# The *Army War College* Review



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# The Army War College Review

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Flag flying over the Strength and Wisdom statue, a gift from the class of 2014, capturing the mission, spirit, and history of Carlisle Barracks (photo by Laura A. Wackwitz, Ph.D.).

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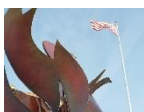
# The United States Army War College
## Student Publications

## The Army War College Review

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## Research

## Insights

# Using the Rule of Law to Combat the Islamic State

Stephen E. Schemenauer

*As the most lethal and well-funded terrorist group in the world, the Islamic State represents an unprecedented threat to international peace and security. Yet, the international community's current efforts to combat the group are largely disjointed, ineffective, counter-productive, and costly. Current efforts also emphasize the role of force over the rule of law, draw international criticism and fuel the flames of Islamic jihad. This has led many in the international community to call for a more comprehensive strategy that includes prosecutorial efforts as an integral component of the solution. Unfortunately, the international criminal justice system suffers from an institutional gap that allows the Islamic State's members to operate with impunity. This article recommends that the United Nations Security Council establish an Office of the Chief International Prosecutor for the Islamic State (UNOCIPIS) to fill that gap and provide the international community with a better legal tool for combating the Islamic State's worldwide criminal network.*

> [The Islamic State's] violent extremist ideology, its terrorist acts, its continued gross systematic and widespread attacks directed against civilians, abuses of human rights and violations of international humanitarian law, . . . its eradication of cultural heritage and trafficking of cultural property, . . . its recruitment and training of foreign terrorist fighters whose threat affects all regions and Member States, . . . constitutes a global and unprecedented threat to international peace and security[.]
>
> —Statement in United Nations (UN) Resolution 2249[1]

*Stephen E. Schemenauer (J.D. Hamline University School of Law) is a Colonel in the United States Army. An earlier version of this article, written under the direction of Dr. Paul C. Jussel while the author was an Army War College Fellow at Tufts University, earned a prestigious Military Order of the World Wars Writing Award for the USAWC Class of 2016.*

[1] United Nations, "Security Council 'Unequivocally' Condemns ISIL Terrorist Attacks, Unanimously Adopting Text That Determines Extremist Group Poses 'Unprecedented' Threat," November 20, 2015, http://www.un.org/press/en/2015/sc12132.doc.htm (calling for Member States to "take all necessary measures, in compliance with international law, . . . to redouble and coordinate their efforts to prevent and suppress terrorist acts committed specifically by Isil . . . and to eradicate the safe haven they have established in Iraq and Syria.").

Notwithstanding the UN's pronouncement that the Islamic State[2] is the greatest threat to global peace and security, the international community's efforts to destroy the group are disjointed, ineffective, counter-productive, and costly.[3] Developing a more comprehensive strategy that includes prosecutorial efforts to combat the Islamic State is imperative, but will require structural and procedural change.[4] The mechanisms typically relied upon to dispense international criminal justice are ill-equipped to handle the current threat, resulting in an institutional gap that must be filled. Meanwhile, the Islamic State continues to develop its network, build its resources, and conduct attacks with increasing frequency and lethality worldwide, and the death toll continues to mount.[5]

This article begins by examining the Islamic State's current status and the international community's ongoing efforts to combat the group. It then analyzes various deficiencies of the

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[2] Although known by many names, the label "Islamic State" is used throughout this essay. See Elizabeth Jensen, "Islamic State, ISIS, ISIL or Daesh?" *National Public Radio Ombudsman*, November 23, 2015, http://www.npr.org/sections/ombudsman/2015/11/18/456507131/islamic-state-isis-isil-or-daesh.

[3] Indeed, the international community has been criticized for failing to unite to combat terrorism and other forms of injustice throughout the world. See generally, Parliamentary Assembly of the Council of Europe, *2001 Ordinary Session, Official Report of Debates*, vol. IV (Strasbourg, France: Council of Europe Publishing, 2002), 972-983. (cataloguing criticisms of the international justice system and international calls for increased cooperation and development of a framework to combat terrorism). Some argue that this lack of unity is due to the inability to precisely define "terrorism," which "undermines attempts to generate international cooperation against terrorism and can lead to unilateral and (even if unwittingly) counterproductive strategies." See Anthony Richards, "Frameworks for Conceptualizing Terrorism," *Studies in Conflict & Terrorism* 37, no. 3 (February 2014): 213-236; See also Alex P. Schmid, ed., *Handbook of Terrorism Research* (London: Routledge, 2011), 86-87. (noting that "[w]hile there are many national and regional definitions, there is no universal legal definition approved by the General Assembly of the United Nations (the one proposed by the Security Council in Res. 1566 (2004) is non-binding, lacking legal authority in international law)"). This definitional issue is largely a difference without a distinction. See Alex, P. Schmid "Frameworks for Conceptualising Terrorism," *Terrorism and Political Violence* 16, no. 2 (Summer 2004): 197-198. (noting that there is no widespread international consensus on what crimes are considered terrorist acts, and that the "conceptualisation of crime varies considerably across time and cultural space," as laws and morality vary). Terrorist acts are criminal acts, and most, if not all, of the Islamic State's activities constitute multiple violations of various national and international laws. See Ibid; See also United Nations, "Security Council 'Unequivocally' Condemns ISIL Terrorist Attacks." (reaffirming that "any acts of terrorism are criminal and unjustifiable regardless of their motivations, whenever and by whomsoever committed[.]"). The international community must view the Islamic State as a worldwide criminal network, allowing the development of a more comprehensive strategy that includes a legal component. See Assaf Moghadam, Ronit Berger, and Polina Beliakova, "Say Terrorist, Think Insurgent: Labeling and Analyzing Contemporary Terrorist Actors," *Perspectives on Terrorism* 8, no. 5 (October 2014): 11-14. (arguing that by viewing a threat as terrorist in nature, a government limits its responses to law enforcement and military efforts; by broadening its viewpoint, it can develop more flexible and sustainable options).

[4] See, e.g., Salma El Shahed, "Prosecuting ISIS Poses Challenge to International Justice," *Al Arabiya News*, August 28, 2014, http://english.alarabiya.net/en/perspective/analysis/2014/08/28/Prosecution-of-ISIS-poses-challenge-to-intenational-justice.html (noting that an anonymous UN official recommended establishing a separate international tribunal to overcome the political issues associated with ICC prosecution); Julian Borger, "Call for Special Tribunal to Investigate War Crimes and Mass Atrocities in Syria," *The Guardian*, March 17, 2015, http://www.theguardian.com/world/2015/mar/17/call-for-special-tribunal-to-investigate-war-crimes-and-mass-atrocities-in-syria (noting the UN Commission of Inquiry's call for referral of the Syrian conflict to the ICC); Mark Kersten, "The ICC and ISIS: Be Careful What You Wish For," *Justice in Conflict*, June 11, 2015, http://justiceinconflict.org/2015/06/11/the-icc-and-isis-be-careful-what-you-wish-for/ (insisting that an ICC investigation of ISIS was warranted and that the Court was the best venue for bringing ISIS combatants to justice); John A. Bellinger III, "Make ISIS' Leaders Face Justice," *New York Times Online*, April 2, 2015, http://www.nytimes.com/2015/04/03/opinion/make-isis-leaders-face-justice.html?_r=1 (declaring its support for a UN Security Council referral of the Islamic State to the ICC); United States Commission on International Religious Freedom, "USCIRF Statement on the Designation of Victims of Genocide, Persecution, and Crimes Against Humanity in Syria and Iraq," December 7, 2015, http://www.uscirf.gov/news-room/press-releases/uscirf-statement-the-designation-victims-genocide-persecution-and-crimes (recommending that the ICC investigate and prosecute Islamic State members in Iraq and Syria); Luigi Prosperi, "Prosecuting ISIS Under International Law: Pros and Cons of Existing International Justice Mechanisms," http://www.academia.edu/12258595/Prosecuting_ISIS_Under_International_Law_Pros_And_Cons_Of_Existing_International_Justice_Mechanisms (noting that the former Chief Prosecutor of the UN-backed criminal tribunals proposed the establishment of an *ad hoc* tribunal); Beth Van Schaak, "Options for Accountability in Syria," *Just Security*, May 22, 2014, https://www.justsecurity.org/10736/options-accountability-syria/ (calling for an *ad hoc* tribunal for the Syrian situation).

[5] Indeed, some predict the Islamic State will "double-down" in 2016 with "increased attacks in Russia, Europe, Turkey and possibly Lebanon and Syria." Daniel Benjamin and Steven Simon, "The Global Terror Threat in 2016: A Forecast," *CTC Sentinel* 9, no. 1 (January 2016): 2, https://www.ctc.usma.edu/posts/the-global-terror-threat-in-2016-a-forecast.

institutions that typically investigate and prosecute crimes in the international justice system; namely, the International Criminal Court (ICC) and independent or *ad hoc* criminal tribunals (ICTs). Finally, a proposal is offered for establishing a United Nations Office of the Chief International Prosecutor for the Islamic State (UNOCIPIS), which would fill the existing gap in the international criminal justice system and provide the international community with a capacity-building tool that would enable UN Member States to effectively investigate and prosecute members of the Islamic State's worldwide criminal network.[6]

## The Islamic State: Public Enemy #1

The United Nations' condemnation of the Islamic State as an "unprecedented threat to international peace and security" is not mere rhetoric. Indeed, the group is led by religious zealots bent on ridding the world of apostates and unbelievers, establishing a worldwide caliphate, and inciting a global apocalyptic war using any means necessary.[7] These goals are, without question, antithetical to every nation's sovereignty and continued existence. With a net worth of over $2,000,000,000, the Islamic State funds its reign of terror through a host of criminal activities, including smuggling stolen oil, looting banks, imposing taxes, kidnapping, protection rackets, selling stolen artifacts, extortion, exploitation of natural resources, and controlling crops. As a result, the Islamic State is the most "financially endowed terrorist organization in history."[8] Although geographically limited to Iraq, Syria, and Libya, the Islamic State's influence and operational capabilities extend well beyond its territorial base.[9] For example, groups in Algeria, Afghanistan, Bangladesh, Cameroon, Chad, Egypt, Indonesia, Libya, Niger, Nigeria, Pakistan, the Philippines, and Yemen actively cooperated with, or have sworn allegiance to the Islamic State.[10]

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[6] UNOCIPIS, like military action, is not a panacea; rather, it should be considered an integral part of a broader and more comprehensive strategy to defeat the Islamic State.

[7] Cole Bunzel, "From Paper State to Caliphate: The Ideology of the Islamic State," *The Brookings Project on U.S. Relations with the Islamic World* 19 (March 2015): 10, http://www.brookings.edu/~/media/research/files/papers/2015/03/ideology-of-islamic-state-bunzel/the-ideology-of-the-islamic-state.pdf (noting that Abu Bakr al-Baghdadi defined "offensive jihad" as "'going after the apostate unbelievers by attacking [them] in their home territory, in order to make God's word most high and until there is no persecution.'"); Karen Yourish, Derek Watkins, and Tom Giratikanon, "Recent Attacks Demonstrate Islamic State's Ability to Both Inspire and Coordinate Terror," *New York Times Online*, January 14, 2016, http://www.nytimes.com/interactive/2015/06/17/world/middleeast/map-isis-attacks-around-the-world.html?_r=0 (stating that one of the Islamic State's goals is to expand the organization and use affiliates to "create chaos in the wider world" and "incite a global apocalyptic war").

[8] Jose Pagliery, "Inside the $2 Billion ISIS War Machine," *CNN Money*, December 11, 2015, http://money.cnn.com/2015/12/06/news/isis-funding/index.html (noting that the Islamic State: makes $500,000,000 per year from hijacked oil wells and refineries, and more than $360,000,000 a year in taxes; collected $20,000,000 to $45,000,000 from kidnappings in 2014; and stole $500,000,000 to $1,000,000,000 from banks in its new territories); See also CNN World, "ISIS Fast Facts," January 28, 2016, http://www.cnn.com/2014/08/08/world/isis-fast-facts/ (discussing the Islamic State's strategy for revenue); Zachary Laub, "The Islamic State," *Council on Foreign Relations*, March 3, 2016, http://www.cfr.org/iraq/islamic-state/p14811 (noting that the Islamic State nets an estimated $1,000,000 to $3,000,000 per day in oil sales and $8,000,000 per month in extortion); See also Charles Lister, *Profiling the Islamic State* (Washington, DC: Brookings Institution, 2014), 2, 4-5, http://www.brookings.edu/~/media/Research/Files/Reports/2014/11/profiling%20islamic%20state%20lister/en_web_lister.pdf (noting that the Islamic State was earning approximately $2,000,000 per day and had a net worth of close to $2,000,000,000 by September 2014, making it the "wealthiest terrorist organization in the world").

[9] Laub, "The Islamic State"; See also Lisa Curtis et al., *Combatting the ISIS Foreign Fighter Pipeline: A Global Approach*, The Heritage Foundation Special Report on Terrorism (Washington, DC: Heritage Foundation, January, 2016), http://www.heritage.org/research/reports/2016/01/combatting-the-isis-foreign-fighter-pipeline-a-global-approach (noting that the Islamic State has "established a presence in at least 19 countries").

[10] Laub, "The Islamic State" (noting that various militant groups have sworn allegiance to the Islamic State); See also Curtis et al., *Combatting the ISIS Foreign Fighter Pipeline: A Global Approach*. (describing the Islamic State's global presence).

Organizationally, the Islamic State is estimated to have anywhere from 9,000 to 200,000 local members, more than 30,000 foreign fighters from over 100 different countries,[11] and reportedly recruits 1,000 new fighters every month.[12] The possibility that radicalized foreign fighters will return to their home countries and carry out attacks, expands the Islamic State's geographic reach exponentially.[13] Operationally, the Islamic State projects worldwide influence,[14] spread via a litany of attempted and successful attacks in at least 35 countries, including: 12 separate events in the United States, numerous attacks in Paris, the downing of a Russian passenger jet over the Sinai Peninsula, and suicide bombings in Beirut.[15] The Islamic State's brutality transcends the bounds of human decency and constitutes some of the most egregious crimes ever known, including crimes against humanity, war crimes, ethnic cleansing, and genocide.[16] According to the G*lobal Terrorism Index*, the Islamic State was responsible for 6,073 terrorist-related deaths and at least 20,000 "battlefield deaths" in 2014, making it the most lethal and destructive terrorist group in the world.[17] This finding is corroborated by a recent United Nations report that over 24,000 civilians were killed or injured in Iraq alone in 2014, with most of the carnage due to the Islamic State.[18] In addition to these terrorist and battlefield related casualties, the Islamic State has harmed or killed thousands more by public executions (drowning, burning, beheading, and crucifixion), abductions, kidnappings, and other

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[11] David Gartenstein-Ross, "How Many Fighters Does the Islamic State Really Have?" *War on the Rocks*, February 9, 2015, http://warontherocks.com/2015/02/how-many-fighters-does-the-islamic-state-really-have/?singlepage=1 (noting a range of estimates provided by the Central Intelligence Agency, the Syrian Observatory for Human Rights, the Russian General Staff, Baghdad-based security expert Hisham al-Hashimi, and Kurdish Chief of Staff Fuad Hussein); Curtis et al., *Combatting the ISIS Foreign Fighter Pipeline: A Global Approach*. (noting that a 2015 National Counterterrorism Center report found that there were more than 20,000 foreign fighters in Syria emanating from over 90 countries, 32 of which accounted for 100 foreign fighters or more); Institute for Economics and Peace, *Global Terrorism Index 2015* (New York: Institute for Economics and Peace, 2015), 45-48, http://economicsandpeace.org/wp-content/uploads/2015/11/Global-Terrorism-Index-2015.pdf (stating that "[o]verall estimates from UN and government reports indicate that nearly 30,000 foreign individuals have travelled to Iraq and Syria from roughly 100 countries."); Chas Danner, "Report: ISIS Has Recruited as Many as 30,000 Foreigners in the Past Year," *Daily Intelligencer*, September 27, 2015, http://nymag.com/daily/intelligencer/2015/09/#.

[12] Danner, "Report: ISIS Has Recruited as Many as 30,000 Foreigners in the Past Year."

[13] Laub, "The Islamic State"; See also Brian Michael Jenkins, *Stray Dogs and Virtual Armies, Radicalization and Recruitment to Jihadist Terrorism in the United States Since 9/11* (Santa Monica, CA: Rand Corporation, 2011), 12. (noting that the return of foreign fighters who received terrorist training and experience abroad is one of the United States' greatest concerns and citing the case of Faisel Shazad's attempt to bomb Times Square in 2010 as an example).

[14] See Laub, "The Islamic State." (noting that the Islamic State's ambitions "have no geographic limits," and that a series of attacks in 2015 "highlighted [the group's] ability to strike beyond its territorial base."); See, e.g., Lisa Lundquist, "The Islamic State's Global Reach," *Threat Matrix*, blog entry posted September 5, 2014, http://www.longwarjournal.org/archives/2014/09/the_islamic_state_and_the_sham.php (cataloging known or suspected Islamic State activity in 33 countries outside Iraq and Syria since 2013); Yourish et al., "Recent Attacks Demonstrate Islamic State's Ability to Both Inspire and Coordinate Terror." (charting attacks linked to, or inspired by, the Islamic State in 2015); Stephen Collinson, "Obama Unyielding on ISIS as Criticism Mounts after Paris Attacks," *CNN Politics*, November 17, 2015, http://www.cnn.com/2015/11/16/politics/obama-isis-strategy-paris-attacks/ (noting that President Obama's critics "believe ISIS has morphed from a regional threat into a ravenous extremist group now spreading its tentacles through Libya, Egypt, Pakistan, Afghanistan and elsewhere and . . . is pulling off mass-casualty attacks on Western cities").

[15] Laub, "The Islamic State."

[16] Office of the Prosecutor, "Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, on the Alleged Crimes Committed by ISIS," August 4, 2015, https://www.icc-cpi.int/en_menus/icc/press%20and%20media/press%20releases/Pages/otp-stat-08-04-2015-1.aspx.

[17] Institute for Economics and Peace, *Global Terrorism Index 2015*, 38-42. (noting that "battlefield deaths" are distinct from terrorist related deaths as the former include military and civilian casualties; the latter only civilian casualties).

[18] United Nations Assistance Mission for Iraq (UNAMI) and the Office of the United Nations High Commissioner for Human Rights (OHCHR), *Report on the Protection of Civilians in the Armed Conflict in Iraq* (Baghdad, Iraq: UNHCR/OHCHR, January 5, 2016), i-ii, http://www.ohchr.org/Documents/Countries/IQ/UNAMIReport1May31October2015.pdf.

heinous acts.[19] The group is also reportedly destroying holy sites, stealing valuable antiquities, and holding 3,500 people as slaves who are subject to rape, sodomy, and forced labor.[20] Despite the UN's designation of the Islamic State as public enemy number one and its call for Member States to "take all necessary measures" to combat the group,[21] the international community continues to struggle.

## Current Efforts are Ineffective

Efforts to eradicate the Islamic State have fallen short, merely disrupting or containing the group in some respects.[22] The UN has yet to take any concerted action, having been blocked in large part by political infighting between the Security Council's permanent members (P5) over the situation in Syria.[23] Similarly, the United States' attempt to develop an international coalition to "degrade, and ultimately destroy" the Islamic State has failed to garner broad international support.[24] To date, the Obama administration has only assembled a coalition of 65 countries out of 193 UN Member States (representing 33% of the UN's total membership), and some questions remain as to whether the majority of these members are truly committed to the fight.[25] More importantly, however, the U.S.-led international coalition's "grand strategy" continues to emphasize military power through air strikes, support to ground forces, and counterterrorism efforts.[26] A prime example

[19] CNN World, "ISIS Fast Facts"; See also Institute for Economics and Peace, *Global Terrorism Index 2015*, 20. (noting that the Islamic State kidnapped 101 people in 2014, targeting private citizens 44% of the time, police 25%, and journalists 15%).

[20] CNN World, "ISIS Fast Facts."

[21] Supra note 1; See also David Usborne, "Isis: United Nations Security Council Resolution Planned by World Powers to Declare War against Group in Iraq and Syria," *Independent*, November 19, 2015, http://www.independent.co.uk/news/world/politics/isis-world-powers-plan-united-nations-security-council-resolution-to-declare-war-against-group-in-a6741181.html (describing the UN's resolution as a declaration of war designed to "'eradicate' jihadists in Iraq and Syria").

[22] See supra notes 8, 12, and 17 (stating that despite the international community's best efforts, the Islamic State continues to be the most lethal and well-funded terrorist organization in the world, with access to a steady flow of fighters); See also Nick Paton Walsh, "The Inconvenient Truth: There's No Easy Military Answer to War on ISIS," *CNN Opinion*, November 18, 2015, http://www.cnn.com/2015/11/17/opinions/isis-no-military-answer-paton-walsh/index.html (arguing that there is no "simple military solution to Syria"); David Welna, "After a Year Of Bombing ISIS, U.S. Campaign Shows Just Limited Gains," *NPR*, August 7, 2015, http://www.npr.org/sections/parallels/2015/08/07/430151358/after-a-year-of-bombing-isis-u-s-campaign-shows-just-limited-gains (noting the limited effectiveness of the U.S. bombing campaign).

[23] United Nations, "Security Council 'Unequivocally' Condemns ISIL Terrorist Attacks"; See also Amanda Barrow, "Summary of UN Efforts in Syria," *Women's International League for Peace and Freedom*, http://www.peacewomen.org/e-news/article/summary-un-efforts-syria (bemoaning the UN's efforts and calling for more decisive action, including imposing an arms embargo, implementing targeted sanctions against Syrian leaders, and referring the situation to the ICC); The "P5:" China, France, the Russian Federation, the UK, and the U.S. United Nations Security Council, "Current Members," http://www.un.org/en/sc/members/.

[24] President Barack Obama, "Statement by the President on ISIL," September 10, 2014, https://www.whitehouse.gov/the-press-office/2014/09/10/statement-president-isil-1 (outlining the administration's "comprehensive and sustained counterterrorism strategy" to "degrade" and "ultimately destroy" the Islamic State).

[25] United Nations, "Member States of the United Nations," http://www.un.org/en/members/ (noting that there are 193 members of the United Nations); See, e.g., Peter Baker, "A Coalition in Which Some Do More Than Others to Fight ISIS," *New York Times Online*, November 29, 2015, http://www.nytimes.com/2015/11/30/us/politics/a-coalition-in-which-some-do-more-than-others-to-fight-isis.html?_r=0 (quoting President Obama's former State Department Counterterrorism Coordinator, Daniel Benjamin, who said "I don't know why the White House has put as much emphasis on the coalition as it has, because it's been fairly transparent for a long time that the overwhelming majority of those nations have sent in their $25 contributions and not done much more."); U.S. Department of Defense, "Operation Inherent Resolve, Targeted Operations Against ISIL Terrorists," http://www.defense.gov/News/Special-Reports/0814_Inherent-Resolve (noting that the U.S. conducted 8,076 of the 10,545 total coalition air strikes in Iraq and Syria, or nearly 77% of the total missions).

[26] David Hudson, "President Obama: 'We Will Degrade and Ultimately Destroy ISIL'," *The White House*, blog entry posted September 10, 2014, https://www.whitehouse.gov/blog/2014/09/10/president-obama-we-will-degrade-and-ultimately-destroy-isil (outlining the coalition's four-point strategy: a systematic campaign of airstrikes, increased support to ground forces, drawing on counterterrorism capabilities, and providing humanitarian assistance to displaced civilians); See also Blaise Misztal and Jessica Michek, "An Overview of ISIS Threat and U.S. Response," September 25, 2014, http://bipartisanpolicy.org/blog/overview-isis-threat-and-us-response/ (providing an overview of the American strategy);

is Operation Inherent Resolve, which has resulted in over 10,545 coalition air strikes against Islamic State targets in Iraq and Syria (7,061 Iraq/3,484 Syria), damaging or destroying 21,501 targets.[27] The total operating cost has exceeded $6,200,000,000 in less than two years, equating to an average daily cost of $11,500,000 and a per target cost of $288,358.[28] Noticeably absent in this "grand strategy" are legal efforts to investigate and prosecute Islamic State members for criminal activity, which many believe would be a "great victory for the international justice."[29] This is surprising because the Obama administration has noted, time and again, how effective prosecutions have been in combating terrorism in the post-9/11 years. It also begs the question as to why the U.S. and the international community have not incorporated this effective counterterrorism tool into their fight against the Islamic State.[30]

In addition to joint efforts to combat the Islamic State, many countries have adopted unilateral approaches that have impeded cooperation and fostered ineffective and counter-productive strategies that exalt the role of force over the rule of law, or disregard the latter completely. U.S. drone strikes in Yemen and Pakistan, and indefinite detention without charge or trial of prisoners at Guantanamo Bay, for example, have elicited international condemnation, provoked the Islamic community, and provided a "propaganda windfall" for the Islamic State.[31] Thus, despite impressive

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Laub, "The Islamic State." (noting that the U.S. has deployed nearly 3,000 uniformed personnel in Iraq, armed the peshmerga, and led airstrikes against Islamic State forces).

[27] U.S. Department of Defense, "Operation Inherent Resolve, Targeted Operations against ISIL Terrorists."

[28] Ibid.

[29] Kersten, "The ICC and ISIS: Be Careful What You Wish For." (noting that prosecuting the Islamic State's members would be a "great victory" as opposed to "venturing into additional and legally questionable military forays or expanding an already nefarious drone programme."); See also Former Chief Prosecutor for the International Criminal Court Luis Moreno-Ocampo, interview by author, Cambridge, MA, January 18, 2016. (noting that a more comprehensive strategy, including a legal component, is necessary to combat the Islamic State's worldwide criminal network).

[30] See, e.g., President Barack Obama, "Remarks at National Defense University," public speech, National Defense University, Fort McNair, Washington, DC, May 23, 2013, https://www.gpo.gov/fdsys/pkg/DCPD-201300361/pdf/DCPD-201300361.pdf (highlighting the "scores" of successful prosecutions in Article III courts, including Umar Farouk Abdulmutallab, Faisal Shahzad, and Richard Reid); The White House Office of the Press Secretary, "Remarks of John O. Brennan, 'Strengthening our Security by Adhering to our Values and Laws'," September 16, 2011, https://www.whitehouse.gov/the-press-office/2011/09/16/remarks-john-o-brennan-strengthening-our-security-adhering-our-values-an (Assistant to the President for Homeland Security and Counterterrorism stating that "Article III courts are not only our single most effective tool for prosecuting, convicting, and sentencing suspected terrorists—they are a proven tool for gathering intelligence and preventing attacks. For these reasons, credible experts from across the political spectrum continue to demand that our Article III courts remain an unrestrained tool in our counterterrorism toolbox[,] . . . and "a wholesale refusal to utilize our federal courts—would undermine our values and security."); United States Department of Justice, "Attorney General Eric Holder Speaks at Northwestern University School of Law," March 5, 2012, https://www.justice.gov/opa/speech/attorney-general-eric-holder-speaks-northwestern-university-school-law (noting the administration's pride in Department of Justice's efforts to work with "colleagues across the national security community . . . to prosecute suspected terrorists, and to identify and implement legal tools necessary to keep the American people safe.").

[31] See, e.g., Steve Coll, "The Unblinking Stare," *The New Yorker Online*, November 24, 2014, http://www.newyorker.com/magazine/2014/11/24/unblinking-stare (discussing the negative ramifications of U.S. drone strikes); Owen Bowcott, "Drone Strikes Threaten 50 years of International Law, says UN Rapporteur," *The Guardian*, June 21, 2012, http://www.theguardian.com/world/2012/jun/21/drone-strikes-international-law-un (noting that the UN Special Rapporteur on extrajudicial killings and summary or arbitrary executions stated that the United States' use of drones to carry out targeted killings challenges the international legal system and encourages other states to "flout long-established human rights standards"); Common Dreams, "Time to End the 'Conspiracy of Silence Over Drone Attacks': UN Investigator," June 21, 2012, http://www.commondreams.org/news/2012/06/21/time-end-conspiracy-silence-over-drone-attacks-un-investigator (noting Pakistan's UN Ambassador's call for legal action to halt the United States' "totally counterproductive [drone] attacks"); UCDavis Center for the Studies of Human Rights in the Americas, "Calls for the Closure of Guantanamo," *Hemispheric Institute on the Americas*, http://humanrights.ucdavis.edu/projects/the-guantanamo-testimonials-project/calls-for-the-closure-of-guantanamo (collecting testimonials from the international community condemning operations at Guantanamo Bay and calling for its closure); Cassandra Vinograd and Mushtaq Yusufzai, "ISIS and Guantanamo Bay: Chain of Command Casts Spotlight on Re-engagement," *NBC News*, February 11, 2015, http://www.nbcnews.com/storyline/isis-terror/isis-guantanamo-bay-chain-command-casts-spotlight-re-engagement-n304241 (noting that the Islamic State "has seized on the propaganda value of Guantanamo Bay," using the imagery of captives in orange jumpsuits in their

and costly, displays of military might, the Islamic State continues to be the most lethal and well-funded terrorist group in the world.[32] A change of strategy is needed.[33] The international criminal justice system's current framework must become a major element of that strategy.

## Issues with the Current Legal Framework

A growing number of voices have urged the international community to use the ICC or ICTs to investigate and prosecute the mass atrocities and human rights violations committed by the Islamic State in Syria and Iraq.[34] Unfortunately, these mechanisms suffer from a host of procedural, substantive, and institutional flaws that render them incapable of investigating and prosecuting those who identify with the Islamic State for their crimes.[35]

### The International Criminal Court

The ICC was established by the Rome Treaty in 2002 and was the first permanent international criminal court designed to "help end impunity for the perpetrators of the most serious crimes of concern to the international community," including war crimes, genocide, and crimes against humanity.[36] The Court does not have jurisdiction over terrorist acts unless those acts fall within one of the categories of crimes identified.[37] The ICC's jurisdiction is restricted to only prosecuting crimes if they were committed on the territory of a State Party (territorial jurisdiction) or by one of its

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propaganda videos and quoting Wells Dixon as saying ". . . Guantanamo serves as a propaganda windfall for ISIS."); President Barack Obama, "Remarks by President Obama and Prime Minister Trudeau of Canada After Bilateral Meeting," public speech, Bilateral Meeting at the Philippine International Convention Center, Manila, Philippines, November 19, 2015, https://www.whitehouse.gov/the-press-office/2015/11/19/remarks-president-obama-and-prime-minister-trudeau-canada-after (stating that "Guantanamo has been an enormous recruitment tool for organizations like ISIL[,]" and "[i]t's part of how [the Islamic State] rationalize[s] and justif[ies] [its] demented, sick perpetration of violence on innocent people."). The cost to operate the Guantanamo Bay detention facility for fiscal year 2015 was approximately $445,000,000. U.S. Department of Defense, *Plan for Closing the Guantanamo Bay Detention Facility* (Washington, DC: U.S. Department of Defense, February 23, 2016), 7, http://www.defense.gov/Portals/1/Documents/pubs/GTMO_Closure_Plan_0216.pdf.

[32] See supra notes 8 and 17 (the Islamic State is the most well-funded and lethal terrorist organization in the world).

[33] Supra note 4 (describing some of the international community's calls for prosecution of the Islamic State).

[34] Ibid.

[35] The international criminal justice system suffers from three primary issues: lack of (1) universal support due in large part to sovereignty concerns; (2) an international enforcement mechanism; and (3) procedural, substantive, and systemic reliability in the primary institutions for prosecuting crimes (the ICC and independent or *ad hoc* tribunals). See., e.g., Council on Foreign Relations, "The Global Human Rights Regime," June 19, 2013, http://www.cfr.org/human-rights/global-human-rights-regime/p27450 (noting that: western countries "resist international rights cooperation from a concern that it might harm business, infringe on autonomy, or limit freedom of speech; "[n]egligence of international obligations is difficult to penalize;" many nations are incapable of protecting rights within their borders; and "[t]he utility of accountability measures, such as sanctions or force, . . ." is debatable); Kyle T. Jones, "The Many Troubles of the ICC," *The National Interest*, December 6, 2012, http://nationalinterest.org/commentary/the-many-troubles-the-icc-7822 (outlining general issues associated with the expense, delay, and inefficiencies of the international criminal justice system).

[36] International Criminal Court, "About the Court," https://www.icc-cpi.int/en_menus/icc/about%20the%20court/Pages/about%20the%20court.aspx. For a complete listing of all 124 States Parties, see International Criminal Court, "The States Parties to the Rome Statute," https://www.icc-cpi.int/en_menus/asp/states%20parties/Pages/the%20states%20parties%20to%20the%20rome%20statute.aspx. Ironically, the ICC and ICTs are often criticized for creating an "impunity gap," not eliminating it. The gap is created when an international court or tribunal only prosecutes high-level leaders for the most serious crimes, ignoring lower-level perpetrators who commit "lesser" crimes, thus failing to bring justice to a large number of victims. See International Center for Transitional Justice, "Criminal Justice," https://www.ictj.org/our-work/transitional-justice-issues/criminal-justice.

[37] International Criminal Court, "Frequently Asked Questions," https://www.icc-cpi.int/en_menus/icc/about%20the%20court/frequently%20asked%20questions/Pages/16.aspx. The Court will also have jurisdiction over the crime of aggression in 2017, once all of the Rome Statute Review Conference conditions are fulfilled. International Criminal Court, "The ICC at a Glance," https://www.icc-cpi.int/iccdocs/PIDS/publications/ICCAtAGlanceEng.pdf.

nationals (personal jurisdiction).[38] These conditions do not apply, however, if the UN Security Council refers a situation to the Chief Prosecutor or if a State accepts the Court's jurisdiction by declaration.[39] As a court of last resort, the ICC is intended to complement, not replace, national criminal justice systems.[40] Based on this principle of complementarity, the ICC will not act if a case is being investigated or prosecuted by a country unless the national proceedings are disingenuous.[41] "In addition, the ICC only tries those accused of the gravest crimes."[42]

The ICC's Chief Prosecutor can initiate an investigation or prosecution in one of three ways: (1) by a State Party referral of a situation; (2) by UN Security Council request; or (3) on its own initiative (*proprio motu*) if the Prosecutor receives reliable information, but only after receiving authorization from the Pre-Trial Chamber.[43] Seated at The Hague in the Netherlands, the ICC is independent of the UN and relies on States Parties' contributions and voluntary donations to fund operations.[44] The requested ICC's budget for 2016 was €153,320,000 ($168,644,334), of which €43,700,000 ($48,888,938) was for the Office of the Prosecutor (OTP).[45] To date, there have been 23 cases in 10 situations brought before the ICC.[46] Recent efforts to have the ICC open a preliminary examination into allegations of widespread atrocities committed by the Islamic State in Syria and Iraq, however,

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[38] International Criminal Court, "The ICC at a Glance."

[39] Ibid.

[40] Ibid. The principle of complementarity "recognizes that States have the first responsibility and right to prosecute international crimes." International Criminal Court, *Informal Expert Paper: The Principle of Complementarity in Practice* (The Hague, The Netherlands: International Criminal Court, 2003), 3, https://www.icc-cpi.int/NR/rdonlyres/20BB4494-70F9-4698-8E30-907F631453ED/281984/complementarity.pdf. In contrast, a "primacy regime creates a hierarchy in which domestic jurisdictions retain the ability to prosecute perpetrators, but which preserves an 'inherent supremacy' for the international tribunal." Jennifer Trahan, "Is Complementarity the Right Approach for the International Criminal Court's Crime of Aggression? Considering the Problem of 'Overzealous' National Prosecutions," *Cornell International Law Journal* 45 (2012): 574. For example, the relationship between the national courts and the International Criminal Tribunal for the Former Yugoslavia (ICTY) is one of "primacy," meaning the latter national court proceedings and had the first option to prosecute. Ibid., 571, 573. The Security Council created the ICTY by resolution to overcome concerns that it lacked time and ability to negotiate a multilateral treaty. Ibid., 573-574. Chapter VII of the UN Charter gave the Security Council "preeminent authority to take measures to restore 'international peace and security'." Ibid. (noting that Chapter VII "enables the tribunal to issue directly binding international legal orders and requests to States, irrespective of their consent.").

[41] Ibid; International Criminal Court, "ICC at a Glance," https://www.icc-cpi.int/en_menus/icc/about%20the%20court/icc%20at%20a%20glance/Pages/icc%20at%20a%20glance.aspx. For example, a proceeding could be deemed disingenuous if it was commenced solely to shield the accused from criminal responsibility.

[42] Ibid. The Rome Statute does not define "gravity." However, the Chief Prosecutor has assessed the gravity of a situation by considering: the scale, severity and systematicity of the crime; the manner in which it was committed; and the impact of the crime on victims. Susana SaCouto and Katherine A. Cleary, "The Gravity Threshold of the International Criminal Court," *American Journal of International Law* 23, no. 5 (2008): 808-810. The practical effect of the gravity requirement is that many offenders go unprosecuted because their crimes do not meet the threshold, thus creating an impunity gap. See supra note 36 (noting the intent of the ICC).

[43] International Criminal Court, "The ICC at a Glance."

[44] International Criminal Court, "About the Court."

[45] International Criminal Court, "Assembly of States Parties Report on the Committee on Budget and Finance on the Work of its Twenty-Fifth Session," November 9, 2015, 11, https://www.icc-cpi.int/iccdocs/asp_docs/ASP14/ICC-ASP-14-15-ENG.pdf (noting that this represented an increase of €4,100,000 ($4,586,834) or 10.4% over the 2015 budget); See also European Parliament, "ICC Requests 17% Increase for Growing Workload," September 18, 2015, 1, http://www.europarl.europa.eu/meetdocs/2014_2019/documents/droi/dv/502_analysisiccbudget_/502_analysisiccbudget_en.pdf (noting that States Parties' annual contributions are based on gross national income). The States Parties' assessed contributions for 2015 ranged from $5,173 for Vanuatu to $144,418,577 for Japan. International Criminal Court, "Assembly of States Parties Report on the Committee on Budget and Finance on the Work of its Twenty-Fifth Session," 29-30.

[46] Ibid; International Criminal Court, "Situations and Cases," https://www.icc-cpi.int/en_menus/icc/situations%20and%20cases/Pages/situations%20and%20cases.aspx. To date, four State Parties have referred situations occurring on their territories to the ICC, including Mali, Uganda, the Democratic Republic of the Congo, and the Central African Republic. In addition, the Security Council has referred the situations in Sudan and Libya, neither of which are parties to the Rome Statute. Finally, the Pre-Trial Chamber has authorized the Prosecutor to open investigations *proprio motu* into the situations in Kenya, the Ivory Coast, and Georgia.

have been rejected by the ICC's Chief Prosecutor, Fatou Bensouda.[47] Bensouda found that while the atrocities allegedly committed by the Islamic State "undoubtedly" constituted grave war crimes and crimes against humanity that "threaten[ed] the peace, security and well-being of the region, and the world[,]" she did not have the jurisdictional basis to even open a preliminary investigation. Moreover, because Syria and Iraq are not parties to the Rome Statute, the ICC lacked territorial jurisdiction and would only have limited personal jurisdiction over foreign fighters who were States Parties' nationals, which effectively precluded prosecution of those most responsible for mass crimes.[48]

Given these issues, the ICC could only gain jurisdiction if Iraq and/or Syria acquiesced to it, or if the UN Security Council referred the situation to the Court.[49] The former is highly improbable because, by acquiescing to the ICC's jurisdiction, the governments of Iraq and Syria would potentially be opening themselves to investigation and prosecution for their own alleged crimes.[50] Similarly, the latter is highly improbable given the geo-political dynamics associated with the Security Council. The U.S. and Russia are both permanent members of the Security Council with veto power over any ICC referrals.[51] They are also conducting military operations in Iraq and/or Syria and would likely be concerned that the Court's scrutiny could potentially expose their troops to prosecution. Both would likely veto a referral unless it included an exclusion of jurisdiction clause, which would prohibit the Court from prosecuting U.S. or Russian nationals.[52] The Syrian situation is additionally problematic because the Russians are extremely wary of U.S. efforts to effectuate a regime change, as evidenced by the recent failed attempt to draft a resolution referring the Syrian situation to the ICC.[53]

Beyond these jurisdictional issues, some question whether the Islamic State, as an organization, can even constitute a "situation" under the Rome Statute.[54] A "situation" has consistently been defined by temporal, territorial and personal parameters. In this case, the Islamic State lacks

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[47] Office of the Prosecutor, "Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, on the Alleged Crimes Committed by ISIS."

[48] Ibid. (noting that the Islamic State "is a military and political organisation primarily led by nationals of Iraq and Syria[,]" thus precluding the ICC from investigating and prosecuting those most responsible within the leadership of the organization due to a lack of personal jurisdiction).

[49] See supra note 39 (explaining the exceptions to the ICC's jurisdictional limitations).

[50] El Shahed, "Prosecuting ISIS Poses Challenge to International Justice." (noting that "[b]y recognizing and accepting the jurisdiction of the ICC, states allow the 'ICC Prosecutor to investigate for all crimes against humanity and war crimes potentially committed on the territory of the state, by any actor, during a specified time period[.]'"). In both cases, the governments of Iraq and Syria have allegedly engaged in crimes that would fall under the ICC's subject matter jurisdiction. See, e.g., Stephanie Nebehay, "UN: ICC Should Prosecute ISIS Fighters for War Crimes," *Haaretz*, March 19, 2015, http://www.haaretz.com/middle-east-news/1.647771 (noting that "Iraqi government forces and affiliated militias 'may have committed some war crimes' while battling the insurgency"); Amnesty International, *'Death Everywhere' – War Crimes and Human Rights Abuses in Aleppo, Syria* (London: Amnesty International, Ltd, May 5, 2015), 6, https://www.amnesty.org/en/documents/mde24/1370/2015/en/ (reporting that the Syrian government has subjected Syrian civilians to war crimes and crimes against humanity).

[51] #globalJUSTICE, "Veto of Justice for Syria Highlights Need for Security Council Reform," *Coalition for the ICC*, May 28, 2014, https://ciccglobaljustice.wordpress.com/2014/05/28/veto-of-justice-for-syria-highlights-need-for-security-council-reform/ (noting that "one of the permanent five members—the US, Russia, the United Kingdom, France and China—can prevent an otherwise united [Security] Council from acting.").

[52] See Anna Marie Brennan, "Prosecuting ISIL before the International Criminal Court: Challenges and Obstacles," *American Society of International Law* 19, no. 21 (September 17, 2015): https://www.asil.org/insights/volume/19/issue/21/prosecuting-isil-international-criminal-court-challenges-and-obstacles.

[53] United Nations, "Referral of Syria to International Criminal Court Fails as Negative Votes Prevent Security Council from Adopting Draft Resolution," May 22, 2014, http://www.un.org/press/en/2014/sc11407.doc.htm (noting that Russia's Vitaly Churkin said "the draft resolution proposed by 'Western colleagues' did not include a list of terrorist organizations, such as the Islamic Front, which led one to wonder whether there was an attempt to change the regime by force.").

[54] Carsten, "Why the ICC Should be Cautious to Use the Islamic State to Get Out of Africa: Part I," *European Journal of International Law*, blog entry posted December 3, 2014, http://www.ejiltalk.org/why-the-icc-should-be-cautious-to-use-the-islamic-state-to-get-out-of-africa-part-1/ (questioning whether the Islamic State, as an organization, could be a target for prosecution given it lacks statehood); see also El Shahed, "Prosecuting ISIS Poses Challenge to International Justice." (noting the lack of clarity over the Islamic State's "international legal personality").

elements of statehood under international law, notwithstanding various UN resolutions calling for prosecution of the group,[55] or the Islamic State's claim to a caliphate and "effective control" over territory in Iraq and Syria.[56] In fact, the ICC has already rejected a group-based definition for the referral of the Lord's Resistance Army, interpreting it more broadly as a referral of the situation in Uganda. Presumably, the ICC would similarly reject a group-based referral for the Islamic State, unless the "situation" was defined more broadly and tied to an "objective or territorial nexus."[57]

In addition to the geographic, jurisdictional, and situational limitations, the ICC also suffers from substantive issues that impede its ability to prosecute the Islamic State. For starters, its subject matter jurisdiction is generally limited to violent personal or property crimes covered by one of three categories: crimes against humanity, war crimes, and genocide.[58] This means that the ICC could not prosecute "lesser" or inchoate crimes that do not fit within these three categories.[59] For example, financial crimes would be excluded, notwithstanding the critical nature of money to the Islamic State's global operations. Similarly, the ICC would not be able to prosecute those who conspire with, aid or abet, Islamic State members who commit crimes, including financiers, recruiters, and logisticians. Even if all crimes could somehow be shoe-horned into one of the three categories, many "lesser" crimes would remain outside of the ICC's reach because they would not satisfy the scale, systematicity, or gravity requirements.[60]

Even assuming that the ICC could overcome the technical issues preventing the Court from opening an investigation and prosecuting the Islamic State, the sheer volume of cases and geographic scope of the group's crimes would impose a significant financial burden on the Court and present an overwhelming enforcement challenge. Based on a number of reports, the ICC would potentially be faced with investigating and prosecuting anywhere from 5,000-13,000 offenders in Iraq and Syria alone, and many additional crimes committed in other parts of the world.[61] Despite having a staff of more than 700 people, 34 judges, and an annual operating budget of over $166,000,000, the ICC does not have the capacity to deal with this volume of crime, as evidenced by the ICC's current record

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[55] Ibid; See, e.g., United Nations, "Security Council Resolution 2178," September 24, 2014, 4, http://www.un.org/en/sc/ctc/docs/2015/SCR%202178_2014_EN.pdf (calling for prosecution of terrorist groups including the Islamic State); United Nations, "Security Council Resolution 2170," August 15, 2014, 1-5, http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2170(2014) (deploring and condemning the Islamic State); United Nations General Assembly, "Human Rights Council Resolution S-22/1, The Human Rights Situation in Iraq in the Light of Abuses Committed by the So-called Islamic State in Iraq and the Levant and Associated Groups," September 1, 2014, 1-3.

[56] Carsten, "Why the ICC Should be Cautious to Use the Islamic State to Get Out of Africa: Part I." (stating that territory conquered by the Islamic State remains part of sovereign land belonging to Syria and Iraq, and that the Islamic State's "claims over population and representation remain contested" because "they are grounded in the forcible submission" of the local inhabitants).

[57] Ibid.

[58] See supra note 36 (noting the Rome Statute's three broad categories of crimes); The Full Text of the Rome Statute is available at https://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf.

[59] Ibid. An inchoate offense is "[a] step toward the commission of another crime, the step in itself being serious enough to merit punishment." Bryan A. Garner, *Black's Law Dictionary*, 10th ed. (St. Paul, MN: Thomson West, 2014), 1, 250. Some examples include attempt, conspiracy, and solicitation.

[60] See supra notes 36 and 59 (noting the absence of "lesser" crimes in the Rome Statute and providing examples of inchoate crimes); See also supra note 42 (discussing the ICC's gravity, scale, and systematicity requirements).

[61] See, e.g., Yazda and Free Yezidi Foundation, "ISIL: Nationals of ICC States Parties Committing Genocide and Other Crimes Against the Yazidis," September 2015, 1-49, http://www.yazda.org/wp-content/uploads/2015/09/RED-ISIL-commiting-genocide-against-the-Yazidis.pdf (hereinafter, "Yazda Report") (reporting a litany of potential crimes committed by over 5,000 to 7,500 foreign fighters in Iraq alone); United Nations, "Security Council Unanimously Adopts Resolution Condemning Violent Extremism, Underscoring Need to Prevent Travel, Support for Foreign Terrorist Fighters," September 24, 2014, http://www.un.org/press/en/2014/sc11580.doc.htm (noting that the UN is tracking more than 13,000 foreign fighters from more than 80 Member States who have joined the Islamic State); See also supra notes 11-12 (describing various reports of the number of foreign fighters in Syria and Iraq).

of 2 convictions over a 14-year period at a cost of over $1,000,000,000.[62] Moreover, the lack of an enforcement mechanism would impede the ICC's ability to prosecute the Islamic State, particularly given the volume of cases worldwide. Without an associated police force or other enforcement arm, the ICC is wholly dependent on States Parties to enforce the ICC's indictments and otherwise support its work.[63]  This has already proven problematic in a number of the ICC's cases, where states and inter-governmental organizations have been unwilling to enforce the ICC's actions against a small number of individuals.[64] It would only be exacerbated by the sheer number of Islamic State cases.

## International Criminal Tribunals

A number of proponents have argued for ICTs to overcome the procedural and substantive issues precluding the ICC from prosecuting the Islamic State's members.[65] These types of tribunals, however, suffer from many of the same deficiencies as the ICC. ICTs require an enormous amount of political will and resources from the international community. Consequently, they take too long, are financially burdensome, and have a limited impact.[66] For example, the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) have been criticized for failing to foster national reconciliation or to provide peace, security, or justice to victims and offenders.[67] Operating for over 23 years, these tribunals have accomplished little justice at great cost to the international community. In the ICTY's case, there were 161 indictments resulting in 80 convictions, 18 acquittals, 13 referrals to national courts, and 12 ongoing proceedings (four trials and eight appeals).[68] This equates to an estimated total cost of over $1,598,500,000, or $19,981,250 per conviction.[69] In comparison, the ICTR indicted 93 individuals, concluded proceedings for 85 accused, convicted 62 individuals and referred 13 people to other

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[62] David Davenport, "International Criminal Court: 12 Years, $1 Billion, 2 Convictions," *Forbes*, March 12, 2014, http://www.forbes.com/sites/daviddavenport/2014/03/12/international-criminal-court-12-years-1-billion-2-convictions-2/#127e19176440. This equates to a per conviction price of $500,000,000.

[63] Maryam Jamshidi, "The Enforcement Gap: How the International Criminal Court Failed in Darfur," *Aljazeera*, March 25, 2013, http://www.aljazeera.com/indepth/opinion/2013/03/201332562714599159.html.

[64] See, e.g., Ibid. (noting the difficulties associated with enforcing 6 indictments and 1 arrest warrant in the Darfur situation); International Criminal Court, "Situations and Cases." (noting that of the 5 arrest warrants issued in the Uganda situation, 1 offender surrendered to authorities, 2 died, and 2 remain at large, including Joseph Kony, the Commander-in-Chief of the Lord's Resistance Army).

[65] Notwithstanding these deficiencies, the ICC is currently the international community's best and only option to prosecute the Islamic State's members. While those prosecutions would be limited, they, nevertheless, would have more impact than the international community's current, do-nothing approach. See supra note 4 (describing calls for ICTs to prosecute the Islamic State).

[66] See El Shahed, "Prosecuting ISIS Poses Challenge to International Justice." (stating that "such courts can last for more than 20 years and consume millions if not billions of dollars").

[67] Lilian A. Barria and Steven D. Roper, "How Effective are International Criminal Tribunals? An Analysis of the ICTY and ICTR," *The International Journal of Human Rights* 9, no. 3 (September 2005): 363, http://stevendroper.com/ICTY.pdf.

[68] United Nations International Criminal Tribunal for the Former Yugoslavia, "Key Figures of the Cases," December 2, 2015, http://www.icty.org/sid/24.

[69] This is a conservative estimate using the ICTY's annual operating costs for its first decade extrapolated over 23 years. See David Akerson, "The Comparative Cost of Justice at the ICC," *The View From Above*, March 26, 2012, http://djilp.org/1877/the-comparative-cost-of-justice-at-the-icc/ (calculating that the ICTY and ICTR spent $695,000,000 and $1,000,000,000, respectively, in their first decade of operations). This equates to an annual operating cost of $69,500,000 for the ICTY and $100,000,000 for the ICTR. See Ibid.; See also United Nations International Criminal Tribunal for the Former Yugoslavia, "The Cost of Justice," http://www.icty.org/en/about/tribunal/the-cost-of-justice (noting that "[a]s of February 2015, the ICTY employed 569 staff members representing 69 nationalities" and had an annual budget of $179,998,600).

jurisdictions.[70] This equates to an estimated total cost of $2,200,000,000, or $35,483,871 per conviction.[71]

The estimated cost to establish a limited criminal tribunal to prosecute the Islamic State in Syria and Iraq would be hundreds of billions of dollars and take more than 20 years; a finding that comports with the ICTY's and ICTR's historical examples.[72] Applying the combined average cost to convict for the ICTY and ICTR ($27,732,560.50) to the potential number of foreign fighters in Iraq and Syria alone, the total cost to conduct an Islamic State tribunal would range from $138,662,802,500 to $360,523,286,500. Clearly, this limited approach is not economically feasible, especially since it fails to account for thousands of potential offenders in other countries.[73] Making matters worse, international criminal tribunals like the ICTY and ICTR have often been perceived as dispensing "victors' justice," which would only provide additional fodder for the Islamic State's propaganda machine and potentially provoke an escalation of atrocities.[74]

Finally, the ICTY and the ICTR were extremely limited in terms of time, space and scope due to the targeted threat.[75] That would not be the case with the Islamic State, where the sheer volume, range, type, and transnational nature of the crimes and offenders would tax a tribunal.[76] Indeed, the number of potential indictments would be in the thousands, even if only limited to one or two geographic regions.[77] Thus, the ICTY and ICTR's ability to indict only 254 people over 23 years demonstrates how limited a criminal tribunal would be if faced with the high volume of cases and offenders that the Islamic State would likely present.[78]

## A Global Game Changer: UNOCIPIS

The international criminal justice system's current mechanisms are simply incapable of handling the complexity and enormity of the issues posed by the Islamic State. The UN Security Council, therefore, should take immediate steps to establish an independent, international body to fill that institutional gap, operate within Member States' legal frameworks, and enable the effective investigation and prosecution of members of the Islamic State's worldwide criminal network.

Although somewhat novel, the concept of uniting international legal efforts to tackle a transnational threat is not without precedent. For example, at the International Maritime Office's (IMO) prompting, the UN Security Council acted under Chapter VII of the UN Charter to adopt a

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[70] United Nations Mechanism for International Criminal Tribunals, Legacy Website of the International Criminal Tribunal for Rwanda, "Key Figures and Cases," http://unictr.unmict.org/en/cases/key-figures-cases.

[71] See supra note 70 (noting that the ICTR spent approximately $1,000,000,000 in its first decade of operations, or $100,000,000 per year). Extrapolating this over the ICTR's 22 years of operations, the tribunal's total operating costs exceeded $2,200,000,000.

[72] El Shahed, "Prosecuting ISIS Poses Challenge to International Justice." (noting that an Islamic State tribunal could last for more than 20 years and cost "millions, if not billions of dollars"); see also supra notes 69-72 (describing the ICTY's and ICTR's time span and costs).

[73] See supra notes 11, 13, 61, 70, and 72 (noting the existence of foreign fighters from over 100 countries and calculating the total costs for a combined tribunal based on the ICTY's and ICTR's average per conviction cost).

[74] See Prosperi, "Prosecuting ISIS Under International Law: Pros and Cons of Existing International Justice Mechanisms."

[75] International Criminal Court, "About the Court." (noting that following the Cold War, the ICTY and ICTR were "established to try crimes committed only within a specific time-frame and during a specific conflict . . . .").

[76] See supra notes 9-20 (describing the Islamic State as a transnational network whose voluminous crimes transcend geographic boundaries).

[77] Supra note 61 (estimating 5,000-13,000 foreign fighters in Iraq and Syria alone). To be truly effective, an Islamic State tribunal would have to be able to investigate and prosecute crimes throughout the world. Limiting it to one or two geographic regions would have a minimal impact on the group's global network.

[78] Supra notes 69 and 71 (tallying the total number of indictments and prosecutions for the ICTY and ICTR).

series of conventions and resolutions to combat international piracy.[79] These conventions and resolutions called on all nations to cooperate with investigations and prosecutions of pirates, emphasizing the importance of collaborating to deter piracy and bring them to justice.[80] This international regime effectively conferred universal jurisdiction on all states to suppress piracy along the Somali coast and prosecute pirates across territorial boundaries.[81]

Similarly, the European Union (EU) has proposed establishing an independent and decentralized body called the European Public Prosecutor's Office (EPPO), charged with investigating and prosecuting EU fraud and financial crimes across Member States' borders.[82] This proposal arose out of the EU Member States' inability to investigate and prosecute financial crimes transnationally, particularly where EU bodies like Europol and Eurojust lacked the mandate to conduct such investigations.[83] By "combining European and national law enforcement efforts in a unified, seamless and efficient approach," the EU could protect its financial interests and fill an "institutional gap" with an office having exclusive and EU-wide jurisdiction to deal with crimes falling within its purview.[84] The EU believes the EPPO would add value by: developing a "genuine European prosecution policy;" establishing a "uniform, consistent and systematic approach while linking in with the Member States' judicial systems;" enabling the "investigation and prosecution of all EU fraud cases;" and providing a "stronger deterrence and prevention effect."[85] The EPPO would be led by a chief prosecutor and investigations will be carried out by delegated prosecutors in each Member State who would also function as national prosecutors.[86] When acting on behalf of the EPPO, however, the delegated prosecutors would be fully independent from the Member State's prosecutorial bodies.[87] The EPPO's investigative powers would be "based on and integrated into the national law systems of the Member States[,]" and its investigations "would be subject to judicial review by the national courts."[88]

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[79] James Kraska and Brian Wilson, "Combatting Piracy in International Waters," *World Policy*, blog entry posted February 23, 2011, http://www.worldpolicy.org/blog/2011/02/23/combatting-piracy-international-waters. The IMO has 167 Member States and is the UN's special agency for dealing with maritime matters. In 2005, the IMO urged nations to "take legislative, judicial, and law enforcement action to receive and prosecute or extradite pirates arrested by warships or other government vessels. . . . "

[80] Ibid.

[81] Ibid; See also United Nations, "Security Council Renews Measures to Combat Piracy, Armed Robbery off Somali Coast, Unanimously Adopting Resolution 2246 (2015)," November 10, 2015, http://www.un.org/press/en/2015/sc12113.doc.htm (stating that "the [Security] Council stressed the need for the international community to take a comprehensive response to prevent and suppress piracy and tackle its underlying causes."); Donald R. Rothwell, "Maritime Piracy and International Law," *Crimes of War*, http://www.crimesofwar.org/commentary/maritime-piracy-and-international-law/ (noting how the UN's conventions and resolutions deter and suppress piracy).

[82] European Commission, "European Public Prosecutor's Office," http://ec.europa.eu/justice/criminal/judicial-cooperation/public-prosecutor/index_en.htm. Article 86 of the Lisbon Treaty provides the legal basis for the proposal and outlines the office's various competencies and procedures. EUR-Lex, "Proposal for a COUNCIL REGULATION on the Establishment of the European Public Prosecutor's Office," http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52013PC0534. To read the complete text of Article 86, see The Lisbon Treaty, "Article 86," http://www.lisbon-treaty.org/wcm/the-lisbon-treaty/treaty-on-the-functioning-of-the-european-union-and-comments/part-3-union-policies-and-internal-actions/title-v-area-of-freedom-security-and-justice/chapter-4-judicial-cooperation-in-criminal-matters/354-article-86.html.

[83] European Commission, "European Public Prosecutor's Office." Europol is the EU's law enforcement agency. Europol, "About Us," https://www.europol.europa.eu/content/page/about-us. Eurojust is the EU's judicial cooperation unit, tasked with improving the cooperation and coordination of EU Member States' investigations and prosecutions. Eurojust, "Mission and Tasks," http://www.eurojust.europa.eu/about/background/Pages/mission-tasks.aspx.

[84] European Commission, "European Public Prosecutor's Office."

[85] Ibid.

[86] Ibid. Each Member State will determine the exact number of delegated prosecutors, but the minimum is one.

[87] Ibid.

[88] Ibid.

Perhaps the best example of an independent, international body created to investigate and prosecute crimes is the *Comision Internacional Contra la Impunidad en Guatemala*, or the CICIG.[89] The CICIG was established by Agreement Between the United Nations and the State of Guatemala on the Establishment of an International Commission against Impunity in Guatemala, which sets forth the CICIG's operating guidelines.[90] The CICIG has similar attributes to an international prosecutor. Its scope, however, is much more limited, operating under Guatemalan law, in accord with Guatemalan criminal procedure in Guatemalan courts.[91] The CICIG's purpose is to help Guatemala's Public Prosecutor's Office, National Civil Police, and other State institutions investigate and prosecute crimes committed by members of illegal security forces and clandestine security structures (collectively, Illegal Groups) within the country.[92]

The CICIG's mandate consists of three objectives: determining the existence and structure of Illegal Groups committing crimes affecting the human rights of Guatemala's citizenry, including their

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[89] CICIG, "Mandate, Agreement to Establish CICIG," http://www.cicig.org/index.php?page=mandate.

[90] See generally, CICIG, "Agreement Between the United Nations and the State of Guatemala on the Establishment of an International Commission Against Impunity in Guatemala (CICIG)," December 12, 2006, 1-21, http://www.cicig.org/uploads/documents/mandato/acuerdo_creacion_cicig.pdf#page=12. The Commission's powers include the following:

> (a) Collect, evaluate and classify information provided by any person, official or private entity, non-governmental organization, international organization and the authorities of other States;
>
> (b) Promote criminal prosecutions by filing criminal complaints with the relevant authorities. The Commission may also, in accordance with this Agreement and the Code of Criminal Procedure, join a criminal proceeding as a private prosecutor (querellante adhesivo) with respect to all cases within its jurisdiction;
>
> (c) Provide technical advice to the relevant State institutions in the investigation and criminal prosecution of crimes committed by presumed members of illegal security groups and clandestine security organizations and advise State bodies in the implementation of such administrative proceedings as may be required against state officials allegedly involved in such organizations;
>
> (d) Report to the relevant administrative authorities the names of civil servants who in the exercise of their duties have allegedly committed administrative offences so that the proper administrative proceedings may be initiated, especially those civil servants or public employees accused of interfering with the Commission's exercise of its functions or powers, without prejudice to any criminal proceedings that may be instituted through the Office of the Public Prosecutor;
>
> (e) Act as an interested third party in the administrative disciplinary proceedings referred to above;
>
> (f) Enter into and implement cooperation agreements with the Office of the Public Prosecutor, the Supreme Court, the Office of the Human Rights Ombudsman, the National Civilian Police and any other State institutions for the purposes of carrying out its mandate;
>
> (g) Guarantee confidentiality to those who assist the Commission in discharging its functions under this article, whether as witnesses, victims, experts or collaborators;
>
> (h) Request, under the terms of its mandate, statements, documents, reports and cooperation in general from any official or administrative authority of the State and any decentralized autonomous or semi-autonomous State entity, and such officials or authorities are obligated to comply with such request without delay;
>
> (i) Request the Office of the Public Prosecutor and the Government to adopt measures necessary to ensure the safety of witnesses, victims and all those who assist in its investigations, offer its good offices and advice to the relevant State authorities with respect to the adoption of such measures, and monitor their implementation;
>
> (j) Request and supervise an investigation team made up of national and foreign professionals of proven competence and moral integrity, as well as such administrative staff as is required to accomplish its tasks;
>
> (k) Take all such measures it may deem necessary for the discharge of its mandate, subject to and in accordance with the provisions of the Guatemalan Constitution; and
>
> (l) Publish general and thematic reports on its activities and the result thereof, including recommendations pursuant to its mandate[.]

[91] CICIG, "About CICIG," http://www.cicig.org/index.php?page=about.

[92] CICIG, "Mandate, Agreement to Establish CICIG."

links to Guatemalan officials, operating modalities, and funding sources; assisting Guatemala in disbanding Illegal Groups and "promot[ing] the investigation, criminal prosecution and punishment of the crimes committed by the[ir] members;" and making public policy recommendations to "eradicate and prevent the re-emergence of" Illegal Groups.[93] To accomplish these goals, the CICIG works in conjunction with Guatemalan legal authorities and, at times, also acts as a complementary prosecutor for certain complex cases. In doing so, the CICIG strengthens Guatemala's legal institutions and its entire justice system.[94]

Collectively, the UN's anti-piracy initiative, the EPPO, and the CICIG demonstrate that the international community can unite to combat national and transnational threats, promote accountability, and strengthen the rule of law. More importantly, facets of these three programs could be adapted and incorporated into a model program for UNOCIPIS, providing the framework necessary to fill the existing institutional gap in the international criminal justice system.

## Proposed Model for UNOCIPIS

The proposal advanced here draws upon the UN's anti-piracy efforts, the EPPO, and the CICIG to build a general framework for UNOCIPIS, leaving the UN Security Council and the first Chief International Prosecutor to determine the office's finer details.[95] The proposal is organized into six key areas: (1) authority, (2) structure, (3) mission, (4) powers, (5) applicable laws, rules, and procedures, and (6) funding.

### *Authority*

The Security Council should create UNOCIPIS by resolution and thereby avoid a prolonged treaty process that would likely fail in gaining unanimous consent.[96] This would also ensure that the relationship between UNOCIPIS and the national authorities is based on primacy, avoiding sovereignty concerns and the ICC's complementarity issues, and allowing the Security Council to enforce UNOCIPIS's actions and compel Member States' compliance.[97] Finally, passing a resolution would put teeth in the UN's condemnation of the Islamic State, overcome the lack of unity and cooperation that plagues the international community's current efforts, enhance legitimacy, and strip the Islamic State of propaganda recruitment fodder.[98]

### *Structure*[99]

UNOCIPIS should be independent of the United Nations, and its operations should be decentralized.[100] This would allow the office to better operate within the confines of Member States'

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[93] Ibid.

[94] Ibid.

[95] The model proposed, for example, does not address the intricate details related to staffing, case management, or other ancillary details required to create the office and carry out its mandate.

[96] See supra notes 36 and 40 (noting that the Rome Treaty lacks unanimity and describing the Security Council's rationale for creating the ICTY by resolution).

[97] Supra notes 35, 40-42, and 63-65 (discussing primacy and the issues of sovereignty, complementarity, and enforceability).

[98] Supra notes 1, 3, 22-25, and 31 (discussing the international community's condemnation of the Islamic State, the lack of action and disunity of its fight against the group, and the impact of unilateral operations).

[99] The office's composition and organizational structure should be determined by the Chief International Prosecutor after the office has been established.

[100] See supra notes 83 and 87-89 (describing the EPPO's decentralized structure).

law enforcement and judicial frameworks and ensure its success.[101] The Security Council could structure UNOCIPIS in one of two ways, adopting either the EPPO's or the CICIG's approach. This decision would hinge on funding constraints and which of the competing structures was better suited to deal with the Islamic State. For example, the Security Council could follow the EPPO's model, appointing a Chief International Prosecutor (CIP) and requiring each Member State to appoint at least one Chief National Prosecutor (CNP).[102] Or, alternatively, the Security Council could follow the CICIG's model, appointing just a CIP and allowing him or her to work directly with national authorities.[103] The latter would be less intrusive and more economical, as it would require less staffing and oversight and avoid the extreme costs and bureaucratic bloat associated with the ICC and ICTs.[104] The former may be more effective because the CNPs would presumably be more vested in UNOCIPIS and could facilitate a closer working relationship with national authorities.[105]

Practically speaking, UNOCIPIS would strive to support Member States' efforts, taking the lead only where requested or required due to a national authorities' inability or unwillingness to investigate and prosecute alleged perpetrators.[106] This approach would recognize UNOCIPIS's primacy over national authorities without heightening concerns over a lack of sovereignty or perceived intrusion into internal affairs. Finally, UNOCIPIS and the national authorities would divide their efforts accordingly. UNOCIPIS would take a more strategic approach, focusing on developing the cross-border connections of the Islamic State's entire criminal network. Conversely, national authorities would take a more tactical approach, focusing on the crimes committed within their jurisdictions.[107] This dual-focused, and more holistic, approach would facilitate development of the entire network, enhancing the international community's ability to defeat the Islamic State.[108]

### Mission

UNOCIPIS's mission would be to support, strengthen, and assist the international community's global efforts to dismantle the Islamic State's worldwide criminal network by combining international and national law enforcement efforts to investigate and prosecute members of the Islamic State for their crimes.[109] UNOCIPIS would accomplish its mission by collaborating and cooperating with international and national law enforcement agencies and judiciaries throughout the world to: investigate the Islamic State's entire criminal network and determine its structure (leadership, recruitment, training, etc.), forms of operation, sources of financing and logistical support, and any other relevant information; and prosecute members of the Islamic State for their crimes *sua sponte* or in conjunction with members of the international community.[110]

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[101] See supra notes 85-89, 92-93, and 95 (discussing how the EPPO and the CICIG operate independently from the UN, but within the national structures of the Member States).

[102] See supra notes 87-89 (describing the EPPO's structure).

[103] See supra notes 90-92 (describing the CICIG's structure and listing its powers).

[104] See supra notes 69-72 (discussing the ICC's and ICTY's staffing and budgeting issues).

[105] See supra note 86 (listing the EPPO's advantages).

[106] See supra notes 40-41, 87-89, 92-93, and 95 (explaining the doctrine of primacy; noting how the EPPO and the CICIG operate within, and complementary to, the national systems; describing how the CICIG's prosecutors can play a complementary role in complex cases; and noting the capacity-building effect of the CICIG).

[107] See supra notes 87-89 and 92-93 (explaining how EPPO's and CICIG's prosecutors work with national authorities).

[108] See supra notes 84-85 (noting limitations on EU organizations to investigate and prosecute cross-border crimes).

[109] See supra notes 83-85 and 93-95 (discussing the EPPO's and CICIG's missions).

[110] Supra notes 94-95 (outlining the CICIG's goals).

*Powers*

To discharge its mandate, and in accordance with the Member States' criminal laws and procedures, UNOCIPIS should:

i.     Advise and assist Member States' institutions with investigations and criminal prosecutions;[111]

ii.    Join in and/or initiate criminal investigations and proceedings;[112]

iii.   Enter into, and implement, cooperation agreements with Member State institutions, including, but not limited to, the CNPs or national authorities, Member States' courts, and national law enforcement authorities;[113]

iv.    Enter into, and implement, cooperation agreements with International Organizations including, but not limited to, INTERPOL, Europol, Eurojust, or any other organization that could facilitate UNOCIPIS's investigations or prosecutions;[114]

v.     Require the cooperation of International Organizations and Member State officials and institutions;[115]

vi.    Request and supervise an administrative, investigative, and legal staff, as required to accomplish its tasks;[116]

vii.   Take all measures necessary for the discharge of its mandate, subject to, and in accordance with, Member States' laws, rules and procedures (e.g., gather evidence, issue subpoenas and warrants, etc.);[117] and

viii.  Publish annual reports to the UN Security Council on its activities and results.[118]

Although not all-encompassing, these expectations and authorities would allow UNOCIPIS to carry out its mandate within the respective Member States' legal frameworks. If additional powers should be necessary, the UN Security Council and CIP could adjust accordingly.

*Applicable Laws, Rules and Procedures*

UNOCIPIS would operate within Member States' law enforcement and judicial frameworks, abiding by their criminal laws, rules, and procedures to conduct investigations and prosecutions.[119] UNOCIPIS's actions would also be subject to judicial review by a national court of competent jurisdiction.[120] This would make the office more efficient and effective while providing legal safeguards for suspected and accused persons. It would also avoid the various technical issues presented by the ICC's temporal, jurisdictional, situational, and subject matter limitations.[121] Finally, it would side-step the ICC's gravity and systematicity requirements, providing a broader and more

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[111] Supra note 91 (noting similar powers of the CICIG pursuant to Article 3(1)(c)).

[112] Supra note 91 (noting similar powers of the CICIG pursuant to Article 3(1)(b)).

[113] Supra note 91 (noting similar powers of the CICIG pursuant to Article 3(1)(f)).

[114] Ibid.

[115] Supra note 91 (noting similar powers of the CICIG pursuant to Article 3(1)(h)).

[116] Supra note 91 (noting similar powers of the CICIG pursuant to Article 3(1)(j)).

[117] Supra note 91 (noting similar powers of the CICIG pursuant to Article 3(1)(k)).

[118] Supra note 91 (noting similar powers of the CICIG pursuant to Article 3(1)(l)).

[119] See supra notes 87-89, 92-93 (discussing the ways in which the EPPO and the CICIG operate in accordance with Member States' laws, rules, and procedures).

[120] See supra note 89 (noting that the EPPO's investigations are subject to review by courts of competent jurisdiction).

[121] See supra notes 49-60 (discussing the ICC's technical limitations).

flexible prosecutorial platform that would allow UNOCIPIS to fill the "impunity gap" by prosecuting all offenders for all crimes, including lesser and inchoate crimes.[122]

### Funding

Like the ICC, UNOCIPIS would be principally funded by Member State contributions based on a pro rata share of their gross national income, but additional funds could come from voluntary government contributions, international organizations, individuals, corporations, or other entities.[123] Where UNOCIPIS takes a lead role, the Member State would be responsible for all costs and expenses incident to the investigation and prosecution, in addition to that nation's annual contribution.

Compared to the ICC and ICTs, and the ongoing military operations to combat the Islamic State, UNOCIPIS is a veritable bargain. Assuming the Security Council would decide to use the CICIG structure over the EPPO structure (appointing a CIP without CNPs in each Member State), this model could likely operate on 10% of the OTP's 2016 budget, or $4,880,000.[124] To put this in perspective, UNOCIPIS's total annual budget would be approximately: 42% less than a single day of airstrikes ($11,500,000) and 0.001% of Operation Inherent Resolve's annual operating cost ($4,197,500,000); 0.011% of Guantanamo Bay's annual operating cost ($445,000,000); 0.029% of the ICC's 2016 requested budget ($168,644,334); 0.07% of the ICTY's annual operating cost ($69,500,000); and 0.05% of the ICTR's annual operating cost ($100,000,000).[125] Assuming all 193 UN Member States contributed equal shares, that would represent an annual contribution of $36,269.43 per country – a fraction of what many of the Rome Treaty States Parties contribute annually to the ICC.[126] To be fair, the exact amount of Member States' annual contributions should be based on a pro-rata share of the budgeted goal and each Member State's gross national income.

Crafting a general framework for UNOCIPIS invites thoughtful consideration with regard to how the proposed model might work. What follows is an illustrative, hypothetical example that demonstrates the advantages that UNOCIPIS would afford over the ICC approach.

## A Comparison of UNOCIPIS to the ICC

A simple hypothetical model, loosely based off the San Bernardino terrorist attack, can assist in illustrating how UNOCIPIS could overcome the ICC's deficiencies.[127] The scenario:

*On December 2, 2015, two shooters entered a U.S. government building in San Bernardino, California, killing 14 people and wounding 22 others. The U.S.-born shooters had a South Sudanese-based accomplice who provided funding and logistical support for the attack. The funds were transferred from an Islamic State account in Indonesia to the United States through multiple banks in Yemen, Lebanon, and Malaysia. All three participants were recruited and radicalized by*

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[122] See supra notes 42 and 58-60 (discussing the impunity gap and the need to prosecute all offenders and all crimes, not just high level leaders who commit the gravest crimes).

[123] Supra notes 44-45 (explaining that the ICC is predominantly funded by States Parties' yearly contributions based on their gross income).

[124] See supra notes 87, 92-93 and 95 (noting that the CICIG's structure has significantly fewer personnel than the EPPO which provides for a chief prosecutor and delegated prosecutors in each member state).

[125] See supra notes 27-28, 31, 45, 70 and 72 (displaying annual budgets and operating costs for the associated entities).

[126] Supra note 45 (reflecting a 2015 assessed contribution range for States Parties of $5,173 for Vanuatu to $144,418,577 for Japan).

[127] This hypothetical is loosely based on the terrorist attack in San Bernardino, CA on December 2, 2015. Details have been changed to highlight the panoply of issues faced by the ICC—the only international institution currently capable of conducting limited investigations and prosecutions of the Islamic State, particularly since no ICTs have been established.

*Islamic State operatives in Pakistan. The shooters also received weapons and explosives training at an Islamic State training camp located in Iraq. To date, there have been no referrals of the "situation" by a State Party, the UN Security Council has not referred the matter, and no reliable information has been provided allowing the Pre-Trial Chamber to authorize the Chief Prosecutor to exercise her proprio motu powers.*

Given this hypothetical scenario, it would be incredibly problematic, if not impossible, for the ICC to prosecute any of these offenders. The UNOCIPIS, however, could investigate and prosecute any or all of them.

1.   Threshold Issues. Without a referral by a State Party or the Security Council, and lacking any reliable information to exercise *proprio motu* powers, the OTP would not be able to investigate or prosecute the various offenders.[128] It is also highly unlikely that this scenario would even be considered a "situation" falling within the ICC's purview.[129] The UNOCIPIS, however, would not be subject to these constraints because power would derive from a Security Council resolution and not the Rome Treaty.

2. Personal and Territorial Jurisdictional. Even assuming, *arguendo*, that the ICC could overcome the threshold issues and open an investigation, it would not be able to proceed because of the Rome Treaty's jurisdictional limitations.[130] The offenders are all non-State Party citizens, and the crimes were all committed on non-State Party territory.[131] Therefore, the ICC lacks personal and territorial jurisdiction, and the Court could not proceed without a declaration by the implicated countries acceding to the ICC's jurisdiction or a referral by the Security Council.[132] In contrast, UNOCIPIS would not be bound by jurisdictional restrictions because it would operate within the Member States' legal and judicial frameworks, including their laws, rules and procedures. If the Member States had jurisdiction, UNOCIPIS would have jurisdiction.

3.   Subject Matter Jurisdiction. The hypothetical also raises issues regarding the impunity gap created by the ICC's subject matter jurisdiction. While the murders arguably fall within the category of crimes against humanity, the ICC would not have subject matter jurisdiction over the lesser and inchoate crimes that are reflected in the scenario, including conspiracy, aiding and abetting, and a host of financial crimes.[133] Consequently, many of the offenders could escape justice.[134] UNOCIPIS, however, would not be bound by the Rome Treaty's categorical limitations and it could fill the impunity gap by prosecuting any of the crimes found in the applicable Member State's criminal code.

4.   Admissibility. Admissibility issues pose yet another problem for the ICC in this hypothetical, both from a gravity and complementarity perspective. It is doubtful that the deaths of 14 and wounding of 22 in an isolated incident like this would meet the ICC's scale or systematicity requirements necessary to satisfy the gravity threshold.[135] UNOCIPIS, however, is not bound by the Rome Treaty's gravity requirements and would be able to proceed. It is equally unlikely, given the nature of the Islamic State threat, that any of the countries implicated in the hypothetical would not, or could not, investigate and prosecute the perpetrators. Consequently, the ICC would be precluded

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[128] Supra note 43 (discussing the three ways in which the ICC can open an investigation or prosecution).

[129] Supra notes 54-57 (explaining the problems associated with group-based definitions).

[130] Supra notes 47-48 (explaining that the ICC rejected the Islamic State referral due to jurisdictional issues).

[131] See supra note 37 (referring to a complete listing of States Parties to the Rome Treaty).

[132] Supra notes 38-39 (discussing the ICC's jurisdictional limitations and explaining how the ICC can overcome them via a State Party declaration or Security Council referral).

[133] Supra notes 58-60 (discussing the ICC's impunity gap created by lesser and inchoate crimes).

[134] Supra notes 42 and 58-60 (defining the "impunity gap").

[135] Supra note 42 (explaining the ICC's gravity requirements).

from participating in those cases. UNOCIPIS, on the other hand, would be able to complement the ongoing cases and, if necessary, take the lead.[136]

5. Additional Advantages. UNOCIPIS has several additional advantages over the ICC in this scenario. First, UNOCIPIS could act as a central and coordinating element for the multiple investigations and prosecutions being conducted throughout the various Member States. The CIP could act as a liaison between the various CNPs or national authorities and facilitate communication and information sharing to support each Member State's case.[137] Second, UNOCIPIS could focus on developing the connections of the broader network, while the national authorities focus on prosecuting the crimes committed within their jurisdiction.[138] Finally, UNOCIPIS could take a lead role if one or more of the Member States lacked the ability or willingness to investigate the crimes and prosecute the perpetrators, thus having a capacity-building effect and ensuring that justice is served.[139]

This hypothetical scenario underscores the litany of issues facing the ICC, which is currently the international community's best option to prosecute the Islamic State's members (notwithstanding its reluctance to do so).[140] The scenario also illustrates how UNOCIPIS could overcome shortfalls and serve as a flexible and effective weapon to with which to combat the Islamic State's worldwide criminal network.

## Conclusion

While the international community remains united in its recognition that the Islamic State represents an "unprecedented threat to international peace and security," its current efforts to combat the group remain largely disjointed, ineffective, and costly for two reasons. First, the international community lacks a holistic strategy that combines all instruments of international power and the net result is an over-reliance on military force. While military force is clearly necessary, force alone cannot dismantle the Islamic State's worldwide criminal network. Consequently, the international community must broaden its strategy to include the missing legal component. The second issue plaguing the international community's efforts to deal with the Islamic State is the lack legal mechanisms with which to effectively investigate and prosecute the Islamic State's members for their crimes. The ICC and ICTs are simply ill-equipped and inadequate to handle the unique challenges and the net result is that the international legal community sits idly by while horrific crimes continue and escalate with near impunity.

UNOCIPIS could help resolve both shortcomings by adding a critically needed legal component to the current strategy and filling the institutional gap that is preventing the international community from dispensing justice. UNOCIPIS has the potential to become an economically viable and incredibly powerful weapon with which to combat the Islamic State's worldwide criminal network.

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[136] Supra notes 40-41 (discussing the concepts of complementarity and primacy).

[137] See supra notes 107-111 (outlining UNOCIPIS's support role).

[138] See supra notes 87-89, 91-93, and 108-109 (differentiating the prosecutors' roles in the various organizations and discussing the CIP's broader focus).

[139] Supra notes 95, 103-111, and 112 (describing UNOCIPIS's capacity-building qualities).

[140] Supra note 47 (reflecting that the ICC rejected a recent referral for the Islamic State).
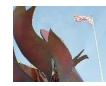
# Hellenic National Security: The Turkish Challenge

Michail Ploumis

*This paper examines the National Security Strategy of Greece in an era of a persistent economic crisis. The military balance of power between Greece and Turkey and regional military powers in the Eastern Mediterranean is deteriorating. The defense budget for Greece in the coming decade is projected and the corresponding implications with regard to how reductions in military spending will impact the Hellenic National Defense Forces' (HNDF) capabilities are discussed. Recommendations for needed revisions to the National Security Strategy and military strategies in an increasingly complex and potentially hostile neighborhood are proffered.*

Keywords: *Hellenic Armed Forces, Greek National Security Strategy, Greece, Cyprus, Turkey*

> Si vis pacem, para bellum. (If you want peace, prepare for war.)
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> —Publius Flavius Vegetius Renatus[1]

Greece is in the midst of a multiyear economic crisis that, since 2009, has curtailed governmental spending including national defense. At the same time, the Middle East is undergoing a series of noteworthy changes due to ongoing-armed conflicts. In the Balkans, ethnic tensions and the growing presence of radical Islamic groups impact the region. Meanwhile, the Turkish Armed Forces continue to violate Greek airspace and territorial waters in the Aegean Sea and to unlawfully occupy the northern region of the Republic of Cyprus. In this volatile environment, Greece must maintain capable armed forces to counter symmetric and asymmetric threats to Greek national security, especially those coming from, or through its neighbor, Turkey. Turkey's power, combined with its effort to advance its national interest in the region at Greece's expense, raises a deep concern for, if not fear, of Turkish military aggression for the Greek people. At the same time, reduced Greek defense budgets undermine the Hellenic National Defense Forces (HNDF) capabilities. In August 2015, Greece agreed with the European Union (EU) to further reduce its military spending in

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*Michail Ploumis (M.S.S. United States Army War College) is a Colonel in the Hellenic Army. An earlier version of this article, written under the direction of Colonel Thomas J. Moffatt, earned a prestigious Army War College Foundation Award for Outstanding Strategy Research Paper for the USAWC Class of 2016.*

[1] The adage is from Book 3, of Latin author Publius Flavius Vegetius Renatus.

accordance with the new economic recovery program. This fiscal reality requires changes, and the establishment of revised, budget-driven strategies to meet contemporary challenges.

This article addresses the necessity for revised Hellenic *national security* and *military* strategies in the era of economic crisis.[2] It examines the military power of Greece by analyzing past and current defense spending, briefly introduces the military powers in the Eastern Mediterranean, and projects a view for HNDF's future capabilities. The essay forecasts future Greek-Turkish relations and asymmetric threats for the period of 2016-2026 by studying the Greek-Turkish relations through levels of analysis and creating a scenario-based projection. This forecast identifies Greece and Turkey potentially as "Friends," "Partners," "Opponents," or "Enemies." Finally, in the changed fiscal environment, recommendations for a revised national security and military strategy are suggested to include the reprogramming of resources and concepts, to address symmetric and asymmetric security threats, while protecting Greek national security interests.[3]

## Greek Military Power in the Eastern Mediterranean

Since 2010, Greece has been receiving financial support from the European Union (EU) and the International Monetary Fund (IMF) to cope with its fiscal challenges.[4] In August 2015, Greece agreed to a new program from the EU, which paved the way for new loans of up to €89 billion (bn.) during the 2015 – 2018 timeframe. Amongst other provisions, Greece must "reduce permanently [of what they were at that time] the expenditure ceiling for military spending by €100 million in 2015 and by €400 million in 2016 with a targeted set of actions, including a reduction in headcount and procurement."[5] During the 2009-2014 period (2009 is considered the base year of the Greek

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[2] The term *National Security* herein refers to the safeguarding of the Greek "people, territory, and way of life." For more see, Amos A. Jordan et al., "National Security Policy: What It Is and How Americans Have Approached It," in *American National Security,* 6th ed. (Baltimore: Johns Hopkins University Press, 2009), 3-5. The *National Security Strategy* is defined as "the art and science of developing, applying and coordinating the instruments of national power (diplomatic, economic, military, and informational) to achieve objectives that contribute to national security." The *National Military Strategy* is defined as the "art and science of distributing and applying military power to attain national objectives in peace and war." For more see, H. Richard Yarger, "Towards a Theory of Strategy: Art Lykke and the Army War College Strategy Model," in *The U.S. Army War College Guide to National Security Issues, Volume I: Theory of War and Strategy*, 4th ed., ed. J. Boone Bartholomees, Jr. (Carlisle Barracks, PA: U.S. Army War College, July 2010), 45-52.

[3] The national security interests are: *Survival* (it represents "the very essence of the actor's existence — the protection of its citizens and their institutions from attack by enemies, both foreign and domestic. It addresses an imminent threat of attack and is an interest that cannot be compromised." These kind of interests usually demand from individuals even to die in pursuing them). *Vital* ("exist when an issue is so important to an actor's well-being that its leadership can compromise only up to a certain point. Beyond that point, compromise is no longer possible because the potential harm to the actor would no longer be tolerable." These kind of interests usually demand from individuals even to kill in pursuing them). *Important* (significant but not crucial to the actor's well-being. Damage to them could cause serious concern and harm to the actor's interests, and even though the result may be somewhat painful, would much more likely be resolved with compromise and negotiation, rather than confrontation." These kind of interests usually demand certain investments and commitments in pursuing them). And *Peripheral* (they "involve neither a threat to the actor's security nor to the well-being of its populace"). According to the above categorization Greek security interests in relation to Turkey involve: *Survival*: prevent, deter, and reduce the threat of Turkish aggression against Greece and Cyprus (including military aggression); *Vital*: establish and protect interests, resulting from the application of the U.N. Convention of the Law of the Sea (UNCLOS) in the Aegean Sea and the Eastern Mediterranean, upon the provisions of International Law (the only compromise); *Important*: prevent Turkey from negatively influencing Greece's neighboring countries and the Muslim minority in Greece; Peripheral: promoting the economic interests of Greek citizens in Turkey. See, Alan G. Stolberg, "Crafting National Interests in the 21st Century," in *The U.S. Army War College Guide to National Security Issues, Vol. II: National Security Policy and Strategy*, 5th ed., ed. J. Boone Bartholomees (Carlisle Barracks, PA: U.S. Army War College, 2012), 13-25.

[4] European Commission, "Financial Assistance to Greece," May 2, 2010, http://ec.europa.eu/economy_finance/assistance_eu_ms/greek_loan_facility/index_en.htm; European Commission, "Second Adjustment Program for Greece," March 14, 2012, http://ec.europa.eu/economy_finance/assistance_eu_ms/greek_loan_facility/index_en.htm.

[5] European Commission, *Memorandum of Understanding between the European Commission Acting on Behalf of the European Stability Mechanism and the Hellenic Republic and the Bank of Greece* (Brussels, Belgium: European

economic and fiscal crisis), the Government of Greece cut total defense expenditures by half due to fiscal austerity.[6] In particular, military and civilian personnel defense expenditures decreased by €1.51 bn. from 2009 to 2014, or by 56.23% in nominal terms (not adjusted for inflation). Military procurement and research and development (R&D) outlays decreased from a high point of €2.17 bn. in 2009 to €0.53 bn. in 2014 or by 75.58%. Infrastructure and operation and maintenance (O&M) expenditures remained relatively the same averaging € 0.62 bn. per year in 2012-2014, with a corresponding annual average of € 0.57 bn. in 2008-2014.

Greek defense expenditures declined at a higher rate than the corresponding rate for the Greek GDP output. During the 2009-2014 period, the Greek GDP declined from € 237.4 bn. to € 179.1 bn.[7] This represents an annual compound rate of decline of 5.48%.[8] During the same time-period, however, Greek defense spending declined from € 6.318 bn. to € 3.188 bn., or at a compound annual rate of negative 12.79%. Thus, Greek defense expenditures did not maintain a proportional pace with the overall GDP but, rather, decreased at a rate that was 2.33x higher than the corresponding GDP annual decline. Despite this reduction, the total defense spending still remained at a level above 2% of the GDP (honoring country's commitment to NATO) because the GDP also declined during the same period albeit at a lower rate.[9]

Since 2009, Greece has not announced its intention to acquire any major defense equipment.[10] This trend reflects that for the period 2009-2015, the country only awarded contracts to upgrade current systems and to acquire spare parts for existing equipment. The reduction of procurement programs, as well as the implementation of the EU legislation on arms acquisition which eliminated domestic protective measures, negatively affected the Hellenic defense industry.[11] The decrease of domestic defense industrial base activities puts HNDF sustainment at risk, while it reduces confidence for domestic self-sufficiency in arms, munitions, and consumables production.[12]

This analysis indicates that after 2009 Greece significantly reduced its military expenditures. While in the Eastern Mediterranean, Egypt, Israel, and Turkey increased theirs.[13] Meanwhile, Turkey

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Commission, August 19, 2015), 7, http://ec.europa.eu/economy_finance/assistance_eu_ms/greek_loan_facility/pdf/01_mou_20150811_en.pdf.

[6] Source: HMOD. Released to the author by, AD/F.400/3/126980/S.260/January 30 2015/HMOD/GDOSY/DOI/YPEP.

[7] The World Bank, "Data: Greece," October 2015, http://data.worldbank.org/country/greece.

[8] This is calculated on the basis of Future Value = Present Value * $(1 + rate)^n$ where n is the number of years. Thus, € 179.2 bn. [2014 GDP] = € 237.4 bn. [2009 GDP] * $(1 – 0.0548)^5$.

[9] For example see Jeans Stoltenberg, NATO Secretary General, *"Keynote Address,"* public speech, NATO Parliamentary Assembly, The Hague, The Netherlands, November 24, 2014, http://www.nato.int/cps/en/natohq/opinions_115098.htm?selectedLocale=en.

[10] HIS Jane's Aerospace, Defence & Security, "Greece: Procurement," 2016, https://janes-ihs-com.usawc.idm.oclc.org/Janes/Display/1301878.

[11] With the legislation n. 3978/2011, Greece has implemented directive 2009/81/EC on arms acquisition and trade without making provisions for protecting its essential interests of its security which are connected with the production of war material. According to Article 346 of Treaty on the Function of the European Union (TFEU), EU member-states can introduce protective measures for their industry to support their essential interests. For directive 2009/81/EC see, EUR-Lex, "Directive 2009/81/EC," July 13, 2009, http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32009L0081; For the TFEU see, EUR-Lex, "Consolidated Version of the Treaty on the Functioning of the European Union," December 13, 2007, http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:12012E/TXT.

[12] Jurgen Brauer, "Arms Industries, Arms Trade, and Developing Countries," in *Handbook of Defense Economics*, Vol. 2, ed. Todd Sandler and Keith Hartley (Amsterdam, The Netherlands: North- Holland, Elsevier 2007), 982.

[13] According to the Stockholm International Peace Research Institute (SIPRI) countries made expenditures in Current $U.S. billion (bn.), in 2007 and 2014 (year samples), as follows: EGY: 3.30, 4.96, GRC: 8.53, 5.31, ISR: 11.9, 15.9, TUR: 15.9, 22.61, and U.S: 556.9-609.9 (for comparison reasons). For more see, SIPRI, "Military Expenditure Database," http://www.sipri.org/research/armaments/milex/milex_database/milex_database; "Turkey Approves New Defense Projects Worth $5.9 Billion: PM," *Hurriet Daily News*, March 9, 2016, http://www.defense-aerospace.com/article-view/release/172042/turkey-approves-new-defense-projects-worth-%245.9-billion.html.

maintains the largest military forces in the region with about 462M followed by Egypt (359M), Israel (176M) and Greece (148M).[14] Furthermore, both Israel and Turkey possess significant defense industrial bases that sustain their armed forces and increase security confidence. Today, Israel itself ranks high as an exporter of sophisticated defense items to other countries, often in competition with U.S.-based defense industries.[15] Turkey's exports of defense articles are on the rise as well, which also indicates the strength of its defense related industrial base.[16]

Taking into consideration the Greek economic situation, this inquiry assumes for Greece that for the period of 2016-2019, it will reduce its military spending further due to financial obligations. For the period from 2019 to 2026, military spending may increase slightly following the anticipated gradual improvement of the Greek economy.[17] Based on these assumptions, dismissing random events, and focusing on routine patterns, an attempt to project the Greek defense budget for the period of 2016-2019 yields the following most likely results:

a. The Hellenic defense budget will be between € 2.5 bn. and €2.8 bn. per year, and may drop under 2% of the country's GDP for the period of 2016 to 2019.

b. The number of the active uniformed personnel will continue to decrease.

c. The expenditures for infrastructure, operations and maintenance will decrease and stabilize approximately in the range of € 0.3 - € 0.4 bn. on an annual basis.

d. New procurement programs and R&D awards will be limited to spare parts and limited upgrades of existing weapons systems. Such programs will reach at most € 0.5 bn. per year.

e. In the medium-term, the HNDF will have aging equipment with higher maintenance issues and lack cutting-edge military technology.

f. The reduced budget will negatively affect the morale of the military personnel because of equipment readiness, training and assignments further away from home.

g. The Hellenic defense industrial base, lacking adequate domestic funding, will shrink, which in turn will entail risks for the HNDF reliance on domestically produced military equipment, munitions, and consumables.

## Scenario-Based Forecasting for Greek-Turkish Relations 2016-2026

While Greek defense expenditures decrease, the security threats around Greece will likely increase. Although Greece and Turkey are both members of NATO, historical and current experience indicates that Greek security concerns will not diminish any time soon. To examine these issues, this analysis entails a scenario-based forecasting for the period of 2016 to 2026 in an effort to predict how Greek-Turkish relations may unfold. This forecast is anchored to a prime issue impacting future outcomes in Greek-Turkish relations: Turkey's preponderance of military power and its ability to apply revisionist policies at the expense of Greek national security interests.[18] The lack of military

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[14] For more about countries service strength, see, HIS Jane's Aerospace, Defence & Security, "Dashboards: Country," 2015, https://janes-ihs-com.usawc.idm.oclc.org/janes/home.

[15] Federal Research Division, U.S. Library of Congress, *Israel: A Country Study,* 3th ed., ed. Hellen Chapin Metz (Washington, DC: Federal Research Division, U.S. Library of Congress, 1990), 313-323.

[16] Stockholm International Peace Research Institute, "The SIPRI Top 100 Arms-Producing and Military Companies in the World (excluding China) 2014," http://www.sipri.org/research/armaments/production/recent-trends-in-arms-industry.

[17] National Intelligence Council, "Executive Summary," in *Global Trends 2030: Alternative Worlds* (Washington, DC: National Intelligence Agency, December 2012), vi, http://www.dni.gov/index.php/about/organization/global-trends-2030 .

[18] For the military balance between Greece and Turkey for the year 2015 see, The International Institute for Strategic Studies, *The Military Balance: The Annual Assessment of Global Military Capabilities and Defense Economics 2015,* ed. James Hackett (London: Routledge, February 11, 2015), 100-103, 144-147.

balance between the two countries increases Greek concerns because it "creates a clear temptation to aggression" that can easily escalate.[19] Examining Greek-Turkish relations through a levels of analysis framework reveals factors likely to affect Turkey's decision to use military power.[20]

## Greece and Turkey: Individual and State Level of Analysis

Greece is an EU member and a mature democracy with successive democratic governments since 1974. Turkey seems to seek equilibrium, balancing between different ideologies and governance patterns from its birth. In 1923, Mustafa Kemal (Atatürk) abolished the last Islamic Caliphate, established a Turkish secular republic, and eliminated Islam as the state religion.[21] Since its founding, Turkey has demonstrated a major commitment to secularism but it has also undergone many popular movements driven in good measure by Islamic political activism.[22]

Until 2002, the military played a primary role in Turkey's political life. In 1960, 1971 and 1980, the military actively intervened in politics to safeguard Turkey from threats deemed dangerous to the state.[23] Since Turkey's establishment, Islamism and the Kurdistan Workers' Party have challenged domestic stability and national security.[24] Islamism as a mix of religious beliefs and ideology constituting a complex question for Turkish national identity.[25] Since 2002, the Islamist Justice and Development Party (AKP) under the leadership of now President Recep Tayyip Erdoğan, and Prime Minister Ahmet Davutoğlu have consistently won the election. Until 2015, AKP's leadership established moderate Islamist governments with risk-averse foreign policies. As Prime Minister, Erdoğan implemented numerous political and economic reforms aimed at affiliating with the EU.[26] Turkish membership in the EU, however, remains, at best, as still under consideration primarily due concerns that Turkey's legislation "in the area of rule of law, freedom of expression and freedom of assembly ran against EU standards."[27] In praising Turkish reforms in 2010, the U.S. President Obama characterized Turkey as "a great Islamic democracy."[28]

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[19] Alastair Buchan, *War in Modern Society: An Introduction* (London: Harper Colophon Books, 1968), 7, quoted in Geoffrey Blainey, "Power, Culprits and Arms," in *Conflict after the Cold War: Arguments on Causes of War and Peace*, ed. Richard K. Betts 2th ed. (Boston: Pearson, 2013), 122.

[20] The *individual* level of analysis focuses on who is making decisions inside a state. The *state* level of analysis focuses on domestic politics and society and the dynamics of state's government. The *system* level of analysis focuses on international system. Predictions about a state's behavior often involve interplay between two or more level of analysis. For more see, Joseph S. Nye, Jr. and David A. Welch, *Understanding Global Conflict and Cooperation: An Introduction to Theory and History,* 9th ed. (Boston: Pearson, 2013), 52-59.

[21] Paul M. Pitman, III and Eric Hooglund, "Introduction," in *Turkey: A Country Study*, 5th ed., ed. Hellen Chapin Metz (Washington, DC: Federal Research Division, U.S. Library of Congress, 1996), xxv-xxxix.

[22] R. Craig Nation, "Greece, Turkey, Cyprus," in *War in the Balkans, 1991-2002* (Carlisle Barracks, PA: U.S. Army War College, August 2003, 297-298), http://www.strategicstudiesinstitute.army.mil/pdffiles/00117.pdf.

[23] Ellen Lust, "Institutions and Governance," and Mine Eder "Turkey," in *The Middle East,* 13th ed., ed. Ellen Lust (Washington, DC: Congressional Quarterly Press, 2013), 134-135, 830-865.

[24] In October 8, 1997, the U.S. Secretary of State designated the Kurdistan Workers Party (PKK) (Kongra-Gel) as one of the foreign terrorist organization. This designation plays a critical role in U.S. fight against terrorism. For more see, U.S. Department of State, "Diplomacy in Action: Foreign Terrorist Organizations," http://www.state.gov/j/ct/rls/other/des/123085.htm.

[25] The term Islamism sees Islam as not only a religion but as providing a comprehensive political system and code and usually wishes to see Shari'ah (or Islamic law) implemented throughout society. For more see, Larry Goodson, "The Middle East: Enduring Realities and Breathtaking Changes," *Strategos* 1, no. 1 (Spring 2008): 65.

[26] Erdal Tanas Karagöl, "The Turkish Economy during the Justice and Development Party Decade," *Insight Turkey* 15, no. 4 (Fall 2013): 115-129.

[27] European Commission, *Commission Staff Working Document: Turkey 2015* (Brussels, Belgium: European Commission, November 10, 2015), 4-7, http://ec.europa.eu/enlargement/pdf/key_documents/2015/20151110_report_turkey.pdf.

[28] Burak Bekdil, "A Great Islamic Democracy," *Hurriet Daily News*, December 11, 2013, http://www.hurriyetdailynews.com/a-great-islamic-democracy.aspx?pageID=449&nID=59345&NewsCatID=398;

Since 2015, AKP has formed governments amid allegations over increasing state authoritarianism (e.g., reduced press freedoms) and Islamism.[29] These governments have introduced a riskier foreign policy compared to the period prior to 2015. Turkey's Prime Minister, and former Minister of Foreign Affairs, Davutoğlu has described the religious-secular separation of Turkey's "domestic political culture" as "polarizing" and not conducive for his envisioned broader regional role that Turkey must exercise in the world.[30] Under his direction, Turkish foreign policy has become increasingly adventurous with religious overtones, e.g., alignment with Saudi Arabia in the regional clash of Sunni and Shiite interests. Although the AKP elected governments have asserted control over the Turkish military command structure, the latter still plays a major role in the formulation of foreign policy and national security.

The current political leadership of the Turkish government and the AKP are engaged in a dangerous and destabilizing "groupthink" foreign policy that entails risks for Turkey's traditional national security interests.[31] In the short-term, these policies may risk a military engagement in Syria.[32] The policy that this political group delivers regarding Greece is consistent with Davutoğlu's theoretical premise, which does not permit the continuous exercise of Greek sovereignty over the Aegean Sea an area that he considers to be Turkey's "vital space."[33] This goal, coupled with extensive Turkish armament programs presents a serious threat for Greek national security interests. Thus, the evolution of Turkey's identity and internal decision making processes remains a concern not only for Greece and Cyprus, but for the U.S. and NATO as well.

## State-System Level of Analysis: Greece-Turkey Bilateral Relations

Since the Zürich and London Agreements of 1959, Greece has been one of the guarantor powers, together with Turkey and the United Kingdom, for the independence of the Republic of Cyprus.

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However, "Early on, Obama saw Recep Tayyip Erdoğan, the president of Turkey, as the sort of moderate Muslim leader who would bridge the divide between East and West—but Obama now [2016] considers him a failure and an authoritarian." For more see, Jeffrey Goldeberg, "The Obama Doctrine," *The Atlantic*, April 2016, http://www.theatlantic.com/magazine/archive/2016/04/the-obama-doctrine/471525/.

[29] "Special Report, Turkey: Erdogan's New Sultanate," *The Economist* 418, no. 8975 (February 6-12, 2016): 5, 7-8; David Gardner, "Authoritarian Erdogan Sets an Unappealing Precedent," *Financial Times* (USA Edition), April 3, 2014; Safak Timur and Tim Arango, "Turkey Seizes Newspaper, Zaman, as Press Crackdown Continues," *The New York Times Online*, March 4, 2016, http://www.nytimes.com/2016/03/05/world/middleeast/recep-tayyip-erdogan-government-seizes-zaman-newspaper.html?ref=world&_r=0.

[30] Ahmet Davutoğlu, *The Strategic Depth: The International Position of Turkey,* ed. Neoklis Sarris, trans. Nikolaos Raptopoulos (Küre Yayinlari, Turkey: Poiotita Editions, 2001), 677. Professor Davutoglu was foreign policy adviser to the elected Turkish AKP governments of Tayipp Erdogan. Professor Davutoglu became Foreign Minister of Turkey in 2009 and later attained the Turkish premiership under the AKP banner.

[31] The term "*groupthink*" refers "to a mode of thinking that people engage in when they are deeply involved in a cohesive group, when the members' striving for unanimity override their motivation to realistically appraise alternative courses of action . . . where the group is insulated from outside advice, where an aggressive or opinionated leader prevents meaningful debate, where most members of the group think alike." The distinction between risk aversion and risk acceptance suggests that "individuals will be risk averse when dealing with gains, but they will be risk accepting or seeking when dealing with losses." "You have become risk acceptant because you are operating in a domain of losses." For more see, David P. Houghton, "Homo Sociologicus," and "Homo Psychologicus," in the *The Decision Point* (New York: Oxford University Press, 2013), 43-61, 81.

[32] The Turkish armed forces command structure has publicly distanced itself from the Turkish AKP government pronouncements about a military intervention in Syria in the absence of an appropriate UNSC resolution to that effect. Liz Sly, "Turkey's Increasingly Desperate Predicament Poses Real Dangers," *The Washington Post Online*, February 20, 2016, https://washingtonpost.com/world/middle_east/turkeys-increasingly-desperate-predicament-poses-real-dangers/2016/02/20/a3374030-d593-11e5-a65b-587e721fb231_story.html.

[33] Davutoğlu, *Strategic Depth*, 267-273. UNCLOS permits the innocent passage of Turkish Navy warships through Greek territorial waters and merchant shipping can freely transit the Greek EEZ to and from Turkey. Thus, Davutoglu's premise about Turkey's alleged "isolation" because of Greek sovereignty in the Aegean Sea is unfounded. Similar unfounded theories of "vital space" have led to major military conflicts, e.g., Nazi Germany and the commencement of WWII.

Under this agreement, Greece maintains the Hellenic Forces of Cyprus on the island.[34] In 1974, Turkey militarily invaded Cyprus claiming to act as one of the guarantors to protect the Turkish Cypriot population and since then has illegally occupied approximately 37% of its territory.[35]

In a similar way, after the discovery and exploitation of undersea oil deposits in the seas surrounding the Greek island of Thasos (Northern Aegean Sea) in 1973, Turkey has consistently challenged Greek territorial sovereignty.[36] Turkey has also challenged Greece's internationally recognized responsibilities in the Aegean Archipelago waters and air space as defined by the International Civil Aviation Organization (ICAO), and the International Maritime Organization (IMO). Also in the 1970s, Turkey created the "Aegean Army" command in Izmir, which presents a major threat to Greek territorial integrity.[37] The geographic disposition and periodic maneuvers of its formations, which includes numerous landing craft and airborne assault helicopters, are clearly targeted for offensive operations against the Greek islands in the Aegean, as no other Turkish neighbors, except Cyprus, are more susceptible to amphibious assault. Such actions intimate that Turkey may one day undertake limited or full scale offensive military operations against the nearby islands of Greece in the Aegean Sea and/or conduct a conventional attack across the Evros River (international border) into Western Thrace by the armored Turkish 1st Army which has modern river assault/crossing and bridge laying equipment at its disposal. The potential for this "land-grab" is also apparent in that the most modern weapons systems of the Turkish Army are deployed at the Greek-Turkish frontiers and *not* along Turkish borders with other countries.

In 1995, Turkey formally declared that the potential expansion of Greek territorial waters from 6 to 12 nautical miles in the Aegean Sea, permitted under international law, would amount to a *casus belli*. The discovery of confirmed and exploitable undersea natural gas deposits within the Exclusive Economic Zones (EEZs) of Cyprus, Israel, Lebanon, and Egypt complicate the security challenges in the Eastern Mediterranean.[38] Turkey appears, for example, to lack undersea energy resources within its own EEZ. Since the delimitation of the Cyprus EEZ, Turkey has engaged in challenging provocations and has already moved to challenge the boundaries of the Greek EEZ in the Aegean Sea and the Eastern Mediterranean.[39] Greece, Cyprus, Egypt and Israel have responded with multilateral

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[34] For more about the Hellenic Force of Cyprus, see Hellenic Army General Staff, "Brief History of Hellenic Force of Cyprus," (in Greek), June 14, 2012, http://www.army.gr/default.php?pname=SYNTOMO_ISTORIKO&la=1.

[35] The unlawful 1974 Turkish military invasion of Cyprus and occupation of Cypriot territory have violated numerous UN Security Council Resolutions including but not limited to Nos. 353, 354, 355, 358, 360, 365, 375 (1974), 541 (1983), 774 and 789 (1992). Van Coufoudakis, *International Aggression and Violations of Human Rights: The Case of Turkey in Cyprus* (Minneapolis: University of Minnesota, 2008), 1-2, n. 4; Eugene T. Rossides, "American Foreign Policy Regarding Cyprus and the Rule of Law," in *The United States & Cyprus: Double Standards and the Rule of Law*, eds. Eugene T. Rossides and Van Coufoudakis (Washington, DC: American Hellenic Institute Foundation, 2002), 41. The European Court of Human Rights (ECHR) has issued a number of binding decisions affirming that the unlawful Turkish military invasion and occupation have violated the basic human rights of the Cypriots. *Case of Cyprus v. Turkey* (Application No. 25781/94) (ECHR, May 10, 2001), http://hudoc.echr.coe.int/Hudoc2doc2/HEJUD/200105/cyprus%20v.%20-%2025781jv.gc%2010052001e.doc; *Case of Loizidou v. Turkey* (Application No. 15318/89) (ECHR, December 18, 1996). Finally, Turkey has violated the U.S. Foreign Assistance Act of 1961 and the U.S. Foreign Military Sales Act by using U.S.-supplied weapons for defensive purposes to invade the sovereign Republic of Cyprus. For more see, Rossides, "American Foreign Policy," 34-35, 39-40.

[36] Theodore Columbis and Thanos Dokos, "Assessing the Turkish Threat," in *Greece: A Country Study,* 4th edition, ed. Glenn E. Curtis (Washington, DC: Federal Research Division, U.S. Library of Congress, 1994), 279-282.

[37] For detailed geographic disposition, force structure, equipment, etc., of the Turkish Armed Forces, and especially of the Aegean Army and the 1st Army, see HIS, Aerospace, Defence & Security, "Turkey>Army," December 8, 2015, https://janes-ihs-com.usawc.idm.oclc.org/Janes/Display/1303429.

[38] Ioannis Tzanetakis, *Exclusive Economic Zones in the Eastern Mediterranean: Risks of Conflict*, Strategy Research Project (Carlisle Barracks, PA: U.S. Army War College, April 2014).

[39] Eric R Eissler and Gözde Arasil, "Maritime Boundary Delimitation in the Eastern Mediterranean," *The RUSI Journal* 159, no. 2 (April/May 2014): 74-80.

negotiations and EEZ delimitation agreements.[40] The friction over the EEZs and the actual or potential undersea energy resources that they contain could result in active military confrontations between Greece and Turkey.[41] Hellenic Navy warships have intervened multiple times when Turkish Navy warships attempted to interfere with lawful undersea seismic energy exploration within the Greek EEZ.[42] Under Turkey's revisionist policies and claims, a number of crises arose in the Aegean Sea where armed conflict was narrowly averted (August 1976, March 1987, and February 1996). Routine Turkish violations of Greek air space often lead to mock dogfights between armed aircraft of the Hellenic Air Force (HAF) and the Turkish Air Force (THK). These encounters have resulted in the loss of aircraft and crews for both sides (e.g., the May 2006 collision between a THK F-16 fighter with an intercepting HAF F-16).

To resolve Turkish claims in the Aegean Archipelago, Greece proposed bringing these matters before the International Court of Justice in The Hague. Turkey has not ruled out this approach but neither has it consented to participate in this process.[43] Since 1999, Greek-Turkish relations continue to be based on "earthquake rapprochement" following the earthquakes that hit both countries.[44] Meanwhile, the Republic of Cyprus and the Turkish-Cypriot community are continuing negotiations for the re-unification of the island, and the Turkish armed forces continue to violate Hellenic air space and territorial waters in the Aegean Sea.[45]

## System Level of Analysis: Greece and Turkey in the Regional System

In the Caucasus, Turkey—under Russia's "close observation"—has been a long-time soft-power actor through its close relations with Azerbaijan, Uzbekistan, Turkmenistan, Kazakhstan, and Kyrgyzstan—countries with ethnic groups of Turkic origin. [46] Conversely, Greece maintains a strong relationship with Armenia and recognizes the 1915 Armenian Genocide by the Ottoman Turks.[47]

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[40] Cyprus has already signed delimitation agreements with Egypt, Israel, and Lebanon. In the 1st trilateral summit in Cairo, on November 8, 2014, Cyprus, Greece and Egypt recognized "that the discovery of important hydrocarbon reserves in the Eastern Mediterranean can serve as a catalyst for regional cooperation." They "stress that this cooperation would be better served through the adherence with the countries of the region to well established principles of international law." In this respect, they "emphasize the universal character of the UN Convention of the Law of the Sea (UNCLOS)," and decided to proceed with negotiations on the delimitation of maritime zones, where it is not yet done." For more see, State Information Service Egypt, "Egypt-Greece-Cyprus, Trilateral Summit, Cairo Declaration," November 9, 2014, http://www.sis.gov.eg/En/Templates/Articles/tmpArticleNews.aspx?ArtID=83738#.Vj9bu7cvfIU; Hellenic Republic Ministry of Foreign Affairs, "Cyprus- Egypt-Greece, 2nd Trilateral Summit, Nicosia Declaration," April 29, 2015, http://www.mfa.gr/en/current-affairs/news-announcements/cyprusegyptgreece-2nd-trilateral-summit-nicosia-declaration-29-april-2015.html.

[41] Ioannis N. Grigoriadis, "Energy Discoveries in the Eastern Mediterranean: Conflict or Cooperation?" *Middle East Policy* XXI, no. 3 (Fall 2014): 124-131.

[42] Nation, "Greece, Turkey, Cyprus," in *War in the Balkans*, 285.

[43] Republic of Turkey, Ministry of Foreign Affairs, "Questions," October 24, 2015, http://www.mfa.gov.tr/questions.en.mfa.

[44] James Ker-Lindsay, "Turkey and Greece: What Future for Rapprochement?" in *Debating Security in Turkey: Challenges and Changes in the Twenty-First Century,* ed. Ebru Canan-Sokullu (Lanham, UK: Lexington Books, 2013), 237-248.

[45] In 2015, violations and infringements were as follows: Turkish Air Force Violations of Hellenic Airspace: 1,779, Over flights of Hellenic Territory: 36, Turkish Armed Violating Formations: 133, Engagements with HAF Interception Fighters: 80, Infringement of Athens F.I.R: 826, Violations of Hellenic Territorial Waters: 175. For more see, Hellenic National Defence General Staff, "Violations," 2016, http://www.geetha.mil.gr/en/violations-en.html; United Nations, Good Offices Mission, "Statement Delivers by Special Adviser of the Secretary General on Cyprus, Espen Bart Eide, on October 12, 2015," http://www.uncyprustalks.org/nqcontent.cfm?a_id=6792.

[46] Burcu Gultekin-Punsmann, "Turkish-Russian Rapprochement and the Security Dialogue in the Black Sea-south Caucasus Region," in *Debating Security in Turkey*, 173-185; Tartter, "National Security: External Security Concerns," in *Turkey: A Country Study*, 312-313.

[47] Hellenic Republic, Ministry of Foreign Affairs, "Armenia," January 30, 2016, http://www.mfa.gr/en/blog/greece-bilateral-relations/armenia/. Despite the efforts of U.S. diplomacy, Turkey maintains closed borders with Armenia; See also,

In the Balkans, Turkey has demonstrated a "keen interest" in Bosnia and Herzegovina, in the Former Yugoslav Republic of Macedonia (FYROM), in Albania, and in the region of Kosovo where there are Muslim inhabitants.[48] The Turkish government directorate of religious affairs, for example, has instituted an extensive program of mosque and school building in Balkan countries.[49] In Bulgaria, the existing minority of ethnic Turks has affected that country's relations with Turkey, while Greece has suffered from the unwarranted Turkish consular involvement in Greek affairs in Western Thrace where a Muslim minority exists. The Ottoman past provides Turkey with the unfounded but "patronizing" excuse to declare itself the "protector" of all Muslims in the Balkans and to regularly attempt to iinfluence the domestic affairs of other countries. Turkish Prime Minister Davutoğlu described in his strategic vision of Turkey's foreign policy as aligned with the Muslim populations in the Balkans who constitute "Ottoman remnants" thereby "connect[ing] their fate with the regional power and gravity of Turkey."[50] He also considers Turkey's influence in the region as essential to the preservation of "regional balances."[51] Turkey's leverage in the Balkans, combined with ongoing regional instability, creates the impression that a regional "Turkish network" is being established and that creates fears of isolation in Greece and Bulgaria.[52]

In the Middle East, following the "Arab Spring," Turkey adopted a non-traditional and much riskier policy with respect to regional development. In combination with its stance in the Balkans and the theoretical premise of "vital space" of Prime Minister Davutoğlu in his "Strategic Depth" treatise, Turkey may be aspiring to become a *regional hegemon*. In a radical departure from past risk-averse practices, Turkey has become *actively involved* in the crisis and armed conflict in neighboring Syria. Since 2014, the Turkish AKP government and its National Intelligence Organization (Millî İstihbarat Teşkilatı, MİT) appear to have been actively involved in permitting the transit of extremist Islamist fighters and military equipment into Syria.[53] At the same time, the Turkish economy has benefitted from the illicit import of oil from areas controlled by the Islamic State (ISIS) in Syria and Iraq.[54] On November 24, 2015, the Turkish Air Force shot down a Russian Air Force Sukhoi Su-24M strike aircraft near the Turkish-Syrian border, an incident that led to the deterioration of Turkish-Russian relations, signaled Turkish self-confidence, and reflected an adventurous policy in the region.[55]

The adoption of a new riskier policy in Syria is opposed to Davutoğlu's theoretical premise of a regional geostrategic balance in the Middle East based on the triangular relationship between

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Republic of Turkey, Ministry of Foreign Affairs, "QA-8: Regarding the Statement of the Greek Prime Minister Mr. Aleksis Tipras, and President Mr. Prokopis Pavlopoulos on the Occasion of the Visit of the President of Armenia Mr. Serzh Sarkisian, Referring to Historical Event During the Disintegration of the Ottoman Empire and Containing Allegations against Turkey and the Turkish Identity," http://www.mfa.gov.tr/qa_8_-17-march-2016_-statement-of-the-spokesperson.en.mfa.

[48] Jean R. Tartter, "National Security: The Balkans," in *Turkey: A Country Study*, 317-318.

[49] "Turkey's Religious Diplomacy: Mosqued Objectives – Turkey is Sponsoring Islam Abroad to Extend its Prestige and Power," *The Economist* 418, no. 8973 (January 23, 2016): 46.

[50] Davutoğlu, *The Strategic Depth*, 477.

[51] Ibid., 485.

[52] Columbis and Dokos, "Assessing the Turkish Threat," in *Greece: A Country Study*, 282.

[53] Adam Entous and Joe Parkinson, "Turkey's Spymaster Plots Own Course on Syria," *The Wall Street Journal*, October 10, 2014, A1, A14.

[54] Aaron Stein, *Turkey's New Foreign Policy: Davutoğlu, the AKP and the Pursuit of Regional Order*, Royal United Services Institute for Defense and Security Studies (RUSI) Whitehall Paper Series no. 83 (Abingdon, UK: Routledge Journals, 2014), 83-86; Matthew Rosenberg, Nicholas Kulish, and Steven Lee Myers, "Predatory Islamic State Wrings Money From Those It Rules," *The New York Times Online*, November 29, 2015, http://www.nytimes.com/2015/11/30/world/middleast/predatory-islamic-state-wrings-money-from.

[55] Neil MacFarquhar, "Russia and Turkey Hurl Insults as Feud Deepens," *The New York Times Online*, December 3, 2015, http://www.nytimes.com/2015/12/04/world/europe/putin-russia-turkey.html?ref=europe&_r=0.

Turkey, Egypt and Iran.[56] This risky independent policy has set Turkey at odds with the American public regarding U.S. foreign policy and national security interests in the region.[57] Turkish foreign policy setbacks in the Middle East coupled with domestic and regional issues (e.g., political and socioeconomic instability, the Kurdish security issue in Southeast Turkey), could redirect Turkey's attention and military toward Greece.[58] Such actions are not unprecedented and have negative implications for the national security interests of Greece, Cyprus, and other neighboring countries.

Beyond the military threat, the large refugee flows from the Middle East's war zones have imposed tremendous stress on the financially constrained Greek domestic security forces. These refugee flows initially move into Turkey and then, through Turkish human traffickers, they frequently land on Greek islands in the Aegean, and subsequently transit through Greece to Central Europe where they seek permanent asylum.[59] At present, Central European countries have been receiving the bulk of the refugees, while the EU is struggling to manage the migrant crisis through cooperation with Turkey.[60] It is rather peculiar that Syrian refugees who have crossed into Turkey since 2011 did not start arriving in massive numbers onto Greek shores until 2015-2016.[61] Turkey's refusal or inability to effectively deal with the refugee flows, despite the entreaties of the EU, continues to pose an asymmetric threat to Greek national security.[62]

This threat may become more intense if European countries refuse to accept additional refugees in the near-term.[63] Should this occur, Greece could consider the possibility of hosting not only those

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[56] Davutoğlu, *The Strategic Depth*, 531-534. Following the January 2015 breakdown in relations between Saudi Arabia and Iran after the execution of Saudi Shiite cleric Al Nimr, Turkey unequivocally sided with the positions of Saudi Arabia, despite the significant economic relationship between Turkey and Iran with an annual trade of approximately $15-$16 billion. Iran is also a clear supporter of the Syrian regime of Bashar Assad while both Saudi Arabia and Turkey support its overthrow. Furthermore, after the military overthrow of the elected government of President Mohamed Morsi in Egypt in July 2013 (Muslim Brotherhood – Freedom and Justice Party), the AKP Turkish government has considerably distanced itself from the new regime of Egyptian President Abdel Fattah Al Sisi (ex-Minister of Defense under Morsi). For more see, Stein, *Turkey's New Foreign Policy*, 92; Similarly, Turkey and Qatar have played a destabilizing role in Libya through their support to extremist Islamist factions based in Tripoli, while Egypt and the United Arab Emirates supporting a more moderate faction in Tobruk. This adversarial gaming derailed UN attempts to unify fragmented administrations and their armed followers into a single Libyan governing entity. For more see, Yaroslav Trofimov, "West Ponders Another Libya Intervention: As Islamic State Gains Ground, Europe and the U.S. Prepare for Military Action," *The Wall Street Journal Online*, February 4, 2016, http://www.wsj.com/articles/west-ponders-another-libya-intervention-1454606312.

[57] Behlul Ozkan, "The West Must Stop Giving Turkey a Free Pass," *The New York Times Online*, February 2, 2016, http://www.nytimes.com/2016/02/03/opinion/the-west-must-stop-giving-turkeya-free-pass.html?ref=world; Matthew Weaver, "Turkey: Chomsky Hits Back at Erdoğan, Accusing Him of Double Standards on Terrorism," *The Guardian*, January 14, 2016, http://www.theguardian.com/us-news/2016/jan/14/chomsky-hits-back-erdogan-double-standards-terrorism-bomb-istanbul.

[58] "Turkey's War on the Kurds: Futile Repression – Turkey's President Must Give up Trying to Crush the Kurds. Instead, He Should Reopen Peace Talks," and "Turkey and the Kurds: Widening the Conflict – A Campaign against the PKK Turns the Country's South-East into a War Zone," *The Economist* 418, no. 8973 (January 23, 2016): 10, 45-46.

[59] For statistics on immigration, see, Hellenic Police, "Statistical Data: Statistical Data on Illegal Immigration," 2015, http://www.astynomia.gr/index.php?option=ozo_content&perform=view&id=24727&Itemid=73&lang=EN.

[60] Jean-Claude Junker, "Managing the Refugee Crisis-President Junker's Presentation to the European Council of 17-18 March 2016," March 18, 2016, http://ec.europa.eu/priorities/sites/beta-political/files/migration-state-play-17-march-final-presentation_en.pdf.

[61] Under the doctrine of the past Turkish Prime Minister Turgut Ozal, Greece could easily be overwhelmed by "a few millions illegal immigrants from Turkey." For more see, John M. Nomikos, *Illegal Immigration and Organized Crime in Greece* (Athens, Greece: Research Institute for European and American Studies, August 2010), 11, citing Theodoros Katsavenas, "Nobody is Worrying," in *To Paron* (Greece: August 3, 2009); "By the end of 2011, at least 40,000 Syrians had perished and 3,000 Syrians a day were fleeing the country." For more see, Agnieszka Paczynska, "The Economics of the Middle East," in *Understanding the Contemporary Middle East*, ed. Jillian Schwedler, 4th ed. (Boulder: Lynne Rienner, 2013), 250.

[62] James Kanter and Andrew Higgins, "E.U. Offers Turkey 3 Billion Euros to Stem Migrant Flow," *New York Times Online*, November 29, 2015, http://www.nytimes.com/2015/11/30/world/europe/eu-offers-turkey-3-billion-euros-to-stem-migrant-flow.html?ref=europe&_r=0.

[63] On February 21, 2015, the Former Yugoslav Republic of Macedonia (FYROM) in collaboration with Austria, clamped down on migrant flows that originate in Turkey and try to cross the Greek-FYROM borders on their way to Western

refugees already in Greece, but the influx of others in exchange for long-term "help with its debt and budgets."[64] The existence of radical groups within the refugee population and the additional government expenditures required would place multiple challenges on the Hellenic government. Such an outcome could create asymmetric threats inside Greece and increase the need for the HNDF to support civil authorities. Meanwhile, Greece, on national security grounds, rejected recent EU proposals to execute combined maritime patrols together with Turkey to control these refugee flows.[65] Greece welcomed the presence of a combined NATO naval task force to assist Greece and Turkey, to include the EU's border control agency, FRONTEX, in an ostensible and rather unclear attempt to manage these refugee flows in the Aegean Sea.[66]

## System Level of Analysis: Greece and Turkey in the Global System

Greece and Turkey are allies in NATO and both maintain close relations with the U.S. In the event of Turkish aggression against Greece, NATO will not guarantee its containment in advance. The North Atlantic Treaty does not secure an automatic response by the allies in the event of an attack, "the allies are only pledged to consult as a group by Article 5 prior to determining the necessary response."[67] This time lapse from hostile action to allied response is the same challenge that the Baltic countries face with NATO with regard to concerns over a resurgent Russia.[68]

NATO's reaction to a potential Greek-Turkish crisis or a large military confrontation, however, is an ostensible and rather unclear effort to frame the environment—as happened during the Turkish invasion of Cyprus in 1974, and the Imia crisis in 1996.[69] Because both Greece and Turkey are allies in the same collective security organization, NATO would not necessarily defend one over the other. Thus, in actions such as a Turkish attempt to grab an island in the Aegean Sea or to threats of a large war (e.g., in case of a lawful expansion of Greek territorial waters, or the delimitation of its EEZ), NATO is expected to intervene for quick termination. The alliance would like to encourage both countries to compromise, accommodate or appease the other so that "unity" is preserved along NATO's Southern flank.[70] Like the West's reaction to Crimea, no action will be taken to "undo" such

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Europe. This has created a refugee crisis within Greek territory. For more see, "Refugees in Greece—No Way Out," *The Economist* 418, no. 8978 (February 27, 2016): 43-44.

[64] "Leaders: How to Manage the Migrant Crisis," *The Economist* 418, no. 8975 (February 6-12, 2016): 9-10.

[65] "Greek Foreign Minister Says No to Joint Patrols in Aegean," *Greece, Greek Reporter,* October 15, 2015, http://greece.greekreporter.com/2015/10/15/greek-foreign-minister-says-no-to-joint-patrols-in-aegean/#sthash.cShT2LVE.dpuf.

[66] The operational execution of this NATO mission has been delayed because of Turkish objections for the task force's operation in the sea space between the Greek Dodecanese islands and the Turkish coastline. When it started until today, has not brought tangible results. Thus, the migrant ferrying activities of Turkish human traffickers have continued unabated. For more, see, Vasilis Nedos, "Tipras's [Greek Prime Minister] Protestation to NATO about Aegean Sea," *H Kathimerini,* March 23, 2016, (in Greek), http://www.kathimerini.gr/854112/article/epikairothta/politikh/diamartyria-tsipra-sto-nato-gia-to-aigaio; North Atlantic Treaty Organization, "NATO Secretary General Welcomes Expansion of NATO Deployment in the Aegean Sea," March 6, 2016, http://www.nato.int/cps/en/natohq/news_128833.htm; North Atlantic Treaty Organization, "NATO Ships in the Aegean Participate in Efforts to Cut Lines of Illegal Trafficking and Migration," *NATO YouTube Channel,* March 4, 2016, video file, https://www.youtube.com/watch?v=rSxzgbVe7lE; North Atlantic Treaty Organization, "NATO Defense Ministers Agree on NATO Support to Assist with the Refugee and Migrant Crisis," February 11, 2016, http://www.nato.int/cps/en/natohq/news_127981.htm.

[67] Todd Sandler and Keith Hartley, *The Political Economy of NATO: Past, Present, and Into the 21st Century* (Cambridge, UK: Cambridge University Press, 1999), 25-26.

[68] David A. Shlapak and Michael W. Johnson, *Reinforcing Deterrence on NATO's Eastern Flank: Wargaming the Defense of the Baltics* (Santa Monica, CA: RAND Corporation, January/February 2016), 10, http://www.rand.org/pubs/research_reports/RR1253.html.

[69] Nation, "Greece, Turkey, Cyprus," in *War in Balkans*, 294, 303.

[70] For accommodation, appeasement, and compromise in negotiations see, Charles W. Freeman Jr., "Diplomatic Maneuver," in *Arts of Power: Statecraft and Diplomacy* (Washington, DC: U.S. Institute of Peace Press, 1997), 77-79, 100-

a *fait accompli.* The same response is expected from the EU, of which Greece and Cyprus are members, because the established EU Common Foreign and Security Policy (EU CFSP) necessitates consensus among 28 sovereign countries to make decisions upon such issues.[71] Thus, neither organization provides security guarantees to Greece in the event of a military confrontation in any form with Turkey. They only provide a forum for discussion of actual or potential aggression and possibly manage peaceful resolution of disputes with unclear results.[72]

United States foreign policy, and that of NATO and the EU cannot reasonably utilize "double standards" in regional matters, i.e., criticizing the Russian annexation of Crimea while accepting the unlawful 42-year long Turkish occupation of Cypriot territory and continuous Turkish aggression in the Aegean as "routine" and a historic *fait accompli.*[73] Similarly, the United States cannot invoke principles of international law embodied in the United Nations Convention of the Law of the Sea (UNCLOS) in matters pertaining to the South China Sea, but not apply the same principles in the Aegean Sea and the Eastern Mediterranean.[74] Both history and the practice of double standards provide ample evidence that Turkish aggression against Greece may not result in any substantial response from the international community beyond efforts to force a cessation of hostilities.

## Alternative Scenarios for Greek-Turkish Relations

Based on the levels of analysis, this article develops scenarios for Greek-Turkish relations for the 2016-2026 period and elaborates with "signposts" and "wild cards."[75] While signposts indicate that the considered scenarios are likely to happen, the wild cards describe events that if they happen will dramatically change the conventional outcome of the contemplated scenarios. In this scenario-based forecasting, Greece remains a mature democracy and member of the EU, but continues to suffer from ongoing economic crisis and a decline in conventional military capability. Turkey remains a military power but struggles over regional instability and non-democratic, authoritarian practices. In this context, the analyses considers the possibilities that for the next decade Greece and Turkey will become "Friends," "Partners," "Opponents," or "Enemies." Two operant wild cards may violate the forecasting assumptions.

The first wildcard is the establishment of an independent or highly autonomous Kurdish entity within northwest Syria and its actual or potential expansion into Turkish territory, through *coercive violence* and *terror.*[76] If this were to happen, it would create dire consequences in Greek-Turkish

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103; As regard the U.S. way of making diplomacy (as U.S. drives NATO) in general, "it does not matter whether the other party to the negotiations is a twentieth-century communist state or an eighteenth-or nineteenth-century European state. In either case, the fruits of diplomacy have been looked on with suspicion." For more, see, Glen P. Hasted, "The Global Context," in *American Foreign Policy: Past, Present, and Future,* 10th ed. (Lanham, MD: Rowman & Littlefield, 2014), 72.

[71] Derek E. Mix, *The European Union: Foreign and Security Policy* (Washington, DC: U.S. Library of Congress, Congressional Research Service, April 8, 2013), 8.

[72] Jurgen Brauer, "Survey and Review of the Defense Economics Literature on Greece and Turkey," *Defence and Peace Economics* 13, no. 2 (2002): 103.

[73] "The second consequence [of the American National Style] is the existence of a double standard in judging the behavior of states." For more, see, Hasted, "The Global Context," in *American Foreign Policy,* 71.

[74] Barack Obama, *National Security Strategy* (Washington, DC: The White House, February 2015), 13, https://www.whitehouse.gov/sites/default/files/docs/2015_national_security_strategy.pdf; Ronald O' Rourke, *Maritime Territorial and Exclusive Economic Zone (EEZ) Disputes Involving China: Issues for Congress* (Washington, DC: U.S. Library of Congress, Congressional Research Service, December 22, 2015), 29.

[75] Scenario-based forecasting is one method of forecasting potential possibilities that can inform the action and/or impact the discretion of organizations. For more see, R. Craig Bullis and Thomas P. Galvin, *Scenario-Based Forecasting: A Primer*, Faculty Working Paper (Carlisle Barracks, PA: U.S. Army War College, June 2015).

[76] Thomas C. Schelling, "The Diplomacy of Violence," in *Arms and Influence* (New Haven, CT: Yale University Press, 1966), 1-34.

relations because history has shown that whenever a state, especially Turkey, suffered a major geostrategic setback but retained the bulk of its military capabilities, it sought to rebalance its interests elsewhere.[77] The devastating Greek military defeat in the 1920-1922 Asia Minor War by the post-WW I Turkish forces under Mustafa *Kemal (Atatürk)* remains fresh in the minds of Greeks even after 94 years. The second wild card would be a Russian-Turkish low-grade regional conflict that may include open hostilities and limited war. Such an event would have wider geostrategic implications due to Turkey's NATO membership, its control of the strategic Bosporus-Dardanelles choke-point, and Russia's desire for a permanent military presence in the Middle East.[78]



Figure. Scenario-Based Forecasting for Greek-Turkish Relations 2016-2026

"*Friends.*" In this scenario, Turkey's internal Kurdish separatism has ceased. The Turkish occupation forces have withdrawn from the re-unified island of Cyprus. Turkey has transformed into a *mature democracy*. The Turkish claims over the Aegean Sea have been resolved on the basis of applicable provisions of International Law. In general, the Eastern Mediterranean enjoys peace, economic development and prosperity. Signposts that indicate the strong likelihood of the "Friends'" scenario would be an announcement that Turkish claims will be resolved on the basis of International Law, or that Greece and Cyprus unconditionally support Turkey's accession into the EU.

"*Partners.*" In this scenario, Turkey continues to be a great, moderate *Islamic democracy* in an unstable region. Turkey's claims against Greece have not yet been resolved. The two countries have come together on less significance level issues due to international encouragement to address regional problems stemming from instability. Turkey has increased investments in Greece because of the existing opportunities resulting from the Greek economic recession and Greece has wider access to Turkish markets. The Republic of Cyprus enjoys continued negotiations for the re-unification of the island with increased prospects for a viable agreement. Turkey initiates efforts to decreased friction in the Aegean Sea. Signposts for this scenario would be the execution of combined operations (e.g. between the Hellenic and Turkish Coast Guards) in the Aegean Sea to address

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[77] The Middle East region possesses characteristics of a complex adaptive system (CAS) because state and non-state actors are forming a unified whole through regular interaction and interdependence, and the existing problems are linked to one another. Based on this assumption, a Turkish strategic defeat in the East would create dire consequences in the West (i.e., Greece, Bulgaria) because the system would seek equilibrium. For more about CAS see, Malcolm Gladwell, "The Mosquito Killer," *New Yorker*, July 2, 2001, 42–51.

[78] Jonathan Altman, "Russian A2/AD [Antiaccess/Area-Denial] in the Eastern Mediterranean: A Growing Risk," *Naval War College Review* 69, no. 1 (Winter 2016): 72-73.

asymmetric threats (e.g., refugee flows and migration into EU member states), or the execution of combined search and rescue (SAR) operations in the Eastern Mediterranean.

"*Opponents.*" In this scenario, Turkish governance has become *authoritarian* in an unstable region. The island of Cyprus either has remained divided with the Turkish military occupation forces in place or has been re-unified under an agreement resulting from ongoing negotiations. Turkey has increased its claims against Greek sovereign territory, especially over the undersea energy resources in the Aegean Sea and the Eastern Mediterranean. Signposts for this scenario would be increased Turkish armed forces violations of Greek territory; Turkish covert operations in the Greek region of Western Thrace intended to influence the local Muslim minority; and continuous Turkish challenges of the Republic of Cyprus' rights, if the Cyprus crisis has not been resolved.

"*Enemies.*" In this scenario, Greece and Turkey are embroiled in *open military conflict (war)*.[79] Military conflict between the two countries may occur in two forms. First, as a limited war of choice for Turkey in its effort to revise the Greek-Turkish borders and gain access to and control over the undersea energy resources in the Aegean Sea and the Eastern Mediterranean at Greece's expense. Second, as a larger war between the two countries by accident or by intentional "accident" in the service of Turkish goals.[80] Such an event could escalate because of deteriorating Greek-Turkish relations and a serious incident in the Greek sea or air space of the Aegean Sea. Signposts for this scenario would be an increase in Turkish demands and military activities in the Aegean Sea and the Eastern Mediterranean. Concurrently, Turkey would demand that Greece grant "special territorial autonomy rights" to local Muslim minorities in the Greek territories of Western Thrace and in certain Greek islands in the Dodecanese.

The current state of Greek-Turkish relations fits in the "opponents" scenario. Turkish policy toward Greece and Cyprus includes elements of "*coercive gradualism.*" "Coercive gradualism" takes place when an "aggressor" state advances its interests against another state through the use of "threats and intimidation" and through a gradual "step-by-step process." [81] For example, Turkish direct challenges to and violations of Greek sovereignty have not ceased, but have been coupled with the asymmetric threat posed by the large flows of refugee that end up on Greek shores.

The most desirable, "best-case" scenario for Greek-Turkish relations would be for Turkey to become a liberal democratic state and cooperate with Greece to promote economic development and prosperity under the "Friends" scenario.[82] For Turkey to become an open liberal democracy may well require a period of time that extends well beyond 2026. History suggest, however, that the likelihood that Greece and Turkey will become "Friends" in the next decade is minimal. Although a partnership

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[79] "War is socially sanctioned violence to achieve a political purpose. War can result from the failure of states to resolve their disputes by diplomatic means." For more see, U.S. Joint Chiefs of Staff, *Doctrine for the Armed Forces of the United States*, Joint Publication 1 (Washington, DC: US Joint Chiefs of Staff, March 25, 2013), I-2 - I-4, http://www.dtic.mil/doctrine/new_pubs/jp1.pdf.

[80] For a real accident above on the Aegean Sea see, Kenneth Mackenzie, *Greece and Turkey: Disarray on NATO's Southern Flag* (London: The Institute for the Study of Conflict, 1983), 8; For an "intentional accident" see the 2003 "Balyoz" ("Sledgehammer") Turkish military conspiracy for destabilizing the elected moderate AKP, that was based on the pretext of an aerial combat incident with aircraft of the HAF, and a Turkish land invasion of Greek sovereign territory in Western Thrace. For more see, "236 Acquitted in Balyoz Coup Case," *Hurriet Daily News*, March 31, 2015, http://www.hurriyetdailynews.com/236-acquitted-in-balyoz-coup-case.aspx?pageID=238&nid=80408. The incident of the Russian aircraft shot down by THK F-16s, at the Syrian borders on November 24, 2015, proves the unpredictability of Turkey and demonstrates the possibility of such events over the Aegean Sea.

[81] William G. Pierce, Douglas G. Douds, and Michael A. Marra, "Countering Gray-Zone Wars: Understanding Coercive Gradualism," *Parameters* 45, no. 3 (Autumn 2015): 51-61, http://www.strategicstudiesinstitute.army.mil/pubs/parameters/issues/Autumn_2015/8_Pierce.pdf.

[82] Francis Fukuyama, *The End of History and the Last Man* (New York: Free Press, 2006), 43-51, 262-264.

would be more likely, becoming "partners" does not guarantee the preservation of peace in long-term because it does not resolve the existing and continuing Turkish claims.

More likely are the remaining options that Greece and Turkey will become either "Opponents" or "Enemies" in the near term due both to historic events and numerous military incidents in the comparatively recent times.[83] Furthermore, the presence of energy resources in the Eastern Mediterranean, the changing geopolitical situation, and Turkey's irredentist policies and unpredictability, complicate Greek-Turkish relations. While the Greek national goal should be to move from the "opponents" towards the "Friends" scenario, the recommendation is that Greek security planners and strategists ought to assess Turkey as an "Enemy" and revise the nation's strategies with regard to the prospect and risks associated with war. Usually a mutual respect exists between equals and "as the world goes, [right] is only in question between equals in power, while the strong do what they can and the weak suffer what they must." [84] Conventional deterrence has been and continues to be the first line of defense. However, other measures including bilateral and multilateral security arrangements remain an open and in some respects an appealing alternative.[85]

## A Revised National Security Strategy for Greece

In recommending a revised national security strategy, *Greece must primarily rely on itself* to counter regional security challenges.[86] "[T]he sinews of war are not gold, but good soldiers," which for Greece means "that the quest for security must necessarily translate itself" into a requirement for maintaining capable armed forces and a credible deterrence.[87] As "a power might be overrunning with gold and still defend itself very badly," Greece needs to engage its military and diplomatic efforts to counter contemporary and future symmetric and asymmetric threats with the following prioritization during an era of economic austerity.[88]

### The Military First

The military instrument's overall goal should be to deter or defeat any Turkish aggression in violation of international law as well as to counter any asymmetric threats.[89] Based on these

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[83] Nation, "Greece, Turkey, Cyprus, Brother Enemies," in *War in the Balkans, 279.*

[84] Robert B. Strassler, ed., *The Landmark Thucydides: A Comprehensive Guide to the Peloponnesian War* (New York: The Free Press, 1996), 352.

[85] The risky and unstable Turkish foreign policy in the Middle East provides corresponding opportunities for Greek national security interests. For more see, Pierce, Douds, and Marra, "Countering Gray-Zone Wars," 57-58; See also in Greek, Vasilios Markezinis, *H Ellada ton Criseon: Prosopiko Dokimio (Greece of Crises: A Personal Statement)* (Athens, Greece: Livanis, 2011), 389-391.

[86] This is a "self-help system. State must rely on themselves to accomplish their foreign policy goals. To do otherwise runs the risk of manipulation or betrayal at the hands of another state." For more, see, Hasted, "The Global Context," in *American Foreign Policy,* 35-36. The U.S. President Barack Obama security policy supports "the self-help system." "Part of his mission as president, Obama explained, is to spur other countries to take action for themselves, rather than wait for the U.S. to lead." For more see, Goldeberg, "The Obama Doctrine."

[87] Niccolò Machiavelli, "Money is Not the Sinews of War, although it Is Generally so Considered," in *Conflict After the Cold War*, 297-299; Arnold Wolfers, "National Security as an Ambiguous Symbol," *Political Science Quarterly* 67, no. 4 (December 1952): 490.

[88] Baron De Jomini, "Article XIII: Military Institutions," in *The Art of War*, trans. Capt. G.H. Mendell and Lieut. W.P. Craighill (Radford VA: Wilder, 2008), 37.

[89] Deterrence by both (threat of) denial (the act of dissuading an enemy by convincing him that he cannot successfully achieve the aim he seeks), and punishment (the act of dissuading an enemy to refrain from an action by promising a punishing use of force should he engage in the action). Defeat in the use of military power to physically defeat an enemy. For more see, John F. Troxell, "Military Power and the Use of Force," in *U.S Army War College Guide to National Security Policy and Strategy*, 2nd ed. ed. J. Boone Bartholomees, Jr. (Carlisle Barracks, PA: U.S. Army War College, June 2006), 217-240, http://www.strategicstudiesinstitute.army.mil/pdffiles/PUB708.pdf; Deterrence by threat of denial can mainly be

objectives, the HNDF should be consolidated and re-organized by managing optimizing tradeoffs amongst combat readiness, force structure, and modernization, as follows:

*Combat Readiness*. This refers to the assessment of the HNDF capabilities to provide sufficiently trained and ready combat forces to successfully deter and defeat multiple forms of Turkish military aggression, e.g., from a localized crisis in the Aegean to a full scale war. To do so, Greece should develop even smaller, combined arms formations from the existing force capable of exercising mission command.[90] The transition to small well-trained forces would be a cost-effective solution and would create flexible and efficient units for rapid respond to evolving crises. The establishment of combined armor and mechanized infantry units in a unified base structure can lead to the immediate closure of 8-12 unnecessary military camps that are costly to man and maintain.[91] Adopting the concept of mission command would facilitate operations, improve command and control in the diverse, remote Greek theaters of operations, as well as enabling effective operations should communications failures (e.g., jamming, cyberattack) occur in theatre. Small unit and joint service initiatives and preventive measures *timely* exercised *within* the rules of engagement will help minimize the prospect that a localized crisis will escalate (e.g., avoiding a repetition of the 1996 Imia crisis) while presenting multiple dilemmas for enemy forces.

*Transformed Force Structure*. The HNDF should transform and adapt their structure to remain capable while less expensive and more economical. To do so, the country should impose manpower economies, disband units that do not affect combat readiness, and create a system that can mobilize society to be ready for war should it come. The long border with Turkey and the geographical disposition of the Turkish Armed Forces requires Greece to maintain its existing combat posture in Western Thrace and the Aegean Sea. Reducing the number of professional military personnel and increasing the number of conscripts in a balanced fashion could assist with manpower economies.[92]

On the other hand, Greece should disband unnecessary units (e.g., support units and/or services unnecessary to war fighting) and further enhance force structure by re-organizing its society for a potential war with Turkey. As Clausewitz recounted, after the French Revolution:

> [T]he people became a participant in war; instead of governments and armies as heretofore, the full weight of the nation was thrown into the balance . . . nothing now

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achieved by making; allies; the coveted piece of territory harder to take; adversary's coveted object harder to keep; economic development. For more see, A. Wess Mitchell, "The Revisionist: The Case for Deterrence by Denial," *The American Interest*, August 12, 2015, http://www.the-american-interest.com/2015/08/12/the-case-for-deterrence-by-denial/.

[90] In the exercise of the mission command subordinates, having assumed appropriate delegation of authority and responsibility, plan and conduct individual warfighting missions and tasks based upon their understanding of the local situation without being under the direct and superior commanders' command and control but within the overall strategic and/or operational theater intent. For more see, Eitan Shamir, *Transforming Command: The Pursuit of Mission Command in the U.S., British, and Israeli Armies* (Stanford, CA: Stanford University Press, 2011); The U.S Department of the Army defines mission command as, "Mission Command is the exercise of authority and direction by the commander using mission orders to enable disciplined initiative, within the commander's intent to empower agile and adaptive leaders in the conduct of unified operations." For more see U.S. Department of the Army, *Mission Command*, Army Doctrine Publication (ADP) 6-0 (Washington, DC: U.S. Department of the Army, May 2012, Includes Change 2, March 12, 2014), 1, http://armypubs.army.mil/doctrine/DR_pubs/dr_a/pdf/adp6_0.pdf .

[91] Greece has 12 infantry and armor brigades. Establishing infantry and armor in the unified bases during peacetime would lead to the immediate closure of 8-12 bases. For the Hellenic Defense Budget and force structure see, JANE'S, Aerospace, Defence & Security, "World Armies: Greece," https://janes-ihs-com.usawc.idm.oclc.org/CustomPages/Janes/DisplayPage.aspx?DocType=Reference&ItemId=+++1319231&Pubabbrev=JWAR.

[92] The average annual budget for professional manpower members is $23,317 (constant 2015 USD). Reducing the professional personnel by 1,000 members the savings will be $23,317,000 per year. It is estimated that professionals are 50,000-70,000. To counterbalance the decrease of professionals the conscripts should be in service at least 12 months instead of 9 months that they are today. The budget for conscripts is lower than professional military personnel. For more about the Greek defense budget, see, Ibid.

impeded the vigor with which war could be waged, and consequently the opponents of France faced the utmost peril.[93]

In 1998, Greece introduced the "all peoples' defense," (i.e., Law 2641/1998), a local mobilization system for non-active or reserve military personnel, to participate in the national defense. This system should be re-organized due to lessons learned from recent wars, especially from the 2006 Israeli-Hezbollah War in Lebanon. In that war, small Hezbollah formations (e.g., village fighters *and* permanent Hezbollah military members) successfully executed decentralized defensive operations against ground units of the Israeli Defense Forces (IDF) that enjoyed complete command of the air, considerable fire support, and C4I capabilities.[94]

*Modernization*. Greece should direct some of the savings from the enhanced combat readiness and the transformed structure to gradually modernize its Army with assistance from the domestic defense industrial base. To increase funds, Greece should utilize the property of its National Defense Fund (e.g., real estate, etc.) and seek voluntary contributions earmarked for defense from supporters both at home and abroad.[95] The government could promote and appropriately manage private initiatives reminding people that in ancient Greece most public infrastructure improvements were built with the *liturgy*, a voluntary contribution from the rich to the city-state of Athens.[96] The HMOD should develop a cost effective acquisition culture and regularly review the acquisition programs and processes by prioritizing aviation and aerospace capabilities. Under this strategy, new defense system acquisitions would be limited to upgrades and limited procurement of used ones.

To modernize the Army and upgrade existing systems, the HNDF should maximize engagement with the domestic defense industrial base. Greece should support industry initiatives to identify new markets abroad, participate in multinational defense programs, and/or engage in the production of dual-use items while keeping manufacturing lines open, remaining in the market, and supporting the HNDF sustainment.[97] Greece should also revise its policies in accordance with European legislation to protect certain domestic arms production. Not *all* Greek military procurement of equipment, munitions, and consumables needs to be unquestionably subjected to the EU's "open bidding" rules; domestic co-production arrangements or repairs should be actively pursued with all foreign manufacturers. The creation of a unified procurement service that awards contracts for the HNDF as well as for the National Police, National Fire Service Corps, and Coast Guard, could provide economies of appropriate scale and scope.

## Diplomacy Supported by Information

Diplomacy goals should be to preserve peace in the region and resolve Turkish claims through the application of International Law. Sufficient intelligence, information, and cyber operations should support diplomacy efforts. Diplomacy should primarily focus on:

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[93] Carl Von Clausewitz, "Book Eight: Scale of the Military Objective and of the Effort to be Made," in *On War*, eds. and trans. Michael Howard and Peter Paret (Princeton, NJ: Princeton University Press, 1976), 591-592.

[94] Anthony H. Cordesman, George Sullivan, and William D. Sullivan, *Lessons of the 2006 Israeli-Hezbollah War* (Washington, DC: Center for Strategic and International Studies, 2007), 80-84.

[95] The National Defense Fund is the owner of 0.19% of the total Greek land surface area. For more, see, http://www.ndf.gr/en.html.

[96] Acquisition of the "Averof" battle cruiser, the mainstay of the Royal Hellenic Navy during the 1912-1913 Balkan Wars, was achieved through a liturgy. The warship bears the name of its donor. For more, see, http://www.averof.mil.gr/. A number of private donors have come forward with monetary donations that cover the acquisitions of small patrol boats and assault craft utilized by Hellenic Army and Hellenic Navy special operations forces.

[97] Thanos Dokos and Christos Kollias, *Greek Defense Spending in Times of Crisis: The Urgent Need for Defence Reform*, ELIAMEP Thesis (Athens, Greece: ELIAMEP, March 2013), http://www.eliamep.gr/wp-content/uploads/2013/03/ELIAMEP-Thesis-1-2013_Th.Dokos-Ch.Kollias1.pdf.

*Bilateral Greece-Turkey Diplomacy.* Greece's objective should be the continuation of rapprochement with Turkey to adjust relations by mutual agreement or to bring Turkish claims before the International Court of Justice. Greece, in coordination with Cyprus, should support Turkey's EU accession if Turkey formally recognizes the Cyprus Republic, plans to withdraw its occupation forces from the island, and respects the principle of good neighborly relations.

*Greece-NATO-EU CFSP Diplomacy.* Greece, with advanced modern weapons, should strengthen its participation in NATO and the EU CFSP. Greece, honoring its commitment to NATO, and despite its financial constraints, continued to allocate "more than two present" of its GDP to defense in 2015 in sharp contrast to other NATO allies with much stronger economies.[98] Greece should be actively engaged in the international arena and continue to join in multilateral peace operations and humanitarian missions under U.N., NATO or EU auspices. Greece's strong presence in these organizations would establish mutual trust, elevate Greek credibility, and create an environment for stronger support for Greek positions. Greece should also support EU initiatives aiming to create a European Army under CFSP.[99] A European Army that can intervene, even as a "tripwire" force, would be useful in deterring external aggression against any EU member state.

*Greece-U.S. Diplomacy.* Since WW II, Greece and the United States have maintained very good relations and the HNDF benefitted from major U.S military grant programs until the 1980s.[100] Greece still takes advantage of the U.S. Excess Defense Articles (EDA) program. In 1976, certain indications demonstrated that the U.S provided Greece informal assurances that, "if the Turks should attack [Greece], the U.S would not stand idly by."[101] Until 2009, Greece maintained a robust modernization program for the HNDF with some of the most advanced F-16s and Long Bow Apaches added to the inventory. This ability no longer exists, however, and Greece cannot afford an arms race with Turkey. Common Greek and U.S. interests in the Eastern Mediterranean, in view of the instability in the Middle East, necessitate enhanced U.S. security assistance and cooperation programs with the HNDF. The U.S. military utilizes the Hellenic base for the 6th Fleet and U.S. Air Force, in Souda Bay, Crete, which is an important military base with anchorages and the longest runways in the Eastern Mediterranean (e.g., Libya's operations in 2011). Greece also maintains good relations with Israel, the Arab world, and Iran which highlights the importance of its location.[102] On this basis, Greece should seek closer assistance and military cooperation with the U.S. and work to balance Turkey's role in U.S. foreign policies in the region.[103]

*Greece-Russia/China Diplomacy.* Although Greece is a member of NATO and the EU, this does not prevent the pursuit of appropriate Greek initiatives with powers who impact developments in the Balkans and the Eastern Mediterranean such as Russia and China. Greek-Russian relations go back

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[98] "Well, [countries spend more than 2% in defense] it is the United States, the United Kingdom, Estonia, Poland and Greece. They are the five nations spending more than two percent." For more, see, Jens Stoltenberg, "Remarks by NATO Secretary General Jens Stoltenberg at the European Parliament Committee on Foreign Affairs and its Subcommittee on Security and Defence," February 23, 2016, http://www.nato.int/cps/en/natohq/opinions_128311.htm?selectedLocale=en.

[99] *President Schulz: We Need a Common Foreign and Security Policy* (Washington, DC: HT Media Ltd, March 15, 2015), http://search.proquest.com/docview/1663424126?accountid=4444.

[100] George P. Bozikas, *U.S. Security Assistance and Regional Balance of Power: Greece and Turkey, A Case Study*, Strategy Research Project (Carlisle Barracks, PA: U.S. Army War College, April 1998), 25-45.

[101] This assurance (not a binding U.S. commitment) is said to be given by Henry Kissinger, then U.S. Secretary of State in 1976. For more see, Mackenzie, *Disarray on NATO's Southern Flank*, 10-11.

[102] Thanos Dokos, "Letter from Athens," *Carnegie Europe: Strategic Europe*, blog entry posted May 8, 2015, http://carnegieeurope.eu/strategiceurope/?fa=60024&mkt_tok=3RkMMJWWfF9wsRojuqXJZKXonjHpfsX66OUtXqag38431UFwdcjKPmjr1YcJSsV0aPyQAg0bGp5I5FEIQ7XYTLB2t60MWA%3D%3D.

[103] "In 2009, Turkey paid lobbying firms, including those Livingston and former congressmen and presidential candidate . . . , almost 1.7 million to work on its behalf." For more see, Glenn P. Hastedt, "Society," and "Congress," in *American Foreign Policy*, 122-29,127.

to the 19th Century, when Russia assisted Greece in its War of Independence against the Ottoman Turkish Empire in the 1820s. In the 1870s, when Russia initiated the concept of *Panslavism* (e.g., a Russian sphere of influence in Europe encompassing all the Slavs), Greece "stopped looking to Russia" for support and became more aligned with western powers in protecting its security interests.[104] Russia has historically been actively involved in the affairs of the Middle East and the Eastern Mediterranean.[105] Russian national security interests in these regions currently encompass both Cyprus (primarily economic and commercial), and Syria. Russia's military presence and the friction with Turkey act as countervailing factors for the Turkish aims of geopolitical revisionism.[106] Thus, Greece must also maintain an open avenue for diplomacy with Russia.

A similar approach is warranted for Greek-Chinese relations. China is a major investor in the partially privatized commercial harbor of Piraeus, and uses its container facilities for the movement of imported products into the rest of Europe. This containerized cargo provides an economic boost to Greece by using the Greek railroad network to transport goods out of country. It also reflects a large Chinese interest in using Greece to ensure the efficient flow of commerce in the region. Thus, diplomacy with China can provide an additional avenue for airing Greek national security issues and regional concerns, especially with regard to the transfer of missile technology for development of Turkish long-range rockets and theater ballistic missiles (e.g.,Yildirim TBM), which is well-known and somewhat worrisome for Greek defense planners.[107]

*Regional Diplomacy*. Greece needs to establish agreements concerned with managing crises associated with the necessity to protect their EEZs with non-NATO countries, such as Israel, Egypt, and Cyprus. Cyprus and Egypt have already engaged in trilateral summits to cooperate in exploiting undersea hydrocarbon reserves in the region.[108] Such initiatives should continue to produce tangible results and be expanded to include other countries such as Lebanon. Since 2008, the military cooperation between the HNDF and the IDF has increased through joint exercises that often involve U.S. and other NATO military units.[109] With NATO members, such as Italy, Bulgaria and Albania,

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[104] "The *Gentleman's Magazine* claimed that Panslavism convinced Greece to stop looking to Russia, with whom they had opposing views of liberty, for support, since they feared absorption into a Russian-dominated Slavic state. As a result, Greek nationality has now become thoroughly distinguished from Greek Christianity." For more see Eric Edmund Kleist, "European or Oriental? British Perceptions of Russia in the Nineteenth Century," 2003, 279-280, http://search.proquest.com/docview/305333213?accountid=4444, citing Arthur Arnold, "The Claims of Greece," *Gentleman's Magazine* 246 (July 1879): 707-708.

[105] Eleni Mahaira-Odoni, "Government and Politics: Foreign Policy, Russia," in *Greece: a Country Study*, 264.

[106] Reference to Cyprus crisis in 1963-1964, Letter of U.S. President Lyndon Johnson to Turkish Prime Minister Ismet Inonu – non-NATO involvement in the event of Turkish invasion of Cyprus and Soviet intervention opposing such invasion. For more see, Bozikas, *U.S. Security Assistance and Regional Balance of Power: Greece and Turkey,* 18.

[107] HIS, Aerospace, Defence & Security, "Turkey>Strategic Weapons System: Ballistic Missiles, Project J," *Jane's Sentinel,* December 8, 2015, https://janes-ihs-com.usawc.idm.oclc.org/Janes/Display/1303302.

[108] In the 1st trilateral summit in Cairo, on November 8, 2014, Cyprus, Greece, and Egypt recognized "that the discovery of important hydrocarbon reserves in the Eastern Mediterranean can serve as a catalyst for regional cooperation." They "stress that this cooperation would be better served through the adherence with the countries of the region to well established principles of international law." In this respect, they "emphasize the universal character of the UN Convention of the Law of the Sea (UNCLOS), and decide to proceed expeditiously with our negotiations on the delimitation of our maritime zones, where it is not yet done." For more see, State Information Service Egypt, "Egypt-Greece-Cyprus, Trilateral Summit, Cairo Declaration," November 9, 2014, http://www.sis.gov.eg/En/Templates/Articles/tmpArticleNews.aspx?ArtID=83738#.Vj9bu7cvfIU; Hellenic Republic Ministry of Foreign Affairs, "Cyprus- Egypt-Greece, 2nd Trilateral Summit, Nicosia Declaration," April 29, 2015, http://www.mfa.gr/en/current-affairs/news-announcements/cyprusegyptgreece-2nd-trilateral-summit-nicosia-declaration-29-april-2015.html.

[109] Greece and Israel have participated in various exercises together or with other countries during the last decade. For more see, "Israel Holds Naval Drill with U.S and Greece," *The Jerusalem Post*, May 7, 2015, http://www.jpost.com/Israel-News/Israel-holds-naval-drill-with-US-Greece-402343; "Israel Participates in Joint Exercise in Greece Against Iran's S-300 Missiles," *JP Updates*, May 19, 2015, http://jpupdates.com/2015/05/19/israel-participates-in-joint-air-exercise-in-greece-

defense agreements can be initiated in accord with NATO's *smart defense policy* to share and pool manpower and/or use of costly military equipment for mutual benefit.[110]

The recommendations for a revised national security strategy balances military strength with diplomacy. The Greek government should work hard to re-organize the HNDF and stress to NATO allies and the U.S. officials the strategic importance of Greece in the geopolitical region.[111] A relative balance of military power between Greece and Turkey is consistent with the interests of NATO and the U.S. in an era where Turkey could become an unreliable, authoritarian, and possibly unstable partner posing risks to NATO's Southern Flank. Until Greece has full NATO and U.S. support, it should revise its military strategy.

# Conclusion

Since 1974, Greece has established a defensive military strategy with an operational and tactical posture against Turkey based on a balance of power mentality. This strategy is no longer sufficient. To shape the future operational environment, Greece must revise its military strategy and maintain flexible "defensive-offensive methods based on high mobility that carries the power of quick riposte," by exploiting the elements of movement and surprise." By simultaneously enacting the above national security strategy recommendations and applying a mixture of theories of war[112] advanced by Clausewitz, Jomini, Corbett, and Sun Tzu, Greece can begin to realize its current national security goals without jeopardizing its long term future during an era of fiscal austerity. These theorists illuminate the potential of employing various means to maintain national sovereignty and cultivate a stronger, more robust regional presence. Discussed here are four areas of particular import to Greece in the near term: landpower, naval warfare, national security strategy, and force morale.

## Landpower

Clausewitz maintains that defense is a stronger form of fighting than attack. His suggestion "to begin defensively and end by attacking," can help in forming theater strategies for protecting the territorial integrity of both the Greek land borders and the Aegean islands.[113] Equally useful is Jomini's endorsement of the concepts of total social mobilization for war, of dislocating the enemy, and the freedom of military commanders to wage war in accord with scientific principles.[114] Greece needs to embrace these concepts in order to effectively re-organize its land force structure by focusing on smaller mobile or armored units and Special Forces units with enhanced firepower, as well as mobilizing its society for a potential war.[115] In this context, Greece should maintain its alignment of land forces to the East in order to cope with the Turkish symmetric threat and keep smaller, mobile units on the frontiers with Albania and FYROM for coping with potential asymmetric threats.

against-irans-s-300-missiles/; "Greek Participation in US-Israel Military Drill Meant as a Message to Turkey," *Israel Hayom*, April 1, 2012, http://www.israelhayom.com/site/newsletter_article.php?id=3775.

[110] Keith Hartley, "The Economics of Smart Defense," *Connections: The Quarterly Journal* 12, no. 3 (Summer 2013): 1-7.

[111] For the importance of Greece today see, David Lerman and Nicole Gaouette, "Admiral James Stavridis Interview: Greek Debt Crisis Risks NATO Withdrawal, New Refugee Surge," *Bloomberg Business*, June 29, 2015, http://www.bloomberg.com/news/articles/2015-06-30/greek-debt-crisis-risks-nato-withdrawal-new-surge-of-refugees.

[112] Basil H. Liddell Hart, "Grand Strategy," in *Strategy: The Classical Book on Military Strategy*, 2nd ed. (New York: Penguin, 1991), 323-324, 355.

[113] Clausewitz, "Book Six: Defense," in *On War*, 357-501.

[114] John Shy, "Jomini" in *Makers of Modern Strategy from Machiavelli to the Nuclear Age*, ed. Peter Paret (Princeton, NJ: Princeton University Press, 1986), 154-155, 161.

[115] Jomini, "Article VIII: National Wars," in *The Art of War*, 19-24.

## Naval Warfare

Corbett's theory of naval warfare provides a framework for the Hellenic Navy to counter challenges in the Aegean Sea and the Eastern Mediterranean. Following Corbett's logic, the Hellenic Navy should exercise control of passages and the sea lines of communication, and hold command of the sea by, if warranted, counterattacks.[116] In order to deter Turkish efforts to occupy an island, Greek naval power will maintain control in the comparatively narrow spaces of the Aegean Sea, intercept and destroy amphibious forces, protect sea lines of communication, deploy decisive military power from the mainland shores to islands against air mobile or amphibious assault, and protect Greek EEZ interests.[117] Fiscal austerity effects the procurement and the deployment of larger Navy warships (e.g., missile guided frigates), although such warships remain valuable for surface and anti-air warfare tasks). The adoption of new military technologies (e.g., UAVs) in combination with littoral combat ships equipped with precision guided munitions (PGMs), submarines, and unconventional tactics can provide appropriate capabilities.[118] The civil-maritime industries in Greece can assist with building, expanding and repairing these particular capabilities. Such assets, by exploiting the coastal topography under a coordinated joint plan, can expose the enemy's surface fleet to unacceptable losses, safeguard Greek maritime space, and secure the country's interests in the Eastern Mediterranean.

## National Security Strategy

Sun Tzu's theory of war provides the best perspective as Greece seeks to develop a strong, forward-looking, reality-based national security strategy. Sun Tzu provides a framework for developing a revamped, comprehensive military strategy that can address symmetric and asymmetric threats in a complex geopolitical environment. Sun Tzu focused on the preeminence of *intelligence* about the enemy and *self-knowledge* about your own objectives and capabilities.[119] The undeclared Greek-Turkish conflict exemplifies Sun Tzu's theory: although the two countries have not directly engaged in actual military hostilities—except in very limited circumstances (e.g., Cyprus 1974)—the instrument of military power of both nation-states has been positioned and used to achieve political ends. Sun Tzu's emphasis on the use of deception, surprise, intelligence, and maneuver to achieve strategic and operational objectives with little or no fighting, combined with his ideas about attacking portions of the enemy with the whole available force, make his theory particularly salient to Greek security planners and national security experts. The implementation of Sun Tzu's theory at the operational level will require a renewed emphasis on the concept of *joint* planning and operations among all branches of the HNDF.[120]

## Force Morale

Clausewitz's theory on the military's moral elements provides a foundation for increasing morale among uniformed personnel. Welfare (e.g., pay, housing, and recreation), discipline, and

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[116] Julian S. Corbett, *Principles of Maritime Strategy* (Mineola, NY: Dover, 2004), 167-168.

[117] Coloumbis and Dokos, "National Security Doctrine," in *Greece: A Country Study,* 285-287.

[118] Geoffrey Till, *Seapower: A Guide for the Twenty-First Century,* 2nd ed. (New York: Routledge, 2009), 71-74.

[119] Sun Tzu, "III: Offensive Strategy," in *The Art of War*, trans. Samuel Griffith (London: Oxford University Press, 1971), 84.

[120] William T. Johnsen*, Re-Examining the Roles of Landpower in the 21st Century and Their Implications* (Carlisle Barracks, PA: U.S. Army War College, Strategic Studies Institute, November 2014), 8-16.

training are the factors most affecting military morale.[121] The series of cuts in welfare and training, due to economic austerity, has potential effects on the military's confidence and pride, in their leaders, and in their teams. This must be changed although improvements must be cost effective. Clausewitz stated that the principal moral elements are the skill of the commander; the experience and courage of the troops; and their patriotic spirit. [122] Military leadership must select capable unit commanders who can lead by example and trust their subordinates through efficient mission command. In an effort to provide sufficient training, the leadership should introduce realistic training by appropriately combining the use of technology (e.g., use of simulators) and real life missions training (e.g., the Hellenic Navy's regular patrolling in the Aegean Sea can be combined with Special Forces training). Governmental leadership should also communicate trust to the military to instill the self-confidence and increased patriotic spirit needed if they are to continue giving their best, even when they have to endure the worst as Greek national sovereignty is at stake.[123]

The theories of war advanced by Sun Tzu, Clausewitz, Jomini, and Corbett, if applied appropriately, and combined with the recommendations herein will effectively contribute to a revised Hellenic Military Strategy. Because of Greece's unique geo-socio-historic position, Greece has "survived the relentless sands of time only through the use of stratagems."[124] Sun Tzu's Theory of War, therefore, is the most readily applicable. In these troubling times of fiscal austerity and human migration, should neighboring countries further threaten the sovereignty of Greece, it will take more than one Trojan Horse to end the conflict. Absent unwavering commitment from across the pond, a Greek embrace of contemporary stratagems in the style of Sun Tzu may well be the best hope Greece has to protect its citizenry and national security interests.

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[121] J. G. Shillington, "Morale," *The RUSI Journal* 156, no. 2 (April/May 2011): 96-98, http://dx.doi.org/10.1080/03071847.2011.576482.

[122] Clausewitz, "The Principal Moral Elements," in *On War*, 186.

[123] Lewis Sorley, *Thunderbolt: General Creighton Abrams and the Army of His Time* (New York: Simon and Schuster, 1992), 350-368.

[124] Dimitris Liantinis, "This is Missolonghi!" in *Gemma*, trans. Yiannis Tsapras, ed. Nikolitsa Georgopoulou-Liantini (Amazon, 2013), 127.
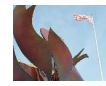
# Justified Physical Response to Cyber Attacks

Joseph W. Smotherman

*If attacks in cyberspace are assaults of one state against another, then the framework of Just War theory should still apply. Michael Walzer's Legalist Paradigm provides a rationale for determining the circumstances under which an armed response to a cyber-attack is morally permissible. While some parts of Just War theory directly apply to responses to Cyber Attacks, the others do not. Walzer describes Just Cause in terms of the natural rights of the citizens of a state. When a cyber-attack interrupts the ability of those citizens to make a life together or the "safe space" they create, then a physical response to a cyber-attack could be justified. This essay examines the relationship between Walzer's Legalist Paradigm and justifications for physical response to cyber-attacks.*

Keywords: *Cyberspace Operations, Just War Theory, Just Cause*

As the character of warfare evolves, new technology continues to push the limits of acceptability. The consequences of warfare in the cyber world do not fit neatly into society's paradigm of right versus wrong and what is just. Despite the old adage, not all is fair in war. In the rapidly developing world of cyberspace, each action will push the boundaries of propriety. Questions that previously had easy answers are no longer black and white: When Saddam Hussein's Iraqi Army pushed across the border of Kuwait on August 2, 1990, there was no doubt that his aggression was a cause for war, but today, if one country were to use attacks in cyberspace to cripple the infrastructure of another, the decision to retaliate is not so clear. All states should reserve the right to respond to a cyber-attack with force as a deterrent, and the United States has stated that it will consider physical responses to cyber-attacks. Deputy Defense Secretary William Lynn said "The United States reserves the right, under the laws of armed conflict, to respond to serious cyberattacks with a proportional and justified military response at the time and place of its choosing."[1] If a nation (not just the United States) must decide when to respond to a cyber-attack with physical force, then an appropriate framework must be established for recognizing cyber-attacks as armed attacks. If cyber-attacks are assaults by one state on another then the Just War framework should still apply, and as a more contemporary

[1] Tom Gjelten, "Pentagon Strategy Prepares for War in Cyberspace," *NPR,* July 15, 2011, http://www.npr.org/2011/07/15/137928048/u-s-military-unveils-cyberspace-strategy.

conception of Just War, Michael Walzer's basic premise of the Legalist Paradigm provides a clearer lens for determining when an armed response is morally permissible. In terms of political sovereignty and territorial integrity, cyber-attacks can be a form of aggression and, therefore, just cause for war.

Attacks using cyber warfare have been examined from the perspective of the Law of Armed Conflict, and legal guidelines have been established. In spite of this, when a cyber-attack occurs, the leadership of the victimized country must decide when a physical response is justified.[2] This article explores when that is the case. The first section describes the cyber domain and makes the distinction between operations in the cyber domain and cyber-attacks. Following the discussion of the cyber domain, it briefly reviews classic Just War Theory (JWT) and examines the application of JWT to cyber-attacks through the lens of Michael Walzer's Legalist Paradigm and theory of aggression.[3] The discussion of JWT theory begins with the aspects of JWT that are straightforward, regardless of the nature of the attack and continues with an analysis of just cause—the lynchpin of the last three criteria. After a determination of just cause, the final three criteria of JWT are evaluated in the context of whether or not the cause for retribution is sufficient.

## Operations in Cyberspace

"Cyber" is a new aspect of the modern battlefield. Its evolution and arrival follows the Clausewitzian construct of the nature and character of war: The use of cyberspace in war is a new tool and method of fighting (the "character of war") with the end of forcing an enemy to bend to the attackers will (the "nature of war").[4] Because of the futuristic aspect of "cyberwar," it becomes a phrase that is used in parlor discussions without specificity and is often shortened to just "cyber."[5] For the sake of clarity, all definitions employed herein are adapted from Department of Defense Joint Publications. The first and most basic definition is that of cyberspace. Cyberspace is "A *global domain* within the information environment consisting of the interdependent networks of information technology infrastructures and resident data, including the Internet, telecommunications networks, computer systems, and embedded processors and controllers. [Emphasis added]"[6] The highlight of this definition is that cyberspace is a domain: "a sphere of knowledge, influence, or activity."[7] Cyberspace becomes a location, albeit virtual, on par with the maritime, land, air, and space domains. Operations conducted in cyberspace are "employment of cyberspace capabilities where the primary purpose is to achieve objectives in or through cyberspace. Cyberspace operations (COs) are composed of the military, intelligence, and ordinary business operations of DOD in and through cyberspace."[8] In short, cyber operations are any activities that take place in cyberspace, whether day-to-day activities or attacks. Cyber Operations can assume many forms. They can take the form of Information Operations (IO), or they can be full-fledged

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[2] Paul Nakasone, "Cyber Domain," in *Theater Strategy and Campaigning* (Carlisle Barracks, PA: U.S. Army War College, 2015).

[3] Michael Walzer, *Just and Unjust Wars,* 5th ed. (New York: Basic Books, 2015).

[4] U.S. Army Maneuver Center of Excellence, "Maneuver Leaders Self Study Program: Nature and Character of War and Warfare," http://www.benning.army.mil/mssp/Nature%20and%20Character/.

[5] Joint Publication 1-02, Figure B-3 identifies "cyber" as one of the most commonly misused terms in joint warfare. U.S. Joint Chiefs of Staff, *Department of Defense Dictionary of Military and Associated Terms,* Joint Publication 1-02 (Washington, DC: U.S. Joint Chiefs of Staff, November 8, 2010), B5.

[6] U.S. Joint Chiefs of Staff, *Cyberspace Operations,* Joint Publication 3-12 (Washington, DC: U.S. Joint Chiefs of Staff, February 5, 2013), GL4.

[7] Interestingly, DoD Joint Publications use the term "domain" regularly but never define it. This definition, from the Merriam-Webster online dictionary, applies to most, if not all, uses of "domain" in the Joint Publications.

[8] U.S. Joint Chiefs of Staff, *Cyberspace Operations*, II-1.

cyberspace attacks. In the past, all CO were considered subsets of IO, but have recently been separated as a unique form of warfare.

Separating cyberspace attacks from other operations conducted in cyberspace is a useful analytic tool.[9] Cyberspace attacks are those operations in cyberspace "that create various direct denial effects in cyberspace (i.e., degradation, disruption, or destruction) and manipulation that leads to denial that is hidden or that manifests in the physical domains."[10] If the actions taken in cyberspace are not intended to deny or manipulate an adversary or enemy's capability, then they are not attacks. Another definition, offered by the *Tallinn Manual*,[11] describes the application of international law to attacks in cyberspace.[12] The *Tallinn Manual* defines an attack as "a cyber operation, whether offensive or defensive, that is reasonably expected to cause injury or death to persons or damage or destruction to objects."[13] The data stolen from defense contractors Boeing and Lockheed-Martin by Chinese hackers, for example, would not qualify as an attack due to the intent to acquire information rather than deny or manipulate U.S. systems.[14] A physical operation with the same effects would simply be espionage: treated as a criminal enterprise rather than a use of force.

Because of the relatively low entry cost to the cyber domain, it is accessible to many different actors, which contrasts with the assumption of classic JWT that war is an activity between established states.[15] In the modern world, although non-state actors may take part in war-like activity, warfare in its classic sense is still the providence of states, as evidenced by the United States quandary in dealing with fighters captured in the Global War on Terrorism. They do not represent any state and are therefore not subject to any of the moral or legal protections of warfare. In any case, a physical, armed response to non-state actors is still an act of war against the state in which they reside and any physical response to cyber-attacks must be considered in the same fashion. An analogy with the war in Afghanistan holds: the United States entered into war with the ruling Taliban because of their relationship with al Qaeda. If a non-state actor (or actors) performs an act of terrorism or a cyber-attack, any response against that actor in their location becomes an act against that state. Additionally, it could be expected that two states previously in a state of war would not have any moral quandary when deciding to respond to any attack with force. Because of this, examining responses to cyber-attacks through the lens of non-warring states provides clarity as a starting point, but extrapolation from state on state attacks to non-state actors become more closely aligned with recent principles developed in the Global War on Terrorism. New problems sometimes do not require new principles as much as they require an examination of the basics.

As a working definition, the *Tallinn Manual* is most restrictive, but it also leaves open the possibility of an adversary "working around the edges" by using temporary effects. The U.S. Department of Defense Joint Doctrine on Cyber Operations, Joint Publication (JP) 3-12 definition considers both intent (denial or manipulation) and permanent or temporary effects that may remain

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[9] Kyle Genaro Phillips, "Unpacking Cyberwar: The Sufficiency of the Law of Armed Conflict in the Cyber Domain," *Joint Force Quarterly* 70 (3rd Quarter 2013): 72-73.

[10] U.S. Joint Chiefs of Staff, *Cyberspace Operations*, II-5.

[11] Published by NATO's Cooperative Cyber Defence Centre of Excellence.

[12] Michael N. Schmitt, ed., *Tallinn Manual on the International Law Applicable to Cyber Warfare* (Cambridge, UK: Cambridge University Press, 2013), 1.

[13] Ibid., 106.

[14] "Su Bin, Chinese Man Accused by FBI of Hacking, in Custody in B.C.," *CBC News*, July 12, 2014, http://www.cbc.ca/news/canada/british-columbia/su-bin-chinese-man-accused-by-fbi-of-hacking-in-custody-in-b-c-1.2705169.

[15] While the writings of Saints Augustine and Thomas Aquinas became Classic JWT predating the Westphalian conception of states, they treated war as an activity between princes. Such wars were more personality driven, but the analogy between pre-Westphalian princes and States, generally speaking, applies across the ages.

hidden or exist in the physical realm. Consequently, the JP 3-12 definition is more complete and allows for both deontological and teleological consideration of an attack.[16] Unfortunately, neither the *Tallinn Manual* (as an examination of international law) nor U.S. military joint doctrine affords adequate instruction for cyber-attacks that do not have physical effects but leave the leadership and populace of a country with the sense that a strong response is required.

## Just War Theory

The basis for international law surrounding the conduct of war began with the philosophical Just War Tradition that traces its roots to Aristotle, Cicero, and more popularly, Augustine.[17] Over the course of time, this tradition has been considered from three perspectives: *Jus ad bellum, jus in bello*, and *jus post bellum*. These phrases persist in both Just War tradition and in international law and each have specific conditions.[18] For this analysis, *jus ad bellum* (conditions for going to war) is the most salient.

The beginnings of a coherent Just War Theory were articulated by Saint Thomas Aquinas in *Summa Theologica*. He addresses what are generally considered to be the conditions necessary for a war to be "just:"

1. War must be declared by a nation state (*legitimate authority*).
2. There must be a *just cause* for which the war is being fought.
3. The intent of fighting must be morally worthy as well (*right intention*)

Later scholars added other criteria.

4. War must be a *last resort*.
5. There must be a *reasonable likelihood of success*.
6. The cost of fighting a war must be proportional to the wrong redressed (*proportionality of ends*).
7. Any war must not only be just in its cause, but also fought with *just means* (*jus in bello*).[19]

The *jus in bello* criterion is sometimes separated from the broader *jus ad bellum*. *Jus in bello* applies to the individual soldier fighting the war, but it also applies to those directing the war in a larger sense. For the purposes of cyber-attacks, any actions must conform to *jus in bello* criteria as a whole, even though *jus in bello* is beyond the scope of this analysis.

Many of these criteria apply to attacks in cyberspace in much the same fashion they do to physical attacks (legitimate authority, right intention, probability of success), but others (just cause, last resort, proportionality of ends, and just means) are more difficult to shape because of evidence of an attack. In a world of physical warfare, the effects left behind by any act of aggression are easily identifiable. In a cyber-attack, the only evidence may be the destruction of information, or financial impact, or in some cases critical infrastructure that continues to malfunction with deleterious effects. While the first three criteria of Just War Theory (legitimate authority, right intention and probability of success) are essential, they change very little for responses to a cyber-attack. A state, rather than individuals acting alone, must respond in a fashion aligned with moral ends and be likely to achieve them.

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[16] U.S. Joint Chiefs of Staff, *Cyberspace Operations*, II-5.

[17] Stanford Encyclopedia of Philosophy, "War," July 28, 2005, http://plato.stanford.edu/archives/fall2008/entries/war/.

[18] Ibid.

[19] George R. Lucas, Jr. and Rick Rubel, eds., *Ethics for the Military Professional: The Moral Foundations of Leadership,* 4th ed. (Boston: Pearson Learning Solutions, 2011), 232-233.

The question of legitimate authority is easily applied, even to attacks waged in cyberspace. Since war is an activity, an armed conflict, between political entities it requires that those engaging in such activities represent such an entity.[20] The most common is the state, but an insurgency can represent populations as well. The pre-Westphalian world of Saint Thomas Aquinas did not recognize states as we know them; war was waged by and between princes. These princes controlled territory and were political rulers, and today this concept has evolved into the modern states. Modern day war remains an activity between those states. A state (and since only a state may wage war) that desires the moral and legal protections of *jus ad bellum* must be a recognizable (if not recognized) political entity. Otherwise, any response is simply a criminal activity to be dealt with internally.[21]

Right Intention is an issue that applies to responses to cyber-attacks in the same manner as traditional, physical uses of force. The intent of any response to a cyber-attack must be morally just. While this requirement follows from just cause, one state must act with an intent that—if motivated during any other form of warfare—would still pass the test. The ways, or manners, of response become less important.

As with any type of attack, one must be able to expect a reasonable chance of success. Whatever the espoused cause and desired ends of a response, there must be some chance that it may be successful, and must be related to proportionality of ends. While this criterion does not demand certainty of success, the degree of surety of a desired outcome must exist to the same degree as an attack for any other form of aggression.

## The Central Problem: Just Cause

While the previous demands of Just War Theory change little for attacks in cyberspace, the others are less clearly defined. Just cause, last resort, and proportionality of ends are all more difficult to apply when dealing with attacks in cyberspace. One of the most prominent political philosophers currently considering contemporary issues in Just War Theory is Michael Walzer.[22] Walzer attempts to refine the Just War Theory for modern times. His most profound contribution is a definition of "just cause" in terms of the natural rights that man binds together in states to protect: rights such as life, liberty, and property. According to Walzer, war is justified when those natural rights are threatened.

In the cyber domain, the most problematic of the classic Just War Theory criteria for waging war is "just cause." Early Just War Theorists such as Augustine of Hippo approached the warfare from the pacifist beginnings of the Christian Church, where killing was prohibited, but war became a necessary evil in order to govern the empire as Christianity spread.[23] This is considered the most important of the criteria, and a foundation for every other criteria. This often is broken down into two separate categories of "wrongs received:" self-defense and punishment for a grievous, uncorrected wrongdoing.[24]

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[20] R. Craig Nation, "History, Theory, War, and Strategy," lecture, U.S. Army War College, Carlisle Barracks, September 9, 2015, cited with permission.

[21] For clarity and simplicity, any political entity will be referred to as a "state." In the complex world of asymmetric warfare, many groups claim to be legitimate governments, but they are rarely attacked from outside (and when they are, the outside agents are typically asked to intervene by the ruling government, such as Russia's involvement in the 2015 Syrian Civil War), making civil wars or insurgencies internal questions. See Stanford Encyclopedia of Philosophy, "War."

[22] Institute for Advanced Study, "Michael Walzer," https://www.ias.edu/people/faculty-and-emeriti/walzer.

[23] Lucas and Rubel, *Ethics for the Military Professional*, 232.

[24] Stanford Encyclopedia of Philosophy, "War."

The first of these, self-defense, is viewed as the *only* just cause for war in international law in which a state may take unilateral action.[25] This right of self-defense applies not just to a country protecting itself, but also includes collective self-defense: the defense of other states.[26] Philosophers have long attempted to define the bounds of self-defense, and when applying "self-defense" to cyber-attacks, it becomes even more difficult. How does one determine self-defense when there are no invading armies? Can a war waged against a state that does not cross into another's territory be considered self-defense? These questions become more critical in an age of expeditionary warfare. The United States, for example, has not fought a foreign nation on her shores since the Mexican American War in the 1840s, but the United States has fought in wars that were considered "just." As an example, the beginning of the current conflict in Afghanistan is generally considered a just cause, but the government of Afghanistan did not invade the United States in the traditional sense. That government, on the other hand, offered aid and protection to those who attacked the U.S.

The second traditional cause for just war is the punishment of a state for some wrongdoing. The framework for punishment as just cause has always been problematic. Very little has been agreed upon, either in customary or international law, or even the basic premise behind what this punishment is intended to accomplish.[27] Walzer describes it simply as the international analogue to punishment for domestic crime: to prevent future aggression.[28]

Unfortunately, cyber-attacks do not fit nicely into either of these categories. Even if a cyber-attack has the same effects as an armed attack (perhaps an attack commands infrastructure to destroy itself, thereby causing the deaths of a large number of people), declaring it to be an attack that requires defense is difficult if there is no realistic threat of continued action that an armed physical response would interrupt. Walzer links his specific theory to traditional Just War Theory, saying "there is no reason why it can't work"[29] in current times and explains that his is an attempt to describe the new character of war as it relates to Just War Theory. His question (and answer): "Do the same rules apply [to asymmetric war]?[30] I want to say that they do, but that requires an argument."[31]

Walzer's argument is centered on what he refers to as the "Legalist Paradigm." The basis for this argument is that just cause for war is the maintenance of law and order in the international realm. In Walzer's world, the *only* crime that a state may commit is termed "aggression."[32] He compares it to domestic crimes, and lists a range of different categories among individuals, but when a violation of international rights occurs there is no other name for it than simply "aggression." The comparison of violations on an individual level and an international one is what Walzer terms the "Domestic Analogy."[33] This analogy leads to the *Legalist Paradigm* and has six propositions.

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[25] Jeff McMahan, "Just Cause for War," *Ethics & International Affairs* 19, no. 3 (Fall 2005): 1, http://www.philosophy.rutgers.edu/joomlatools-files/docman-files/Just_Cause_for_War.pdf.

[26] U.N. Charter, chapter 7, art 51. Chapter seven of the U.N. Charter allows for warfare in the case of international agreement through the UN, but absent an international agreement, self-defense is the only permissible cause for war. The First Gulf War in 1991 is an excellent demonstration of collective self-defense: Iraq invaded neighboring Kuwait, and the expulsion of Saddam Hussein's forces was sanctioned by the United Nations Security Council and led by the United States.

[27] Michael Walzer, *Just and Unjust Wars,* 5th ed. (New York: Basic Books, 2015), 62.

[28] Ibid., 63.

[29] Ibid., xiv.

[30] Walzer specifically refers to "armies and insurgents" as modern war, but it seems fair to extrapolate his commentary to all forms of asymmetric warfare.

[31] Walzer, *Just and Unjust Wars,* xiv.

[32] Ibid., 51.

[33] Ibid., 58.

1. There exists an international society of independent states.
2. The international society has a law that establishes the rights of its members—above all, the rights of the territorial integrity and political sovereignty.
3. Any use of force or imminent use of force by one state against the political sovereignty or territorial integrity of another constitutes aggression and is a criminal act.
4. Aggression justifies two kinds of violent response: a war of self-defense by the victim and a war of law enforcement by the victim and any other member of international society.
5. Nothing but aggression can justify war.
6. Once the aggressor state has been militarily repulsed, it can also be punished.[34]

Since states are the collectivization of the rights of their citizens, then a state must have a claim to natural rights, a concept drawn from John Locke's writings on the nature of government. The two primary forms of these natural rights for a state are territorial integrity and political sovereignty. Any threat to either of the conditions is a threat to the state and constitutes aggression: the only just cause for war. When viewed from the perspective of territorial integrity and political sovereignty, then cyber-attacks can be aggression and just cause for war.

According to Walzer, since the members of the international order are states, and the only crime a state may commit against another state is aggression, therefore, that is "the name we give to the crime of war."[35] While aggression may be fighting, whether in a warring or other sense, the key to identifying aggression is that it interrupts the peace. "Peace" in this sense is not a world without fighting, but "peace with rights, a condition of liberty and security that can exist only in the absence of aggression."[36] The crux of Walzer's theory of aggression is that people band together to form states, and these states represent the collective natural rights of its citizens: "the duties and rights of states are nothing more than the duties and rights of the men who compose them."[37] These duties and rights are the natural rights Americans are familiar with from Locke's natural rights of man: life, liberty, and property (possessions).[38] Walzer declares threats to these rights as simply "aggression." Life and liberty in their collective form are political sovereignty and the collective property is territorial integrity. The political sovereignty is a long established contract: rather than a "transfer" of rights, the state protects the common lives of its citizens, which gives the state a moral standing to exist. If the state will not protect its citizens, then it loses that moral standing.[39] In addition to protecting political sovereignty, the state must also guard its territorial integrity. While protecting territorial integrity is not the same as ownership, Walzer compares it to the individual's right of property even in a home that she does not own. She must have some place safe from intrusion, and the existence of a state provides that space.[40]

As cyber technology continues to integrate with every aspect of daily lives, the likelihood of two adversaries using cyber operations to wage a war against each other grows. This is especially true if

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[34] Ibid., 61-63.

[35] Ibid., 58, 51.

[36] Ibid., 51.

[37] John Westlake, *Collected Papers,* ed. L. Oppenheim (Cambridge, England: 1914), 78, quoted in Walzer, *Just and Unjust Wars,* 53.

[38] John Locke, *The Works of John Locke: A New Edition*, ed. Rod Hay (London, England: McMaster University Archive of the History of Economic Thought, 1823), 107.

[39] Walzer, *Just and Unjust Wars,* 54.

[40] Ibid., 55.

one side has a distinct military disadvantage but desires a first strike or feels that a preemptive strike is justified.[41] Some legal writings, most notably the *Tallinn Manual*, consider only the physical effects of a cyber-operation: if the effects are comparable to a non-cyber-attack, then it may be considered an armed attack.[42] While this is an excellent starting point for identifying aggression, very few cyber-attacks will "look like" a physical armed attack in their results. A bomb leaves a large crater, while a cyber-attack may leave all equipment in place but in a non-working status. Evaluating these attacks from Walzer's Legalist Paradigm and determining if an attack violates the natural rights of a state in the form of political sovereignty and territorial integrity, its "life, liberty, and property," will help clarify whether these cyber-attacks that may not leave a "smoking hole" constitute aggression.

Many cyber-attacks are attacks on the political sovereignty of a state. The right of a people to be free from foreign "control and coercion"[43] is the keystone of political sovereignty. In a conventional war ideal, this would seem to mean physical occupation or perhaps even an assassination of a leader by a foreign nation, although if "assassination tends to become the norm of political affairs--indeed, civil politics would thus crumble into barbaric plots and conspiracies (as did Rome in its last centuries) in a race to gain power and mastery over others rather than to forge justifiable sovereignty."[44] In the world of cyberspace, attacks may take many forms with the intent of coercing and controlling the targeted group with behavior change. In the extreme, a cyber-attack could be used to install a government favorable to an adversary. This is a circumstance to which a liberal democracy would be especially vulnerable. In other cases, this could take the form of an attack to terrorize a population in the way it institutes or enforces laws.

Recently, a foreign entity tried to use cyber operations to coerce a corporation not to market a product it had created. In November 2014, the computer network at Sony Entertainment Pictures was penetrated by hackers. These hackers, calling themselves the "Guardians of Peace" demanded that Sony stop the release of *The Interview,* a comedy critical of North Korean leader Kim Jong Un. If Sony released the film, then the Guardians of Peace would publicize documents and emails embarrassing to Sony officials and employees. The FBI attributed the attack to the North Korean government and confirmed that it was in response to the film.[45] While this example is directed at a private sector company, government officials—especially elected officials—could be just as, if not more, vulnerable to such embarrassing revelations.

Consider the 2007 Estonian Distributed Denial of Service where online systems in Estonia were rendered useless in a cyber-attack.[46] This attack was a response to political action to move a memorial to Russian soldiers from World War II. While the attack was never fully attributed to anyone

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[41] Many Just War theorists (although not all) consider a preemptive strike justifiable, although both sides will likely disagree in any specific case. Arguing that a cyber attack is a justified as a preemptive move is difficult unless it *directly* prevents some form of aggression.

[42] Schmitt, *Tallinn Manual,* 45.

[43] Walzer, *Just and Unjust Wars,* 89.

[44] Alexander Moseley, "Just War," http://www.iep.utm.edu/justwar/.

[45] Oliver Laughland, "FBI Director Stand by Claim that North Korea was Source of Sony Cyber-Attack," *The Guardian Online,* January 7, 2015, http://www.theguardian.com/world/2015/jan/07/fbi-director-north-korea-source-sony-cyber-attack-james-comey.

[46] Beal defines a Distributed Denial of Service as follows: "DDoS is a type of DOS attack where multiple compromised systems are used to target a single system causing a Denial of Service (DoS) attack. Victims of a DDoS attack consist of both the end targeted system and all systems maliciously used and controlled by the hacker in the distributed attack. According to . . . eSecurityPlanet, in a DDoS attack, the incoming traffic flooding the victim originates from many different sources – potentially hundreds of thousands or more. This effectively makes it impossible to stop the attack simply by blocking a single IP address; plus, it is very difficult to distinguish legitimate user traffic from attack traffic when spread across so many points of origin." See Vangie Beal, "DDoS Attack – Distributed Denial of Service," http://www.webopedia.com/TERM/D/DDoS_attack.html.

specifically (it originated in Russia, but it was not clear if the attack was the act of individuals or sponsored by the Russian government), it was a clear attempt to coerce the Estonian government and people to change their intended action by outside individuals, a clear assault on the internal political sovereignty of Estonia.[47]

Regardless of whether or not Russia actually perpetrated the cyber incursion on the U.S. Democratic National Committee in an attempt to influence the 2016 Presidential election, the event clearly demonstrates the need to prepare for similar eventualities.[48] Cyber-attacks may be used to indirectly influence (most likely) or directly alter the internal workings of a state. As technology inserts itself as a vehicle for the democratic process, an ill intended actor could use technology to influence the political process through direct means. It would be conceivable that a cyber-attack could actually change the outcome of an election with an aggressor installing a government favorable to itself. In the 2016 election, caucus chairs in both Iowa and Nevada reported results using a specially designed Microsoft smartphone application.[49] Imagine the chaos that would follow if a vote count was changed. The faith in decisions for a nation would be shaken severely, especially in a democracy that relies on the consent of the people to follow the rule of law rather than being ruled by an authoritarian government. Any of these examples, in the proper circumstances, could represent an attack on the political sovereignty of a state and therefore, aggression against them.

The clearest form of aggression is a violation of territorial integrity. While the prototypical ideal of a violation of territorial integrity would be an invasion with great armies crossing borders, it is not simply about the possession of land. Territorial integrity is a function of national existence: the "coming together of a people that establishes the integrity of a territory."[50] In the earlier analogy about a house being robbed, territorial integrity is about the safe space a nation creates for itself. When a cyber-attack occurs, it threatens that safe space. Just as in our own homes we assume we are safe from intrusion, we should be able to assume that activities that occur within our state will be allowed to continue. If that safe space is violated, then the method used to perform the intrusion is of less concern than the intrusion happening in the first place.

In remarks to the United States Cyber Command Interagency Legal Conference, Harold Hongju Koh referenced

> [c]ommonly cited examples of cyber activity that would constitute a use of force include, for example, (1) operations that trigger a nuclear plant meltdown, (2) operations that open a dam above a populated area causing destruction, or (3) operations that disable air traffic control resulting in airplane crashes.[51]

While Mr. Koh was discussing these attack in a legal sense, he chose examples that are clear uses of force, but do not involve a direct violation of territorial integrity in the sense of foreign invaders. On the other hand, they are still violating Walzer's "safe space" concept. As one begins to explore less

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[47] Joywang, "The 2007 Estonian Cyberattacks: New Frontiers in International Conflict," *On Cyber War-Freshman Seminar 43Z-Internet Law*, blog entry posted December 21, 2012, https://blogs.harvard.edu/cyberwar43z/2012/12/21/estonia-ddos-attackrussian-nationalism/.

[48] Amanda Taub, "D.N.C. Hack Raises a Frightening Question: What is Next?" *New York Times*, July 29, 2016, http://www.nytimes.com/2016/07/30/world/europe/dnc-hack-russia.html

[49] Emily Cadei, "Iowa Caucuses Go High Tech," *Newsweek Online,* January 8, 2016, http://www.newsweek.com/iowa-caucuses-go-high-tech-412958; Mario Trujillo, "Nevada GOP to Report Caucus Results With Smartphones," *The Hill Online,* February 22, 2016, http://thehill.com/policy/technology/270257-nevada-gop-to-report-caucus-results-with-phone-and-pictures.

[50] Walzer, *Just and Unjust Wars,* 57.

[51] Harold Hongju Koh, "International Law in Cyberspace," *Harvard International Law Journal* 54 (December 2012): 4, http://www.harvardilj.org/wp-content/uploads/2012/12/Koh-Speech-to-Publish1.pdf.

clear examples in terms of violence, the domestic analogy becomes more important. Nations should be able to expect that property, equipment or possessions are not in jeopardy[52] when fairly acquired and safe within a state's territory.

A recent example of a cyber-attack destroying property is the Stuxnet virus: a cyber operation against Iranian nuclear enrichment centrifuges. The virus consisted of malware that replicated itself on computers and media with which it came in contact. The virus was limited in duration and number of times it would replicate, and it searched for a specific combination of software on the infected computer in order to target the specific controllers for the Iranian centrifuges. When the conditions were met, the virus caused the centrifuges to spin out of control, thereby destroying them and the uranium they were enriching. Ryan Jenkins describes this not as an invasion of physical space, but rather an invasion of Iran's *cyber territory*.[53] While this may be confusing at first glance, it follows the idea of the safe space: digital infrastructure is the cyber territory that should be regarded in the same fashion as physical territory. The expectation is that property (whether the individual's property or the state's) should be safe within these territories, much as Walzer's analogy of territorial integrity is the collective right of a home's resident to not expect her possession to be in jeopardy. Jenkins also compares this destruction to a special warfare-style raid on the facility.[54] The circumstance that the territory was invaded by electronic instructions on a computer rather than individuals with weapons is less important than the safe space that was violated.

## Proportionality of Ends and Last Resort

As one state violates the sovereignty of another and the victim of aggression considers a response, the "good" of the response must be compared to the "wrong" inflicted. Positive outcomes must be considered in terms of the overall effect: not simply from the perspective of the state pursuing the action.[55] In other words, a state may not wage war for any triviality. While this concept holds for responding to cyber-attacks, the difficulty lies in applying the ideals directly. If an attack is simply a nuisance: a Denial of Service attack that makes the internet run slowly, it is hardly proportional to opt for war simply because life is made difficult. The problem of proportionality is ever present, but cyber exacerbates the concern. Decisions to go to war are clearer when counting bodies, but become less so when deciding if it permissible to destroy infrastructure, causing suffering, or killing people simply because electronic data was manipulated on a computer. Responses are less clear when results look like a physical attack, but no loss of life happens: a power supply is taken down, the banking or financial institutions are destroyed, the water supply is polluted, or aircraft are grounded because they cannot be controlled safely. All of these are effects of attacks that could happen with a physical attack or by using electronic means. In any of these cases the means of the attack is less important than the effect on a population: attacks in cyberspace must be framed in terms of their effects, rather than the means used. Additionally, since the proportionality clause is concerned with ends desired compared to evils present, the actors must consider the degree to which cyber-attacks are ongoing and if any retaliation would stop attacks. Furthermore, will retaliation prevent future attacks? While concerned about proportionality regarding the short term effects of a response, one must also consider the long term effects. Will an immediate response lead to a larger war?

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[52] The assumption is that there is not a declared state of war. If a declared state of war exists, then the use of violence is legal and to be expected.

[53] Ryan Jenkins, "Is Stuxnet Physical? Does It Matter?" *Journal of Military Ethics* 12, no. 1 (2013): 72.

[54] Ibid.

[55] Stanford Encyclopedia of Philosophy, "War."

The means of response may change how any response is perceived. If one state is considering a physical response to any attack, then this decision to wage war must not be taken lightly. While the ends must be proportional, war should also not be the first choice: an essential *jus ad bellum* condition is that war must be a last resort. If killing in war is abhorrent, one must ensure that no other appropriate response exists. In many modern conflicts, the parties involved are at tensions for some time prior to any actual conflict. Orend describes the simplest definition: "when it seems the last practical and reasonable shot at effectively resisting aggression."[56] Orend's conception is direct, but it leaves much to the judgment of the actors with very little guidance. Walzer discusses the idea of last resort in the context of preemptive attacks, but he gives a clear framework that aligns nicely with the Legalist Paradigm and, by extension, just cause. "States may use military force in the face of threats of war, whenever the failure to do so would seriously risk their territorial integrity or political independence."[57] While Walzer's definition still requires some degree of reasoned judgment, it outlines parameters: if action is not taken, would an actor commit aggression, or continue to commit it in the case of ongoing attacks?

From the perspective of the cyber domain, if an attack is ongoing, and the only way to stop that attack is through a physical response as opposed to cyber defense, then it becomes an acceptable case of last resort, an emerging act of aggression that cannot be stopped otherwise. On the other hand, in the absence of continuing aggression in the cyber domain, the decision is more challenging. Would failure to act leave political sovereignty or the safety of cyber territory under threat in a reasonable horizon? If the answer is no, then any response is unlikely to pass the test of last resort.

## Conclusion

For a leader who is responsible for the collective rights of their population, a decision to initiate an act of war, especially one that changes the character of a conflict from a cyber-war to a physical one, cannot be taken lightly. Leaders must decide when it is both moral and legal to respond physically to a virtual attack. A slight change in the perspective will clarify matters. Walzer's logic and reasoning clarifies the ideas of territorial integrity and political sovereignty resulting in a more tangible approach. When the cyber domain is viewed as cyber territory, and the effects are considered in relation to their effects on Walzer's description of a state's "safe space" (territorial integrity) or ability to govern itself (political sovereignty), a leader can articulate when it is appropriate to attack another nation after being victimized in the cyber domain.

As technology continues to advance, the ability of aggressors, whether nation states or individuals, to attack other nations with nothing but electronic means will continue to increase. The effects of such attacks will have more and more profound consequences to the victims, even in the absence of death and destruction. Nations will need to continue to determine how best to respond to such attacks. The most elemental question in future world of cyber-attacks will be whether or not these attacks are an affront to political sovereignty and/or territorial integrity. If the determination of "just cause" is affirmative, then an option to use physical force could justifiably be on the table. Fulfilling these two criteria does not alleviate the responsibility for adherence to the rest of Just War Theory, rather they present a most useful perspective for analyzing an appropriate response.

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[56] Ibid.

[57] Walzer, *Just and Unjust Wars,* 84.
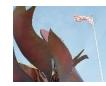
# Terminating Conflict with the Islamic State

Benjamin R. Jonsson

The Islamic State continues to cede territory in Syria and Iraq. Exploring effective means of ending—without inadvertently prolonging—the conflict is critical to minimizing the threat to U.S. interests over the long term. That the Islamic State would simply disappear in response to coalition efforts is very unlikely: Al Qaida in Iraq was nearly eradicated by the end of 2009, but it later grew into the virulent Islamic State. The United States must now anticipate how the demise of the Islamic State's caliphate in Syria and Iraq will cause the organization to adapt and survive.

As the conditions on the ground in Syria and Iraq shift in favor of non-Islamic State factions, American strategy must shift as well. In order to minimize the extent to which the Islamic State continues to threaten U.S. interests, the United States must co-opt Islamic State fighters, thereby draining some of the organization's strength. A viable U.S. strategy should include three elements: creating entry points into the political process for Islamic State militants, maintaining military pressure on the Islamic State, and undermining the appeal of the Islamic State's narrative.

## Bringing Islamic State Members into the Political Process

Excluding the Islamic State from the Vienna process helped world powers achieve some notable outcomes: agreement on the broad framework for a political transition in Syria and the implementation of a partial ceasefire., It, also, however, communicated to Islamic State militants that they had no options regarding a future in Syria—and, by extension, Iraq—other than to continue fighting for the survival of the organization. Though it may seem counterintuitive to consider incorporating Islamic State militants into the political process, transforming the relationship with these adversaries is critical to minimizing their enduring threat to Syria and to the rest of the world.

Policy discussions about ways to effectively deal with adversaries flow out of core theoretical paradigms, statements of "the basic assumptions, concepts, and propositions employed by a school of analysis."[1] In international relations, paradigms help not only to explain observations, but also to

*Benjamin R. Jonsson (M.S.S. United States Army War College) is a Lieutenant Colonel in the United States Air Force. An earlier version of this article, completed under the direction of Dr. Christopher H. Hamner, earned Third Place in the 2016 Chairman of the Joint Chiefs of Staff National Defense and Military Strategy Essay Competition hosted by National Defense University Press.*

[1] Joseph S. Nye, Jr. and David A. Welch, *Understanding Global Conflict and Cooperation,* 8th ed. (New York: Longman, 2011), 55.

analyze emerging puzzles. In 2012, for example, the Obama administration quietly endorsed negotiations with the Taliban as a means to hasten the end of the U.S. war in Afghanistan.[2] Working with an adversary in this fashion may seem somewhat counterintuitive, but the decision was drawn from within the realist paradigm in which neither permanent friends nor permanent enemies exist, only permanent interests. Thus, if ongoing negotiations with the Taliban help to protect U.S. interests at the lowest possible cost, the bargaining is beneficial.[3] Similarly, if allowing Islamic State militants to participate in the political process minimizes their threat to U.S. interests and preserves U.S. power, then it makes sense to do so.

Although such reasoning may, at first, seem diametrically opposed to perspectives from outside the realist paradigm, some unexpected compatibility exists. Those operating from a primarily liberal paradigm, for example, might bristle at the idea of cooperating with Islamic State militants whose values and goals are antithetical to international norms. But even liberalists would agree that engagement, generally speaking, can help to moderate behavior. Those from the constructivist paradigm would likely agree, believing that any umbrage with allowing Islamic State militants into the political processes is socially-constructed, and that attitudes about who should be "in" and who should be "out" can be shifted.[4] History demonstrates the wisdom of this position: The Oslo Accords and the Northern Ireland peace process are poignant examples of how national attitudes shifted on both sides and overtime negotiations became acceptable.[5]

U.S. administrations have reflected different paradigms in dealing with insurgents and terrorist groups. Ronald Reagan's famous statement during a 1980 Presidential debate with Jimmy Carter that "there will be no negotiations with terrorists of any kind" became U.S. policy.[6] In the succeeding decades, however, U.S. administrations (including Reagan's) have had both open and secret dealings with terrorist organizations at the discretion and direction of the President.[7]

Providing entry points into the political process for the Islamic State need not put them on equal footing with Syrian opposition groups in negotiating Syria's political transition. But offering Islamic State militants a voice in Syria's future has the potential to fragment the Islamic State itself. Militants join the Islamic State for a variety of reasons; their reasons for leaving the organization may vary widely, too.[8] The Vienna process should outline criteria through which Islamic State militants can be a part of Syria's future, including accepting the political process and joining the ceasefire. This opening could encourage tribes and other groups that have joined the Islamic State to break off, thus undermining the size and strength of the organization, particularly as it comes under increasing military pressure.

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[2] Glenn P. Hastedt, *American Foreign Policy* (Lanham, MD: Rowman & Littlefield, 2015), 263.

[3] Nye and Welch, *Understanding Global Conflict*, 56.

[4] David Dessler and John Owen, "Constructivism and the Problem of Explanation: A Review Article," *Perspective on Politics*, no. 3 (September 2005): http://www.academia.edu/5131253/Constructivism_and_the_Problem_of_Explanation_A_Review_Article.

[5] Eamonn O'Kane, "Anglo-Irish Relations and the Northern Ireland Peace Process: From Exclusion to Inclusion," *Contemporary British History* 18 (Spring 2004): http://homepage.univie.ac.at/herbert.preiss/files/OKane_Anglo-Irish_relation_and_the_peace_process.pdf.

[6] Fredrick Ellison and Janine Di Giovanni, "Dear ISIS, We Need to Talk," *Newsweek Online*, July 3, 2015, http://www.newsweek.com/dear-isis-we-need-talk-349806.

[7] Ibid.

[8] Patrick Tucker, "Here's Why People Join ISIS," *Defense One*, December 8, 2015, http://www.govexec.com/defense/2015/12/heres-why-people-join-isis/124300/?oref=d-dontmiss.

## Continued Military Pressure

The coalition military effort should continue to pressure the Islamic State, and the Islamic State must recognize that violence is the only alternative to political settlement. While the history of successful negotiations with insurgents is mixed, war-weariness and mutually hurting stalemates have often preceded negotiations.[9] Military force should be used to drive militants toward settlement. But military force without a political alternative will lead to a protracted conflict. Regardless of the paradigm that guides the policy discussions, terminating the conflict with the Islamic State will require identifying conditions that describe the desired future environment. How the Islamic State, or what remains of it, responds to those conditions will be a key feature of the new security situation in Syria.

If Islamic State militants see their struggle as purely existential, without any safety in disarmament or prospect for amnesty, then fighting to the death becomes the optimal strategy. Following the loss of territory, surviving fighters will go underground (more likely for those recruited locally) or move to other nations (more likely for foreign fighters). In either case, Islamic State militants will continue to kill their opponents and destabilize communities where they operate. Successful military pressure on the Islamic State that reduces its control over territory could thus drive some militants toward political settlement, *if* the door is open. Continued military pressure will help undermine the Islamic States' core appeal to Sunni Muslims in Syria and Iraq.

## Undermining the Islamic State's Appeal

Two key themes of the Islamic State's narrative and appeal are its military strength and the success of the caliphate—ideas that appear prominently in the Islamic State's social media outreach.[10] The United States needs to challenge both themes by employing its own information campaign. Local forces, when supported by U.S. special operations teams and airstrikes, can erode the Islamic State's narrative of military strength and the success of its caliphate when coupled with an enhanced American information campaign. Tweets with links to pictorial reports and videos *in Arabic* that highlight Islamic State losses could serve as a powerful information weapon when propagated through hashtags and retweets by Arab media. While the United States has been engaged in counter-messaging efforts on social media, it has produced very little of this type of content, even after Islamic State losses of Ash Shaddadi and Palmyra. Pictorial and video reports that highlight these losses in Arabic could be developed by State Department's new Center for Global Engagement and their planned third-party network of experts.[11] The United States should expect the Islamic State to persist in actions and policies that portray an image of military strength, even if it has to fabricate actual military successes—something it has already done.[12] Undermining the Islamic State's military strength narrative would help damage its credibility with the local population and simultaneously reduce the appeal for militants to remain with the Islamic State, further eroding its momentum.

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[9] Colin Clarke and Christopher Paul, *From Stalemate to Settlement* (Santa Monica, CA: RAND Corporation, 2014), http://www.rand.org/content/dam/rand/pubs/research_reports/RR400/RR469/RAND_RR469.pdf.

[10] Ben Jonsson, "Islamic State 2016 and America's Underperformance on the Twitter Battlefield," *The Strategy Bridge*, March 8, 2016, http://www.thestrategybridge.com/the-bridge/2016/3/8/islamic-state-2016-and-americas-underperformance-on-the-twitter-battlefield.

[11] U.S. Department of State, "A New Center for Global Engagement," January 8, 2016, http://www.state.gov/r/pa/prs/ps/2016/01/251066.htm; Kimberly Dozier, "Anti-ISIS-Propaganda Czar's Ninja War Plan: We Were Never Here," *The Daily Beast,* March 15, 2016, http://www.thedailybeast.com/articles/2016/03/15/obama-s-new-anti-isis-czar-wants-to-use-algorithms-to-target-jihadis.html.

[12] Jonsson, "Islamic State 2016 and America's Underperformance on the Twitter Battlefield."

Efforts to undermine the Islamic State's appeal should also target gaps in their social contract. Highlighting abuses of power by the Islamic State as they struggle to make payroll and replace fighters, and showing the disparities in living conditions between foreign fighters and locals, would weaken the Islamic State's narrative of successful governance.[13] The approach should help expand the efforts of Syrian activists, producing Arabic interviews with fleeing refugees and defectors. The United Arab Emirates and the U.S.-supported Sawab Center have produced video reports that could serve as a model for this type of content.[14] The effort should also employ metadata software to better tailor and target its message content. Though no panacea exists for reversing the Islamic State's powerful appeal, these efforts would weaken the Islamic State's portrayal of strength via social media and success in ways that have yet to be fully exploited.
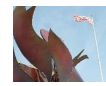
## Conclusion

Isolating Islamic State militants from the political process will almost certainly guarantee a protracted insurgency in Syria and drive the Islamic State to increase its operations in other under-governed spaces around the globe. Failing to consider how Islamic States militants could be incorporated into a political transition is a mistake. As foreign ministers shuttle between their capitals and Vienna, they must consider criteria that will allow interested parties, including adversaries to participate in Syria's future, even as military pressure and enhanced counter-messaging efforts decrease the appeal of joining and continuing to fight for the Islamic State. As former Israeli Foreign Minister Moshe Dayan once observed, "If you want to make peace, you don't talk to your friends. You talk to your enemies."[15] Allowances for former adversaries will help enable future peace.

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[13] Mara Revkin, "ISIS' Social Contract," *Foreign Affairs Online*, January 10, 2016, https://www.foreignaffairs.com/articles/syria/2016-01-10/isis-social-contract.

[14] Sawab: United Against Extremism, Twitter post, https://twitter.com/sawabcenter?lang=en.

[15] State of Israel Ministry of Foreign Affairs, "Interview with Foreign Minister Dayan in *Newsweek*- 17 October 1977," October 17, 1977, http://www.mfa.gov.il/mfa/foreignpolicy/mfadocuments/yearbook3/pages/58%20interview%20with%20foreign%20minister%20dayan%20in%20newswe.aspx.

# Russia's Information Operations Themes: NATO under Attack

## Geoffrey W. Wright

The deployment of U.S. and other Allied forces to the Baltic States and Poland since Russia's 2014 annexation of Crimea sparked a sharp Russian international informational response.[1] By actively seeking to shape opinion throughout Europe and the United States, state-owned media outlets such as "Sputnik News" and "Russia Today" (or "RT") are an integral component of the Russian Federation's larger plan: to use media and information technologies as a means of fracturing the NATO alliance and weakening belief in NATO's utility. Russia views NATO as a primary threat and specifically identified NATO as such in its 2014 National Military Doctrine.[2] To combat Russia's attempts to subvert the alliance, U.S. leaders must understand Russian integration campaigns and information themes especially as they relate to and impact the Army Operating Concept vision of regionally-engaged Army forces "shaping security environments and preventing conflict" in Europe.[3]

Russian-state owned media use two main information operations themes. The first, portrays U.S. and NATO activity as provocative, damaging to Russia's legitimate security interests, and dangerous for European states. The second, depicts Western activity as ineffective, damaging to Eastern European Allies, and largely reflective of the Allies' self-interests. This essay briefly examines Russian information operations, demonstrates how these themes have been developed in Russian state-owned international media outlets, and identifies the impact of these efforts and offers recommendations for U.S. officials.

*Geoffrey W. Wright (M.A. Harvard University) is a Lieutenant Colonel in the United States Army. An earlier version of this article, was written under the direction of Professor Philip M. Evans while the author was an Army War College Fellow at Tufts University.*

[1] Operation Atlantic Resolve commenced in April 2014 with the deployment of units of the 173rd Airborne Brigade from Italy to Poland, Lithuania, Latvia, and Estonia. Since then, U.S. Army Europe has maintained a consistent presence of U.S. Army units training with East European counterparts. In addition, other service components based in Europe have worked with EUCOM to boost rotational presence and exercises in the region, and expanded activities to Central and Southeast European Allies. "OAR" is not a NATO operation, but operates within the spirit of NATO assurance measures.

[2] Olga Oliker, "Russia's New Military Doctrine: Same as the Old Doctrine, Mostly," *The RAND Blog*, blog entry posted January 15, 2015, http://www.rand.org/blog/2015/01/russias-new-military-doctrine-same-as-the-old-doctrine.html.

[3] U.S. Army Training and Doctrine Command, *The U.S. Army Operating Concept*, TRADOC Pamphlet 525-3-1 (Fort Monroe, VA: U.S. Army Training and Doctrine Command, October 31, 2014), 17.

## The Russian Federation View

Both military and civilian policy thinkers in Russia have emphasized the critical importance of information operations (or "information warfare" in the Russian military parlance) at the strategic and operational levels. This focus on the importance of "informational-psychological aspects"4 to meet Russian strategic goals, builds on the longstanding Russian tradition of using deception, propaganda, and covert action as means for achieving the desired political ends.5

The perceived importance of political-military utility of Russian information operations/warfare is demonstrated in the 2010 Russian Military Doctrine which cited information warfare as a tool "to achieve political objectives without the utilization of military force" and to "shape a favorable response from the world community."6 General Valery Gerasimov, Chief of the General Staff, stated "the information space opens wide asymmetrical possibilities for reducing the fighting potential of the enemy" by "influencing state structures and the population."7 This military understanding of "information as a weapon" has become part of the "mainstream discourse" of peacetime Russian political life—both for the defense of the State and for achieving state purposes abroad.8 That those state-purposes are currently targeting NATO makes dissecting Russia's information operations themes imperative.

## Russian Themes in Eastern Europe

The first theme used by Russian Federation international media outlets argues that U.S.-led Allied military activity puts European security at risk by threatening Russia. This theme attempts to divide the U.S. from its Western European Allies by blaming the U.S. for a disproportionate response to events in Ukraine. Kremlin sources deny official Russian involvement in eastern Ukraine but state that NATO "military activity [so] close to Russia's borders has had a destabilizing effect on relations across the continent."9 Media coverage highlights Western military activity in the Baltics—including modernization and procurement by regional Allied states themselves10—as regularly occurring in close proximity to the Russian border, near St. Petersburg, for example. Such reporting contributes to a broader narrative of NATO "encirclement" of the Russian state.11 In addition, the Russian media emphasis on menacing terminology like "build-up" and "war games," effectively transforms and

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4 Timothy L. Thomas, "The Russian View of Information War," in *The Russian Armed Forces at the Dawn of the Millennium*, ed. Michael H. Crutcher (Carlisle Barracks, PA: U.S. Army War College, February 2000), http://fmso.leavenworth.army.mil/documents/Russianvuiw.htm.

5 Merle Maigre, *Nothing New in Hybrid Warfare: The Estonian Experience and Recommendations for NATO* (Washington, DC: German Marshall Fund of the United States, February 12, 2015), http://www.gmfus.org/publications/nothing-new-hybrid-warfare-estonian-experience-and-recommendations-nato.

6 President of the Russian Federation, *Military Doctrine of the Russian Federation* (Moscow, Russia: The Kremlin, February 5, 2010), http://carnegieendowment.org/files/2010russia_military_doctrine.pdf.

7 Valery Gerasimov, "The Value of Science in Prediction," 2013 in Mark Galeotti, "The Gerasimov Doctrine and Russian Non-Linear War," *In Moscow's Shadow Blog*, blog entry posted July 6, 2014,

https://inmoscowsshadows.wordpress.com/2014/07/06/the-gerasimov-doctrine-and-russian-non-linear-war.

8 Peter Pomerantsev and Michael Weiss, "The Menace of Unreality: How the Kremlin Weaponizes Information, Culture, and Money," *The Interpreter Magazine*, November 2014, 13, http://www.interpretermag.com/wp-content/uploads/2014/11/The_Menace_of_Unreality_Final.pdf.

9 "NATO Ramps Up War Games with 'Baltic Pirahna' War Games in Lithuania," *Sputnik News*, October 2, 2015, http://sputniknews.com/europe/20151002/1027912390/nato-baltic-piranha-military-exercises-lithuania.html.

10 "Russia Believes Expansion of Estonia's Amari Air Base to be Provocative," *Sputnik News*, October 20, 2015, http://sputniknews.com/europe/20151020/1028812189/estonia-airbase-nato-russia.html.

11 See, for example, "Net of U.S. Military Bases Encircles the Globe Threatening Security," *Sputnik News*, September 17, 2015, http://sputniknews.com/military/20150917/1027123901.html.

elevates for media audiences the modest size of U.S. and NATO units into a threat located on Russia's borders.

NATO—not Russia—then, is depicted as responsible for forcing Russia's military activity and modernization in the region. In the Russian view, this modernization is portrayed as merely a response to U.S. action. A Russian Foreign Ministry spokesperson described NATO's activity in Eastern Europe as "undoubtedly an attempt to provoke Russia into taking counter-measures."[12] The prepositioning of a battalion-sized unit of U.S. armored vehicles in the Baltics appears in Russian international media as "most aggressive step from the Pentagon and NATO since the Cold War" leaving Russia with no other option than to build up the necessary "might and means" to secure western Russian locations.[13]

Lastly, Russian statements accuse the United States of taking self-interested actions to maintain its own leading position in Europe and doing so at the expense of other NATO Allies. President Putin stated in an interview with an Italian newspaper that the United States does not want a Russian "rapprochement" with Europe, as such an event would deprive the U.S. of the "external enemy" it needs to maintain primacy.[14] A series of European and American figures in Russian international media argue that economic sanctions against Russia damage European interests far more than American.[15] In all such instances, the Russian goal is to disrupt the unity between the U.S. and its Western and Central European Allies.

In a second theme, state-controlled Russian media tries to demonstrate to East European audiences that U.S. and NATO efforts are largely if not purely driven by self-interest. This theme asserts that the Baltic States are suffering because U.S.-led "hysteria" forces the relatively poor Baltic States to spend money on U.S. made weaponry and other expensive security enhancements.[16] This effort to justify NATO's existence relies on creating a false perception of danger and leaves the residents of the Baltic States with nothing but ruined economies and low-wage jobs.[17] A journalist from the state-funded RIA news services speculated that NATO's "protection" plan would eventually force the Baltic States to accept more refugees from outside Europe, a highly controversial political topic within European states.

Russian media also attempts to undermine the credibility of regional Western military by describing training and exercise activity as halfhearted, incompetent, or insufficient. Sputnik News has tried to demonstrate that U.S. Stryker vehicles are "outgunned" by Russian equipment.[18] Russian journalists regularly accuse the U.S. and other NATO Allies of sending poorly maintained or outdated equipment to support their "self-centered national interests" in the Baltic States.[19] Russian media

[12] "NATO Military Buildup Near Russian Borders 'Provocative'-Source," *Sputnik News,* June 25, 2015, http://sputniknews.com/europe/20150625/1023846705.html.

[13] "U.S. Deploys Heavy Weaponry to Europe, Russia to Respond Adequately," *Sputnik News*, June 15, 2015, http://sputniknews.com/europe/20150615/1023380992.html.

[14] Quoted in David Klion, "U.S. Prepares to Arm Eastern Europe, But NATO Remains Divided," *World Politics Review*, June 15, 2015, http://www.worldpoliticsreview.com/trend-lines/16002/u-s-prepares-to-arm-eastern-europe-but-nato-remains-divided.

[15] "U.S. Sanctions on Russia Will Have a 'Deleterious Effect on E.U. States'," *RT.com*, July 31, 2015, https://www.rt.com/op-edge/311272-russia-sanctions-us-eu/.

[16] "Estonia to Spend 40 Million Euro Hosting Additional NATO Forces," *Sputnik News*, February 19, 2015, http://sputniknews.com/europe/20150219/1018484081.html.

[17] "US Attempt to Scare Russia with War Games a 'Laugh'," *Sputnik News*, July 23, 2015, http://sputniknews.com/politics/20150723/1024957323.html.

[18] "US Stryker Carrier Outgunned by Russian Armored Vehicles," *Sputnik News*, July 24, 2015, http://sputniknews.com/us/20150724/1025008576.html.

[19] "Main NATO Member States Seek Their Interests in the Baltic States, Nothing More," *Sputnik News*, October 17, 2015, http://sputniknews.com/europe/20151017/1028675346/us-britain-germany-in-baltics.html.

also further their carefully constructed narrative by repeating Western press coverage of alleged difficulties in U.S. contingency planning efforts.[20] Russian media, therefore, simultaneously make the case that Eastern European states are being tricked into thinking that: (a) they need NATO protection/intervention, (b) those states are not, in fact, well protected by NATO, and (c) their governments and citizenries are significantly worse-off than they were before NATO intervention and U.S. deployments.

## Moving Forward in the Information Environment

Russia actively exploits differences of opinion and differences of interests among NATO members. Given that Europe itself is divided along a number of political fault lines, this approach has potential for impressive success. A near-decade of challenging economic conditions has given political space and increasing electoral success to a number of political parties and leaders in Central and Western Europe. These parties are skeptical of the value of European unity and even of some of Europe's current nation states. The recent Brexit referendum in which the United Kingdom voted to leave the European Union demonstrates that this discontent has increasingly sharp political teeth.[21] West European public opinion also reflects a great deal of ambivalence about committing national military forces to support a NATO member under attack. [22] Within Eastern Europe, a similar skepticism about the likelihood of West European support rests alongside concern about any development that portends a potentially short commitment of U.S. and Allied forces to the region.[23]

Russia recognizes the political potential of these divisions, which are trumpeted by Russia's international media outlets. Former Supreme Allied Commander General James L. Jones in testimony to Congress cited Russia's support for extremist European political parties as part of Russia's strategy to "sow division" within NATO.[24] Critics accuse Russia of being engaged in an even broader strategy to provide financial support to "euroskeptical" and separatist parties across Central and Western Europe.[25] Even without overt financial support, many of these parties openly support the Russian point of view about Eastern Europe, and Russian international media work carefully to both highlight division while concurrently unearthing news to cause controversy and debate over NATO. Russian information operations are opportunistic and seek to exploit Europe's complex political environment.

Measuring the direct impact of Russian media is difficult,[26] and "countering" Russian information campaigns in democratic states is exceptionally challenging, as many of these matters are properly sovereign national issues.  Efforts to resist Russian information operations also opens

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[20] "NATO Unable to Defend Baltics Due to Mooses, Vast Swamplands," *Sputnik News*, September 7, 2015 http://sputniknews.com/europe/20150907/1026701017/nato-unable-to-defend-baltics.html.

[21]Brian Wheeler and Alex Hunt, "Brexit: All You Need to Know about the UK Leaving the EU," *BBC News*, September 1, 2016, http://www.bbc.com/news/uk-politics-32810887.

[22] Katie Simmons, Bruce Stokes, and Jacob Poushter, "NATO Publics Blame Russia for Ukrainian Crisis but Reluctant to Provide Military Aid," *PewGlobal.org*, June 10, 2015, http://www.pewglobal.org/2015/06/10/nato-publics-blame-russia-for-ukrainian-crisis-but-reluctant-to-provide-military-aid.

[23] Jarno Limnell, "Will NATO Defend All Members Equally?" *Breaking Defense*, September 2, 2014, http://breakingdefense.com/2014/09/will-nato-protect-all-members-equally.

[24] Ashish Kumar Sen, "A Three-Pronged Strategy to Deal with Putin," *Atlantic Council New Atlanticists Blog*, blog entry posted October 8, 2015, http://www.atlanticcouncil.org/blogs/new-atlanticist/a-three-pronged-strategy-to-deal-with-putin.

[25] Leonid Bershidsky, "Putin's European Allies Don't Need His Money," Bloomberg View, June 9, 2016, https://www.bloomberg.com/view/articles/2016-06-09/putin-s-european-allies-don-t-need-his-money.

[26] Pomerantsev and Weiss, "The Menace of Unreality," 15. However, it is fair to say that measuring the daily audience of RT, as opposed to its availability, is difficult. See also Katie Zavadsky, "Putin's Propaganda TV Lies about Its Popularity," *The Daily Beast*, September 17, 2015, http://www.thedailybeast.com/articles/2015/09/17/putin-s-propaganda-tv-lies-about-ratings.html.

NATO to cynical charges that NATO itself supports the dissemination of "propaganda." The ability of Russian information operations to work in tandem at rapid speed with developments across Europe, however, should prompt U.S. officials to take Russian capabilities seriously. Strategic leaders in the United States should counter Russian information themes while promoting NATO unity in their own interactions with press and public officials.

American officials should underscore that U.S. and Allied military activity in Eastern Europe is a collective response of democratic states in defense of broader transatlantic democratic values, in response to Russia's illegal annexation of Crimea and intervention in eastern Ukraine. Highlighting the contributions and qualities of Allied host nations and contributing nations will effectively underscore the collective nature of the Allied response. U.S. leaders should not shy away from discussing our military commitments, but rather should highlight the quality, logistical complexity, and duration of U.S. commitment. Lastly, maintaining tight connections to host nation public affairs offices and U.S. Embassy officials and developing crisis communications procedures will allow the distribution of accurate information in a regionally appropriate manner to Allied audiences.

## Conclusion

Information operations are a core activity of Russia's efforts to divide NATO and weaken European and American resolve to protect Eastern European Allies. The current themes will likely guide Russia's efforts in the near future. Estonian President Toomas Hendrik Ilves believes that Europe is in a "conflict of values" with Russia.[27] American military leadership and presence can serve as a vital bridge to maintaining essential transatlantic relationships in the face of Russian informational efforts to break NATO.

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[27] Quoted in Joerg Forbrig, "Introduction," in *A Region Disunited? Central European Responses to the Russia-Ukraine Crisis* (Washington, DC: German Marshall Fund of the United States, February 2015), www.gmfus.org/file/4250/download.

# The United States Army War College

The United States Army War College educates and develops leaders for service at the strategic level while advancing knowledge in the global application of Landpower.

The purpose of the United States Army War College is to produce graduates who are skilled critical thinkers and complex problem solvers. Concurrently, it is our duty to the U.S. Army to also act as a "think factory" for commanders and civilian leaders at the strategic level worldwide and routinely engage in discourse and debate concerning the role of ground forces in achieving national security objectives.

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|  | The Strategic Studies Institute publishes national security and strategic research and analysis to influence policy debate and bridge the gap between military and academia. |
|  | The Center for Strategic Leadership contributes to the education of world class senior leaders, develops expert knowledge, and provides solutions to strategic Army issues affecting the national security community. |
|  | The Peacekeeping and Stability Operations Institute provides subject matter expertise, technical review, and writing expertise to agencies that develop stability operations concepts and doctrines. |
|  | The School of Strategic Landpower develops strategic leaders by providing a strong foundation of wisdom grounded in mastery of the profession of arms, and by serving as a crucible for educating future leaders in the analysis, evaluation, and refinement of professional expertise in war, strategy, operations, national security, resource management, and responsible command. |
|  | The U.S. Army Heritage and Education Center acquires, conserves, and exhibits historical materials for use to support the U.S. Army, educate an international audience, and honor Soldiers—past and present. |