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## National Security Law

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GUY C. QUINLAN, AND SERGIO L. SUAREZ\*

This article surveys 2014 developments in National Security Law relevant to international lawyers.<sup>1</sup>

### I. Russia, Ukraine, and Hybrid Warfare

The use of proxy military actors in today's international conflicts requires detailed analyses of both methodology and the use of "Hybrid Warfare" in obfuscating the lines of legal attribution and responsibility under international law. Direct Russian military engagement in, and the failure to restrain incursions emanating from its territory into Ukraine, may underscore Russia's breach of its international legal obligations.<sup>2</sup>

#### A. EVIDENCE OF THE FEDERATION'S MILITARY INTERVENTION IN THE UKRAINE

According to Ukrainian sources, approximately twelve hours prior to the invasion of the Crimea in late February 2014, a Ukrainian correspondent traveling along the Black Sea

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\* The committee editor of this article was Captain James D. Carlson, Judge Advocate, U.S. Coast Guard. Captain Carlson contributed "International Response to Iran's Nuclear Program" and "Islamic State of Iraq and the Levant;" Guy C. Quinlan, President, Lawyers Committee on Nuclear Policy, contributed "Nuclear Arms Control," and First Lieutenant Sergio L. Suarez, U.S. Army, J.D. Candidate, Seton Hall University School of Law, contributed "Information and Intelligence." The section on Russia, Ukraine, and Hybrid Warfare was contributed by Jonathan Michael Meyer, Attorney-at-Law. The section on Cybersecurity Developments was contributed by Geoffrey M. Goodale, Attorney, Trade Law Advisors PLLC. The views expressed herein by the military officers are those of the authors personally and are not official or reflective of the views of the Army Chief of Staff, Coast Guard Commandant, U.S. Army, or U.S. Coast Guard.

1. For developments during 2013, see James D. Carlson et al., *National Security Law*, 48 INT'L LAW. 471 (2014).

2. The Commentary to the United Nations Legislative Series states: "The general rule is that the only conduct attributed to the State at the international level is that of its organs of government, or of others who have acted under the direction, instigation or control of those organs, i.e. as agents of the State." United Nations Legislative Series, MATERIALS ON THE RESPONSIBILITY OF STATES FOR INTERNATIONALLY WRONGFUL ACTS 27, Doc. No. ST/LEG/SER B/25, available at <http://legal.un.org/legislativeseries/documents/Book25/Book25.pdf>. It is further noted "as a corollary, that [the] conduct of private persons is not as such attributable to the State . . ." *Id.* However, "the different rules of attribution stated in chapter II have a cumulative effect, such that a State may be responsible for the effects of the conduct of private parties, if it failed to take necessary measures to prevent those effects." *Id.* at 28.

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Highway from Sevastopol to Yalta spotted two Russian military lorries with tightly closed tents headed in the direction of the Russian military base in Sevastopol.<sup>3</sup> The correspondent followed the lorries until they stopped at a Russian military sanitarium in Yalta. There he observed a serviceman exiting the lorry wearing full military garb with no military insignia. This was the debut of the “Little Green Men”<sup>4</sup> in Ukraine.

Russia’s initial statement about this incident provides further evidence of its direct involvement. The treaty between Ukraine and Russia regarding Russia’s Black Sea Fleet<sup>5</sup> requires Russia to provide Ukraine with preliminary notification when military convoys move between Russian military installations in Crimea.<sup>6</sup> Absent notification, the Ukrainian military command requested a written explanation pursuant to the treaty. The Russian Black Sea Fleet allegedly responded that “there is a very unstable situation in Ukraine and as a result, a limited military regiment was sent for better protection of sanitarium visitors.”<sup>7</sup>

Thereafter, according to the same source,<sup>8</sup> at midnight lorries left the sanitarium in Yalta and moved to the Crimean capital, Simferopol. These lorries contained groups of servicemen from the highly trained Airborne Brigade from Toljatty, Russia, which, according to Ukrainian sources, were administratively attached to the main department of military intelligence of the Russian army and fleet.<sup>9</sup> At approximately 14:00 hours, the forces arrived at the Crimean Parliament, disarmed the Ukrainian militia, and captured and exercised full military control over the area. Early the next morning, forces conducted a full-scale invasion, with “Little Green Men” occupying all airports and seaports, and surrounding Ukrainian military bases and other key tactical and strategic installations.<sup>10</sup> These forces were portrayed by the Russian media as self-organized, local self-defense organizations.<sup>11</sup>

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3. *Id.*

4. Steve Pifer, *Opinion: Watch Out for Little Green Men*, DER SPIEGEL, July 7, 2014, <http://www.spiegel.de/international/europe/nato-needs-strategy-for-possible-meddling-by-putin-in-baltic-states-a-979707.html> (explaining the etymology of the term, “little green men”).

5. Partition Treaty on the Status and Conditions of the Black Sea Fleet Russ.-Ukr., art. 15, para. 2, May 28, 1997, *available at* <https://archive.today/ue0rj> (translated through Google translator) [hereinafter Black Sea Fleet Agreement].

6. *Commentary of the MFA of Ukraine concerning the unilateral breach of the Russian Federation the Ukraine-Russia accords, laid down in the Agreements on the Black Sea Fleet*, <http://greece.mfa.gov.ua/en/press-center/news/18552-komentar-mzs-ukrajini> (Mar. 2, 2014); Black Sea Fleet Agreement, *supra* note 5.

7. According to Ukrainian sources to whom the author has access, this reply was posted together with a video on Feb. 26, 2014, and subsequently removed.

8. *Id.*

9. Confidential sources at the Ukrainian Ministry of Internal Affairs (to whom the author’s sources have access).

10. David McHugh & Greg Keller, *Hundreds of Gunmen Surround Ukraine Military Base in Crimea*, BUSINESS INSIDER INDONESIA (Mar. 2, 2014, 9:43PM), [http://www.businessinsider.co.id/hundreds-of-gunmen-surround-ukraine-military-base-in-crimea-2014-3/#.VHv\\_nNLF-So](http://www.businessinsider.co.id/hundreds-of-gunmen-surround-ukraine-military-base-in-crimea-2014-3/#.VHv_nNLF-So).

11. Corey Flintoff, *Russian Media Accused of Using Propaganda in Ukraine Reporting*, NAT’L PUBLIC RADIO (Apr. 15, 2014, 5:17AM), <http://www.npr.org/2014/04/15/303172312/russian-media-accused-of-feeding-propaganda-on-ukraine-crisis>; Oleg Sulkov, *The Media War Behind the Ukraine Crisis*, THE MOSCOW TIMES, Mar. 11, 2014, <http://www.themoscowtimes.com/news/article/the-media-war-behind-the-ukraine-crisis/495920.html>.

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Russian "Hybrid Warfare" may also involve the use of recently retired military and Russian Secret Service officers.<sup>12</sup> Such personnel may possess experience in past intense military conflict. This ensures the inability to directly attribute any military activity to official organs of the Russian Federation.

On February 28, 2014, more than 150 "Little Green Men" on four lorries attacked and captured the main Crimean civilian airport in Simferopol.<sup>13</sup> They were headed by Colonel Igor "Strelkov" Gyrkin, who retired from the Russian Federal Security Service before the attack. Throughout his career, he participated in numerous military and paramilitary conflicts, including those in Transnistria in Bosnia (on the side of Serbian Army), and in the two Chechnya wars.<sup>14</sup> In early April, he crossed the Russian-Ukrainian border in the Donetsk region with a special assault unit and declared himself the "Defense Minister of the Donetsk Peoples' Republic."<sup>15</sup>

In a recent interview in the Moscow newspaper "Tomorrow,"<sup>16</sup> Colonel Gyrkin explicitly recognized his role in initiating activities in Ukraine. He stated, "In a certain way, the war trigger was pushed by me. If my unit did not cross the border, everything would have finished as in Kharkiv and Odessa. Some people would have been killed, some—arrested, but nothing would have happened."<sup>17</sup>

Hybrid warfare may also involve circumvention of international legal obligations, while at the same time maintaining the utility of same. This is exemplified by the Russian Federation's apparent circumvention of its agreement with the Ukraine concerning the prohibition of intelligence operations by and between the organs of the Russian and Ukrainian Foreign and Military Intelligence Services.<sup>18</sup> Russian President Vladimir Putin created the Fifth Main Intelligence Department, a new organization inside the Federal Security Services under the title "Department of Actual Information about International Coopera-

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12. Путин отрицает наличие у России планов аннексии или дестабилизации восточной Украины [Putin denies that Russian has plans for annexation or destabilize Eastern Ukraine], <http://www.golos-ameriki.ru/content/putin-russia-has-no-plans-to-annex-or-destabilize-ukraine/1929789.html> (Jun. 4, 2014).

13. Shaun Walker et al., *Russian 'invasion' of Crimea fuels fear of Ukraine conflict*, *GUARDIAN* (UK), Feb. 28, 2014, 19:27PM, <http://www.theguardian.com/world/2014/feb/28/russia-crimea-white-house>.

14. Noah Snider, *Shadowy Rebel Wields Iron Fist in Ukraine Fight*, *N.Y. TIMES* (July 10, 2014); Peter Leonard, *Meet Igor Strelkov, The Face of the Insurgency in Eastern Ukraine*, *THE HUFFINGTON POST* (Apr. 29, 2014), [http://www.huffingtonpost.com/2014/04/29/igor-strelkov-ukraine\\_n\\_5235368.html](http://www.huffingtonpost.com/2014/04/29/igor-strelkov-ukraine_n_5235368.html).

15. *Id.* See also Gianluca Mezzofiore, *Igor Strelkov admits Russia FSB affiliation in Kremlin-censored interview*, *INT'L BUSINESS TIMES*, Dec. 2, 2014, <http://www.ibtimes.co.uk/igor-strelkov-admits-russia-fsb-affiliation-kremlin-censored-interview-1477713>.

16. Спусковой крючок войны все-таки нажал я. Если бы наш отряд не перешел границу, в итоге все бы кончилось, как в Харькове, как в Одессе. Было бы несколько десятков убитых, обожженных, арестованных. И на этом бы кончилось [Girkin Triggered War], *KIEVSMI.NET*, <http://www.microsofttranslator.com/BV.aspx?ref=IE8Activity&a=http%3A%2F%2Fkievsmi.net%2Fnovosti%2Fukraina%2F53203-strelkov-spuskovoj-kryuchok-voyny-vse-taki-nazhal-ya.html> (Nov. 20, 2014).

17. Диверсант Гиркин взял на себя ответственность за начало войны [Saboteur Girkin took responsibility for starting the war], *LIGA.NET*, [http://news.liga.net/news/politics/4124022-diversant\\_girkin\\_vzjal\\_na\\_sebya\\_otvetstvennost\\_za\\_nachalo\\_voyny.htm](http://news.liga.net/news/politics/4124022-diversant_girkin_vzjal_na_sebya_otvetstvennost_za_nachalo_voyny.htm) (Nov. 20, 2014); Anna Dolgov, *Russia's Igor Strelkov: I Am Responsible for War in Eastern Ukraine*, *THE MOSCOW TIMES*, Nov. 21, 2014, <http://www.themoscowtimes.com/news/article/russias-igor-strelkov-i-am-responsible-for-war-in-eastern-ukraine/511584.html>.

18. TV News Channel 24, *Москаль. В Луганске сидит Пятое Главное управление ФСБ России [Moscal: In Lugansk Sits The fifth Main Control the FSB of Russia]*, (Nov. 4, 2014), <http://24tv.ua>, [http://24tv.ua/home/showSingleNews.do?v\\_luganske\\_sidit\\_pyatoe\\_glavnoe\\_upravlenie\\_fsb\\_rf\\_\\_moskal&objectId=505414&lang=ru](http://24tv.ua/home/showSingleNews.do?v_luganske_sidit_pyatoe_glavnoe_upravlenie_fsb_rf__moskal&objectId=505414&lang=ru).

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tion.<sup>19</sup> This department does not have any agreements with the Ukrainian Security Service and conducts intelligence activities in the Ukraine, Moldova, and Georgia.<sup>20</sup>

## II. International Response to Iran's Nuclear Program<sup>21</sup>

Over the past year, the so-called P5+1 and Iran,<sup>22</sup> facilitated by the European Union, have been negotiating towards a permanent, comprehensive agreement to ensure peaceful use of Iran's nuclear program. Efforts through the year included six rounds of technical meetings between the International Atomic Energy Agency (IAEA or Agency) and Tehran,<sup>23</sup> as well as seven rounds of political-level meetings between the parties.<sup>24</sup> The parties ultimately failed to come to a final agreement for the second time in the past year but agreed to a seven-month extension of the interim foundational agreement, the Joint Plan of Action (JPOA).<sup>25</sup> The JPOA is a six-month interim agreement between Iran and the P5+1 signed on November 23, 2013. It lays out an approach towards a long-term solution to address international concerns over Iran's nuclear program and is renewable by mutual agreement.<sup>26</sup> This second extension extends the deadline for a permanent agreement to June 30, 2015, with an interim deadline of March 31, 2015 for a general framework.

The additional extension was not a surprise. Despite recurring reports of earnest discussions as the year progressed, the negotiations are obviously complex, complicated,<sup>27</sup> and, in various aspects, "interdependent."<sup>28</sup> After the second extension, and similar to last year when the JPOA was announced, some in the United States Senate felt increased

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19. *Id.*

20. *Id.*

21. This brief overview should be read in conjunction with the last two Year-in-Review articles from the National Security Law Committee, *National Security Law*, 48 INT'L LAW 474 (2014) and *National Security Law*, 47 INT'L LAW 456 (2013).

22. The P5+1 was coined to signify the five permanent members of the U.N. Security Council plus Germany. The group is also referred to as the E3/EU+3, signifying the three involved EU nations (i.e., United Kingdom, France, and Germany) plus the United States, Russia, and China.

23. *IAEA and Iran: Chronology of Key Events*, INT'L ATOMIC ENERGY AGENCY, <http://www.iaea.org/newscenter/focus/iran/chronology-of-key-events> (last visited Nov. 21, 2014).

24. See *Timeline of Nuclear Diplomacy with Iran*, ARMS CONTROL ASS'N, <https://www.armscontrol.org/factsheet/Timeline-of-Nuclear-Diplomacy-With-Iran> (noting six rounds of political-level discussions, plus the November rounds leading up to the second JPOA extension).

25. EUROPEAN EXTERNAL ACTION SERV., [http://eeas.europa.eu/statements/docs/2013/131124\\_03\\_en.pdf](http://eeas.europa.eu/statements/docs/2013/131124_03_en.pdf).

26. EUROPEAN EXTERNAL ACTION SERV., Factsheet, *E3/EU+3 Nuclear Negotiations with Iran: Terms of the Agreement on a Joint Plan of Action, Including Measures to be Taken by the European Union*, Doc. No. 131219/02, Jan. 17, 2014, [http://www.eeas.europa.eu/statements/docs/2013/131219\\_02\\_en.pdf](http://www.eeas.europa.eu/statements/docs/2013/131219_02_en.pdf).

27. Undersecretary of State Wendy Sherman, Remarks at a Symposium on P5+1 Iran Nuclear Negotiations, Center for Strategic and International Studies (Oct. 23, 2014), available at <http://www.state.gov/p/us/rm/2014/233306.htm>.

28. Louis Charbonneau & Justyna Pawlak, *Six Powers, Iran Enter Crunch Phase of Nuclear Diplomacy*, REUTERS (May 14, 2014), <http://www.reuters.com/article/2014/05/14/iran-nuclear-idUSL6N0NZ62E20140514>.

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sanctions were in order to compel an agreement.<sup>29</sup> However, Tehran posited increased sanctions would be a deal breaker.<sup>30</sup>

The reporting period started out optimistically in November 2013 with the signing of the JPOA. On January 12, 2014, the P5+1 and Iran followed up by agreeing to technical understandings to implement the JPOA.<sup>31</sup> The technical understandings “create[d] space and time to negotiate a comprehensive resolution to this issue”<sup>32</sup> and are primarily for the IAEA, which is tasked with implementing the agreement.<sup>33</sup> The understandings establish what IAEA officials should be looking for when they visit facilities, what information IAEA officials can expect from Iran, and when to expect it.<sup>34</sup> This information will enable IAEA officials to carry out managed access to new facilities they had not visited as part of their regular monitoring activities. Additionally under the JPOA, Iran is required to halt enrichment of uranium over 5% and to take tiered actions to dilute 20% enriched uranium hexafluoride (UF<sub>6</sub>), such that it will be eliminated at the end of the six-month-agreement period.<sup>35</sup> According to the IAEA, Iran has met these obligations, though it has continued to enrich UF<sub>6</sub> up to 5%.<sup>36</sup>

Cynicism against Iran’s efforts gained traction after the announcement by IAEA Director General Yukiya Amano, on the eve of the November 2014 political talks between the P5+1 and Iran, that he was “still unable to provide ‘credible assurance’ Iran had no undeclared nuclear material and activities.”<sup>37</sup> The Agency cited concerns over construction activity at the Parchin military installation “likely to have further undermined the Agency’s ability to conduct effective verification. It remains important for Iran to provide answers to the Agency’s questions and access to the Parchin military facility.”<sup>38</sup>

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29. Niels Lesniewski, *Republicans Push for More Iran Sanctions as Talks are Extended*, ROLL CALL (Nov. 24, 2014), <http://blogs.rollcall.com/wgdb/republicans-push-for-more-sanctions-on-iran-as-talks-are-extended/>.

30. Matthew Lee & George Jahn, *Iran Nuclear Talks Extended Until July but Threatened by Potential Sanctions*, DENVER POST (Nov. 25, 2014), [http://www.denverpost.com/nationworld/ci\\_27005717/iran-nuclear-talks-extended-until-july-but-threatened](http://www.denverpost.com/nationworld/ci_27005717/iran-nuclear-talks-extended-until-july-but-threatened).

31. *Background Briefing on the Implementation Plan of the P5+1 and Iran’s First Step Nuclear Agreement*, U.S. DEP’T OF STATE, <http://www.state.gov/r/pa/prs/ps/2014/01/219571.htm> (last visited Jan. 15, 2014).

32. *Id.*

33. *Id.*

34. INT’L ATOMIC ENERGY AGENCY, MONITORING AND VERIFICATION IN THE ISLAMIC REPUBLIC OF IRAN IN RELATION TO THE JOINT PLAN OF ACTION ¶ 6, GOV/2014/2 (Jan. 17, 2014), available at <http://www.iaea.org/sites/default/files/gov2014-2.pdf>.

35. U.S. DEP’T OF STATE, *Background Briefing on the Implementation Plan of the P5+1 and Iran’s First Step Nuclear Agreement*, <http://www.state.gov/r/pa/prs/ps/2014/01/219571.htm>, visited Jan. 15, 2014.

36. INT’L ATOMIC ENERGY AGENCY, IMPLEMENTATION OF THE NPT SAFEGUARDS AGREEMENT AND RELEVANT PROVISIONS OF SECURITY COUNCIL RESOLUTIONS IN THE ISLAMIC REPUBLIC OF IRAN ¶¶ 12-14, Doc. No. GOV/2014/58 (Nov. 7, 2014), available at <http://www.iaea.org/sites/default/files/gov2014-58.pdf>.

37. Frederick Dahl, *Iran Still Stalling as Nuclear Deadline Looms—U.N. Agency*, REUTERS (Nov. 21, 2014), <http://in.reuters.com/assets/print?aid=INKCN0J41BF20141120>.

38. INT’L ATOMIC ENERGY AGENCY, *Implementation of the NPT Safeguards Agreement and relevant provisions of Security Council resolutions in the Islamic Republic of Iran* ¶ 59, IAEA Doc. GOV/2014/58 (Nov. 7, 2014), <http://www.iaea.org/sites/default/files/gov2014-58.pdf> (internal citations omitted).

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### III. Nuclear Arms Control

In its 2014 Compliance Report<sup>39</sup> the U.S. State Department declared the Russian Federation to be “in violation of its obligations under the INF [Intermediate Nuclear Forces] Treaty<sup>40</sup> not to possess, produce, or flight-test a ground-launched cruise missile (GLCM) with a range capability of 500 km to 5,500 km, or to possess or produce launchers of such missiles.”<sup>41</sup> The United States called for immediate talks on the reported violation and for prompt steps by Russia to cure it. The Russian Foreign Ministry denied the missile in question violated the treaty and repeated earlier claims (which the United States has denied) that the United States is violating the treaty with some of the missiles used in missile defense tests and with the development of some armed drones.<sup>42</sup> As of late November 2014, the disputes remained unresolved, but both parties expressed a desire to continue talks and preserve the treaty.<sup>43</sup>

In April 2015, the next Review Conference on the Nuclear Non-Proliferation Treaty (NPT)<sup>44</sup> will begin at the United Nations in New York. The United Nations’ 2014 NPT Preparatory Committee was unable to agree on a final statement.<sup>45</sup> There was sharp disagreement<sup>46</sup> between the nuclear-weapons states recognized by the NPT<sup>47</sup> and a majority of the non-nuclear weapons states over the pace of progress under Article VI of the NPT.<sup>48</sup> Article VI provides all parties agree “to pursue negotiations in good faith on effective measures relating to the cessation of the nuclear arms race at an early date and to nuclear disarmament.”<sup>49</sup> During the United Nations’ First Committee debate on nuclear weapons in October 2014,<sup>50</sup> 155 non-nuclear weapons states submitted a joint statement

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39. U.S. DEP’T OF STATE, <http://www.state.gov/documents/organization/230108.pdf>.

40. Treaty Between the United States of America and the Union of Soviet Socialist Republics on the Elimination of Their Intermediate-Range and Shorter-Range Missiles U.S.-Russ., *available at* <http://www.state.gov/t/avc/trty/102360.htm>.

41. U.S. DEP’T OF STATE, <http://www.state.gov/documents/organization/230108.pdf>.

42. *US Statements that Russia Breaks INF Treaty Unfounded—FM*, TASS RUSSIAN NEWS AGENCY (July 30, 2014), <http://en.itar-tass.com/russia/742972>.

43. Statement by Rose Gottemoeller, U.S. Dep’t of State, Under Secretary for Arms Control and International Security, *America’s Commitment to Ballistic Missile Defense and the European Phased Adaptive Approach* (Nov. 18, 2014), *available at* <http://www.state.gov/t/us/2014/234157.htm>.

44. Treaty on the Non-Proliferation of Nuclear Weapons, July 1, 1968, 21 U.S.T. 483, 729 U.N.T.S. 161.

45. Stockholm Int’l Peace Research Institute, 2014 NPT PrepComm: Day 10, <http://www.sipri.org/research/disarmament/2014-npt-prepcomm/day-10> (last visited Nov. 29, 2014).

46. *See, e.g.*, Women’s Int’l League for Peace and Freedom, NPT News in Review, Vol. 12, No. 11, *available at* <http://reachingcriticalwill.org/images/documents/Disarmament-fora/npt/NIR2014/No.11.pdf>.

47. United States, Russia, United Kingdom, France, and China, which are also the Permanent Members of the U.N. Security Council, frequently referred to as “the P5.”

48. Compare, *e.g.*, Statement by Mikhail I. Uliyanov, Head of Delegation of the Russian Federation to the Preparatory Committee for the 2015 Review Conference of the Parties to the Treaty on the Nuclear Non-Proliferation of Nuclear Weapons (Cluster 1: Disarmament) (Apr. 30, 2014), with Statement by Amb. Patricia O’Brien on behalf of the New Agenda Coalition. Both statements are available at <http://reachingcriticalwill.org/images/documents/Disarmament-fora/npt/2014/statements> (click on the respective statements under “Cluster One, Wednesday 30 April 2014”).

49. NPT, Art. VI.

50. The First Committee, consisting of all U.N. member states, “considers all disarmament and international security matters within the scope of the [U.N.] Charter.” *Disarmament and International Security*, Gen. Assembly of the U.N., <http://www.un.org/en/ga/first>. First Committee resolutions are normally adopted as a matter of course by the General Assembly when it meets in plenary session.

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citing the “catastrophic humanitarian consequences of nuclear weapons” and calling for their “total elimination.”<sup>51</sup>

On April 24, 2014, the Republic of the Marshall Islands (RMI) filed applications<sup>52</sup> in the International Court of Justice (ICJ) against the nine nuclear-weapons states<sup>53</sup> seeking declaratory judgment that the Respondents have breached obligations, recognized by the ICJ in a 1996 advisory opinion, “to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control.”<sup>54</sup> The RMI’s claims against the five NPT signatories rely on both the NPT and customary international law. The RMI’s claims as to the non-signatory states are based solely on customary international law. The United Kingdom, India, and Pakistan have accepted the compulsory jurisdiction of the ICJ in cases where the other party has also accepted compulsory jurisdiction, which the RMI has. None of the remaining six nuclear states has agreed to jurisdiction in this case, and China has already stated it will not do so. The RMI has also filed a parallel case in federal district court in San Francisco, California, against the United States alone. The Department of Justice has filed a motion to dismiss on justiciability grounds.<sup>55</sup>

One current dispute between the P5 and non-nuclear weapons states relates to the modernization of nuclear arsenals. In response to concerns that such modernization was inconsistent with progress toward nuclear disarmament, the parties to the NPT agreed at the 2010 NPT Review Conference to recognize “the interests of non-nuclear weapons states in the constraining by the nuclear weapons states of the development and qualitative improvement of nuclear weapons and ending the development of advanced new types of nuclear weapons.”<sup>56</sup> In 2014, however, all of the nuclear-weapons states are proceeding with the modernization and qualitative enhancement of their nuclear arsenals (and, in the cases of India and Pakistan, with quantitative increases as well).<sup>57</sup> For example, the U.S. Air Force, in addition to a new penetration bomber, is seeking an enhanced air-launched cruise missile that will provide “lower yield options” and “more targeting flexibility.”<sup>58</sup> The United States, however, has declared its modernization program is not intended to

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51. [http://reachingcriticalwill.org/images/documents/Disarmament-fora/1com/1com14/statements/20Oct\\_NewZealand.pdf](http://reachingcriticalwill.org/images/documents/Disarmament-fora/1com/1com14/statements/20Oct_NewZealand.pdf).

52. Press Release, Int’l Court of Justice, No. 2014/18 (Apr. 25, 2014), *available at* <http://www.icj-cij.org/presscom/files/0/18300.pdf>.

53. China, France, Russia, United Kingdom, United States of America, and India, Pakistan, Israel, and North Korea.

54. 1996 Advisory Opinion of the International Court of Justice, para.105(2)F

55. Marshall Islands v. United States, U.S. District Court, Northern District of California, Case No. 3:2014-cv-01885.

56. 2010 NPT Review Conference Final Document I(b)(4).

57. Hans M. Kristensen & Robert S. Norris, *Slowing Nuclear Weapons Reductions and Endless Nuclear Weapons Modernizations: a Challenge to the NPT*, BULL. OF THE ATOMIC SCIENTISTS 2014, <http://bos.sagepub.com/content/70/4/94.full>.

58. Hans M. Kristensen, Fed’n of American Scientists, *W80-1 Warhead Selected for New Nuclear Cruise Missile*, Oct. 10, 2014, [http://fas.org/blogs/security/2014/10/w80-1\\_lrso/](http://fas.org/blogs/security/2014/10/w80-1_lrso/).

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develop new nuclear warheads, missions, or capabilities,<sup>59</sup> and repeated these assurances in the 2014 U.N. debates.<sup>60</sup>

The government of Austria announced it would host an international conference on December 8-9, 2014, in Vienna, on the humanitarian consequences of nuclear explosions.<sup>61</sup> The United States, although it had joined a P5 boycott of earlier conferences on the same subject,<sup>62</sup> announced in November that the United States would participate in the Vienna Conference but would not treat it as a forum for arms control negotiations.<sup>63</sup>

#### **IV. Information and Intelligence Developments**

##### **A. INTELLIGENCE CASES IN U.S. COURTS**

Several high profile cases made their way through the U.S. courts regarding the extent to which the National Security Agency's (NSA's) surveillance program comports with the Fourth Amendment of the U.S. Constitution. In *Klayman v. Obama*, Judge Richard J. Leon of the U.S. District Court of the District of Columbia ruled that the counterterrorism program that collects telephone metadata violated the Fourth Amendment. He barred the government from collecting any data associated with the plaintiff.<sup>64</sup> The court reasoned that the database never truly served the purpose of rapidly identifying terrorist in time-sensitive investigations.<sup>65</sup> Although the government publicly asserted that the NSA's surveillance program has prevented fifty-four terrorist attacks, no evidence was submitted to back the claim.<sup>66</sup>

On appeal, the government argued the collection of the metadata did not amount to a search under the Fourth Amendment because individuals voluntarily shared the data with a third party provider, namely, telephone companies.<sup>67</sup> The government further stated that there was no protected constitutional interest that had been violated by the collection of business records from a telephone company.<sup>68</sup>

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59. *E.g.*, U.S. DEP'T OF DEFENSE, NUCLEAR POSTURE REVIEW REPORT (April 2010), available at <http://www.defense.gov/npr/docs/2010%20Nuclear%20Posture%20Review%20Report.pdf>.

60. Statement by Ambassador Robert Wood to the U.N. General Assembly, *Thematic Debate on Nuclear Weapons* (Oct. 20, 2014).

61. Republic of Austria, Vienna Conference on the Humanitarian Impact of Nuclear Weapons, <http://www.bmeia.gv.at/en/european-foreign-policy/disarmament/weapons-of-mass-destruction/nuclear-weapons-and-nuclear-terrorism/vienna-conference-on-the-humanitarian-impact-of-nuclear-weapons/> (last visited Dec. 7, 2014).

62. Joint Statement of China, France, the Russian Federation, the United Kingdom, and the United States, available at [http://www.reachingcriticalwill.org/images/documents/Disarmament-fora/oslo-2013/P5\\_Oslo.pdf](http://www.reachingcriticalwill.org/images/documents/Disarmament-fora/oslo-2013/P5_Oslo.pdf); <http://opencanada.org/features/the-think-tank/comments/the-humanitarian-side-of-nuclear-non-proliferation/>.

63. Press Release, U.S. Dep't of State, Office of the Spokesperson, *United States Will Attend the Vienna Conference on the Humanitarian Impact of Nuclear Weapons*, (Nov. 7, 2014), available at <http://www.state.gov/r/pa/prs/ps/2014/11/233868.htm>.

64. *Klayman v. Obama*, 957 F. Supp. 2d 1, 67 (D.D.C. 2013).

65. *Id.* at 62-66.

66. *Id.*

67. Josh Gerstein, *Anti-NSA ruling in jeopardy*, POLITICO (Nov. 4 2014), <http://www.politico.com/blogs/under-the-radar/2014/11/antinsa-ruling-in-jeopardy-198151.html>.

68. *Id.* A three-judge panel of the U.S. Court of Appeals for the District of Columbia Circuit heard oral arguments on November 2, 2014.

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*Klayman* stands in stark contrast to *ACLU v. Clapper*, which was heard in the U.S. District Court for the Southern District of New York. Judge William H. Pauley III upheld the NSA's bulk telephone metadata collection program.<sup>69</sup> The court reasoned that although the program vacuums up virtually all telephone calls to and from the United States, it is still subject to executive and congressional oversight.<sup>70</sup> The court further explained there is no evidence the government used the information gathered from the bulk telephone metadata collection program for any purpose other than investigating and disrupting terrorist attacks.<sup>71</sup>

Like *Klayman*, the ACLU case is also on appeal. The Court of Appeals for the Second Circuit heard arguments regarding the constitutionality of the program on September 2, 2014, and raised questions regarding the statutory scheme under which the program operates, specifically Section 215 of the USA PATRIOT Act.<sup>72</sup> This provision enables intelligence organizations to request that the FISA Court order the production of documents or other tangible things relevant to an authorized national security investigation.<sup>73</sup>

The ACLU argued that Section 215 does not apply to telephone metadata and therefore the program is not statutorily allowed.<sup>74</sup> The government stressed the protections that surround the information collected in the program and argued that the gathering of routine information, such as time and duration of phone calls, falls squarely within the Fourth Amendment.<sup>75</sup>

This circuit split may well find its way to the United States Supreme Court.

**B. INTELLIGENCE AND THE U.S. EXECUTIVE**

On January 17, 2014, President Barack Obama issued Presidential Policy Directive/PPD-28 concerning Signal Intelligence Activity.<sup>76</sup> The directive seeks to advance the United States' national security and foreign policy interests and to protect its citizens, and the citizens of its allies and partners, from harm, while also protecting legitimate privacy interests.<sup>77</sup>

The directive makes clear that all signals collection must be authorized by and conducted pursuant to legislation, executive order, or proclamation. Collection of signals intelligence shall not be used to suppress or burden criticism or dissent or to disfavor

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69. *ACLU v. Clapper*, 959 F. Supp. 2d 724 (S.D.N.Y. 2013).

70. *Id.* at 757.

71. *Id.*

72. Oral Argument at 19:57, American Civil Liberties Union, et al., v. James Clapper, et. al. No. 13 Civ. 3994 (WHP), available at <http://www.c-span.org/video/?321163-1/aclu-v-clapper-oral-argument-phone-record-surveillance>.

73. Section 215 of the Foreign Intelligence Surveillance Act, available at <http://icontherecord.tumblr.com/topics/section-215>

74. Oral Argument at 21:51, American Civil Liberties Union, et al., v. James Clapper, et. al. No. 13 Civ. 3994 (WHP), available at <http://www.c-span.org/video/?321163-1/aclu-v-clapper-oral-argument-phone-record-surveillance>.

75. Oral Argument at 1:34:31, American Civil Liberties Union, et al., v. James Clapper, et. al. No. 13 Civ. 3994 (WHP), available at <http://www.c-span.org/video/?321163-1/aclu-v-clapper-oral-argument-phone-record-surveillance>.

76. Available at <http://www.gpo.gov/fdsys/pkg/DCPD-201400031/pdf/DCPD-201400031.pdf>.

77. Presidential Policy Directive 28—Signals Intelligence Activities, DAILY COMP. PRES. DOC. 201400031

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persons based on their ethnicity, race, gender, sexual orientation, or religion.<sup>78</sup> The order limits the collection of signals intelligence exclusively to foreign intelligence or counter-intelligence purposes that support national and departmental missions. In so doing, it specifies that privacy and civil liberties shall be an integral consideration when planning signals intelligence activities.<sup>79</sup>

Following this guidance, the NSA announced the creation of a Civil Liberties and Privacy Officer to provide advice to the director and to oversee the NSA's civil liberties and privacy-related activities. The officer also is expected to develop measures to further strengthen the NSA's privacy protections.<sup>80</sup>

Finally, the presidential directive further refines the process for collecting signals intelligence and directs the intelligence community to establish policies and procedures that are reasonably designed to minimize the dissemination and retention of personal information collected.<sup>81</sup>

C. INTELLIGENCE CASES IN THE EUROPEAN UNION COURT OF JUSTICE

On April 8, 2014, the Grand Chamber of the Court of Justice of the European Union issued a judgment<sup>82</sup> on two combined cases from Ireland and Austria considering the validity of a directive issued by the European Parliament and the Council on March 15, 2006—Directive 2006/24/EC.<sup>83</sup> The directive requires:

telecommunications companies to keep EU citizens' data for between six months and two years '[b]ecause retention of data has proved to be such a necessary and effective investigative tool for law enforcement in several Member States, and in particular concerning serious matters such as organized crime and terrorism, it is necessary to ensure that retained data are made available to law enforcement authorities for a certain period.'<sup>84</sup>

The Court was asked to address the validity of the directive in light of two liberties found in the Charter of Fundamental Rights of the European Union: the fundamental right to respect for private life and the fundamental right to the protection of personal data.<sup>85</sup> The Court struck down the directive, concluding that it "entails a wide-ranging

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78. *Id.*

79. *Id.*

80. Press Release, U.S. Nat'l Security Agency, *NSA Announces New Civil Liberties and Privacy Officer* (Jan. 24, 2014), available at [https://www.nsa.gov/public\\_info/press\\_room/2014/civil\\_liberties\\_privacy\\_officer.shtml](https://www.nsa.gov/public_info/press_room/2014/civil_liberties_privacy_officer.shtml).

81. Presidential Policy Directive 28—Signals Intelligence Activities, DAILY COMP. PRES. DOC. 201400031

82. *Digital Rights Ireland, Ltd. v. Ireland*, available at <http://curia.europa.eu/juris/document/document.jsf?text=&docid=150642&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=127299> [hereinafter EU Court of Justice Judgment].

83. Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:105:0054:0063:EN:PDF>.

84. Andrea Germanos, *Victory for Defenders of Privacy: Top EU Court Smacks Down Surveillance Law*, COMMON DREAMS, <http://www.commondreams.org/news/2014/04/08/victory-defenders-privacy-top-eu-court-smacks-down-surveillance-law>.

85. Charter of Fundamental Rights of the European Union, Arts. 7, 8, [http://www.europarl.europa.eu/charter/pdf/text\\_en.pdf](http://www.europarl.europa.eu/charter/pdf/text_en.pdf).

and particularly serious interference with those fundamental rights in the legal order of the EU,” and that such interference is not “precisely circumscribed . . . to ensure that it is actually limited to what is strictly necessary.”<sup>86</sup> The Court found “particularly serious” the perception of a constant surveillance state that is created when data is retained without the knowledge of the registered user.<sup>87</sup>

## V. Cybersecurity Developments

Several important U.S. cybersecurity developments occurred during the past year. As discussed below, these included: (i) the promulgation by the National Institute of Standards and Technology (NIST) of a Framework for Improving Critical Infrastructure Cybersecurity; (ii) the indictment of five members of the Chinese People’s Liberation Army (PLA) by a grand jury in federal district court in Pennsylvania on charges of cyber espionage and related crimes brought by the Department of Justice (DOJ); and (iii) the failure of Congress to pass any cybersecurity legislation.

In February 2014, NIST issued Version 1.0 of the Framework for Improving Critical Infrastructure Cybersecurity (Framework).<sup>88</sup> Mandated to develop a voluntary Framework pursuant to Executive Order 13636 of February 12, 2013, NIST facilitated useful collaboration between government and private industry that resulted in the creation of a Framework that uses a common language to address and manage cybersecurity risk in a cost-effective way based on business needs without placing additional regulatory requirements on businesses.<sup>89</sup>

The Framework consists of three parts: the Framework Core, the Framework Profile, and the Framework Implementation Tiers.<sup>90</sup> The Framework Core contains a set of cybersecurity activities, outcomes, and informative references that are common across critical infrastructure sectors, providing the detailed guidance for developing individual organizational Framework Profiles.<sup>91</sup> Through use of the Framework Profiles, entities are able to align their cybersecurity activities with their business requirements, risk tolerances, and resources. The Framework Tiers provide a mechanism for businesses to view and understand the characteristics of their approach to managing cybersecurity risk.<sup>92</sup> Collectively, the Framework is intended to allow organizations of any size and with any degree of cybersecurity sophistication to apply the principles and best practices of risk management to develop organization-specific solutions that will help them reduce and better manage cybersecurity risks.<sup>93</sup> Recognizing that the Framework will need to be updated to keep pace with changes in technology, threats, and other factors, and in order to incorporate lessons learned from its use, NIST intends for the Framework to be a “living docu-

86. EU Court of Justice Judgment, ¶ 65.

87. EU Court of Justice Judgment, ¶ 37.

88. NAT’L INST. OF STANDARDS AND TECH., FRAMEWORK FOR IMPROVING CRITICAL INFRASTRUCTURE CYBERSECURITY, <http://www.nist.gov/cyberframework/upload/cybersecurity-framework-021214.pdf> (2014).

89. *Id.* at 1.

90. *Id.*

91. *Id.*

92. *Id.*

93. *Id.* at 2.

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ment” that will be revised on a regular basis. This is why the initial Framework document is designated, “Version 1.0.”<sup>94</sup>

NIST’s Framework was the subject of considerable discussion during a panel program on “Private Contractors, Snowden, and Cybersecurity” that took place during the ABA Section of International Law’s Spring Meeting in New York City on April 3, 2014. During the program, one of the speakers, Joel Brenner, a former Inspector General of the NSA under President George W. Bush and currently a Robert Wilhelm Fellow at the Massachusetts Institute of Technology’s Center for International Studies, acknowledged that NIST’s Framework was a good starting point. He further recommended that law firms, companies, and government agencies also review the Critical Security Controls that were originally developed under the auspices of the SANS Institute<sup>95</sup> and are now administered and updated by the Council on CyberSecurity, a not-for-profit organization committed to the security of the open Internet.<sup>96</sup> Another speaker, Evan Bayh, former Senator and former Governor of Indiana, echoed Mr. Brenner’s recommendation and urged Congress to pass necessary cybersecurity legislation, although he stated that he did not think Congress would take such action until a cyber-attack significantly debilitates a corporate or government computer system.<sup>97</sup>

Revelation of significant cyber-attacks on the computer systems of several large U.S. companies was disclosed when the DOJ unsealed a grand jury indictment against five members of the Chinese PLA on May 19, 2014. In the DOJ press release issued in connection with the indictment, Attorney General Eric Holder stated, “This is a case alleging economic espionage by members of the Chinese military and represents the first ever charges against a state actor for this type of hacking,” and that “[t]he range of trade secrets and other sensitive business information stolen in this case is significant and demands an aggressive response.”<sup>98</sup>

In the unsealed indictment, the following companies were identified as being the victims of the crimes allegedly perpetrated between 2006 and 2014 by the five members of the Chinese PLA who were indicted: Alcoa, Inc.; Westinghouse Electric Co.; United States Steel Corp. (U.S. Steel); Allegheny Technologies Inc. (ATI); the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (USW); and various U.S. subsidiaries of SolarWorld AG.<sup>99</sup> The charges in the indictment included, among other things: economic espionage; trade secret theft; aggravated identity theft; and conspiracy to commit computer fraud.<sup>100</sup>

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94. *Id.*

95. See, e.g., SANS Institute, *Critical Security Controls*, <https://www.sans.org/critical-security-controls/> (last visited Dec. 1, 2014).

96. See Council on CyberSecurity, *Critical Cybersecurity Controls (Vers. 5.1)*, <http://www.counciloncybersecurity.org/critical-controls/> (last visited Nov. 30, 2014).

97. See Stephen Joyce, *Congress Won’t Approve Cybersecurity Law Until Attack Compels It to Act*, Bayh Says, BLOOMBERG BNA (Apr. 7, 2014), <http://www.bna.com/congress-wont-approve-n17179889411/> (last visited Nov. 30, 2014).

98. Press Release, U.S. Dep’t. of Justice, *U.S. Charges Five Chinese Military Hackers for Cyber Espionage Against U.S. Corporations and a Labor Organization for Commercial Advantage* (May 9, 2014), available at <http://www.justice.gov/opa/pr/us-charges-five-chinese-military-hackers-cyber-espionage-against-us-corporations-and-labor>.

99. *Id.*

100. *Id.*

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Notwithstanding the significant cyber-attacks referenced in the unsealed indictment against the five members of the Chinese PLA, or several other large-scale attacks perpetrated in 2014 against J.P. Morgan and numerous U.S. government agencies by entities believed to be supported by the Russian government or the Chinese government, Congress failed to pass any cybersecurity legislation in 2014.

**VI. Islamic State of Iraq and the Levant<sup>101</sup>**

June 2014 saw the rise to international prominence of the Islamic State of Iraq and the Levant (ISIL) in its current form<sup>102</sup> when it swept across northern Iraq, capturing Mosul and the Beiji oil refinery in Iraq. Seizing swaths of Sunni-controlled territory across northeast Syria and northern Iraq<sup>103</sup> and imposing its harsh brand of governance, the group declared a caliphate called the Islamic State, and named Abu Bakr al-Baghdadi as Caliph.

Retribution is swift and brutal against anyone who opposes its harsh theocratic rule. The Independent International Commission of Inquiry on the Syrian Arab Republic<sup>104</sup> investigated the treatment of Syrians living under ISIL control. The investigation,<sup>105</sup> based on over 300 first-hand victim and witness statements, “documents shocking accounts of the armed group’s use of terror to subjugate Syrians living in its areas of control, as well as the use of extreme violence against both civilians and captured fighters.”<sup>106</sup>

ISIL also works to build its version of a state and citizenry. It follows a standard methodology. Once it establishes military control, “it takes over power plants, factories, bakeries, and food supplies,”<sup>107</sup> as well as oil fields.<sup>108</sup> “Its lawyers draft modern contracts that spell out Islamic responsibilities of local organizations that want to work with the dis-

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101. Various entities refer to the group alternately as ISIS, ISIL, the Islamic State, Al Nasra Front, DAIISH, and DAESH. Ray Sanchez, *ISIS, ISIL, or the Islamic State*, CNN (Sept. 9, 2014), <http://www.cnn.com/2014/09/09/world/meast/isis-isil-islamic-state/>. This contribution refers to the group as ISIL.

102. ISIS is an evolved form of Al Qa’ida in Iraq, an Al Qa’ida offshoot organization founded in 2004 by Al Abu Mus’ab al-Zarqawi, who pledged his allegiance to bin Laden. For a quick history of ISIS, see Address by the Honorable Matthew G. Olsen, Director, National Counterterrorism Center, Brookings Institution (Sept. 3, 2014), available at <http://www.dni.gov/files/documents/2014-09-03%20Remarks%20for%20the%20Brookings%20Institution.pdf>.

103. See, e.g., CNN Library, *ISIS Fast Facts*, CNN, <http://www.cnn.com/2014/08/08/world/isis-fast-facts/index.html>.

104. See the overview available at <http://www.ohchr.org/EN/HRBodies/HRC/IICISyria/Pages/IndependentInternationalCommission.aspx>.

105. U.N. OFFICE OF THE HIGH COMMISSIONER ON HUMAN RIGHTS, INDEPENDENT INTERNATIONAL COMMISSION OF INQUIRY ON THE SYRIAN ARAB REPUBLIC, *RULE OF TERROR: LIVING UNDER ISIS IN SYRIA*, (Nov. 14, 2014), available at [http://www.ohchr.org/Documents/HRBodies/HRCouncil/CoISyria/HRC\\_CRP\\_ISIS\\_14Nov2014.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/CoISyria/HRC_CRP_ISIS_14Nov2014.pdf) [hereinafter IICI Report].

106. United Nations Human Rights, *UN Commission of Inquiry: Syrian Victims Reveal ISIS’s Calculated Use of Brutality and Indoctrination* (Nov. 14, 2014), <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15295&LangID=E#sthash.0xLvFuGx.dpuf> <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15295&LangID=E>.

107. Thanassis Cambanis, *The Surprising Appeal of ISIS*, BOSTON GLOBE (Jun. 29, 2014).

108. RT.com, *Islamic State Seeks Crisis Manager to Save Ailing Oil Revenues—report*, <http://rt.com/news/201623-islamic-state-oil-manager/> (Nov. 2, 2014).

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placed.”<sup>109</sup> ISIL asks the governed to actively participate in “spreading the call to God.”<sup>110</sup>

The U.N. Security Council passed a resolution recognizing ISIL as a terror group and calling for action against it,<sup>111</sup> as well as a second resolution addressing foreign terror fighters assisting ISIL.<sup>112</sup> In response, President Obama announced a three-pronged approach focused on expanding a U.S. air campaign; drawing on a full range of counterterrorism tools to stem the tide of foreign fighters; and increasing support for friendly foreign ground forces.<sup>113</sup> The asserted domestic legal authority<sup>114</sup> for taking action against ISIL is the 2001 Authorization for Use of Military Force (AUMF), which was passed as a joint resolution by both houses of the U.S. Congress shortly after the 2001 terror attacks.<sup>115</sup> However, it was later reported that the President would be seeking a new authorization to use military force.<sup>116</sup> Arguably, the AUMF does not cover training moderate rebel forces in Syria.<sup>117</sup>

As for the plan’s international law basis, Iraq expressly requested “the United States . . . to lead international efforts to strike ISIL sites and military strongholds, with [its] express consent.”<sup>118</sup> To this end, sixty nations announced their intent to cooperate in coordinated action against ISIL.<sup>119</sup> The U.S.-led coalition met in Brussels to set up the structure by which it will coordinate actions. The participating states agreed to five lines of effort to defeat ISIL:

- Supporting military operations, capacity building, and training;
- Stopping the flow of foreign terrorist fighters;
- Cutting off ISIL’s access to financing and funding;
- Addressing associated humanitarian relief and crises; and

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109. Thanassis Cambanis, *The Surprising Appeal of ISIS*, BOSTON GLOBE, Jun. 29, 2014.

110. *Id.*

111. S.C. Res. 2701, U.N. Doc. S/RES/2170 (Aug. 15, 2014).

112. S.C. Res. 2701, U.N. Doc. S/RES/2178 (Sep. 24, 2014).

113. Press Release, The White House, *Background Conference Call on the President’s Address to the Nation* (Sept. 10, 2014), available at <http://www.whitehouse.gov/the-press-office/2014/09/10/background-conference-call-presidents-address-nation> [hereinafter White House Press Release].

114. *Id.* See also Letter from President Obama to the Speaker of the House of Representatives and President Pro Tempore of the Senate, *War Powers Resolution Regarding Iraq* (Sept. 23, 2014), available at <http://www.gpo.gov/fdsys/pkg/DCPD-201400698/pdf/DCPD-201400698.pdf>.

115. Joint Resolution to Authorize the Use of United States Armed Forces Against Those Responsible for the Recent Attacks Launched Against the United States, Pub. L. 107-40, 115 Stat. 224 (2001). However, critics of this theory for authorization point to the disavowal of ISIS by Al-Qa-ida; see *Liz Sly, Al-Qaeda Disavows Any Ties with Radical Islamist ISIS Group in Syria, Iraq*, WASH. POST (Feb. 3, 2014).

116. Karen DeYoung, *Obama to Seek New Authorization for Fight Against Islamic State*, WASH. POST (Nov. 5, 2014), [http://www.washingtonpost.com/world/national-security/obama-to-seek-new-authorization-for-fight-against-islamic-state/2014/11/05/67bb0998-652c-11e4-bb14-4cfea1e742d5\\_story.html](http://www.washingtonpost.com/world/national-security/obama-to-seek-new-authorization-for-fight-against-islamic-state/2014/11/05/67bb0998-652c-11e4-bb14-4cfea1e742d5_story.html); Karen DeYoung, *President and Congress Play Waiting Game on Authorization for Islamic State Action*, WASH. POST (Dec. 4, 2014), [http://www.washingtonpost.com/world/national-security/president-and-congress-play-waiting-game-on-authorization-for-islamic-state-action/2014/12/04/0f37339c-7bec-11e4-9a27-6fdb612bff8\\_story.html](http://www.washingtonpost.com/world/national-security/president-and-congress-play-waiting-game-on-authorization-for-islamic-state-action/2014/12/04/0f37339c-7bec-11e4-9a27-6fdb612bff8_story.html).

117. White House Press Release, *supra* note 113.

118. Letter from The Permanent Representative of Iraq to the United Nations to the President of the United Nations Security Council (Sep. 20, 2014), available at [http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s\\_2014\\_691.pdf](http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2014_691.pdf).

119. Joint Statement by Coalition Partners at Counter-ISIL Meeting (Dec. 3, 2014), available at <http://iipdigital.usembassy.gov/st/english/texttrans/2014/12/20141203311598.html#axzz3Kzz7OMHv>.

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- Exposing ISIL's true nature (ideological de-legitimization).<sup>120</sup>

Iran has asserted its role in helping to defeat ISIL. Iran has also said, however, that it will not coordinate with the United States or the U.S.-led coalition, which Ayatollah Ali Hosseini Khamenei dismissed as an alternate way to subvert the Muslim world.<sup>121</sup> Iranian F-4 aircraft were sighted bombing ISIL positions in December.<sup>122</sup> Commander of the Quds Force, Qassem Suleimani, has seen increased media coverage in the latter part of 2014, to include coverage for his Quds Force assisting the Kurdish Peshmerga in the fight against ISIL.<sup>123</sup>

Turkey is in a tenuous position as it tries to balance ongoing tensions with Kurds while also providing support for Kurds battling ISIL.<sup>124</sup> Media reports indicate that Turkey and the United States have struck a deal that will result in greater involvement by Turkey.<sup>125</sup> In exchange for a buffer zone insider Syria along the entirety of the Syria-Turkey border, the United States will get access to the air base at Incirlik.<sup>126</sup> However, "part of the [United States'] risk assessment is whether Syrian President Bashar al-Assad will continue to allow overflights of his territory without activating Syrian air defenses, as he has with U.S. aircraft now striking the Islamic State in areas largely to the east of the proposed new front."<sup>127</sup>

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120. *Id.*

121. <http://english.al-akhbar.com/node/22642>; Ayatollah Ali Khamenei Twitter Post (Nov. 25, 2014), [https://twitter.com/khamenei\\_ir/status/537169493282529280](https://twitter.com/khamenei_ir/status/537169493282529280). See also Tim Arango & Thomas Erdbrink, *U.S. and Iran Both Attack ISIS, but Try Not to Look Like Allies*, N.Y. TIMES, Dec. 3, 2014.

122. Ian Black, *Iranian Air Force Bombs Targets in Iraq, Says Pentagon*, THE GUARDIAN (Dec. 3, 2013), <http://www.theguardian.com/world/2014/dec/03/iran-bombs-isis-in-iraq-says-us>, Julian Borger, *Iran Air Strikes Against ISIS Requested by Iraqi Government, Says Tebran*, THE GUARDIAN (Dec. 5, 2014), <http://www.theguardian.com/world/2014/dec/05/iran-conducts-air-strikes-against-isis-extremists-iraq>.

123. *Quds Force Chief Suleimani Reportedly Helped Peshmerga Defeat IS In Diyala*, RADIO FREE EUROPE/RADIO LIBERTY (Nov. 25, 2014), <http://www.rferl.org/content/irgc-isis-suleimani-kurdish-iraq-islamic-state-fighting/26709813.html>.

124. Gönül Tol, *Turkey's Tough Choice: Take on ISIS or the PKK?*, CNN (Oct. 9, 2014), <http://www.cnn.com/2014/10/07/opinion/turkey-isis-pkk/index.html>.

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