Presidential Palace and became the de facto center of political negotiations during the few years of effective rule by the new President, former Vice-President Al-Hadi.

The Parliament elected during Saleh’s rule, in 2003, had been prolonged awaiting for conditions for fair and free legislative elections.¹⁶ President Saleh tried to continue to influence Parliament’s deliberations, but these efforts were resisted by a large segment of Lawmakers that had been loyal to Saleh but decided to switch allegiance to his former Vice-President Al-Hadi. Regretfully, the positive contributions

¹⁵ The full text in English of the peace-agreement can be found at www.al-bab.com/arab/docs/yemen/yemen_transition_agreement.htm: the text is extremely complicated, long and not readers’ friendly.

¹⁶ Middle East Institute, ‘Yemen postpones [to 2011] its April 2009 parliamentary elections’ (Day S., 2 June 2009): www.mei.edu/content/yemen-postpones-its-april-2009-parliamentary-elections. In 2011 elections were not organized due to the widespread protests against the regime and the civil strife.

DAVID DONAT CATTIN

that Parliament was trying to make in the transitional period not only found obstacles in the *ancien régime* symbolized by Saleh, but also in the International Community that should have fully supported reform-efforts. A paradigmatic example of this problematic reality was represented by the opinion expressed by a Representative of the European Union, the largest development-cooperation partner of Yemen, in communications sent to a Member of the European Parliament and to EU officials who proposed to make a *demarche* with Yemeni authorities in support of the process of ratification of the Rome Statute of the International Criminal Court (ICC). The Statute had been transmitted to Parliament for consideration and approval in June 2013 by the Executive.¹⁷ A few months later, an EU Representative in Yemen shared her assessment that a prolonged Parliament would have not had the required legitimacy to pass such an important legislation and recommended to postpone the EU *demarche*, hence weakening the advocacy made by NGOs to empower Parliament for the adoption and promulgation into law of the Government's Bill that would have allowed Yemen to join the group of States that agreed to prevent impunity through the Rome Statute system.¹⁸

¹⁷ In January 2014, the Government of Yemen made a submission to the UN Human Rights Council under the Universal Periodic Review confirming media and parliamentary reports of June 2013 that referred to a Cabinet decision to ratify the Rome Statute of the ICC: see www.ohchr.org/EN/HRBodies/UPR/Pages/Highlights29January2014pm.aspx .

¹⁸ Exchanges of emails between relevant officials are on file with the author. Given the confidentiality of these communications, the author is not in a position to disclose the addressees. The author, in his capacity as representative of an international NGO, expressed his organisation's constructive position in support of the well-established EU policy in favour of the universality and effectiveness of the Rome Statute of the ICC, as per the EU Doc., *Council Decision 2011/168/CFSP of 21 March 2011 on the*

Peace Processes Online Review
www.peaceprocesses.it

Vol. 1 N. 1

Summer Autumn 2015

THE POLITICS OF IMPUNITY AND THE PURPORTED ‘YEMEN MODEL’

Concisely, during the years of the Al-Hadi regime, which started on 27 February 2012, an immunity law was enacted by Parliament and a ‘transitional’ justice law was drafted by the Executive. Major human rights group qualified the latter as deeply flawed given that, if would have been adopted, it would have not removed the immunity purportedly afforded to former President Saleh by the Security Council’s endorsed peace agreement of 2011.¹⁹ Grievance and recriminations characterized the position publicly expressed by victims, especially those of a major massacre that occurred in March 2011 in Sana’a.²⁰ These sentiments added up to the frustration and

International Criminal Court and repealing Common Position 2003/444/CFSP (<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32011D0168>) and annexed Action Plan, which are binding for the EU as a whole and the European External Action Service in particular. Relevant authorities reiterated the formal position of support for Rome Statute ratification, but the *demarche* vis-à-vis the Parliament of Yemen and/or other relevant authorities was not carried out.

¹⁹ See, for all, Human Rights Watch, *Yemen: Reject Immunity Law for President Saleh and Aides - Unlawful Blanket Amnesty Bill Gives ‘License to Kill’*, 10 January 2012 (www.hrw.org/news/2012/01/10/yemen-reject-immunity-law-president-saleh-and-aides); id., *Unpunished Massacre: Yemen’s Failed Response to the ‘Friday of Dignity’ Killings*, 12 February 2013 (www.hrw.org/report/2013/02/12/unpunished-massacre/yemens-failed-response-friday-dignity-killings). It must be underscored that immunity for core crimes under international law (namely, genocide, crimes against humanity, war crimes and the crime of aggression, or crimes against the peace) is not a bar to prosecution under customary international law since the Nuremberg trial of 1945, whose principles and norms were affirmed as early as in 1946 as part of general international law though the unanimously adopted United Nations General Assembly Resolution 95 (1946), UN Doc. A/64/Add. 1, which refers to *Agreement for the Prosecution and Punishment of Major War Criminals of the European Axis and the Charter of the International Military Tribunal annexed thereto* signed in London on 8 August 1945, 82 U.N.T.S. 279.

²⁰ See *Yemen Times*, ‘Three years on May 11: protest victims still searching for justice’ ([ALI IBRAHIM AL-MOSHIKI](http://www.yementimes.com/en/1782/report/3871/Three-years-on-May-11-protest-victims-still-searching-for-justice.htm) A.I. and BRETT S., 20 May 2014), available at www.yementimes.com/en/1782/report/3871/Three-years-on-May-11-protest-victims-still-searching-for-justice.htm.

Peace Processes Online Review
www.peaceprocess.it

DAVID DONAT CATTIN

dissatisfaction of large parts of the population vis-à-vis the transitional regime, which was perceived as inadequate and incapable of addressing Yemen's multiple problems.

4. The Houtis' and Saleh's Backed Rebellion and the Fully-Fledged Armed Conflict with a Coalition of States Led by Saudi Arabia

The history of Yemen from the peace agreement of February 2012 to the Saudi-led military intervention of March 2015 is one of progressive deterioration and overall failure of the peace-process. The most cited analyst of the situation in Yemen since the 2011 revolt, Mr. Farea al Muslimi, has described as follows the nexus of causality between the mistakes done in the name of the non-genuine peace process, the role of former President Saleh and the growth in power and sphere of influence of the Houtis tribe:

“Ultimately, the failure [of peace in Yemen] is also linked to the original 2011 Gulf Initiative and its concept of a gradual compromise solution to Yemen's crisis. The Gulf Initiative granted Saleh and his associates immunity from any legal prosecution, and it shied away from addressing human rights abuses committed during the uprising of 2011. It also did not stipulate that Saleh must abandon politics in return. Even though Saleh reluctantly surrendered the presidency in 2012, the former Yemeni leader remains highly active, having facilitated the Houthi expansion into Sanaa in 2014 to help orchestrate the overthrow of Hadi in 2015.”²¹

²¹ Cf. *Carnegie Endowment for International Peace*, “Why Yemen's Political Transition Failed” (AL-MUSLIMI F., 16 April 2015): <http://carnegieendowment.org/syriaincrisis/?fa=59803>.

Peace Processes Online Review
www.peaceprocesses.it

Vol. 1 N. 1

Summer Autumn 2015

THE POLITICS OF IMPUNITY AND THE PURPORTED ‘YEMEN MODEL’

The Middle East Report (MRP) described with more detail the sequencing of events in Yemen. We hereby reproduce its analysis of the Houthi phenomenon, with a terminological correction in square brackets that is aimed at ensuring consistency of the text with the intent of the cited Report:

“In some ways the Houthis represented altern[ative] aspirations. All along they objected to the agreement initiated by the self-consciously Sunni petromonarchies of the GCC, formalized by the United Nations and facilitated by international experts, with its culmination in the National Dialogue Conference of March 2013-January 2014. The Houthis and other dissidents maintained that the GCC initiative sought to demobilize the mass 2011 revolutionary uprising by sanctifying an elite pact between members of the Salih regime and its formal, multi-party, cross-ideological “loyal” parliamentary opposition, the Joint Meeting Parties alliance, or Mushtarak. The Mushtarak, in turn, was dominated by a conservative northern alliance of Islah, the Sanaa old guard and the Hashid confederation. Given the GCC monarchies’ interest in stability in the most restive quarter of the Arabian Peninsula, the agreement contained a number of provisions to undermine populist demands for a democratic transition. These measures included extending legal immunity for former President Salih and his family, requiring the uncontested election of his long-standing vice president, ‘Abd Rabbu Mansour Hadi, as chief executive for the transitional period, excluding both the Houthis and the Southern Movement, or *hirak*, from the transitional governing coalition, and mandating the division of cabinet portfolios equally between Salih’s General People’s Congress (GPC) and the Mushtarak/Islah. The Houthis’ posture as “outsiders” let them stake out

Peace Processes Online Review
www.peaceprocess.it

DAVID DONAT CATTIN

high ground as revolutionary challengers to the insufferable status quo ante. **So the Houthis walked into Sanaa largely unopposed**, mainly because people were fed up with the GCC's repackaging of the ancien regime, and secondarily for primordial reasons (because Sanaa remains a largely Zaydi city where historically prominent local families are, like the Houthis, *sayyids*, or direct descendants of the Prophet). Far from a call for Houthi hegemony, or an appeal to Zaydi identity, the speech given by the movement's leader, 'Abd al-Malik al-Houthi, to mark Ansar Allah's occupation of the capital was full of stirring populist, nationalist rhetoric and widespread complaints about corruption intended to appeal to southerners, other Shafi'is and most Yemenis." (Emphasis in bold added by the author.)²²

This analytical explanation appears to contradict the simplified identification of the Houtis militias with an armed group supported by a foreign power, the Islamic Republic of Iran, willing to play a predominant geostrategic role in the region against the other regional power, the Kingdom of Saudi Arabia, at least insofar the period preceding the direct military intervention by the Saudi-led coalition is concerned. In fact, after the failed transition of 2011-2013, the Houtis were seen by many Yemenis as rather a 'genuine' tribal force that was willing to create some degree of order, security and stability in Yemen without necessarily resorting to a sectarian division of the

²²Middle East Report, *ibid.* footnote 14: <http://www.merip.org/mer/mer273/breakdown-gcc-initiative><http://www.merip.org/mer/mer273/breakdown-gcc-initiative>.

Peace Processes Online Review
www.peaceprocesses.it

Vol. 1 N. 1

Summer Autumn 2015

THE POLITICS OF IMPUNITY AND THE PURPORTED 'YEMEN MODEL'

country between Shias and Sunnis communities. However, with the escalation of the internal conflict in the II half of 2014 and the direct military intervention of Saudi Arabia and its coalition of allies from 24 March 2015, there has been evidence of direct support from Iran to the rebel groups centered around the Houtis²³, even if this author is not able to corroborate them from independent verification sources.

In terms of sequencing of events, it may be useful to provide a summary of the main events that led to the escalation of the conflict. The unrest began on 18 August 2014 as the Houthis took advantage of a government-implemented removal of fuel subsidies to call for mass protests. On 21 September 2014, as the Houthis decided to occupy the capital City of Sana'a –host of vast architectural antiquities recognized by UNESCO 'world heritage' of human-kind²⁴–, the army of the State of Yemen abstained from resisting the occupation by adhering and supporting "the people's revolution". Only troops affiliated with General Ali Mohsen al-Ahmar and the conservative Al-Islah Party of Sunni inspiration tried to oppose the Houtis militias. The Houthis and the Government of President Al-Hadi signed a UN-brokered ceasefire deal on 21 September 2014, with the view to form a national unity government. In the campaign for Sana's, the Houtis, led by Abdul Malik Al-Houti, had found a new alliance with militias loyal to former President Saleh. Their territorial gains in the capital provoked

²³ See, for example, *Ahram Online*, "Iranian support to Houthis via Eritrea: Reality or myth? Yemen's exiled government accuses Iran of using Eritrea's Red Sea islands to support the Houthi rebels, claims strongly denied by Eritrea" (Yasser Seddiq, Cairo, 15 June 2015): <http://english.ahram.org.eg/NewsContent/2/8/132655/World/Region/Iranian-support-to-Houthis-via-Eritrea-Allegations.aspx>. But see also *Reuters*, "Iran warships 'linked up' with Yemen-bound cargo ship: Pentagon" (STEWART P. and SAUL J., London/Washington, 19 May 2015): www.reuters.com/article/2015/05/19/us-iran-ship-yemen-idUSKBN0041NN20150519.

²⁴ See <http://whc.unesco.org/en/list/385>.

DAVID DONAT CATTIN

the resignation of Prime Minister Mohammed Basindawa. The insurgents progressively consolidated their positions in the entire country. On 22 January 2015, Houthi forces decided to seized the presidential palace, forcing President Al-Hadi and his Cabinet to resign after having imposed on him a significant time-frame of house-arrest. On 6 February 2015, the insurgents declared the dissolution of Parliament and the formation of a new ruling council, in violation of the cease-fire agreement. In an apparent effort to re-launch a negotiated solution to the crisis, two weeks later the insurgents proclaimed to revive the institutional functioning of the 2003-elected Parliament, the House of Representatives, as part of a self-described power-sharing agreement. In March 2014, President Al-Hadi managed to escape from house-arrest and reinstalled its offices in the southern coastal City of Aden. The internationally-recognized Government of Yemen took immediate action to address the insurgency, as evidenced in the Preamble of UN Security Council Resolution 2216 of 14 April 2015 at its second *considerando*, hereby reproduced due to its significance in respect of the legality of the use of force in Yemen:

Noting the letter dated 24 March 2015 from the Permanent Representative of Yemen, to the United Nations, transmitting a letter from the President of Yemen, in which he informed the President of the Security Council that “he has requested from the Cooperation Council for the Arab States of the Gulf and the League of Arab States to immediately provide support, by all necessary means and measures, including military intervention, to protect Yemen and its people from the continuing aggression by the Houthis”, and noting the letter dated 26 March 2015 from the Permanent Representative of

Peace Processes Online Review
www.peaceprocesses.it

Vol. 1 N. 1

Summer Autumn 2015

THE POLITICS OF IMPUNITY AND THE PURPORTED ‘YEMEN MODEL’

the State of Qatar, S/2015/217, transmitting a letter from the Representatives of the Kingdom of Bahrain, the State of Kuwait, the State of Qatar, the Kingdom of Saudi Arabia and the United Arab Emirates

On the same date, the aerial bombardments of the Saudi-led Coalition started a campaign that is still ongoing, with the aim of backing the Yemeni military troops loyal to the internationally-recognized Government of Al-Hadi, supported by a multi-national contingent of ground-troops from Bahrain, United Arab Emirates, Sudan and Saudi Arabia itself. While the consent of the internationally-recognized Government of Yemen to foreign military intervention represent a sufficient basis for the legality of the use of force (*jus ad bellum*) by foreign powers under International Law, reinforced by the application of Chapter VII of the UN Charter in UN Security Council Resolution 2216 (2015), the Saudi-led aerial bombing campaign and the reaction of the Houtis-led militia have been extremely problematic vis-à-vis the *jus in bello*.

5. The Consolidation of Territorial Control by Al-Qaeda in the Arabian Peninsula (AQAP) and the Risk of Expansion of the Self-Described ‘Islamic State’

While taking action to authorize the use force by Saudi Arabia and its allied, UN Security Council Resolution 2216 (2015) condemns the so-called acts of terrorism of insurgents as criminal, the Council interrupts its previous praxis to characterize acts carried out by Al Qaeda in the Arabian Peninsula (AQAP) the as a “threat to international peace and security”, hence apparently downgrading the gravity-level of the threat posed by extremists in Yemen. In fact, in Resolution 2216 the threat to the peace switches from Al Qaeda to the Houtis and the militias of former President Saleh, whose leaders have also been submitted to a targeted sanctions regime by UNSC Resolution

Peace Processes Online Review
www.peaceprocess.it

DAVID DONAT CATTIN

2140 (2015).²⁵ Most notably, Resolution 2216 (2015) provides an explicit Chapter VII's 'justification' for the intervention of regional organizations, the Gulf Cooperation Council (GCC) and the Arab League, and their Member States, which had never been given to counter on the ground, village by village, the status quo of territorial gains by Al Qaeda in the Arabian Peninsula.

Since the passage of Resolution 2216 (2015), against the background of a fully-fledged armed conflict between insurgents and the internationally-recognized Government backed by its international allies, AQAP appears to have increasingly assumed the strategic role of 'third force', taking advantage of the situation and

²⁵ This is the motivation contained in body of the text of UNSC 2140 (2015) regarding the targeted sanctions regime against the leader of the Houthi and the son of the former President of Yemen, who had befitted – like his father – from impunity-measures in the 2011-12 transitional process: “Ahmed Ali Saleh has engaged in acts that threaten the peace, security, and stability of Yemen. Ahmed Ali Saleh has been working to undermine President Hadi’s authority, thwart Hadi’s attempts to reform the military, and hinder Yemen’s peaceful transition to democracy. Saleh played a key role in facilitating the Houthi military expansion. As of mid-February 2013, Ahmed Ali Saleh had issued thousands of new rifles to Republican Guard brigades and unidentified tribal shaykhs. The weapons were originally procured in 2010 and reserved to purchase the loyalties of the recipients for political gain at a later date. After Saleh’s father, former Republic of Yemen President Ali Abdullah Saleh, stepped down as President of Yemen in 2011, Ahmed Ali Saleh retained his post as commander of Yemen’s Republican Guard. A little over a year later, Saleh was dismissed by President Hadi but he retained significant influence within the Yemeni military, even after he was removed from command. Ali Abdullah Saleh was designated by the UN under UNSCR 2140 in November 2014.” The author could not find a similar motivation in a UNSC Resolution regarding former President Saleh, given that his “designation” for the Chapter VII, Article 41 measures on freezing of assets and travel ban was decided by the relevant Sanctions Committee.

Peace Processes Online Review
www.peaceprocesses.it

Vol. 1 N. 1

Summer Autumn 2015

consolidating its territorial control over vast regions of Yemen, especially in the South and Central areas. As the *Carnegie Endowment for International Peace* underscored in a recent commentary,

“the general situation in Yemen indicates that the phenomenon of al-Qaeda or Islamic State-style jihadism is likely to expand, whether in its current shape or in new forms and under new names. Even if AQAP itself should weaken or split following Wuhayshi’s death²⁶, more extreme factions promoting a similar ideology, like the Islamic State, will be ready to step into the void as long as there is no legitimate government in Yemen.”²⁷

The reference to alleged death of Mr. Wuhayshi, killed by a drone remotely piloted by US Special Forces deployed in Yemen, is indicative of the counter-productive implementation of the policy of “targeted-killings”. Criticized by commentators and independent institutions, including New York University and Stanford University²⁸, the use of drones in Yemen has raised a number of legal and

²⁶ “AQAP is a hierarchical, compartmentalized, and decentralized, analysts say, which allows it to withstand attacks and arrests. Nasser al-Wuhayshi, AQAP's long-time leader, served as bin Laden's aide-de-camp in Afghanistan for some four years. He was reportedly appointed "general manager" of al-Qaeda by Ayman al-Zawahiri, bin Laden's successor, effectively making him the organization's second-in-command globally. In June 2015, Wuhayshi was killed in an apparent U.S. missile strike, and AQAP announced military commander Qassim al-Raimi as his successor.” Cf. Council on Foreign Relations, “CFR Backgrounders: Al-Qaeda in the Arabian Peninsula (AQAP)” (New York/Washington, 19 June 2015): www.cfr.org/yemen/al-qaeda-arabian-peninsula-aqap/p9369.

²⁷ Cf. *Carnegie Endowment for International Peace* (Fareh Al-Muslimi) *ibid.* sub footnote 21.

²⁸ The literature about the controversial nature of “targeted killings” is ample: It had media-impact especially with respect to its counterproductive effect vis-à-vis the goal sought, given that independent

DAVID DONAT CATTIN

political questions and has been labelled as a policy promoting “summary or extrajudicial executions” in all cases in which International Humanitarian Law may not apply.²⁹ From a political perspective, the empirical results of the practice of targeted

studies have proven that this policy has not helped solving but has contributed to increase the support for, and consequently the recruitment by, violent extremist groups, especially by ISIS. Two retired US Generals, directly involved in those activities have warned about the failure of those strategies which have further fueled conflicts in the region (see www.aljazeera.com/news/2015/07/retired-general-drones-damage-good-150716105352708.html and www.reuters.com/article/2013/01/07/us-usa-afghanistan-mcchrysal-idUSBRE90608O20130107). Other independent media reached similar conclusions: see, for all, www.ibtimes.co.uk/secret-cia-report-drone-strikes-targeted-killings-boost-support-terror-groups-1480149 and www.theguardian.com/world/2012/sep/25/drone-attacks-pakistan-counterproductive-report. A joint research group of clinics from New York University and Stanford University illustrated similar perspectives in a project entitled “*Living Under Drones*”: Cf. CAVALLARO J., SONNENBERG S. AND KNUCKEY S., “*Living Under Drones: Death, Injury and Trauma to Civilians from US Drone Practices in Pakistan*”, Stanford, Calif.: International Human Rights and Conflict Resolution Clinic, Stanford Law School; New York: NYU School of Law, Global Justice Clinic, 2012: <https://law.stanford.edu/publications/living-under-drones-death-injury-and-trauma-to-civilians-from-us-drone-practices-in-pakistan/>. Targeted killings have led to many civilian casualties, which are often used by Jihadists’ propaganda: www.theguardian.com/world/2015/aug/03/us-led-air-strikes-on-isis-targets-killed-more-than-450-civilians-report?CMP=Share_iOSApp. In a vitriolic commentary, Professor Leonardo Boff, formerly a theologian of the Catholic Church’s theory of liberation (condemned by Pontiffs John Paul II and Benedict XVI), defined “drones, the most cowardly violation of human rights”: <https://leonardoboff.wordpress.com/2013/12/30/drones-the-most-cowardly-violation-of-human-rights/> (Rio de Janeiro, 30 December 2013).

²⁹ Cf. HEYNS C., *Report [to the UN General Assembly] on Extrajudicial, Summary, or Arbitrary Executions*, UN Doc. A/70/304, 7 August 2015 and various previous reports of Prof. Heyns’ predecessor,

Peace Processes Online Review
www.peaceprocesses.it

Vol. 1 N. 1

Summer Autumn 2015

THE POLITICS OF IMPUNITY AND THE PURPORTED ‘YEMEN MODEL’

killings have been catastrophic and criminogenic especially in Yemen, where the use of terrorist methods and gross human rights abuses have flourished instead of decreasing in the last 12 years, when drone-attacks started to be implemented. Hence, the criminal justice policy goals of (i) *general prevention*³⁰, and (ii) *special prevention*, at least in the

Prof. Philip Alston, available at www.ohchr.org/EN/Issues/Executions/Pages/SRExecutionsIndex.aspx, as well as BEN EMMERSON, *Report [to the UN General Assembly] on the promotion and protection of human rights and fundamental freedoms while countering terrorism*, UN Doc. A/69/397, 24 September 2014: www.ohchr.org/EN/Issues/Terrorism/Pages/SRTerrorismIndex.aspx. These reports include observations and warnings concerning the negative unintended consequences of the policy of “targeted killings” in terms of reach and scope, including its problematic results in Yemen and other situations in which the International Community appears to have failed to prevent and counter violent extremism. Relevant media excerpts of the opinions of Special Rapporteurs: www.un.org/apps/news/story.asp?NewsID=40136#.VeAkRfmqBc and, www.un.org/apps/news/story.asp?NewsID=34896#.VeAk1fmqBc. Due to its innovative value, see especially: ALSTON P., *Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions – Addendum: Study on Targeted Killings*, UN Doc. A/HRC/14/24/Add.6, 28 May 2010 (www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.24.Add6.pdf), which contains a comparative review of the practice of several states in light of applicable international legal standards. Of the same author, Philip Alston “The CIA and Targeted Killings Beyond Borders”, in 2 Harv. Nat’l Sec. J. 283 (2011).

³⁰ A statistical analysis on the progressive increase of victims of terrorism and violent extremism, as well as armed conflict that may be connected with the so-called ‘war on terror’ or international ‘counter-terrorism’, can found in the *Global Terrorism Index 2014* (Institute for Economics and Peace - Sydney, Washington, Oxford): www.visionofhumanity.org/sites/default/files/Global%20Terrorism%20Index%20Report%202014_0.pdf. According to this index figures, the number of casualties linked to terrorism and counter-terrorism has steadily grown over the last 14 years (2000-2014), from 3,361 in 2000 to 11,133 in 2012 and 17,958 in 2013. See also: www.theguardian.com/uk-news/2014/nov/18/fivefold-increase-terrorism-fatalities-global-index. This global terrorism index, however, must be subject to scientific verification, scrutiny and revision because it fails to differentiate between the elements that characterize acts of terrorism from the elements of core crimes under international law, including genocide, crimes

Peace Processes Online Review
www.peaceprocess.it

DAVID DONAT CATTIN

specific cases highlighted by the criminological doctrine³¹, have been defeated. As stated by a highly respected US private institution, the Council on Foreign Relations:

against humanity and war crimes. In fact, in its preamble, the *Index* affirms that “the Global Terrorism Index is based on data from the Global Terrorism Database (GTD) which is collected and collated by the National Consortium for the Study of Terrorism and Responses to Terrorism (START) [an initiative of the Global Counter-Terrorism Forum (GCTF), which includes all major global and regional power: www.thegctf.org/web/guest/members-and-partners]. The GTD is considered to be the most comprehensive dataset on terrorist activity globally and has codified over 125,000 terrorist incidents.” [...] “Over 80 per cent of the lives lost to terrorist activity in 2013 occurred in only five countries - Iraq, Afghanistan, Pakistan, Nigeria and Syria.” The problem is that violent extremists’ groups like Boko Haram in Nigeria and its neighboring countries, ISIS in Syria and Iraq, and the Taliban in Afghanistan and Pakistan are not simply terrorist organization, but armed movements with a totalitarian ideology that have launched fully-fledged campaigns to acquire territorial control and power. These organizations commit crimes against humanity and war crimes in a systematic manner, as a matter of policy and *modus operandi* in conducting hostilities.

³¹ See, for all, HORGAN J. AND ALTIER M.-B., “The future of terrorist de-radicalization programs”, in *Georgetown Journal of International Affairs* (2012), 83-90. At page 83, Horgan and Altier highlight a case that appears paradigmatic of the failure of the so-called ‘rehabilitation’ programmes run by Saudi Arabia to de-radicalize former Guantanamo detainees:

“In August 2009, **Abdullah Hassan al-Asiri** attempted to assassinate Saudi Prince and Deputy Minister of the Interior Muhammad bin Nayef in a suicide bombing. The prince had been responsible for the development of Saudi Arabia’s counterterrorism policy since 2003, and al-Asiri, a member of al-Qaeda, had cleverly gained access to his palace by expressing a desire to turn himself in and participate in the Saudi terrorist rehabilitation program. The suicide bombing failed, killing al-Asiri and only slightly injuring bin Nayef. A few months later, **Ibrahim al-Rubaish**, the latest mufti of al-Qaeda in the Arabian Peninsula (AQAP), released an audiotape in which he used Islamic doctrine to justify the assassination attempt

Peace Processes Online Review
www.peaceprocesses.it

Vol. 1 N. 1

Summer Autumn 2015

THE POLITICS OF IMPUNITY AND THE PURPORTED ‘YEMEN MODEL’

“Despite tactical successes, including the killing of Awlaki, Khan, and possibly Said al-Shihri, who, after his release from Guantanamo Bay, rose to AQAP's number-two position, critics challenge the strategic wisdom of drone strikes. Some analysts argue that they engender anti-Americanism, alienate populations from the Yemeni government, and make aggrieved kinsmen of victims sympathetic to AQAP, swelling AQAP's ranks. Signature strikes, in which targets are chosen based on behavioral profiles, remain particularly contentious.”³²

While elements of the AQAP group reportedly pledged allegiance to the self-described ‘islamic state’ (also known as ISIS/ISIL/Da’esh)³³, the new leader of AQAP reaffirmed the loyalty of the Yemeni violent extremist group to the Al-Qaeda leader

on bin Nayef and al-Qaeda’s use of targeted assassination against “the enemies of Islam,” more generally. Ibrahim al-Rubaish had, in 2001, been captured by U.S. soldiers and was subsequently detained at Guantanamo Bay until December 2006, when he was repatriated to Saudi Arabia and enrolled in the **terrorist rehabilitation program** there. In April 2008, al-Rubaish fled Saudi Arabia, allegedly with eleven other former Guantanamo detainees, to join AQAP in Yemen.” (Emphasis added by the author.)

See, also, Alan Lankford & Katherine Gillespie, “Rehabilitating Terrorists Through Counter-Indoctrination: Lessons Learned from the Saudi Arabian Program,” in *International Criminal Justice Review* 21 (2011) 119; Marisa L. Porges, “Getting Deradicalization Right”, in *Foreign Affairs* (May/June 2010): www.foreignaffairs.com/articles/persian-gulf/2010-05-01/getting-deradicalization-right.

³² *Ibid.* sub footnote 25 (concluding paragraph).

³³ See *Reuters*, “Al Qaeda supporters in Yemen pledge allegiance to Islamic State: group”, (Dubai, 11 February 2015): www.reuters.com/article/2015/02/11/us-yemen-security-qaeda-idUSKBN0LF0E720150211.

Peace Processes Online Review
www.peaceprocess.it

DAVID DONAT CATTIN

Sheikh Ayman al-Zawahiri.³⁴ This detail does not reduce or mitigate the gravity of the current situation in large parts of the Yemeni territory, where violent extremism has regrettably found home on the basis of its totalitarian ideology based on a distorted interpretation of religion. A significant number of domestic and foreign fighters have enrolled into AQAP, and may be tempted to do the same under ISIS-type groups, under a false promise of ‘Jihad’ conflated with ‘martyrdom’ (shahid), which encompasses an idea of eternal reward after death on earth that is often based on mythical interpretations of holy writings.³⁵ Albeit such interpretations have been condemned and rebutted by prominent clerics and scholars, they still prove to be effective vis-à-vis large components of societies in which inequality, injustice, discrimination and poverty have been shrinking the space of hope in a better future for entire generations of Yemenis. Yet, it is appalling to see that all the strategic, military and political energies of

³⁴ This information has been reported by a number of media outlets, but we hereby refer to an online review that seems placed at the opposite pole of our *Journal of Peace Processes and Human Dignity*, namely *The Long War Journal*, “New AQAP leader renews allegiance to the ‘beloved father,’ Ayman al Zawahiri”, (Thomas Joscelyn, 9 July 2015): www.longwarjournal.org/archives/2015/07/new-aqap-leader-renews-allegiance-to-the-beloved-father-ayman-al-zawahiri.php. According to another US on-line media outlet, “AQAP is widely considered the most dangerous of al-Qaida’s active branches. The group sponsored both the attempted Christmas Day bombing over Detroit in 2009 and the attempted parcel bomb plot in 2011. They were also behind the attacks on France’s Charlie Hebdo offices earlier this month.” (Emphasis added by the author.) Cf. *World.Mic*, “Yemen’s Government Just Completely Collapsed. Here’s What You Need to Know” (LEUCK P., 23 January 2015): <http://mic.com/articles/109070/yemen-s-government-just-completely-collapsed-here-s-what-you-need-to-know>.

³⁵ See the references contained in www.theguardian.com/books/2002/jan/12/books.guardianreview5 .

Peace Processes Online Review
www.peaceprocesses.it

Vol. 1 N. 1

Summer Autumn 2015

neighboring countries and their powerful allies appear to be exclusively employed to demolish an internal insurgency that does not appear to be as intolerant, totalitarian and indiscriminately violent as Al-Qaeda in the Arabian Peninsula, which is instead growing and prospering notwithstanding more than 12 years of counter-terrorism policies and practices. It is inevitable to conclude that these policies, centered on the inadequate and insufficient notion of 'counter-terrorism' or the misguided ideological concept of 'war on terror', did not achieve the result of contributing to the stabilization and the reduction of armed violence and therefore had a counter-productive impact in Yemen.

6. Conclusion: Impunity as a Concurrent Cause for the Recurrence of Mass-Atrocities and the Eruption of Conflict

The situation in Yemen at the time in which this note is written is at the apex of gravity. As reported by *The Economist* on 13 October 2015: "The World Health Organisation (WHO) reports that as of October 4th [2015] a total of 5,462 people have been killed and 26,447 injured since the fighting flared up in March. But the UN warns that these numbers are a gross underestimate. Locals think life is returning to medieval ways, as jobs are few and much of the day time is spent stocking up on fuel, food, water and firewood."³⁶ As the battle for the control over the capital City of Sana'a seems imminent, dramatic calls are made to spare the Old City of Sana'a, a major architectural treasure of human civilization, from the wave of destruction and aerial

³⁶ Cf. *The Economist*, "'In Yemen Death Surrounds You' - Life is difficult under the rain of Saudi bombs", (13 October 2015): www.economist.com/news/middle-east-and-africa/21673996-life-difficult-under-rain-saudi-bombs-yemen-death-surrounds-ou?zid=308&ah=e21d923f9b263c5548d5615da3d30f4d.

DAVID DONAT CATTIN

bombings.³⁷ Negotiations are ongoing towards yet another purportedly negotiated solution of the conflict, which may still run the risk to contain impunity clauses that would pose unsustainable and unjust foundations towards the erection a new balance of power in Yemen. The forces led by the Houtis appear to have accepted the terms of UN Security Council resolution 2216 (2015), which may nevertheless prove insufficient for a valid ceasefire agreement and, in prospective, a sustainable peace.

It is the firm view of this author that, regardless of the outcomes of the ongoing new peace-process facilitated by the UN Secretary General's Special Envoy for Yemen³⁸, the catastrophic developments on the terrain in Yemen in 2015 should

³⁷ See *Human Rights Watch*, "Yemen: Sanaa's Old City at Risk - All Sides Should Avoid Battle at UNESCO World Heritage Site" (New York, 17 October 2015): www.hrw.org/news/2015/10/17/yemen-sanaas-old-city-risk.

³⁸ See *Letter dated 23 April 2015 from the Secretary-General addressed to the President of the Security Council*, UN Doc. S/2015/283 (25 April 2015), available at www.un.org/sg/srsg/middleeast.shtml. The performance of the United Nations in acting as mediator for a peaceful resolution of the Yemeni crisis has been poor and ineffective. The Special Envoy from 2011 to 2014 has been sharply criticized for his inability to involve relevant stakeholders representing various groups and communities living in Yemen (*ibid.* sub footnote 21). The UN-facilitated *Peace and National Partnership Agreement* of September 2014 was not a 'national partnership' as it was not participated by many tribal components of the complex structure of Yemen's society. Additional, as we amply documented in this writing, the Yemeni "peace process" 2011-14, which started with the UN-backed *Gulf Initiative* that led to a partial regime-change, can be assessed as non-compliant with the requirements of "human dignity" (i.e. the respect and realization of internationally-recognized human rights) in light of the immunity from prosecution afforded to former President Saleh and his closest accomplices, which resulted in a denial of justice for the victims of gross human rights abuses.

Peace Processes Online Review
www.peaceprocesses.it

Vol. 1 N. 1

Summer Autumn 2015

ultimately persuade international actors playing a role in its battlefield to profoundly re-think their self-defeating and misinformed strategies. Admitting the “collapse of the Yemeni model”³⁹ would entail the admission of one of the most severe failure of the Obama Administration, which, trying to remedy the long-term negative legacies left by the Bush Administration’s policy of “war on terror” (which, *inter alia*, was used as

³⁹ This language is used by FAREA AL-MUSLIMI, *op. cit.* in footnote 21. The same author explains as follows the main causes of “the collapse of the Yemeni Model”: “Of course the situation in Yemen is not only due to the UN envoy’s efforts, or lack thereof. Many overlapping local, regional, and international issues have contributed to the collapse of the political process, including the Saudi-Iranian conflict and the regional struggle to support or oppose the Muslim Brotherhood. Ultimately, the failure is also linked to the original 2011 *Gulf Initiative* and its concept of a gradual compromise solution to Yemen’s crisis. The *Gulf Initiative* granted Saleh and his associates immunity from any legal prosecution, and it shied away from addressing human rights abuses committed during the uprising of 2011. It also did not stipulate that Saleh must abandon politics in return. Even though Saleh reluctantly surrendered the presidency in 2012, the former Yemeni leader remains highly active, having facilitated the Houthi expansion into Sanaa in 2014 to help orchestrate the overthrow of Hadi in 2015. The Yemeni model also failed to take into account that dealing with a state like Yemen, which is economically weak and exposed to severe security threats, requires improving state institutions and supporting the country’s economy in order to produce a palpable difference for its citizens. Instead, frustrated Yemenis continued to fall prey to political polarization and the recruitment efforts of armed groups like the Houthis or al-Qaeda in the Arabian Peninsula (AQAP). Considering the delicate political process the country was going through, the road map should have been more realistic than the one laid out by the Gulf Initiative. [The UN Special Envoy’s] obsession with time had adverse effects as it prescribed the holding of a *National Dialogue Conference* in January 2014 without any real preparation. This led, tragically, to a discussion about the shape of the political system even before immediate grievances were addressed. In particular, the time schedule envisioned by the *Gulf Initiative* led to a speeding through of the draft constitution, the division of provinces in just two weeks, and an attempt to impose the constitution before putting it to referendum. All of this created a state of local public anger, which the Houthis used to their advantage when they overtook Sanaa in September 2014.”

DAVID DONAT CATTIN

partial justification for the unlawful invasion of Iraq), did not modify the policy of targeted killings in Yemen and other scenarios of “counter-terrorism”. Arrest operations remain the best possible alternatives to aerial bombings, as testified in a powerful hearing of Mr. Farea Al-Muslimi before the US Senate’s Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights chaired by Senator Dick Durbin (D-IL) on the moral, legal and constitutional issues surrounding targeted killings and the use of drones on 23 April 2013.⁴⁰ The problem is that arrest operations presuppose that investigations, prosecutions and trials be organized under the Rule of Law, that ground-troops with adequate training on police and anti-crime analysis, detection, investigation, law-enforcement and apprehension of fugitives are deployed and put at risk of enemy-fire and friendly-fire, and that adequate investments be made on ground-troops operations for conflict-prevention and/or post-conflict peace-building or State-building. Regretfully, the current state of affairs of international politics in relation to internal and international armed conflicts indicates that there is insufficient political support for this complex, difficult and risky operations, while the short-cut *modus operandi* of aerial operations, including via remotely piloted armed vehicles, appear the less-costly option for States possessing modern and sophisticated technology. Masked under the misleading rubric of ‘terrorists’, totalitarian rebel movements aspiring to statehood or other forms of stable territorial control, as illustrated by the case of AQAP in Yemen or ISIS/ISIL/Da’esh in Syria and Iraq, are confronted with attacks from the sky that, at a

⁴⁰ The powerful presentation of Mr. Al-Muslimi, a direct witness of air-strikes in Yemen that did not differentiate between civilian and anti-terrorism targets, can be viewed at www.youtube.com/watch?v=Jlb0wMfOFhw, in a post made by Sen. Durbin himself.

Peace Processes Online Review
www.peaceprocesses.it

Vol. 1 N. 1

Summer Autumn 2015

THE POLITICS OF IMPUNITY AND THE PURPORTED 'YEMEN MODEL'

minimum, may cause painful collateral damage, and, in many situations, are bringing about vast civilian death-tolls, due to the failures of intelligence sources in identifying reliable and precise targets. Additionally, if such targets are clearly outside the scope of an armed conflict situation, it is not possible to consider and define the targets as lawful military targets. Therefore, authors of air-strikes with drones are resorting to expanded notions of self-defense and state of necessity drawn from law-enforcement operations as legal justifications (i.e. if evidence would show that a group like AQAP would be in the process of planning an *imminent* terrorist attack or carrying out such an attack against persons or installations in a Third State, it would be justified for armed forces of that State and its allies to eliminate and eradicate this threat in cooperation with the State from which the attack is concretely planned or carried out). Yet, unless there would be hard evidence that there is a criminal transaction ongoing with specific steps undertaken to carry out an *imminent* or *ongoing* deadly attack (whether a terrorist attack or a military action) against a protected target (e.g. an Embassy, or a civilian ship transiting in the Persian Gulf), it would not be lawful to destroy human targets. The killings resulting from these armed attacks carried out with the consent of the territorial State may be characterized as summary or extra-judicial executions, which are strictly prohibited practices under international law.⁴¹ The relevant responsibility shall be attributed to

⁴¹ International human rights law prohibits summary or extra-judicial executions in time of peace without any possibility of derogation ex ICCPR, Article 6 (see relevant international instruments, several of which of a non-binding nature, mentioned at www.ohchr.org/EN/Issues/Executions/Pages/InternationalStandards.aspx). International Humanitarian Law prohibits summary executions in time of armed conflict under common Article 3 to the Geneva Conventions of 1949 and other relevant provisions that have been declared as part of customary international law: The International Committee of the Red Cross makes reference to 9 rules of customary international law that relate, either directly or indirectly, to the prohibition of summary executions, namely: "Rule 46. Orders or Threats that No Quarter Will Be Given; Rule 47. Attacks against Persons Hors de Combat; Rule 100. Fair Trial Guarantees; Rule 115. Disposal of

DAVID DONAT CATTIN

both the State whose agents are carrying out the attacks and are providing the consent for such attacks, as well as to the territorial State that failed to prevent or, at a minimum, condemn the attacks *ex post facto*.⁴²

the Dead; Rule 124. ICRC Access to Persons Deprived of Their Liberty; Rule 131. Treatment of Displaced Persons; Rule 148. Reprisals in Non-International Armed Conflicts; Rule 156. Definition of War Crimes; Rule 159. Amnesty”. Cf. www.icrc.org/customary-ihl/eng/docs/v1. International Criminal Law applicable to all the above-mentioned situations affirms that there cannot be exceptions to the obligation to prosecute the core crimes under International Law and to respect the rights of the accused and the presumption of innocence, as stipulated in relevant provisions of the Statutes of the International Military Tribunal (IMT or ‘Nuremberg Statute’, 1945), the International Criminal Tribunal for the former Yugoslavia (ICTY, 1993), the International Criminal Tribunal for Rwanda (ICTR, 1994) and the International Criminal Court (ICC, 1998, entered into force on 1 July 2002).

⁴² Under applicable International Criminal Law outside the scope of the law of armed conflict or International Humanitarian Law (IHL), the principle of individual criminal responsibility would apply to targeted killings if the summary executions would form part of a widespread or systematic attack directed against any civilian population, but the burden of proof to meet the relevant threshold of crimes against humanity makes this qualification extremely difficult if not impossible to be made in practical terms. If, instead, the targeted killings would be carried out in the context of an armed conflict, as the one currently ongoing in Yemen, and there would be a demonstrable connection between the conduct of hostilities and the specific attack under examination, in case civilian targets would be intentionally destroyed or collateral civilian damage would be clearly excessive *vis-à-vis* the expected military advantage sought, such attacks may be qualified as war crimes and permit the imputation of individual criminal responsibility. War crimes do not require the same threshold of gravity of crimes against humanity, which however may occur outside the ambit of armed conflict. Cf. DONAT CATTIN D., “A general definition of crimes against humanity under International Law: the contribution of the Rome Statute of the International Criminal Court”, in n. 8 *L’Astrée—Revue de Droit Pénal et des Droits de l’Homme, Univ.*

Peace Processes Online Review
www.peaceprocesses.it

Vol. 1 N. 1

Summer Autumn 2015

THE POLITICS OF IMPUNITY AND THE PURPORTED ‘YEMEN MODEL’

Paris Panthéon-Sorbonne (1999), 83, cited in WERLE G., *Principles of International Criminal Law*, TNC Asser Press 2005, 214. Werle affirms that there must be a clear “nexus between the individual act” consisting in a war crime “and the armed conflict”, *op. cit.*, pp. 294-295.

Peace Processes Online Review
www.peaceprocess.it

Vol. 1 N. 1

Summer Autumn 2015
31

