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Panel: "Yemen: Is the U.S. Breaking the Law?"

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### A Question of Ethics

Today's panel on U.S. involvement in the Yemeni civil war through the lens of international law was nothing if not predictable. While humanitarian Nathalie Weizman and researcher Kristine Beckerle detailed war crimes and human rights abuses subsidized by the United States, State Department attorney Brian Finucane and former CIA deputy director Avril Haines presented legal and policy justifications for U.S. complicity. The four panelists' contributions exposed competing priorities and moral assumptions: the independent parties prioritized human life and the mitigation of human suffering, while the agents of the United States government presented the execution of U.S. policy objectives as the highest moral good—to the extent that their priorities considered morality at all.

The civil war between Iranian-backed Houthi rebels and UAE- and Saudi-supported government loyalists in Yemen has claimed over 10,000 casualties thus far. The U.S. has staked out a prominent, if indirect role in the conflict by supplying military aid to Saudi forces. The Saudi military has committed numerous war crimes, including the repeated (twelve-time) bombing of a well that Saudi aircraft apparently mistook for a missile launcher. In addition, Saudi forces are responsible for the bombing of a public funeral procession allegedly attended by a number of high-profile military targets. (Over one hundred civilians were also in attendance.) Saudi strategy is brutal and indiscriminate: entire Houthi-controlled cities are being considered military targets in direct contravention of International Humanitarian Law (IHL), which stipulates that attacks shall be solely directed at "legitimate military targets." While the Houthi rebels have also committed significant abuses, Beckerle censured the U.S. government for refusing to cease its support for the Saudi military insofar as it continues to be responsible for such a horrific human impact.

To a proponent of U.S. foreign policy interests over human life, the picture becomes more complicated—and more excusable—with the introduction of policy objectives and precise legal arguments defending the United States against charges of violating the law of armed conflict (LOAC). Just because an airstrike results in civilian casualties, argued Finucane, does not mean that it is a violation of the LOAC. Substantiating such an accusation would require extensive fact-finding that is currently impossible due to the security situation in Yemen. Moreover, proving charges of "aiding and abetting" under customary international law requires proof that complicit parties had knowledge, seniority, and a systematic policy of committing war crimes—one-offs don't count. In effect: the United States and its allies may act with impunity.

Former deputy director Haines attempted to paint a slightly more sympathetic portrait of U.S. policy in Yemen, although her statement was tainted by conflicting values. On the one hand, she insisted that the United States has a responsibility to uphold commitments to partners and allies, including Saudi Arabia. On the other, admitted Haines, the humanitarian disaster in

Yemen is horrific. Thus Haines admitted a tension between U.S. self-interest and prioritizing human life. She attempted to reconcile this by claiming that U.S. involvement in Yemen will put an end to the civil war and ultimately save lives, but this is beyond unconvincing. Even the moderator confronted Haines with the fact that proxy wars tend to be more protracted and more deadly than civil wars without external intervention.

While the bloody Yemeni war rages on, a competition between conflicting values is playing out in the United States between humanitarians and statesmen. I would argue that these conditions are fostering a new “banality of evil” among those in power, whose occupations lead them into iniquity and apologism. We may hope that the civil war in Yemen comes to a halt as soon as possible, but as long as members of the government such as Finucane and Haines remain in positions of prominence, this seems highly unlikely.