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National Security Law

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This article surveys 2015 developments in National Security Law relevant to international lawyers.¹

I. Cybersecurity Developments

Several important cybersecurity developments have occurred during the past year. As discussed below, these included three main developments: (i) the enactment of several cybersecurity-related laws; (ii) the implementation of regulations requiring certain kinds of government contractors to disclose when significant cybersecurity breaches have occurred under certain circumstances; and (iii) the promulgation of an Executive Order that would permit the President to impose sanctions on foreign entities found to have engaged in cyber-attacks on U.S. persons.

In December 2014, several cybersecurity-related bills were passed by Congress and signed into law by President Obama. The Cybersecurity Work Force Assessment Act requires the Director of Homeland Security, within 180 days after enactment of the law and annually thereafter for three years, to conduct an assessment of the cybersecurity workforce of the U.S. Department of Homeland Security (DHS).² The National Cybersecurity Protection Act of 2014 amends the Homeland Security Act of 2002 to establish the National Cybersecurity and Communications Integration Center (Center) in DHS to carry out the responsibilities of the DHS Under Secretary responsible for

* The committee co-editors of this article are Captain James D. Carlson, Judge Advocate, U.S. Coast Guard, and Professor Joseph D. Prestia. Captain Carlson contributed "International Response to Iran's Nuclear Program," "Islamic State," and "Other Developments." Guy C. Quinlan, President, Lawyers Committee on Nuclear Policy, contributed "Nuclear Arms Control," First Lieutenant Sergio L. Suarez, U.S. Army, J. D. Candidate, Seton Hall University School of Law, contributed "Surveillance and Privacy," and Geoffrey M. Goodale, Managing Partner of Trade Law Advisors, PLLC, contributed "Cybersecurity Developments." 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 2014, see James D. Carlson *et al.*, *National Security Law*, 49 ABA/SIL YIR (n.s.) 373 (2015).

2. Cybersecurity Work Force Assessment Act, Pub. L. No. 113-246, 128 Stat. 2880 (2014) (to be codified at 6 U.S.C. § 146).

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overseeing critical infrastructure protection, cybersecurity, and related DHS programs; requires the Center to be the federal civilian interface for sharing cybersecurity risks, incidents, analysis, and warnings for federal and non-federal entities; and directs the center to enable real-time, integrated, and operational actions across federal and non-federal entities.³ The Cybersecurity Enhancement Act of 2014 provides for the establishment of ongoing, voluntary public-private partnership to improve cybersecurity and authorizes the U.S. Government to support research, raise public awareness of cyber risks, and improve the nation's cybersecurity workforce.⁴

In addition to the laws referenced above, cybersecurity-related provisions are included in the Consolidated and Further Continuing Appropriations Act, 2015 (CFCAA), which President Obama signed into law on December 16, 2014,⁵ and the National Defense Authorization Act for Fiscal Year 2015 (NDAA), which President Obama signed into law on December 19, 2014.⁶ Pursuant to section 515 of the CFCAA, the U.S. Department of Commerce (DOC), the U.S. Department of Justice (DOJ), the National Aeronautics and Space Administration (NASA), and the National Science Foundation (NSF) must assess the risk of cyberespionage or sabotage before acquiring "high-impact" or "moderate impact" information technology systems (Covered Information Systems). The groups must utilize criteria developed by the National Institute of Standards and Technology (NIST) and they must review supply chain risk from the presumptive awardee against available threat information provided by the Federal Bureau of Investigation (FBI) and other federal agencies.⁷ Separately, pursuant to section 1632 of the NDAA, the U.S. Department of Defense (DOD) is mandated, within ninety days of the NDAA's enactment, to establish procedures requiring the reporting of cyber incidents related to networks and information systems of "operationally critical contractors" (*i.e.*, a contractor defined under the NDAA as a contractor designated by the DOD as "critical source of supply for airlift, sealift, intermodal transportation services, or logistical support that is essential to the mobilization, deployment, or sustainment of the Armed Forces in a contingency operation").⁸ Such procedures were ultimately promulgated in August 2015 and are discussed below.

With Congress experiencing some difficulty in passing strong cybersecurity legislation in 2015,⁹ the Executive branch sought to fill the void by taking several assertive actions.

3. National Cybersecurity Protection Act of 2014, Pub. L. No. 113-282, 128 Stat. 3066 (2014) (to be codified at 6 U.S.C. § 148).

4. Cybersecurity Enhancement Act of 2014, Pub. L. No. 113-274, 128 Stat. 2971 (2014) (to be codified at 15 U.S.C. §§ 7422-7423).

5. Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. No. 113-235, § 515, 128 Stat. 2130 (2014) [hereinafter CFCAA].

6. Carl Levin and Howard P. "Buck" McKeon, *National Defense Authorization Act for Fiscal Year 2015*, Pub. L. No. 113-291, §1632, 128 Stat. 3292 (2014) (NDAA).

7. CFCAA, *supra* note 5, § 515.

8. NDAA §1632.

9. In 2015, several cybersecurity-related bills were introduced in Congress. Two such bills made it through the House: Protecting Cyber Networks Act of 2015, H.R. 1560, 114th Cong. (2015) (would seek to improve United States' cybersecurity through enhanced sharing of information about cyber threats), and National Cybersecurity Protection Advancement Act of 2015, H.R. 1731, 114th Cong. (2015) (would enhance multi-directional sharing of information relating to cybersecurity risks and would strengthen privacy and civil liberties protections). One made it through the Senate: Cybersecurity Information Sharing Act of 2015, S. 754, 114th Cong. (2015) (would improve cybersecurity in the United States through enhanced

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For example, pursuant to the requirements of section 1632 of the NDAA, and due in part to massive cyber-attacks suffered by the Office of Personnel Management (OPM) during the Summer of 2015 that resulted in sensitive data of more than 22 million current and former U.S. Government employees and applicants being hacked, the DOD issued an interim rule designed to enhance its cybersecurity posture.¹⁰ Under the interim rule, which became effective on August 26, 2015, all DOD contractors and subcontractors that may have “covered defense information” residing or transiting their systems are required to (1) have “adequate security” consistent with the requirements set forth in NIST Special Publication 800-171,¹¹ unless a special variance is obtained from the DOD; (2) report any cyber incidents “rapidly” to DOD and to provide it significant information about their systems if the DOD opens an investigation into any such incident; and (3) implement and maintain administrative, technical, and physical safeguards and controls with the security level and services required in accordance with the DOD’s Cloud Computing Security Requirements Guide if cloud computing services are going to be used by the contractor in connection with the performance of a contract with the DOD.¹²

President Obama also sought to improve the U.S. government’s cybersecurity posture when he signed Executive Order 13694 of April 1, 2015.¹³ Under this order, sanctions can be imposed against three basic categories of designated individuals or entities. One category relates to those that take part in “cyber-enabled activities” from outside the United States that “are reasonably likely to result in, or have materially contributed to, a significant threat to the national security, foreign policy, or economic health or financial stability of the United States.”¹⁴ A second category pertains to those that are:

[R]esponsible for or complicit in, or to have engaged in, the receipt or use for commercial or competitive advantage or private financial gain, or by a commercial entity, outside the United States of trade secrets misappropriated through cyber-enabled means, knowing they have been misappropriated, where the misappropriation of such trade secrets is reasonably likely to result in, or has materially contributed to, a significant threat to the national security, foreign policy, or economic health or financial stability of the United States.¹⁵

In addition, anyone who provides material assistance, sponsorship, or financial, material, or technological support, or goods or services in support of any of the targeted activities may be subject to sanctions.¹⁶ Furthermore, U.S. persons are generally prohibited from engaging in any dealings with entities designated under the order and any

sharing of information about cybersecurity threats). However, at the time of this writing, none of these three bills seemed likely to be passed by the other chamber of Congress and signed into law by President Obama.

10. Supplement: Network Penetration Reporting and Contracting for Cloud Services (DFARS Case 2013-D018), 80 Fed. Reg. 51,739 (Aug. 26, 2015) (*to be codified at* 48 C.F.R. pts. 202, 204, 212, 239, and 252)[hereinafter DFARS regulation].

11. Ron Ross *et al.*, *Protecting Controlled Unclassified Information in Nonfederal Information Systems and Organizations*, U.S. DEPARTMENT OF COMMERCE, NAT’L INST. OF STANDARDS AND TECHNOLOGY, available at <http://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-171.pdf> (Jun. 2015).

12. DFARS regulation, *supra* note 10.

13. Exec. Order No. 13,694, 80 Fed. Reg. 18,077 (Apr. 1, 2015).

14. *Id.*

15. *Id.*

16. *Id.*

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property or property interests of such designated entities within U.S. jurisdictions or held by U.S. persons must be blocked.¹⁷

II. Nuclear Arms Control

In 2015, the United States and Russia continued to accuse each other of violating their obligations under the Intermediate Nuclear Forces (INF) Treaty,¹⁸ which prohibits the development, possession, or testing of ground-launched cruise missiles (GLCMs) with a range capability of 500 to 5,500 kilometers or of launchers for such missiles. In its 2015 Compliance Report,¹⁹ while stating that implementation of the New START Treaty²⁰ was progressing well, the State Department again asserted that a GLCM developed by Russia is prohibited under the INF treaty, and denied Russian allegations that some aspects of the U.S. missile defense and armed unmanned aerial vehicle programs violate the INF treaty. Neither the United States nor Russia has indicated an intention to withdraw from the treaty.²¹ The State Department Compliance Report states that continued adherence to the INF Treaty is in “the mutual security interests of all the Parties,” and that the United States “will continue to pursue resolution of concerns with Russia,”²² while the Russian Foreign Ministry called for “businesslike” and “substantive” discussions to resolve the disputes.²³

The 2015 Review Conference on the Nonproliferation Treaty (NPT)²⁴ ended without agreement on a Final Document.²⁵ The Conference was marked by “severe and intensifying” conflict between the five nuclear weapons states recognized under the treaty²⁶ and a majority of non-nuclear weapons states over implementation of the obligation under Article VI of the NPT, “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

17. *Id.*

18. Intermediate-Range Nuclear Forces Treaty, U.S.-Union of Soviet Socialist Republics, Dec. 8, 1987, available at <http://www.state.gov/t/avc/trty/102360.htm>.

19. U.S. DEP'T OF STATE, 2015 *Report on Adherence to and Compliance with Arms Control, Nonproliferation and Disarmament Agreements and Commitments*, Jun. 5, 2015, <http://www.state.gov/t/avc/rls/rpt/2015/243224.htm#Adherence> [hereinafter 2015 Arms Control Report].

20. Measures for the Further Reduction and Elimination of Strategic Offensive Arms, U.S., Russ., Apr. 10, 2010, available at <http://www.state.gov/documents/organization/140035.pdf>.

21. See *Russia Threatens to Withdraw From Arms Treaties*, STRATFOR (Mar. 14, 2014), <https://www.stratfor.com/analysis/russia-threatens-withdraw-arms-treaties>.

22. 2015 Arms Control Report, *supra* note 19.

23. *Russia urges US to abandon 'megaphone diplomacy' in disarmament issues*, RUSSIAN NEWS AGENCY (Oct. 13, 2015), <http://tass.ru/en/politics/828275>.

24. Treaty on the Non-Proliferation of Nuclear Weapons, July 1, 1968, 21 U.S.T. 483, 729 U.N.T.S. 161, available at <https://www.iaea.org/sites/default/files/publications/documents/infcircs/1970/infcirc140.pdf>.

25. Press Release, NPT Review Conference, Consensus Eludes Nuclear Non-Proliferation Treaty Review Conference as Positions Harden on Ways to Free Middle East of Mass Destruction Weapon, U.N. Press Release DC/3561 (May 22, 2015), available at <http://www.un.org/press/en/2015/dc3561.doc.htm>.

26. 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.” See *The UN Security Council*, UNITED NATIONS FOUNDATION, <http://www.unfoundation.org/what-we-do/issues/united-nations/the-un-security-council.html?referrer=https://www.google.com/> (last visited Apr. 11, 2016).

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disarmament.”²⁷ By the conclusion of the conference, 107 non-nuclear weapons states had signed a “Humanitarian Pledge,”²⁸ originated by Austria, urging all parties to the NPT to “pursue effective measures to fill the legal gap for the prohibition and elimination of nuclear weapons.”²⁹ While some international law experts argue that actual use of nuclear weapons would violate the existing principles of international humanitarian law, *e.g.*, the requirement of discrimination between military and civilian targets,³⁰ the Manual of the Law of War, issued by the U.S. Defense Department in June 2015, argues that the legality of nuclear weapon use would depend on the circumstances.³¹

In 2015, the First Committee of the U.N. General Assembly³² voted to establish an Open Ended Working Group, open to all countries and not required to proceed by consensus, for the purpose of “taking forward multilateral nuclear disarmament negotiations.”³³ The resolution passed by a vote of 131 to 22 with 28 abstentions and despite all P5 nations voting against it.³⁴

The nuclear powers continued modernization of their nuclear forces in 2015. The U.S. plan includes a new fleet of nuclear missile submarines, new penetration bombers and air-launched cruise missiles, and a review of options for a new generation of intercontinental ballistic missiles (ICBMs).³⁵ Russia announced plans for an improved, new generation of ICBMs, new bombers, and new land and sea-launched cruise missiles.³⁶ China slightly increased the size and substantially increased the capabilities of its arsenal, replacing older missiles with improved versions.³⁷ Pakistan³⁸ and India³⁹ both modernized and

27. Kingston Reif, *Next Steps on Disarmament Uncertain*, 45 ARMS CONTROL TODAY 7, 33 (2015), available at <https://www.google.com/webhp?sourceid=chrome-instant&ion=1&espv=2&ie=UTF-8#q=Next+Steps+on+Disarmament+Uncertain@eif>.

28. *Humanitarian Pledge*, INT’L CAMPAIGN TO ABOLISH NUCLEAR WEAPONS (Dec. 9, 2014), http://www.icanw.org/wp-content/uploads/2015/03/HINW14vienna_Pledge_Document.pdf.

29. Emily Welty & Jonathan Frerichs, *New Humanitarian Pledge to Ban Nuclear Weapons advances as troubled treaty stalls*, WORLD COUNCIL OF THE CHURCHES (May 26, 2015), <https://www.oikoumene.org/en/press-centre/news/new-humanitarian-pledge-to-ban-nuclear-weapons-advances-as-troubled-treaty-stalls>.

30. See, *e.g.*, John Burroughs & Peter Weiss, *Legal Gap or Compliance Gap?*, 45 ARMS CONTROL TODAY 8, 36 (2015), available at https://www.armscontrol.org/ACT/2015_10/Letter-to-the-Editor/Legal%20Gap%20or%20Compliance%20Gap.

31. *Department of Defense Law of War Manual*, OFFICE OF GENERAL COUNSEL DEPARTMENT OF DEFENSE (June 2015), <http://www.defense.gov/Portals/1/Documents/pubs/Law-of-War-Manual-June-2015.pdf>.

32. The First Committee, consisting of all UN member states, “considers all disarmament and international security matters within the scope of the [UN] Charter.” *Disarmament and International Security*, GENERAL ASSEMBLY OF THE UNITED NATIONS, <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. *United Nations First Committee*, NUCLEAR THREAT INITIATIVE, <http://www.nti.org/learn/treaties-and-regimes/un-first-committee/> (last viewed Apr. 11, 2016).

33. Press Release, General Assembly, First Committee Approves 20 Drafts, Including New One Containing Declaration Aimed at Relinquishing ‘They versus Us’ Approach to Nuclear Disarmament, UN Press Release GA/DIS/3541, available at <http://www.un.org/press/en/2015/gadis3541.doc.htm>.

34. *Id.*

35. H. Kristensen and R. Norris, *U.S. Nuclear Forces 2015*, Bulletin of the Atomic Scientists, available at <http://bos.sagepub.com/content/71/2/107.full.pdf+html>.

36. H. Kristensen and R. Norris, *Russian Nuclear Forces 2015*, Bulletin of the Atomic Scientists, available at <http://bos.sagepub.com/content/early/2015/04/13/0096340215581363.full>.

37. H. Kristensen and R. Norris, *Chinese Nuclear Forces 2015*, Bulletin of the Atomic Scientists, available at <http://thebulletin.org/2015/july/chinese-nuclear-forces-20158459>.

38. H. Kristensen and R. Norris, *Pakistani Nuclear Forces 2015*, Bulletin of the Atomic Scientists, available at <http://fas.org/wp-content/uploads/2015/10/Nov-Dec-Pakistan-FINAL.pdf>.

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quantitatively expanded their nuclear arsenals. Pakistan also continued development of smaller tactical warheads to deter a possible conventional arms invasion by India despite U.S. concerns that this could increase the risk of nuclear escalation.⁴⁰

The Comprehensive Test Ban Treaty (CTBT)⁴¹ has not yet entered into force, although all nuclear-armed states except North Korea continued to observe a moratorium on testing. According to its terms, entry into force requires that it be ratified by a specified list of countries, including six nuclear powers that have not yet done so.⁴² On October 21, 2015, the U.S. State Department announced that it would begin a renewed drive for ratification but did not specify a timeline.⁴³

In 2015, the FBI cooperated with Eastern European police in several arrests of smugglers from the former Soviet Union seeking to sell radioactive material to Middle Eastern extremists.⁴⁴ On July 31, 2015, the United States completed its ratification of the Amended Convention on the Physical Protection of Nuclear Material.⁴⁵ In August 2015, the White House, citing “nuclear terrorism” as “the most immediate and extreme threat to global security,” announced plans for a fourth Nuclear Security Summit to be held in Washington in 2016 on steps to secure vulnerable nuclear material and to disrupt nuclear smuggling.⁴⁶

The Republic of the Marshall Islands (RMI) continued to press the suit it filed in 2014⁴⁷ in the International Court of Justice (ICJ) against the world’s nuclear powers.⁴⁸ The suit alleges that the nuclear-armed states have breached their obligations under customary international law and, as to the five NPT signatories under Article VI of that treaty, failed

39. H. Kristensen and R. Norris, *Indian Nuclear Forces 2015*, Bulletin of the Atomic Scientists, *available at* <http://fas.org/wp-content/uploads/2015/10/Nov-Dec-Pakistan-FINAL.pdf>.

40. *Pakistan to Tell U.S. It Won't Accept Limitations on Tactical Nuclear Arms*, REUTERS, (Oct. 16, 2015), http://www.reuters.com/article/2015/10/22/us-nuclear-pakistan-idUSKCN0SF2A120151022?mkt_tok=3RkMMJWWfF9wsRohva7JZKXonjHpfsX66ugqXqCg38431UFwdejkPmjrlYQCScp0aPyQAgobGp515FEIQ7XYTLB2t60MWA.

41. Comprehensive Nuclear Test Ban Treaty, U.N.G.A. Doc. No. A/50/1027, *opened for signature* Sep. 24, 1996, *available at* <http://www.un.org/Depts/ddar/ctbt/20fa.htm>.

42. The United States, China and Israel have signed but not ratified; India, Pakistan, and North Korea have not signed.

43. Statement by Secretary John Kerry, U.S. Dep't of State, Remarks at the Department of Energy's Stockpile Stewardship Event, Washington, D.C. (Oct. 11, 2015), *available at* <http://www.state.gov/secretary/remarks/2015/10/248421>.

44. Desmond Butler and Vadim Ghirda, *AP Investigation: Nuclear Black Market Seeks IS Extremists*, ASSOCIATED PRESS, (Oct. 7, 2015), *available at*, <http://bigstory.ap.org/urn:publicid:ap.org:6fd1d202f40c4bb4939bd99c3f80ac2b>.

45. Jonathan Herbach and Samantha Pitts-Kiefer, *More Work to Do: A Pathway for Future Progress on Strengthening Nuclear Security*, ARMS CONTROL ASS'N, (Oct. 2015) http://www.armscontrol.org/ACT/2015_10/Features/More-Work-to-Do-A-Pathway-for-Future-Progress-on-Strengthening-Nuclear-Security?utm_source=Arms+Control+Association+E-Updates&utm_campaign=9ddaca1d99-Oct_2015_ACT_Feature&utm_medium=email&utm_term=0_0bf155a1a2-9ddaca1d99-79427485.

46. Statement by the White House Press Secretary on the 2016 Nuclear Summit, (Aug. 10, 2015), <https://www.whitehouse.gov/the-press-office/2015/08/10/statement-press-secretary-2016-nuclear-security-summit>.

47. Press release, International Court of Justice, No.2014/18, (April 25, 2014), *available at*, <http://www.icj-cij.org/presscom/files/0/18300.pdf>.

48. The five nuclear weapon states recognized under the Nonproliferation Treaty (NPT), China, France, Russia, United Kingdom and the U.S., as well as India, Pakistan and Israel (which are not parties to the NPT) and North Korea (which withdrew from the NPT).

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to pursue good-faith negotiations to achieve nuclear disarmament.⁴⁹ The three nuclear states that have accepted the compulsory jurisdiction of the ICJ—India, Pakistan, and the United Kingdom—have argued that the case is not within the jurisdiction of the court and is not suitable for adjudication.⁵⁰ Hearings on the objections are expected to be held early in 2016.⁵¹ Although the RMI asked the six nuclear powers that have not accepted the ICJ's compulsory jurisdiction to appear and litigate the issues voluntarily, none have done so.⁵² The U.S. District for the Northern District of California dismissed a companion case by the RMI against the United States and the dismissal has been appealed to the Ninth Circuit.⁵³

III. International Response to Iran's Nuclear Program⁵⁴

On July 14, 2015, the P5+1 (otherwise termed the E3/EU+3)⁵⁵ and Iran agreed to a final accord⁵⁶ addressing Iran's nuclear program. Coined the Joint Comprehensive Plan of Action (JCPOA), it represents the culmination of twenty-two months of talks, which began in 2012 with backchannel diplomacy facilitated by Oman.⁵⁷

The JCPOA, which, as reproduced as an Annex to U.N. Security Council Resolution 2231,⁵⁸ runs eighty-nine pages including Annexes and attachments, has a number of features. Among them:

- The European Union and United States agree to list the entirety of their sanctions and restrictive measures against Iran, the effects of lifting those sanctions,⁵⁹ an agreement to terminate sanctions, and a promise to refrain from re-introducing or re-imposing sanctions, without prejudice to the dispute resolution process provided for in the JCPOA.⁶⁰
- Iran agrees:

49. *The Marshall Islands' Nuclear Zero Cases in the International Court of Justice, The Lawyers Comm. On Nuclear Policy, Inc.*, <http://lcnp.org/RMI/status.html>.

50. *Id.*

51. *Id.*

52. *Id.*

53. NUCLEAR ZERO, *In the Courts*, <http://www.nuclearzero.org/in-the-courts> (Pleadings in the RMI case).

54. This brief overview may be read in conjunction with the last three Year-in-Review articles from the National Security Law Committee, *National Security Law*, 49 ABA/SIL (n.s.) 373 (2015), *National Security Law*, 48 ABA/SIL (n.s.) 474 (2014), and *National Security Law*, 47 ABA/SIR (n.s.) 456 (2013).

55. 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.*, Germany, United Kingdom, France) plus the United States, Russia, and China. Both terms are used depending on the media source.

56. Joint Comprehensive Plan of Action, Jul. 16, 2015, *available at* http://eeas.europa.eu/iran/index_en.htm, hereinafter "JCPOA." Annexes will be referred to as "Annex," the Roman numeral designator, and section.

57. Laura Rozen, *Inside the secret US-Iran diplomacy that sealed nuke deal*, AL-MONITOR (Aug. 11, 2015), *available at* <http://www.al-monitor.com/pulse/originals/2015/08/iran-us-nuclear-khamenei-salehi-jcpoa-diplomacy.html>, visited Nov. 28, 2015.

58. S.C. Res. 2231/15, *Non-proliferation*, U.N. Doc. S/RES/2231/15 (Jul., 20, 2015), *available at* [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2231\(2015\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2231(2015)).

59. Annex II, sections A and B respectively.

60. JCPOA A.26, Annex II.

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- To limit uranium enrichment and uranium enrichment-related activities for eight years, to be followed by a gradual evolution to the next stage of enrichment activities for exclusively peaceful purposes.⁶¹
- To limit centrifuge operations, development, and manufacturing.⁶² Centrifuges are capped at 5,060 first generation IR-1 machines at its Natanz Fuel Enrichment Plant (FEP) for ten years,⁶³ and 1,044 IR-1 machines at its Fordow Fuel Enrichment Plant for fifteen years.⁶⁴ Its more advanced machines will be permitted in numbers varying from one to thirty, depending on the type, for testing.⁶⁵
- To convert the Fordow facility into a nuclear, physics, and technology center.⁶⁶
- To keep its uranium stockpile under 300 kilograms of up to 3.67% uranium hexafluoride (UF₆) for fifteen years.⁶⁷
- To permit the International Atomic Energy Agency (IAEA) a long-term presence for at least fifteen years,⁶⁸ to permit the IAEA to implement “continuous monitoring . . . to verify that stored centrifuges and infrastructure remain in storage,”⁶⁹ and to permit the IAEA regular access, including daily access . . . to relevant buildings at Natanz.⁷⁰
- The parties agree to establish a Joint Commission to monitor the JCPOA implementation.⁷¹
- The parties agree to a conceptual redesign and subsequent rebuilding of the Arak heavy water research reactor⁷² “to support peaceful nuclear research and radioisotope production for medical and industrial purposes.”⁷³ The redesign will “minimize the production of plutonium and not produce weapon-grade plutonium in normal operation.”⁷⁴ The parties agreed to their respective roles in the reactor redesign,⁷⁵ and agreed to create a document that lays out their respective roles in greater detail.⁷⁶

The JCPOA includes an Implementation Plan, included as Annex V to the JCPOA, describing the required sequence of actions. “Implementation Day,” *i.e.*, the day most

61. JCPOA Part A & Annex I, §§ F, H, I, J, P.

62. JCPOA ¶4, Annex I §§ F, G, K, R.

63. Annex I, § F. Down from 15,420 IR-1 centrifuges; INT’L ATOMIC ENERGY AGENCY, *Implementation of the NPT Safeguards Agreement and relevant provisions of Security Council resolutions in the Islamic Republic of Iran*, n. 23, U.N. Doc. GOV/2014/58 (Nov. 7, 2014), available at <https://www.iaea.org/sites/default/files/gov2014-58.pdf> [hereinafter IAEA GOV/2014/58]. The Natanz facility also houses a Pilot FEP for research and development, which houses smaller advanced IR-2M, IR-4, IR-5, IR-6, and IR-8 centrifuges. *Id.*, ¶ 25.

64. Annex I, § H. This is down from 2,710. IAEA Doc. GOV/2014/58, *supra* note 63, n. 39.

65. Annex I, § G.

66. JCPOA ¶ 6, Annex I § H.

67. JCPOA ¶ 7, Annex I § J.

68. Annex I, § N.

69. Annex I, ¶ 70.

70. Annex I, ¶ 71.

71. Annex IV.

72. Annex I § B, Annex I Attachment.

73. Annex I ¶ 2.

74. *Id.*

75. Annex I § B.

76. Bozorgmehr Sharafedin, *World powers to help Iran redesign reactor as part of nuclear deal*, REUTERS, (Nov. 21, 2015), <http://www.reuters.com/article/2015/11/21/us-iran-nuclear-arak-idUSKCN0TA0IK20151121#rhWmf7ueGHs0CxK.97>.

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sanctions are removed, will occur “upon IAEA-verified implementation of nuclear-related measures by Iran” described in Annex V paragraph 15, and upon completed actions by the European Union, United States, and United Nations, in paragraphs 16, 17, and 18, respectively. These actions reference specific paragraphs from Annexes I and II. The JCPOA will terminate ten years from the date the Security Council Resolution endorses the JCPOA.

The JCPOA was endorsed in U.N. Security Council Resolution 2231, which includes, *inter alia*,

- A United Nations Security Council agreement to terminate sanctioning resolutions⁷⁷ and to remove “non-proliferation” as applied to the Iran nuclear issue “from the list of matters of which the Council is seized.”⁷⁸
- Establishing a mechanism to reestablish the sanctioning resolutions should Iran engage in behavior which constitutes a “significant non-performance of [its] commitments under the JCPOA.”⁷⁹
- Requesting the IAEA to monitor and verify voluntary nuclear-related measures by providing “regular updates to the IAEA Board of Governors” and U.N. Security Council.⁸⁰

Lastly, the IAEA and Iran concluded a Road-map to resolve “by the end of 2015 . . . all past and present outstanding issues that have not already been resolved by the IAEA and Iran.”⁸¹ The remaining outstanding issues are provided in the annex of the 2011 Director’s General report (GOV/2011/65) and the possible military dimensions at the Parchin facility.⁸² The process includes Iran providing explanations on the outstanding issues by August 15, 2015, the IAEA reviewing the information by September 15, 2015, technical meetings to resolve ambiguities, and a final assessment on the issues to the IAEA Board of Governors by December 15, 2015.⁸³ The parties met their targets, to include the IAEA visiting the Parchin facility for the first time in September, accepting samples from the facility collected by Iran while under surveillance,⁸⁴ and the release of the IAEA Final Assessment.⁸⁵

The Final Assessment document says:

77. See S.C. Res. 2231, ¶ 7 (July 20, 2015). (Specifically terminating “provisions of resolutions 1696 (2006), 1737 (2006), 1747 (2007), 1803 (2008), 1929 (2010), and 2224 (2015).”).

78. S. C. Res. 2231, *supra* note 58, ¶ 8.

79. *Id.*, ¶¶ 11-13.

80. *Id.*, ¶¶ 3-6.

81. Int’l Atomic Energy Agency [IAEA], *Road-map for the Clarification of Past and Present Outstanding Issues regarding Iran’s Nuclear Program*, IAEA Doc. GOV/INF/2015/14 (July 14, 2015), <https://www.iaea.org/sites/default/files/gov-inf-2015-14.pdf>.

82. IAEA, *Implementation of the NPT Safeguards Agreement and relevant provisions of Security Council resolutions in the Islamic Republic of Iran*, Report by the Director General, GOV/2011/65 (Nov. 8, 2011), <https://www.iaea.org/sites/default/files/gov2011-65.pdf>.

83. See IAEA, *Road-map*, *supra* note 81, ¶¶ 2-8.

84. Francois Murphy and Shadia Nasrallah, *Samples taken at Iran’s Parchin Military Site: U.N. Nuclear Watchdog*, REUTERS (Sep. 21, 2015), <http://www.reuters.com/article/2015/09/21/us-iran-nuclear-iaea-idUSKCN0RL0Z020150921#4q9QCzt1Bgj3z4KP.97>.

85. IAEA, *Final Assessment on Past and Present Outstanding Issues Regarding Iran’s Nuclear Programme*, IAEA Doc. GOV/2015/68 (Dec. 2, 2015), available at http://www.isis-online.org/uploads/isis-reports/documents/IAEA_PMD_Assessment_2Dec2015.pdf [hereinafter Final Assessment].

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The Agency assesses that, before the end of 2003, an organizational structure was in place in Iran suitable for the coordination of a range of activities relevant to the development of a nuclear explosive device. Although some activities took place after 2003, they were not part of a coordinated effort The [IAEA's] overall assessment is that a range of activities relevant to the development of a nuclear explosive device were conducted in Iran prior to the end of 2003 as a coordinated effort, and some activities took place after 2003. The [IAEA] also assesses that these activities did not advance beyond feasibility and scientific studies, and the acquisition of certain relevant technical competences and capabilities. The [IAEA] has no credible indications of activities in Iran relevant to the development of a nuclear explosive device after 2009.⁸⁶

Specific technologies the IAEA found to have characteristics consistent with development of a nuclear explosive device include (1) exploding bridgewire detonators,⁸⁷ (2) multipoint initiation system,⁸⁸ (3) computer modeling of such device,⁸⁹ and (4) explosive safety arrangements inherent to testing such a device.⁹⁰ However, all but the last item may have use in non-nuclear explosive applications. Related to the Parchin site, the IAEA assessed the extensive modifications at a particular area within the Parchin site “seriously undermined the [IAEA's] ability to conduct effective verification.”⁹¹

IV. Surveillance and Privacy

A. UNITED STATES' LEGISLATION

On June 2, 2015, President Barak Obama signed into law the Uniting and Strengthening America by Fulfilling Rights and Ensuring Effective Discipline Over Monitoring Act of 2015 (“USA FREEDOM Act of 2015”).⁹² The new law significantly reformed the existing surveillance apparatus, which had fallen victim to scrutiny following the revelations made by former National Security Agency (NSA) contractor Edward Snowden. Following the leaks, Section 215 had been at the center of contentious litigation in the federal courts. The law revitalized Section 215 of the PATRIOT Act, but added significant restraints. Most notably, Congress ended the NSA's controversial bulk collection program and added mandatory additional oversight of U.S. surveillance activity.⁹³ Additionally, the law limited the government's methods in collecting telephone metadata and added new transparency measures regarding intelligence collection.⁹⁴ The USA FREEDOM Act also requires phone companies to maintain phone records, which the government could query if they receive intelligence of a specific potential threat.⁹⁵

86. *Id.*, ¶¶ 84, 85.

87. *Id.*, ¶ 40.

88. *Id.*, ¶ 46.

89. *Id.*, ¶ 62.

90. *Id.*, ¶ 67.

91. *Id.*, ¶ 57.

92. USA FREEDOM Act of 2015, Pub. L. No. 114-23, 129 Stat. 268 §103(a) (2015).

93. *Id.*

94. Julian Hatttem, *Obama signs NSA bill, renewing Patriot Act powers*, THE HILL (Jun. 03 2015), available at <http://thehill.com/policy/national-security/243850-obama-signs-nsa-bill-renewing-patriot-act-powers>.

95. *Id.*

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The law also grants authority “to continue the acquisition of foreign intelligence information . . . [for] a period not to exceed 72 hours” without a court order.”⁹⁶

B. SURVEILLANCE LITIGATION IN THE UNITED STATES

Prior to the lapsing of Section 215 of the Patriot Act, various courts questioned the statutory interpretation underpinning the U.S. surveillance program. In *Am. Civil Liberties Union v. Clapper*, 785 F.3d 787 (2d Cir. 2015), the Second Circuit Court of Appeals ruled Section 215 of the PATRIOT Act did not authorize the bulk telephone metadata program conducted by the NSA.⁹⁷ Despite this determination, the court did not specifically address the question of whether bulk surveillance violates the Fourth Amendment of the United States Constitution.⁹⁸ The court acknowledged the program’s potential benefit, but reasoned that, due to the extraordinary measures, Congress would have to authorize such a program explicitly.⁹⁹

When Congress passed the USA FREEDOM Act, it gave the government 180 days to discontinue the bulk surveillance program. Judge Richard J. Leon supplemented the Congressional timeline by issuing an injunction against the NSA’s bulk metadata collection program in *Klayman v. Obama*, 800 F.3d 559 (D.C. Cir. 2015).¹⁰⁰ The decision in *Klayman* was very narrow and applied only to specifically named Verizon customers.¹⁰¹ The court reasoned that the plaintiffs were likely to establish that the bulk collection program violates the Fourth Amendment.¹⁰²

C. SURVEILLANCE IN THE EUROPEAN UNION

Following an attack on satirical newspaper *Charlie Hebdo*, French lawmakers passed the Surveillance Act (May 2015), which significantly expands the measures that the government can use to conduct surveillance and specifically enables French intelligence agencies to record telephone calls and text messages using technology that stores information for later use.¹⁰³ The law grants the intelligence agencies the authority to conduct warrantless surveillance, allowing “the government to monitor phone calls and emails of people suspected of connections to terrorism.”¹⁰⁴ Internet service providers

96. USA FREEDOM Act of 2015, Pub. L. No. 114-23, 129 Stat. 268 §701(a) (2015).

97. *Am. Civil Liberties Union v. Clapper et. al*, 785 F.3d 787, 824 (2d Cir. 2015). (Highlighting that the court determined that “Congress is better positioned than the courts to understand and balance the intricacies and competing concerns involved in protecting national security and to pass judgment on the value of the telephone metadata program as a counterterrorism tool.”).

98. *Id.* at 823-24.

99. *Id.* at 821.

100. Cody M. Poplin, *D.C. District Court Issues Injunction in Klayman v. Obama*, LAWFARE (Nov. 9, 2015, 1:46 PM), <https://www.lawfareblog.com/dc-district-court-issues-injunction-klayman-v-obama>.

101. *Klayman v. Obama*, 957 F. Supp.2d 1 (D.D.C. 2013), *vacated and remanded*; *Barack Hussein Obama v. Larry Elliott Klayman*, 800 F.3d 559 (D.C. Cir 2015)(<http://www.leagle.com/decision/In%20FCO%2020150828116/OBAMA%20v.%20KLAYMAN>.)

102. *Id.*

103. Steve Dent, *France gets its own ‘Patriot Act’ in wake of ‘Charlie Hebdo’ attack*, ENGADGET (Jul. 24, 2015), <http://www.engadget.com/2015/07/24/france-surveillance-act/>.

104. Arik Hesseldahl, *France Has a Powerful and Controversial New Surveillance Law*, RECODE.NET (Nov. 14, 2015 9:22 AM PST), <http://recode.net/2015/11/14/france-has-a-powerful-and-controversial-new-surveillance-law/>.

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must install “black boxes” designed to capture and analyze metadata on general internet activity and “make the data available to intelligence agencies.”¹⁰⁵ The law has measures in place that require the techniques and technologies used to collect intelligence to be proportionate to the target.¹⁰⁶ Although law enforcement agents must consult a panel of judges and legislators before conducting surveillance, the recommendation of the panel is not binding.¹⁰⁷

The European Court of Justice (ECJ), concerned with the United States’ mass, indiscriminate surveillance, invalidated the U.S.-E.U. Safe Harbor scheme which thousands of companies relied on to transfer personal data to the United States.¹⁰⁸ An Austrian citizen brought a complaint after he became aware of the United States’ surveillance activities. The suit alleged that the law and practices of the United States do not sufficiently protect the data being transferred from surveillance by public authorities.¹⁰⁹ The ECJ determined that the United States Safe Harbor scheme enables interference by United States public authorities and therefore compromises “the fundamental right to respect private life” under EU law.¹¹⁰ In its judgment, it stressed the fact that the Charter of Fundamental Rights of the European Union grants individual member-states the right¹¹¹ to investigate whether other states adequately protect data transmission from government surveillance.¹¹²

V. Islamic State¹¹³

The Islamic State (IS)¹¹⁴ continued its international campaign to entrench its self-proclaimed caliphate, expanding from its territories in Syria and northern Iraq and

105. *Id.*

106. *Id.*

107. Dent, *supra* note 103.

108. Liam Tung, *Top EU Court Sinks Safe Harbor over US Spying and Rattles Tech Industry*, ZDNET (Oct. 6, 2014 10:38 GMT) <http://www.zdnet.com/article/top-eu-court-sinks-safe-habour-over-us-spying-and-rattles-tech-industry/>.

109. Case C-362/14, *Schrems v. Data Protection Comm’r*, 2015 E.C.R. __, available at <http://curia.europa.eu/juris/document/document.jsf?text=&docid=169195&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=735692>.

110. *Id.*

111. *Id.* (“This request for a preliminary ruling relates to the interpretation, in light of Articles 7,8, and 47 of the Charter of Fundamental Rights of the European Union (‘the Charter’), of Articles 25(6) and 28 of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ 1995 L 281, p. 31).”).

112. European Comm’n Press Release No. 117/15, *The Court of Justice Declares that the Commission’s US Safe Harbour Decision is Invalid* (Oct. 6, 2015), <http://curia.europa.eu/jcms/upload/docs/application/pdf/2015-10/cp150117en.pdf>.

113. The distinctions discussed herein do not lend themselves to crisp topical divisions. There is so much to touch on: as discussed herein, the Islamic State has new purported provinces. Additionally, combat operations in Syria and Iraq against the Islamic State are not limited to those countries. The situation in Syria is particularly muddled due to the presence of purported moderate Islamist groups opposed to Syrian President Assad as well as Islamic State. Russia is (apparently) targeting any group in Syria opposed to Assad. In Iraq, Iraqi Kurds and Iran are fighting the Islamic State in Iraq, with the United States wary of any involvement with Iran. Finally, there is disagreement on an end state for the Assad Government.

114. Maria Vultaggio, *ISIL, ISIS, Islamic State, Daesh, What’s the Difference?*, INT’L BUSINESS TIMES (Nov. 16, 2015, 6:26 PM), <http://www.ibtimes.com/isil-isis-islamic-state-daesh-whats-difference->

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proclaiming additional provinces, or “wilyat,” in parts of Yemen, Saudi Arabia, Algeria, Libya, Egypt’s Sinai Peninsula, Pakistan, Afghanistan, and Russia.^{115,116} The establishment of a new province is a long and complicated procedure, and several groups who have pledged allegiance to IS have yet to be recognized as provinces.¹¹⁷

Most significant is the speed in which IS expanded from controlling territory in only Syria and Iraq, to controlling territory in eight additional nations. Of these provinces, officials characterize Libya as most significant. “Western officials familiar with intelligence reports say it is the only affiliate now operating under the direct control of the central Islamic State’s leaders.”¹¹⁸ Libya is “the hub from which [IS] project[s] across all of North Africa.”¹¹⁹ It may in fact serve as a fallback position, should IS lose its territory in Syrian and Iraq.¹²⁰

This accumulation of controlled territory provides a steady revenue base.¹²¹ Estimates of IS’s annual revenues approach US \$3 billion. IS is estimated to control over US \$2 trillion [sic] worth of assets.¹²² Though oil is the biggest component:

the better known of the Islamic State’s revenue sources—smuggling oil, plundering bank vaults, looting antiquities, ransoming kidnapped foreigners and drumming up donations from wealthy supporters in the Persian Gulf—have all helped make the group arguably the world’s richest militant organization. But as Western and Middle Eastern officials have gained a better understanding of the Islamic State’s finances over the past year, a broad consensus has emerged that its biggest source of cash appears to be the people it rules, and the businesses it controls.¹²³

2187131?rel=most_read2 (Highlighting that various entities refer to the group alternately as ISIS, ISIL, the Islamic State, DAESH, and DAESH. This contribution refers to the group as the Islamic State or IS, which is how the group refers to itself.)

115. Alessandra Masi, *Islamic State Timeline Shows How ISIS Expanded in One Year from Two Countries to Ten*, INT’L BUSINESS TIMES (Jun. 10, 2015, 8:18 AM), <http://www.ibtimes.com/islamic-state-timeline-shows-how-isis-expanded-one-year-two-countries-ten-1959705>.

116. Press Release, U.S. DEP’T OF STATE, Office of the Spokesperson, *Designations of Foreign Terrorist Fighters* (Sept. 29, 2015), available at <http://www.state.gov/r/pa/prs/ps/2015/09/247433.htm> (In announcing designations of foreign terrorist fighters, the United States acknowledged three of the groups: The Islamic State of Iraq and the Levant – Caucasus Province, Islamic State of Iraq and the Levant Khorasan’s, and Islamic State Sinai Province.).

117. See Masi, *supra* note 115.

118. David Kirkpatrick, Ben Hubbard, and Eric Schmitt, *ISIS’ Grip on Libyan City Gives it a Fallback Option*, N.Y. TIMES (Nov. 28, 2015), available at http://www.nytimes.com/2015/11/29/world/middleeast/isis-grip-on-libyan-city-gives-it-a-fallback-option.html?_r=0.

119. *Id.*

120. *Id.*

121. Matthew Rosenberg, Nicholas Kulish, Steven Lee Myers, *Predatory Islamic State Wrings Money from Those it Rules*, N.Y. TIMES, Nov. 29, 2015, <http://www.nytimes.com/2015/11/30/world/middleeast/predatory-islamic-state-wrings-money-from-those-it-rules.html?ribbon-ad-idx=6&rref=world/middleeast&module=ArrowsNav&contentCollection=Middle%20East&action=click®ion=FixedLeft&pgtype=article>.

122. See, e.g., *ISIS/ISIL Funding Methods and Financial Crime Risks*, THOMPSON REUTERS ACCELUS WEBCAST (Nov. 24, 2014, 11-12 EST), <http://info.accelus.thomsonreuters.biz/ISFundingMethods> (Available upon registration with Thomson Reuters).

123. Rosenberg, *supra* note 121.

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Population estimates in IS-controlled territory in Iraq and Syria alone vary from about six and a half to ten million.¹²⁴

The military response to IS features most prominently in daily news reports. Since operations against the IS began on August 8, 2014, the United States has carried out 2,703 airstrikes in Syria, with the rest of the international coalition carrying out 154 in Syria.¹²⁵ The United States' air operations became a little easier after Turkey agreed to allow the United States the use of the Incirlik air base in July 2015.¹²⁶ However, as of this writing, the United States has carried out no air strikes in Syria after Russia deployed SA-400 anti-aircraft missiles in the wake of Turkey's downing of a Russian jet on November 24, 2015.¹²⁷

The authority for the United States' presence against IS in Iraq is an invitation from the Iraqi government. Indeed, Iraq "requested the United States of America . . . lead international efforts to strike ISIL sites and military strongholds, with our express consent."¹²⁸ The United States' authority to carry out operations against IS in Syria is not clear, though it appears to be grounded in self-defense;¹²⁹ and in that collective self-defense is allowed where the territorial State (Syria) is 'unable or unwilling' to stop the attacks itself. The authority to fight IS from a domestic United States view is also unclear. President Obama has asked Congress for an explicit authorization to use force against IS, but to no avail.¹³⁰

124. See e.g., *ISIS/ISIL Funding Methods and Financial Crime Risks*, *supra* note 113; Anna Swanson, *How the Islamic States Makes its Money*, Wonkblog, WASHINGTON POST (Nov. 18, 2015), <https://www.washingtonpost.com/news/wonk/wp/2015/11/18/how-isis-makes-its-money/>; Richard Barrett, *The Islamic State*, THE SOUFAN GROUP at 8 (Nov. 2014), available at <http://soufangroup.com/wp-content/uploads/2014/10/TSG-The-Islamic-State-Nov14.pdf>.

125. U.S. DEP'T OF DEFENSE, *Operation Inherent Resolve: Targeted Operations Against ISIL Terrorists*, DEFENSE.GOV, http://www.defense.gov/News/Special-Reports/0814_Inherent-Resolve (last updated Mar. 15, 2016, 3:59 PM E.).

126. Liz Sly & Karen DeYoung, *Turkey Agrees to Allow U.S. Military to Use Its Base to Attack Islamic State*, WASH. POST (Jul. 23, 2015), https://www.washingtonpost.com/world/middle_east/turkey-agrees-to-allow-us-military-to-use-its-base-to-attack-islamic-state/2015/07/23/317f23aa-3164-11e5-a879-213078d03dd3_story.html.

127. *No U.S. Airstrikes in Syria Since Russia Deployed S-400 Systems*, RT.COM (Nov. 28, 2015), <https://www.rt.com/news/323815-syria-s-400-us-airstrikes/>.

128. U.N. Security Council, Letter from the Permanent Representative of Iraq to the U.N. addressed to the President of the Security Council, Annex (Sep. 20, 2014), U.N. Doc. S/2014/691, available at http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2014_691.pdf.

129. David Hudson, *President Obama: "We Will Degrade and Ultimately Destroy ISIL"*, WHITE HOUSE BLOG (Sep. 10, 2014, 10:25 PM), <https://www.whitehouse.gov/blog/2014/09/10/president-obama-we-will-degrade-and-ultimately-destroy-isil> ("[W]e will hunt down terrorists who threaten our country, wherever they are. That means I will not hesitate to take action against ISIL in Syria, as well as Iraq.")

130. Amber Phillips, *President Obama's Push for Military Authorization to Fight ISIS Won't Go Anywhere in Congress. Here's Why.*, WASHINGTON POST (Dec. 7, 2015), <https://www.washingtonpost.com/news/the-fix/wp/2015/12/07/3-reasons-congress-wont-authorize-obamas-use-of-force-against-the-islamic-state/>.

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France¹³¹ and the United Kingdom¹³² joined the fight against IS in Syria after the IS attacks against Paris in November 2015. This adds to the coalition members who have already joined the fight in both Syria and Iraq.¹³³

In addition to the ongoing United States-led coalition air campaign, on September 30, 2015, the Russian Parliament passed President Putin's request to approve air strikes in Syria; within hours Russian airstrikes began.¹³⁴ The Russian intervention is pursuant to a request by Syrian President Assad for the assistance. Though Russia initially claimed to be targeting IS, Russian Foreign Minister Sergey Lavrov clarified, stating Russia would target "all terrorists in Syria."¹³⁵

Attacking IS's finances is another essential aspect to defeating IS. In an effort to thwart the IS's massive revenue-generation, twenty-six nations gathered to form the Counter ISIL Finance Group (CIFG). Co-led by Saudi Arabia, Italy, and the United States, the CIFG and its participant nations met three times to determine how to deal with the IS's finances. The CIFG Action Plan states, "the unique terrorist financing challenges posed by ISIL, and identifies and establishes key steps that Coalition members, and potentially the entire international community, should undertake to disrupt ISIL's sources of revenue, movement and use of funds, and its overall economic sustainment."¹³⁶ The CIFG developed an action plan at its first meeting in January, through which participating countries agreed to:

- (1) Prevent ISIL from accessing the international financial system;
- (2) Counter the extortion and exploitation of assets and resources that transit, enter, or originate from ISIL-held territory;
- (3) Deny ISIL funding from abroad; and
- (4) Prevent ISIL from providing financial or material support to foreign affiliates.¹³⁷

Partly in response to the IS threat, the United Nation's Security Council passed Resolution 2199, a broad effort calling on U.N. member nations to take action to impact IS's oil trade, address the IS's purge, destruction, and marketing of cultural heritage in Iraq and Syria. It also impacted its kidnapping and external donations, and eliminated IS's

131. Alissa J. Rubin & Anne Barnard, *France Strikes ISIS Targets in Syrian in Retaliation for Attacks*, NEW YORK TIMES (Nov. 15, 2015), <http://www.nytimes.com/2015/11/16/world/europe/paris-terror-attack.html>.

132. Steven Erlanger & Stephen Castle, *British Jets Hit ISIS in Syria After Parliament Authorizes Airstrikes*, NEW YORK TIMES (Dec. 2, 2015), http://www.nytimes.com/2015/12/03/world/europe/britain-parliament-syria-airstrikes-vote.html?_r=1.

133. The countries that have participated in the strikes in Iraq include: Australia, Belgium, Canada, Denmark, France, Jordan, The Netherlands, and the United Kingdom and the countries that participated in Syria include: Australia, Bahrain, Canada, France, Jordan, Saudi Arabia, Turkey and United Arab Emirates. U.S. DEP'T OF DEFENSE, *supra* note 125.

134. *Russia Joins War In Syria: Five Key Points*, BBC NEWS (Oct. 1, 2015), <http://www.bbc.com/news/world-middle-east-34416519>.

135. *Id.*

136. Press Release, U.S. Dep't of State, Office of the Spokesperson, The Establishment of the Counter-ISIL Finance Group in Rome, Italy (Mar. 20, 2015), *available at* <http://www.state.gov/r/pa/prs/ps/2015/03/239592.htm>.

137. Asst. Sec'y Daniel L. Glaser, U.S. DEP'T OF TREASURY, *The Third Counter ISIL Finance Meeting Convened at Treasury*, TREASURY NOTES BLOG (Oct. 8, 2015), <https://www.treasury.gov/connect/blog/Pages/The-Third-Counter-ISIL-Finance-Meeting-Convenes-at-Treasury.aspx>.

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access to financial infrastructure, arms, and related material.¹³⁸ In response to threats from IS and other terror groups in Libya, the Security Council passed Resolution 2214 and 2249.

VII. Other Developments

A. FOREIGN TERRORIST FIGHTERS

Increased international scrutiny is being paid to Western recruits joining IS, not to mention Al Nasrah and a number of the groups battling for control in Syria, Iraq, Libya, and elsewhere. Specifically, “the conflict in Syria, the successes achieved on the ground by ISIS and other jihadist groups, and ISIS’s formation of a self-proclaimed caliphate have had a magnetic draw for many young Western Muslims.”¹³⁹ In the first half of 2015, cites reported approximately 7000 foreign fighters arrived in Syria and Iraq to join terror groups.¹⁴⁰ Building on the actions of U.N. Security Council Resolution 2178, the Security Council Committee, established pursuant to Resolution 1373 (2001) concerning counter-terrorism, released two reports to assess Member States’ capacity to stem the flow of foreign terrorist fighters.¹⁴¹ The reports provide an assessment of actions taken by various countries to address this threat, it included actions taken to counter violent extremism, recruitment, and incitement to conduct terrorist acts, as well as to prevent inter-state travel by foreign terrorist fighters. International concern in relation to recruitment concerning foreign terrorist fighters¹⁴² found further expression in a November 2015 Interpol meeting on the subject.¹⁴³ Members discussed the issue of

138. S.C. Res 2199, 7399th sess., U.N. Doc. S/RES/2199/2015 (Feb. 15, 2015), *available at* [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2199%20\(2015\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2199%20(2015)) (illustrating the resolution similarly includes a parallel call for action against Al Qaeda-affiliated Al Nusrah Front, as well as other Al Qaeda-affiliated entities).

139. Lorenzo Vidino & Seamus Hughes, *ISIS in America: From Retweets to RAQQA* 1, 3 (George Wash. Univ. eds., Dec. 2015), *available at* <https://ech.s.gwu.edu/sites/ech.s.gwu.edu/files/downloads/ISIS%20in%20America%20-%20Full%20Report.pdf>.

140. *Global Terrorism Index 2015*, INST. FOR ECON. & PEACE, 1, 3-4, *available at* <http://economicsandpeace.org/wp-content/uploads/2015/11/Global-Terrorism-Index-2015.pdf>.

141. See U.N. Security Council, Annex, *Implementation of Sec. Council resolution 2178 (2014) by States affected by foreign terrorist fighters*, transmitted by letter dated 2 September 2015 from the Chair of the Security Council Comm. established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council, XX, U.N. Doc. S/2015/683 (Sep. 2, 2015), *available at* http://www.un.org/en/sc/ctc/docs/2015/N1527297_EN.pdf; see also U.N. Security Council, Annex, *Implementation of Sec. Council resolution 2178 (2014) by States affected by foreign terrorist fighters*, transmitted by letter dated 13 May 2015 from the Chair of the Security Council Comm. established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council, XX, U.N. Doc. S/2015/338 (May 14, 2015), *available at* http://www.un.org/en/sc/ctc/docs/2015/N1514129_EN.pdf.

142. S.C. Res. 2178, para. 6, U.N. Doc. S/RES/2178, at 4-5 (Sep. 24, 2014), http://www.un.org/en/sc/ctc/docs/2015/SCR%202178_2014_EN.pdf (Defined as persons “who travel or attempt to travel to a State other than their States of residence or nationality, and other individuals who travel or attempt to travel from their territories to a State other than their States of residence or nationality, for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts, or the providing or receiving of terrorist training.”).

143. Press Release, Interpol, Interpol Counterterrorism Working Group Meeting on Foreign Terrorist Fighters (Nov. 18-20, 2015) (Seville, Spain), *available at* <http://www.interpol.int/en/News-and-media/Events/2015/INTERPOL-Counter-Terrorism-Working-Group-Meeting-on-Foreign-Terrorist-Fighters->

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foreign terrorist fighters travelling from the conflict zones in Syria and Iraq and the developing conflict zone in Libya.

B. SITUATION IN THE SOUTH CHINA SEA

In late October, as part of the longstanding U.S. freedom of navigation (FON) program, the USS LASSEN and a nearby P-8A Poseidon maritime surveillance aircraft, transited along a seventy-two nautical mile loop around Chinese, Vietnamese, and Filipino territorial holdings in the Spratly Islands.¹⁴⁴ But confusion exists as to whether the operation was done under innocent passage. The transit involves coming within six miles of Subi Reef, a low tide elevation which the Chinese built up. A low tide elevation does not generate a territorial sea,¹⁴⁵ and if the operation was done under the concept of innocent passage,¹⁴⁶ the operation could be seen as an implicit acknowledgement of the validity of a Chinese territorial sea claim around the reef.¹⁴⁷ One explanation was that the transit passed within twelve miles of Thitu Island, a Vietnamese-held island that does generate a territorial sea.¹⁴⁸ Similarly, a flotilla of three Chinese warships passed within twelve miles of the Aleutian Islands after a joint operation with Russia.¹⁴⁹ The Chinese apparently did transit under innocent passage.

C. MIGRANT CRISIS IN THE MEDITERRANEAN SEA

The migrant crisis in the Mediterranean region reached untenable levels this year due to the ongoing crises in Syria and Libya. According to the International Organization of Migration, as of January 1, 2015, 891,989 migrants¹⁵⁰ were estimated to have arrived in Europe by sea, while over 3,600 people perished crossing the Mediterranean.¹⁵¹ In partial response, the Security Council passed Security Council Resolution 2240,¹⁵² which authorized Member States for a period of one year to inspect, and if warranted, seize vessels on the high seas off the coast of Libya where there were reasonable grounds to suspect they were being used for migrant smuggling or human trafficking from that

Seville, Spain-18-20-November-2015/INTERPOL-Counter-Terrorism-Working-Group-Meeting-on-Foreign-Terrorist-Fighters (stating Interpol's global role in this area was recognized in S.C. Res. 2178).

144. Sam LaGrone, *Confusion Continues to Surround U.S. South China Sea Freedom of Navigation Operation*, U.S. NAVAL INST. NEWS, <https://news.usni.org/2015/11/05/confusion-continues-to-surround-u-s-south-china-sea-freedom-of-navigation-operation> (last updated on Nov. 6, 2015, 10:04 AM).

145. U.N. Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 397 (entered into force Nov. 16, 1994), art. 13, ¶ 2.

146. See *id.* arts. 17-19, 21.

147. LaGrone, *supra* note 144.

148. *Id.*

149. Missy Ryan & Dan Lamothe, *Chinese Naval Ships Came Within 12 Nautical Miles of American Soil*, WASH. POST (Sep. 4, 2015), https://www.washingtonpost.com/world/national-security/chinese-naval-ships-came-within-12-nautical-miles-of-american-soil/2015/09/04/dee5e1b0-5305-11e5-933e-7d06c647a395_story.html.

150. *Migration Flows – Europe*, INT'L ORG. FOR MIGRATION, <http://migration.iom.int/europe/> (last visited Mar. 30, 2016).

151. Press Release, Mediterranean Migration Arrivals in 2016, INT'L ORG. FOR MIGRATION, <http://www.iom.int/news/mediterranean-migrant-arrivals-2016-164752-deaths-531> (last updated Mar. 29, 2016).

152. S.C. Res. 2240/15, *Maintenance of International Peace and Security*, para. 8, U.N. Doc. S/RES/2240-15 (Oct. 9, 2015), available at http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2240 (2015).

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country. In the discussions leading up to its passage, the Libyan representative pointed out that militias control Tripoli and the ports from which the migrant ventures depart.¹⁵³

D. BOKO HARAM

Boko Haram, based in Nigeria, overtook the Islamic State as the world's deadliest terror group.¹⁵⁴ Though originally promoting its own brand of Islam, IS recently accepted Boko Haram as its Islamic State of West Africa Province. Boko Haram has staged attacks in Nigeria, Cameroon, and Chad. The United States is deploying 300 troops to Cameroon at the government's invitation and will stay until no longer needed.¹⁵⁵ The troops will assist in airborne intelligence, surveillance, and reconnaissance.¹⁵⁶

153. Press Release, Security Council, Security Council Authorizes Member States to Intercept Vessels off Libyan Coast Suspected of Migrant Smuggling; Adopting Resolution 2240 (2015), U.N. Press Release SC/12072 (Oct. 9, 2015), *available at* <http://www.un.org/press/en/2015/sc12072.doc.htm>.

154. Rose Troup Buchanan, *ISIS Overtaken by Boko Haram as World's Deadliest Terror Organization*, THE INDEP. (Nov. 17, 2015), <http://www.independent.co.uk/news/world/africa/boko-haram-overtakes-isis-as-worlds-deadliest-terror-organisation-a6737761.html>.

155. Letter from Barack Obama, President of the U.S., to the Speaker of the House of Representatives and President Pro Tempore of the Senate (Oct. 14, 2015) (notifying Congress of intended deployment of up to 300 troops to Cameroon at that Government's consent), *available at* <https://www.whitehouse.gov/the-press-office/2015/10/14/letter-from-president-war-powers->.

156. *Id.*