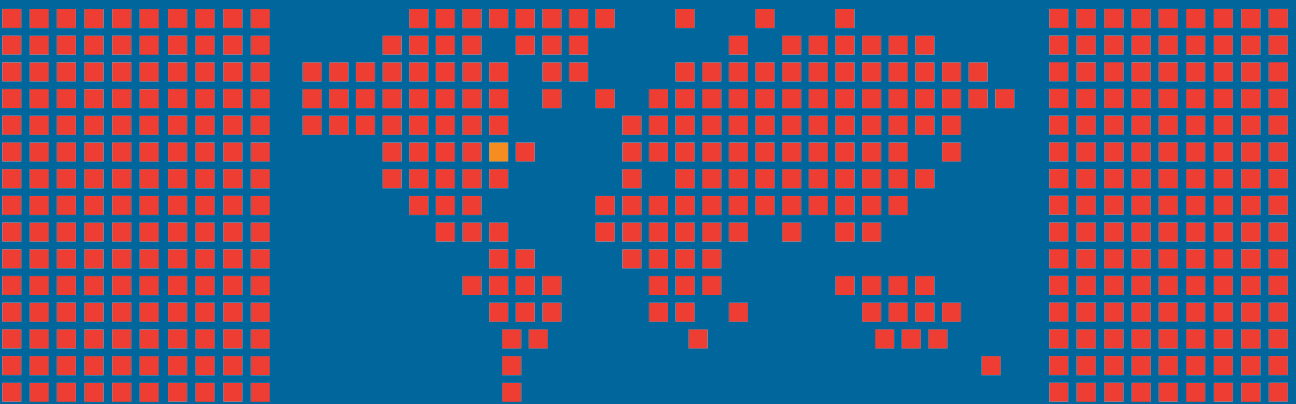


The Journal on Terrorism and Security Analysis

SPRING 2015 | 10th EDITION

CONTRIBUTORS

Lukas Bretzinger
Steven Bucci
Maura Cremin
Katrin Heger
Jeff Howell
Dorothy Martucci
Cameron Reed
Emily Schneider
Sascha Schuster
Ivan Sascha Sheehan
Kitty Veress
Elizabeth Weingarten



Journal on Terrorism and Security Analysis

10th Edition (Spring 2015)

Syracuse University
Syracuse, NY 13244

Editorial Staff

Editor-in-Chief

Chris Moritt

Managing Editors

Jason Stanley

Charlie Mansour

Assistant Editors

Kyle Lundin

Clark Fonda

Drew Pappert

Harlan Weir

Cody Carbone

Dinesh Sharma

Tony Iozzo

Associate Editors

Brittani Howell

Aleksander Fersuson

Steven Nelson

Christopher Folk

Charles Midkiff

Klaxon C Wilson

Christopher Kim

Shannon Kane

Jansher Rasa

Kory Crichton

Dan Haverty

Blake Vierra

Christopher Conrad

Casey Koorring

Darienn Powers

Ben Kopp

Ronald Lee

Zachery Lucas

Matt Crouch

Luke Marzaloes

Paige Donegan

Jesse Champion

Caleb Merrill

Contents

| | |
|-----------------------------------------------------------------------------------------------------------------------------------------------|----|
| DARK CYBER: Some Downsides of Technologies..... | 1 |
| <i>Dr. Steven Bucci & Maura Cremin</i> | |
| Piracy Averted: A Defense of Private Maritime Security Companies as a Critical Part of Breaking the Piracy Cycle in the Gulf of Aden | 13 |
| <i>Jeff Howell, Jr. Esq.</i> | |
| Balancing Ends, Ways, and Means: The Case for Reviving Support for “Regime Change from Within” in Iran..... | 27 |
| <i>Dr. Ivan Sascha Sheehan</i> | |
| The Treason Imperative: Terror as Treason..... | 37 |
| <i>Dorothy Martucci, Esq.</i> | |
| Is Boko Haram Likely to Move Towards More Effective Governance? | 52 |
| <i>Katrin Heger</i> | |
| Out of the Mountains? A Quantitative Approach to Political Violence and Urban Spaces..... | 67 |
| <i>Lukas Bretzinger, Cameron Reed, & Sascha Schuster</i> | |
| Beyond the Jihadi Bride: Our Distorted Understanding of Women’s Motivations to Join Extremist Organizations..... | 79 |
| <i>Emily Schneider & Elizabeth Weingarten</i> | |
| European Jihadi-Tourism: A Review on European Foreign Fighters and Europe’s Counterterrorism Responses in 2014 | 85 |
| <i>Kitty Veress</i> | |
| Contributors..... | 93 |

Message from the Editor-in-Chief

The Journal on Terrorism and Security Analysis (JTSA), now in its 10th edition, is a student run publication administered by a joint team of dedicated students from both the Syracuse University College of Law and the Maxwell School of Citizenship and Public Affairs. We strive to publish quality papers from national security experts and practitioners as well as from students with a strong interest in the field. The Student Association on Terrorism and Security Analysis (SATSA) is a student-run program dedicated to a high level of academic scholarship and research by not only producing this journal but also with our conference held in the spring each year.

I believe this edition represents the true diversity that comprises the field of national security and terrorism related studies. We were fortunate enough to receive papers from current Masters students as well as from past College of Law graduates. In addition to these former students, we were able to receive submissions from some very established experts in the field. In keeping with this editions theme of diversity I think you will find that the subject matter covers a lot of varying material. To the public the field of national security ebbs and flows with whatever the hot issue is presented in the media, one day it could be Somali piracy and when that falls out of popularity then conversation moves on to topics like cyber security. I think this edition represents that all issues that concern our public safety are relevant conversation at any time. The world is a small place and security issues truly do represent a global threat with new problems emerging every day. It is our hope to try and bring academic scholarship and awareness to as many issues as we can.

The JTSA staff would like to thank the faculty and staff of the Institute for National Security and Counterterrorism (INSCT) without whom this journal would not be possible. Their continued financial and inspirational support is what allows us to do this. I would like to especially thank Martin Walls whom I have come to know as an invaluable resource. Additionally, we would like to thank Melanie Anne Stopyra, the Director of the Syracuse Office of Publications and their staff, who was willing to work with tight deadlines and an inexperienced Editor-in-Chief. I would also like to note that the front cover image "World Icon" by Juan Pablo Bravo was made available courtesy of The Noun Project. Again I cannot thank INSCT, the JTSA Staff and SATSA enough.

I can only hope that the reader enjoys our journal as much as we have enjoyed being a part of its production.

Sincerely,

Chris Moritt
Editor-in-Chief

DARK CYBER: Some Downsides of Technologies

Dr. Steven Bucci & Maura Cremin



Introduction

In the last half century, the human experience has changed at a more rapid pace than at any time in history. This is the result of many factors, but one stands out above all the rest: the rise of the Internet. With the development and explosive growth of the Web, the entire nature of human interaction has changed. Never before have people been as closely connected as they now are. At any given moment, it

is completely feasible that business owners in London are speaking to clients in Seoul, that residents of Chicago are sending emails to relatives in Florence, that professors at a university in Texas are sending assignments to students studying in Peru. I live in Washington, D.C., teach for Long Island University, with students serving in combat in Afghanistan. These sorts of exchanges are instantaneous, and they bring our world closer together than it has been at any point.

Certainly, there is a vast array of benefits that come from this sort of technology. The ease and speed with which individuals can communicate across great distances is perhaps one of the most obvious. Additionally, the increased ability of individuals to access information has increased public knowledge, and has contributed, in many instances, to keeping governments, businesses, and non-profits responsible for their actions. Cyber technologies have improved the efficiency of businesses, thereby, lowering costs and prices for consumers while providing more private sector jobs. A huge number of our technological advancements, from transportation to energy to communication involve, and have been improved in some way by, the influence of cyber technology. The gains that society has received from this sector are really almost impossible to quantify.

But cyber technology has a dark side. This cannot be ignored. In spite of all of the benefits that have come with it, huge risks have accompanied them. With the incredible ease of access to information that the Internet provides, it also diminishes secrecy, both for individuals and for governments which may have very good reason for keeping information classified. It is also becoming increasingly centralized, while at the same time allowing for increasing user anonymity, which could potentially have a very stultifying effect on democracy and accountability. Perhaps most dangerous is the fact that the almost universal reliance of the planet's humanity on cyber technology has rendered us all vulnerable to any failure of the system.

These vulnerabilities are very real, and they represent huge considerations. However, they are not a reason for a Luddite call to turn away from cyber. Cyber technologies are an important part of modern societies, and the benefits that they provide are even greater than the risks they entail. Nevertheless, Americans must be aware of the dangers of cyber, and be prepared to take measures, both privately and publicly, to protect against any damaging failure of our cyber infrastructure. Vigilance, not regression, must be the rallying cry of those concerned for the future of cyber security.

Privacy: An Archaic Concept?

One of the most significant potential dangers of cyber technology is the risk that it poses to individual privacy. Many tools that are commonly used by businesses as well

as government have the potential, if used improperly, to lead to severe infringements on individual privacy. However, all of these technologies also serve valuable needs of both the private and public sector. Therefore, they cannot and should not be eliminated. So that the public can be vigilant against possible abuse of these tools, their potential weaknesses must nevertheless be recognized. The national debate spurred by the NSA/Snowden revelations was stark evidence that we still need to work on this area.

Data Mining

One of the foremost tools that has the potential to be manipulated in a manner harmful to public interest is data mining¹. Sometimes known as knowledge discovery, data mining occurs when computer technology is used to sift through enormous quantities of data in order to extract meaning from that data.² This technology allows the user to convert data into information about future trends and to predict future outcomes. It is used by businesses for a number of purposes, from targeted marketing to fraud detection.³

Data mining has also been used by the government. Intelligence agencies, for instance, often scour databases searching for patterns of behavior that indicate a potential threat to national security. Data mining has been a part of the U.S. government's arsenal for a very long time.⁴ From the early 1990s, the Department of the Treasury used data mining to detect money laundering schemes.⁵ The U.S. military used this technology to target terrorist networks, as well as paramilitary organizations in Bosnia during the period of engagement there.⁶ However, after 9/11, the need for this technology reached new levels. When the Defense Advanced Research Projects Agency (DARPA) established the Total Information Awareness (TIA) program, which would have allowed the government to analyze vast quantities of data in order to search for potential terrorists, the negative reaction was overwhelming. By 2004, the TIA program budget was eliminated.⁷

The story of the TIA illustrates the fears that Americans have about the potential dangers of the government going through their private information. Such fears are reasonable. Data mining gives the government the ability to look through and analyze the most private information citizens have. Improperly used, it is certainly feasible that such technology could be used to manipulate the public, or, on a more extreme note, could be a source of population control. It was exactly these sorts of concerns that led to public infuriation about this program in the past, and that should cause skepticism about this technology in the future.

Mobil Computing

A further concern has been raised in regards to the improvements in GPS technology as they are used in mobile devices. With most of the world glued to their cell phones, the presence of GPS technology means that almost any individual can be found at any moment. This technology certainly has many benefits. It is incredibly useful in allowing law enforcement to find lost or missing persons, or to track down criminals. Such options are extremely beneficial to law enforcement and to society as a whole.

1 Jason Frand, "Data Mining: What is Data Mining," University of California Los Angeles, <http://www.anderson.ucla.edu/faculty/jason.frand/teacher/technologies/palace/datamining.htm>.

2 Frand, "Data Mining."

3 *Ibid.*

4 Jeffrey A. Hart, "The Controversies over Data Mining and Warrantless Searches in the Wake of September 11." Paper prepared for a panel on "Information Access, Power, and Rights," at the annual meeting of the International Studies Association, San Francisco, California, March 25-29, 2008, https://scholarworks.iu.edu/dspace/bitstream/handle/2022/3109/Hart_isa08_datamining.pdf?sequence=1.

5 Hart, "Controversies over Data Mining," 5.

6 *Ibid.*

7 *Ibid.* 1.

With that said, there are also very serious concerns about this kind of technology. The tracking technology in most cell phones is as precise as many GPS systems, if not more so.⁸ Unfortunately, cell phone security is also virtually non-existent. This makes it very easy for individuals to track down others, provided they have their target's cell phone number and some basic knowledge of how cell phone networks work.⁹

The potential for privacy violation extends beyond the capabilities of the individual. Current privacy laws prevent law enforcement officials from tracing an individual's cell phone without a warrant.¹⁰ However, many fear the consequences of government failure to comply with this law.¹¹ This technology certainly facilitates government officials listening to the private conversations of citizens, and the minimal security protections on mobile devices only means that it will be easier for them to do so. In this way, even the technologies that are a most ubiquitous part of our daily lives have the potential to harm liberty if they are abused.

Deep Packet Inspection

Deep Packet Inspection is another technique that has provoked controversy in recent years. Deep Packet Inspection occurs when an Internet service provider uses powerful software to scan the data that passes through its network.¹² As the data that is sent through the Internet is sorted into packets, Deep Packet Inspection analyzes each packet for information, such as the sender, the recipient, and what the packet contains.¹³ This tool can be highly valuable. Internet service providers typically use it for reasons like stopping the spread of viruses and preventing illegal downloads. With a court order, law enforcement officials can also use Deep Packet Inspection to intercept criminal communication.¹⁴

However, like the previously discussed tools, Deep Packet Inspection has a dark side. Internet service providers have the capability to go through all of any given individual's personal information and use it for any purpose they desire.¹⁵ Law enforcement officials have the capability to view a citizen's Internet activity, or to interfere with it as they see fit.¹⁶ The idea that the government as a whole could use this technology to minimize the effect of their citizens' online activity and undermine Internet privacy is hardly far-fetched. It is exactly this technique that is used in places such as China to prevent people from accessing the marketplace of ideas that exists on sites like YouTube.¹⁷

Though we are fortunate not to live in an autocracy like that of China, the fact remains that should the American government ever abuse this technology, it has the power to undermine our democracy. Not only could it stop citizens from accessing sites the government happened to dislike, it could also be used to profile and monitor individuals on the basis of their Internet activity. With techniques such as Deep Packet Inspection,

8 Andy Greenberg, "Reminder To Congress: Cops' Cellphone Tracking Can Be Even More Precise Than GPS," *Forbes*, May 17, 2012, accessed August 1, 2012, <http://www.forbes.com/sites/andygreenberg/2012/05/17/reminder-to-congress-cops-cellphone-tracking-can-be-even-more-precise-than-gps/>.

9 Justin, Scheck, "Stalkers Exploit Cell Phone GPS," *Wall Street Journal*, August 4, 2010, accessed August 1, 2012, <http://online.wsj.com/article/SB10001424052748703467304575383522318244234.html>.

10 Greenberg, "Reminder to Congress."

11 *Ibid.*

12 Alex Wawro, "What is Deep Packet Inspection," *PCWorld*, February 1, 2012, accessed August 1, 2012, http://www.pcworld.com/article/249137/what_is_deep_packet_inspection.html.

13 Wawro, "Deep Packet Inspection."

14 *Ibid.*

15 *Ibid.*

16 *Ibid.*

17 See *Ibid.*

the anonymity of the Internet becomes far less certain. If anything, it has the power to be a weapon that serves to further empower government over its citizens.

Ubiquitous Wi-Fi

An often unrecognized threat to individual liberty lies in the movement to ubiquitous Wi-Fi. Currently, many cities are considering implementing infrastructure that would allow for nearly universal access to the Internet for their citizens.¹⁸ In many ways, this is the height of cyber freedom. It means that any citizen, at any given point in time, can expect to access the Internet. For many, the appeal of this kind of access in a world of 24/7 connectivity will be predominantly beneficial. Yet in spite of the possibility that this will make the Internet an even more democratic place, ubiquitous Wi-Fi presents some very real dangers.

Public Internet is notoriously unsafe, and nothing said or done online can be guaranteed to remain unnoticed.¹⁹ As public Wi-Fi becomes increasingly common, it will likewise become increasingly common for the government to be able to access the communication that takes place in that sphere. In a society that is virtually addicted to web connectivity, it is hardly inconceivable that the Internet would serve as a giant 'honeypot,' in which citizens going about their daily cyber lives would be unaware of the fact that the government was tracking their movements.

In this way, the phenomenon of ubiquitous Wi-Fi is like Deep Packet Inspection, in that, while it provides real benefits, it has the potential to enhance governments' ability to monitor their citizens. Unfortunately, while many individuals are quick to perceive the dangers of a technique like Deep Packet Inspection, in spite of the benefits it offers, ubiquitous Wi-Fi often manages to seem more innocuous. It may seem as though this would only enhance the democratic nature of the Internet. Yet the dangers which plague ubiquitous Wi-Fi reveal the way in which any increased reliance on the Internet has the potential to harm citizens' liberty.

Ultimately, tactics such as Data Mining and Deep Packet Inspection, and social realities such as cell phone usage and ubiquitous Wi-Fi, all indicate the ways in which the government can use the Internet to harm privacy. For all of the benefits that these aspects of our cyber world provide, they do have very real downsides. As the world becomes increasingly virtual, it is inevitable that it will become less private. The dangers that ensue from that reality very much threaten individual privacy. This fact demonstrates with undeniable clarity the importance of monitoring the government's use of such technology in order to prevent it from infringing upon the people's reasonable expectations of privacy.

Moving Towards a Single "Web Master"

In addition, and in many ways related to issues of diminishing privacy on the web, are questions about increasing Internet centralization. From the rise of cloud computing to the dominance of web portals, the Internet is becoming increasingly concentrated. This has the potential to increase efficiency and security on the Internet. At the same time, however, like any concentration of power, cyber centralization has the potential to reduce the very democratic nature of the web itself, by taking many choices away from users. As this phenomenon continues, it is possible that it may severely curtail the freedom that is the hallmark of the Internet.

18 Nishanth Sastry, Jon Crowcroft, and Karen Sollins "Architecting Citywide Ubiquitous Wi-Fi Access," Cambridge University: 1, <http://www.cl.cam.ac.uk/~nrs32/pubs/hotnets6.pdf>.

19 Nathan Gilliat, "Why Government Monitoring is Creepy," Social Enterprise Today, February 17, 2012, accessed August 1, 2012, <http://socialenterprisetoday.com/blog/posts/why-government-monitoring-is-creepy/>.

Cloud Computing

One of the foremost centralizing technologies, which is growing in popularity and capability, is cloud computing. Cloud computing is the provision of storage space and computing capacity on the part of Internet Service Providers. In this way, cloud computing is less a technology than a strategy for providing IT services. There are different types of cloud computing.²⁰ Private clouds occur entirely within the firewall of an individual user. As such, they tend to be somewhat secure. They are also highly virtualized and tend to combine a significant amount of IT infrastructure in their resource pools.²¹ Public clouds are less secure. In fact, anyone with a network connection and a credit card can access a public cloud.

This combination of accessibility and centralization is convenient in many ways.²² It tends to be more cost-effective than traditional means of IT service provision. It also tends to be considerably more efficient than such means. Furthermore, if used responsibly, cloud computing offers real security benefits to users. Internet Service Providers have a very real incentive to ensure that their systems are as well-protected as possible, and typically have greater resources to devote to web security. In this way, firms and individuals do not have to try to provide their own web security, but are able to leave it to experts.

However, as with any centralizing phenomenon, cloud computing also poses very serious risks. Among these are issues of privacy.²³ Unlike most datacenters, cloud providers are subject to subpoenas, surveillance, and data seizures. Moreover, as warrants are served to the Internet providers, who have no obligation to inform their customers, individuals are not guaranteed to know when the government has accessed their personal information. As such, the information that users store under cloud computing is increasingly subject to government monitoring. Ultimately, much of the privacy policy for cloud networks is determined by the network itself, and is therefore subject to change.²⁴

Furthermore, despite the security benefits which come with cloud computing, there are serious risks inherent in any highly centralized system. Should a breach of security occur within a cloud network, the effects could be catastrophic. As users surrender control of their network to the Internet Service Provider, they become dependent on that provider for their cybersecurity. When breaches are made, therefore, it is likely that they will affect more people than they would if the networks remained decentralized. It is for reasons such as these that, according to a survey carried out by the Information Systems Audit and Control Association (ISACA), 45% of IT providers believe that the risks of cloud computing outweigh the benefits, as opposed to only 17% who believe that the risks outweigh the benefits.²⁵ Though these benefits certainly exist, cloud computing offers perhaps the clearest indication of the caution that should be used in approaching enhanced cyber capabilities, especially where those capabilities serve to further centralize the Internet.

20 Jon Brodtkin, "Cloud Computing, Demystified," *NetworkWorld*, May 18, 2009, <http://www.networkworld.com/supp/2009/ndc3/051809-cloud-faq.html> (August 1, 2012)

21 Ibid.

22 "Risks and Benefits of Cloud Computing," Privacy in the Cloud, <http://www.princeton.edu/~ddix/risks-benefits.html> (August 1, 2012)

23 Jamey Heary, "The Dangers of Cloud Computing," *NetworkWorld*, May 28, 2012, <http://www.networkworld.com/community/blog/dangers-cloud-computing>, (August 1, 2012)

24 Primavera De Fillipi, Smari McCarthy, "Cloud Computing: Legal Issues in Centralized Architectures," *VII International Conference on Internet, Law and Politics*, Spain, 2011, http://halshs.archives-ouvertes.fr/docs/00/71/30/48/PDF/IDP_-_Centralized_architectures.pdf (August 1, 2012)

25 "Risks and Benefits of Cloud Computing"

Limited Internet Portals

Additional centralization concerns are raised in response to issues regarding Internet portals. These portals are web sites that unite a widely disparate group of sources in a cohesive way. In addition to offering search engine features, these sites usually provide services such as databases, email, news, and entertainment. They represent a growing segment of Internet usage, but certain web portals are particularly significant. Facebook, YouTube, AOL, and Google are just a few of the web portals that dominate most web users' Internet time.

As in the case of cloud computing, the centralization inherent in internet portals has very real benefits. It undoubtedly enhances efficiency and consumer satisfaction by providing Internet users with easy access to a wide variety of key services. The appeal of that service is very clearly reflected in the almost daily use which Internet portals can boast. In fact, many of the most popular Internet portals are used so frequently that their names have become verbs in their own right. For instance, it is not uncommon to hear someone say that they will 'Facebook' their friend, 'Google' their latest research topic, or 'YouTube' their favorite music video. It is hard to imagine, therefore, that Internet portals are going away anytime in the near future.

With that said, these websites exhibit many of the same centralizing techniques that cloud computing does. With those come many of the same risks. The centralization of information within Internet portals means that data held within them is more easily accessed by those who may wish to see it, whether for good or evil purposes. Currently, many government entities are using portals to communicate with citizens.²⁶ While that has the potential to serve citizens by increasing the level of communication between government and citizens, it is conceivable that it could be used in other ways.

As the personal data of Internet users is increasingly concentrated in fewer and fewer key sites, whether Google, AOL, Facebook, or others, it is easier for entities that wish to monitor their citizens to know where to look. Given the incredible popularity of certain web portals, such as those listed above, there are fewer websites that the government needs to track in order to garner an incredible amount of information about the lives of its citizens. The access of such sites could virtually strip away Internet users' anonymity and privacy. Few people even think of this when sending email from their private email accounts or posting potentially inflammatory comments on Facebook. But the reality is, the abuse of Internet portal technology would give those in government who might wish to follow their citizens' activity an incredibly easy method of doing so.

Ultimately, the increased centralization of the Internet is largely a result of a demand for increased efficiency and convenience on the Internet. In the case of cloud computing, it also has the potential to provide real security benefits. However, as with any form of centralization, the concentration of Internet activity also has a disturbing tendency to decrease the web's very democratic nature. As Internet Service Providers levy an increasing amount of control over cyber activity, the ability of those who would abuse the Internet to monitor individuals increases exponentially. As the anonymity of the web decreases, its potential to serve as a tool of abusive governments increases. While that is not necessarily the intended, or even predominant result of these capabilities, the risks they pose to democracy, and even security, are severe enough that they should be watched with constant vigilance and accepted only cautiously.

26 Jamie Yep, "Web Portals Still Relevant But User Engagement Needed," *ZDNet*, June 28, 2011, <http://www.zdnet.com/web-portals-still-relevant-but-user-engagement-needed-2062300953/> (August 1, 2012).

Should the “Wild West” Remain Wild?

An additional concern that has become quite prominent in regard to discussion of the Internet has been the issue of anonymity vs. accountability. One of the Internet’s most striking features has been the ease with which people can operate without traceability. This has allowed the web to be, in many ways, a bastion of true freedom of speech, for the ability to comment freely on issues has allowed individuals to express their opinions without fear. At the same time, however, this anonymity has also drastically reduced web users’ sense of accountability. The ability to say anything without any conceivable consequences has led many to abuse the liberty of the web. This tendency has very real ramifications.

Anonymity/Lack of Accountability

Certainly Americans are very inclined to support anything that promotes freedom of speech. After all, our nation owes its independence in part to an anonymously published pamphlet, *Common Sense*. However, complete anonymity on the web can lead to devastating results. Since it is possible to post comments on the Internet without one’s name being attached to them, many individuals lose touch with any sense of accountability for their actions. One result of this has been the massive increase in cyber bullying and abusive comments in recent years.²⁷ Since the Internet takes away the humanity of the person on the other end of cyberspace, it becomes very easy for the commenter to indulge in vitriolic and hateful attacks.²⁸ The personal toll that such behavior takes on its victims is, and some of the tragic consequences of this behavior, have very clearly highlighted the dangers of an absence of accountability on the Internet.

Yet the risks of anonymity extend beyond the realm of high school students seeking new venues to torment their peers. In fact, the lack of accountability that ensues from an anonymous Internet has nation-wide implications. Under the cover of a false name, or no name, it is entirely conceivable that an individual could spread rumors that could influence public or government activity.²⁹ For instance, if an individual used an anonymous Internet forum to implicate an elected official in some sort of scandal, this could influence the outcome of an election. Such rumors spread by an anonymous web user would not necessarily have any impact on their source, and as such, could be subject to very little scrutiny or verification. If such Internet rumors managed to have a significant impact on the American electoral process, this could be stultifying to the democratic process.

Even more concerning is the potential that Internet anonymity allows for malicious acts intended to undermine the American government. Among the gravest concerns is the threat of Internet hackers who can leak highly sensitive information without fear of reprisal. The role that anonymity plays in this process is made clear by the fact that the hacktivist group that recently released 1.7 GB of Department of Justice archive material actually goes by the name Anonymous.³⁰ It is precisely their ability to infiltrate government sites and release information without detection that allows such groups to survive. Not only do these sorts of links have a chilling effect on our relations with

27 Christopher Wolf, “Sunday Dialogue: Anonymity and Incivility on the Internet”, *New York Times*, November 20, 2011 http://www.nytimes.com/2011/11/27/opinion/sunday/sunday-dialogue-anonymity-and-incivility-on-the-internet.html?_r=4&pagewanted=all.

28 Sheril Kirshenbaum, “Pseudonymity, Anonymity, And Accountability Online,” *Wired*, July 25, 2011, <http://www.wired.com/wiredscience/2011/07/accountability-online/> (August 1, 2012).

29 “On the Anonymity “Versus” Accountability Debate,” *Future Internet Assembly*, http://www.future-internet.eu/uploads/media/Accountability_vs_anonymity.pdf (August 1, 2012).

30 Matthew J. Schwartz, “Anonymous Leaks 1.7 GB Justice Department Database,” *InformationWeek*, May 22, 2012, <http://www.informationweek.com/news/security/attacks/240000778> (August 1, 2012).

foreign intelligence services, it can in fact put field operative's lives at risk.³¹ Yet the anonymity of the Internet allows a few technologically skilled individuals to sabotage American interests, often with no reprisal.

However, it is unlikely that even if we accept these risks as significant enough to demand government action, it is unlikely that anonymity can truly be removed from the Internet. Based on the technology that we have, any imposition of Internet would require a massive, centralized bureaucratic structure to combat it. This would be hugely expensive and would expand government. Even so, it would be possible for hackers and criminals to avoid these agencies by using other peoples' computers or by routing their activities through multiple servers. In short, while Internet anonymity may pose some problems, there is not very much that can be done to stop it.

That may be the best possible news, though. After all, it must be remembered that the benefits of anonymity are also significant. The ability to speak openly on the Internet without fear of reprisal allows cyberspace to be an important venue for freedom of speech. If anonymity were to be removed from the Internet, it would severely curtail the spread of ideas, as many people would be afraid to express their opinions. It is often hard for Americans to fully appreciate this, as we have become so accustomed to a full protection of our First Amendment rights. However, in countries where such liberties are not guaranteed, the ability to speak openly on the Internet may be the only way for many individuals to ensure that their political thoughts can be widely communicated.

Ultimately, anonymity and the lack of accountability that it creates is largely an inherent part of the web. It does pose real problems, and they should all be taken seriously. To the degree possible, it is important that individuals and governments try to minimize these problems. Investments in cyber security, with the goal of preventing hacking, are perhaps the best starting point in minimizing the effects of Internet anonymity. However, any drastic reduction in the ability of Internet users to operate anonymously has the potential to do far more harm than good, and it is not a course of action that should be pursued lightly, if it is pursued at all. We must ultimately decide if the "cure" of reduced anonymity is worth the cost.

When Does the Help Become an Addiction?

It cannot be denied that the Internet has done a great deal to improve our lives. It has given us far greater access to information, increased the efficiency at which our world operates, and improved communication. So great are the benefits of web connectivity, that almost all aspects of our lives rely upon cyber technology in some way. Whether it is a building security system, a banking transaction, or even an elevator operation, virtually all individuals will utilize cyber technology in some capacity every single day. As the world becomes increasingly dependent upon the Internet, this technology will continue to represent a vulnerability that could be exploited by those who wish to do us harm

Dependency

There is no denying the fact that Internet technology is becoming an increasingly important part of our global existence. According to Ipsos Insight's annual The Face of the Web study, while Internet adoption is largely leveling off, the reliance on Internet-related technologies is growing.³² This means that although there are not necessarily many more individuals using the Internet than in past years, those that are using the Internet are using it in more and more aspects of their daily lives. With the growth in popularity of technology such as smartphones and iPads, this is hardly surprising. It is

31 Donald Rumsfeld, interview by Lou Dobbs, Host, Lou Dobbs Tonight, *Fox Business*, June 11, 2012.

32 "Internet Dependence Continues To Grow," RTO Magazine, May 31, 2006, (August 1, 2012).

currently possible to be connected to the Internet 24/7, and many people are taking advantage of this. This trend will only continue to increase as more venues for Internet access are opened. In fact, a perfect example of this trend is the previously discussed spread of ubiquitous wi-fi. As individuals become increasingly reliant on the Internet to live their lives, cyber technology will become an increasingly appealing target to those who would do them harm.

However, it is not only individuals that are increasingly connected to the Internet. Entire systems are also cyber-dependent.³³ Transportation, banking, and medicine are just a few areas that are increasingly reliant on the Internet as a part of their day-to-day functioning. And they are increasingly vulnerable to crime as a result. In fact, according to an FBI survey, every company polled experienced some sort of cybersecurity incident over the course of a three year period.³⁴ Criminals have found in the use of online banking, stock exchanges, and other business transactions an excellent opportunity for robbery, fraud, identity theft, and the like. In this way, the dependence of the private sector on the Internet has served as a facilitator of crime.

Perhaps even more concerning than the reliance of individuals and businesses on the Internet is the equally serious dependence of our government, especially our defense institutions, upon the web. Deputy Defense Secretary William J. Lynn III illustrated this reliance when he asserted that

“[j]ust like our national dependence, there is simply no exaggerating our military dependence on our information networks: the command and control of our forces, the intelligence and logistics on which they depend, the weapons technologies we develop and field – they all depend on our computer systems and networks. Indeed, our 21st century military simply cannot function without them.”³⁵

Given the dangers that individuals and the private sector face as a result of their dependence on cyber technology, it is terrifying to think of the potential vulnerabilities that exist as a result of the military’s reliance on the web. These concerns are very real. In fact, Forbes reported that over the course of the past ten years, multiple government breaches have occurred, including at the level of the Pentagon.³⁶ As government agencies, particularly those in the security and defense fields, continue to increase their use of, and reliance on, the Internet, the damage that could potentially result from such breaches will increase correspondingly. Thus the vulnerability resulting from our reliance upon cyber technology goes beyond threatening the individual to placing the defense of the nation at risk.

This threat is very real, and must be taken seriously. However, it must also be recognized that there are legitimate reasons for the movement of large segments of the public and private infrastructure to the cyber realm. Internet technology tends to be far faster and far more efficient than older technologies. In weighing the risks against the benefits of using this technology, individuals, businesses, and governments have usually found that what was to be gained by utilizing the Internet would do them more good than eschewing such technology. In spite of the security risks that exist in regards to cyber

33 “Cyber Terrorism and Cyber Operations,” Cyber Crime, 2012, <http://www.ecybercrime.com/2011/02/cyber-terrorism-and-cyber-operations.html> (August 1, 2012).

34 John Jorgensen, “The Statistics,” Infragard Tampa Bay Members Alliance, <http://infragardtampabay.org/CyberSecurity/tabid/57/Default.aspx> (August 1, 2012).

35 John J. Kruzell, “Cybersecurity Poses Unprecedented Challenge to National Security, Lynn Says,” U.S. Department of Defense News, June 15, 2009, <http://www.defense.gov/news/newsarticle.aspx?id=54787> (August 1, 2012).

36 Wade George, “The Disadvantages of Computer Technology,” eHow, http://www.ehow.com/info_8255796_disadvantages-computer-technology.html (August 1, 2012).

dependence, most people and organizations have chosen to maintain their Internet infrastructure. Unless catastrophic events disrupt the cost-benefit analysis, it is unlikely that this will change

For this reason, it is difficult to combat our society's Internet reliance. It is largely a function of technological progress, and will in all likelihood continue to proceed. However, as in the case of all of the threats discussed, vigilance is critical. The sheer amount of daily tasks that individuals, businesses, and government entities perform on the Internet must be recognized, and the risks of that reliance must be taken into account. Backup technology should be maintained where possible, in the event of a failure of cyber technology. However, this should not provoke a large-scale move away from Internet technology. After all, whatever the risks, the value of cyber capabilities is great, and cannot be discounted or dismissed.

Conclusion

Cyber Technology: Neither Good nor Evil

In considering the profound risks of cyber technology, and indeed any technology, it can be easy to lose sight of the equally significant benefits that come with such tools. Technology, after all, is just that: a tool. As such, it is morally neutral. It can be used for good or for evil. For instance, Adolf Hitler used the powerful communication capabilities of the radio to spew his despicable propaganda to a wide audience. At the same time, Franklin Delano Roosevelt used the exact same technology to help a wounded nation heal in the aftermath of a devastating attack and to inform a country at war of the actions being taken by its government. The radio itself is neither good nor evil, but was used by two different men to promote good and evil objectives. It is the same with cyber technology. Depending on how it is used, it has the ability to do terrible damage to individuals and nations alike or to make our lives easier, our society more productive, and our country stronger.

Moreover, the Internet is the result of the inevitable process of technological improvement. It cannot be un-invented, and its benefits cannot be forgotten by a world that takes advantage of them on a daily basis. This paper is not, then, a Luddite call for a return to a bygone age of blissful, computer-free, safety. Such a call would be useless, for there is no returning to a pre-cyber world. Nor should there be. After all, the lives of the vast majority of individuals have been greatly improved by the speed and efficiency with which the Internet allows them to live. However, this paper does call for caution, for an awareness of the dangers that come with the incredible boon of technology. That is not a useless effort, but a healthy discussion in which a free society must engage as it is affected by rapid technological development.

Cyber Threats

Cyber technology, with all of the boons it offers, has the potential to seriously interfere with a functioning democracy. The reduction in privacy which has resulted from the spread of the Internet, and conversely, the anonymity with which evildoers can operate in cyberspace, as well as the centralizing aspects of this technology, are all cause for concern. Moreover, the threats which result from these vulnerabilities are made exponentially more serious by virtue of the fact that society is becoming increasingly dependent on the Internet, as more and more aspects of our daily lives are in some way tied to this technology. This is, after all, the basis of the appeal of a cyber attack for potential criminals: such an attack has the potential to affect the lives of a vast majority of the world's population very rapidly. As such, the ability of our defense entities to protect the United States from cyber attacks is a matter of increasing strategic importance.

Yet criminals and terrorists are not the only ones with the capability to use the Internet to negatively impact the lives of a large number of people. Governments, in fact, are probably the most likely to use the power of cyber technology for questionable purposes. China, for instance, controls its citizens' Internet capabilities as a means of controlling the citizens themselves. The monitoring capacities which the Internet has given to governments allow autocracies to stifle dissent with ever-greater ease. It is for this reason that the ongoing debate seen in stable democracies like the United States with regard to the balance between security and liberty in cyberspace is so very healthy. It is absolutely critical that the public be aware of its government's Internet capabilities and that safeguards be set in place to ensure that those capabilities not be abused. That does not mean that the government should not use the Internet for national security purposes. It does, however, mean that any potential incursion of privacy allowed by government technology must be very carefully monitored in order to ensure that the fundamental rights of the people are not violated.

The Importance of Awareness

This would suggest the fundamental argument which this paper seeks to make. Awareness is the ultimate weapon which the public has to guard against the dangers posed by cyber technology, whatever their source. It is not possible or desirable to eschew cyber technology completely, but the abuse of such technology is serious, and should be treated accordingly. It is, therefore, important that private individuals, business leaders, and government officials seek to make themselves knowledgeable about the risks that exist on the Internet, and the signs that undesirable activity is occurring.

In the case of individuals, this may require taking steps to increase their knowledge about the dangers that exist on the web. It may require extra monitoring of their own Internet activities, and Internet-based assets, in order to ensure that they are not the victims of cyber crime. For businesses, this may involve significant investments in cybersecurity, including the hiring and training of recruits that are knowledgeable in the cyber field. For the government, this may mean oversight of the use of Internet technologies, especially those which have the potential to include incursions on the civil liberties of the citizen body. It may also mean extensive partnering with the private sector in order to improve the access of both parties to critical information in a manner that will improve the cybersecurity of both.

It is impossible to overstate the value of vigilance in combating the dark side of cyber technology. If Internet capabilities are acknowledged to be neither good nor evil, then it is up to everyone to guard against abuse of these tools. There are many concrete actions that can be taken at all levels of society to combat cyber threats, and those are certainly useful. However, in order to be effective, they rely upon the ability of citizens to recognize the dangers of the web. To prevent its use against them by either criminals or their own government, the best line of defense that individuals have is to be aware of the dangers inherent in the Internet technology on which they so heavily rely. This does not mean they should stop using that technology, or even drastically reduce it. However, should they become aware of the abuse of cyber capabilities by any entity, they should be prepared to take action to stop it, whether that means prosecuting cyber criminals or holding governments accountable for abuses of power. It is this sort of vigilance which will keep the threat of dark cyber firmly in check

Recommendations

As cyber technology continues to advance in the coming years, the U.S. should take the following steps to minimize the risks of dark cyber.

Facilitate increased information sharing.

Key to enhancing our cybersecurity is an increase in information sharing, both between government and the private sector and within the private sector.³⁷ Current laws are frustratingly ambiguous in regards to the sharing of information, and this has led many companies to err on the side of legal caution in avoiding sharing information. This has the potential for very dangerous ramifications. If the attacks of September 11, 2001 taught us anything, it is that stovepiping has very dangerous consequences, and it should not be imposed upon those facing cyber threats. Consequently, any future cybersecurity legislation should contain strong information-sharing provisions.

Enact strong oversight.

In addition to an increased flow of information, Congress should establish strong oversight provisions in order to prevent government abuse of cyber technology.³⁸ There may be, and often are, very good reasons for the government to operate in private networks, including the sphere of citizen activity on the Internet. However, such action should be taken cautiously, and with a great deal of scrutiny. Agencies that have to engage in any monitoring of the activities of private citizens should have to justify their actions. Ideally, the majority of this activity, as it is performed on civilian networks, should be conducted by civilian agencies, to the greatest degree possible.

Strengthen laws against cyber crime.

Congress should establish stronger laws in regards to the prosecution of those who would use the capabilities of the web for illegal purposes.³⁹ Currently, there is a lack of coherent legal action to be taken against those who commit crimes using the Internet. Stronger laws to deter cyber criminals, combined with better investigative tools are necessary to address this. This sort of common-sense approach to cybersecurity has the potential to greatly reduce the victimization of individuals by cyber criminals, and will significantly reduce the threat of dark cyber.

Closing Thoughts

It is important to remember that the risks of cyber technology can never be completely eliminated. Many of the risks discussed in this paper are an inherent part of the Internet. However, increasing the public's awareness of these risks, in addition to certain legislative action, can help to minimize these threats. That, then, should be the goal of policymakers seeking to keep the dark side of cyber at bay.

37 Paul Rosenzweig, "Cybersecurity Information Sharing and the Freedom of Information Act," testimony before Committee on the Judiciary, U.S. Senate, March 14, 2012, <http://www.heritage.org/research/testimony/2012/03/cybersecurity-information-sharing-and-the-freedom-of-information-act?query=Cybersecurity+Information+Sharing+and+the+Freedom+of+Information+Act> (accessed August 1, 2012).

38 Paul Rosenzweig, "10 Conservative Principles for Cybersecurity Policy," Heritage Foundation Backgrounder No. 2513, January 31, 2011, <http://www.heritage.org/research/reports/2011/01/10-conservative-principles-for-cybersecurity-policy?query=10+Conservative+Principles+for+Cybersecurity+Policy>

39 Paul Rosenzweig, "Cybersecurity Regulation — How Significant is the Threat?," Lawfare, July 6, 2012, <http://www.lawfareblog.com/2012/07/cybersecurity-regulation-how-significant-is-the-threat/> (August 1, 2012).

Piracy Averted: A Defense of Private Maritime Security Companies as a Critical Part of Breaking the Piracy Cycle in the Gulf of Aden

Jeff Howell, Jr. Esq.



Introduction:⁴⁰

Over the past two decades, Somali Piracy has grown from a small-scale regional problem into a self-perpetuating conundrum responsible for considerable costs; both in human lives lost and increased expenses for the global shipping industry. Despite the claims of the pirates themselves that their acts are defensive in nature, most attacks have the objective of hijacking large, fully laden shipping vessels, capturing their crews, and holding them hostage until lucrative ransom payments are paid by their owners. An entire insurance industry emerged to mitigate the risk surrounding these attacks and ransom payments were viewed for a time as the cost of doing business for shipping companies travelling the Gulf of Aden. However, many of these shipping and insurance companies, and other proponents of “business as usual” failed to consider the whole situation. They failed to consider the massive incentive these ransom payments provide to actors in a country with one of the lowest per capita incomes in the world. They also failed to consider the snowball effect of these payments, as additional financial resources went to increase the scale and efficiency of these attacks. And finally, they failed to consider that the proceeds of these attacks have also inevitably fallen into the hands of terrorist actors operating in Somalia such as Al-Shabaab. With all of these not-so-hidden costs, it should be clear to most observers that “business as usual” was unsustainable.

Enter the rise of Private Maritime Security Companies (PMSC). Slowly but surely, a small but growing group of private organizations began offering armed protection to shipping vessels traversing the Gulf of Aden. Suddenly the nefarious cycle of capture, ransom and release was dealt a decisively negative blow. In addition to correlative evidence that ransom payments and successful attacks have both declined since PMSC’s have become commonplace, industry leading PMSCs like the Trident Group are able to make the uncontested claim that today nearly all vessels traveling through the Gulf of Aden employ PMSC operators, and not a single ship has been lost in that region on their watch.

Despite the unquestionable efficacy relative to other counter-piracy efforts, the employment of armed guards has not been without its critics. Some say that the use of armed guards could “escalate violence, involve unlawful use of force, endanger innocent seafarers, or cause international incidents.”⁴¹ Others see the industry’s activities as “a new potential channel for the flow of arms and ammunition into the region.”⁴²

40 Jeff would like to thank Professor Tara Helfman, Syracuse University College of Law, for her mentorship and guidance throughout the preparation of this article. The opinions and representations expressed in this article are attributable to the author alone and do not reflect the opinions or stances of the Global Accountability Initiative or any other organization with which the author is, has been, or may become affiliated.

41 Yvonne M. Dutton, *Gunslingers on the High Seas: a Call for Regulation*, 24 Duke J. Com. & Int’l L. 107, 110 (2013).

42 Dan Harris and Dan Lieberman, “Pirate Attacks Down as Private Maritime Security Business Booms”, *ABC News*, Sep. 7, 2012, accessed May 7, 2014, <http://abcnews.go.com/Blotter/pirate-attacks-private-maritime-security-business-booms/story?id=16352840&singlePage=true>

Whatever their specific concerns, most critics posit that greater regulation by nation-states is needed to govern this new industry. In response to those critics this article aims to present the success of the industry in defense of a more *laissez-faire* approach. It will explain why the private maritime security industry is better situated than other response efforts – including naval task forces and criminal prosecution—to disrupt the financial flows of the pirate economy through *ex ante* prevention rather than *ex post facto* response. More specifically, private maritime security operators have altered the status quo of ransom and release, providing a critical disruption of the “Piracy Cycle” which has been running for more than a decade: a phenomenon whereby poverty and economic fluctuations motivate piratical acts which become increasingly effective as proceeds, such as ransom, provide better equipment and greater incentives. Finally, this article will answer some of the criticisms of PMSC activities by demonstrating how one industry-leading maritime security association has leveraged its unique expertise towards self-regulation policies that are at least as stringent as extant norms of international law. With all these questions answered, this article will endeavor to convince the reader that a robust, self-regulated private maritime security industry provides a response to the piracy problem, which is not only effective and practical, but also legal and ethical.

Part I: The Imperative: The Piracy Problem in the Gulf of Aden

A Brief History of the Piracy Problem:

Viewed against the long history of piracy on the high seas, the problem of Somali Piracy is a relatively recent development which can trace its origins to the mid 1990’s.⁴³ For most of its post-colonial history, the nation of Somalia has been in a state of turmoil and ongoing civil war exacerbated by extreme poverty and lack of resources.⁴⁴ The last functioning government in Somalia was led by President Mohamed Siyad Barre who seized power in a military coup in 1969⁴⁵ and was ousted in 1991⁴⁶. During his 22 year rule, one of the cornerstones of Barre’s diplomatic policy was to exchange the use of Somalia’s strategically valuable coastline to various foreign naval powers in exchange for hundreds of millions of dollars in military aid and weaponry.⁴⁷ When Barre’s government fell in 1991, the Somali military’s weapons caches were raided and distributed among the various clan militias that opposed him.⁴⁸ Since then, there have been 14 failed attempts to establish a central government in Somalia.⁴⁹ This condition ensured Somalia’s place at the bottom of the 2010 Failed State Index due to a pervasive lack of respect for the rule of law and a general inability to provide for the security of its citizens.⁵⁰ Together these factors have reduced Somalia to a lawless territory plagued with an abundance of unregulated small arms and military equipment.⁵¹

In addition to causing continuous instability, decades of armed conflict have relegated an already anemic Somali economy to total ruin. In 2012, the estimated per capita income

43 Christopher Daniels, *Somali Piracy and Terrorism in the Horn of Africa* (The Scarecrow Press, 2012), 35.

44 Martin Meredith, *The Fate of Africa: A history of the Continent Since Independence* (Public Affairs, 2011), 467.

45 Meredith, *The Fate of Africa*, 466.

46 *Ibid.*, 469.

47 Daniels, *Somali Piracy*, 17-18.

48 Meredith, *The Fate of Africa*, 470.

49 Sarah Percy & Anja Shortland, *The Business of Piracy in Somalia*, 36:4 J. of Strat. Stud., 541, 544 (2013).

50 Annemarie Middelburg, *Piracy in a Legal Context: Prosecution of Pirates Operating off the Somali Coast* (Wolf Legal Publishers, 2011), 17.

51 Percy & Shortland, *The Business of Piracy*, 544.

in Somalia was \$284 US, the fourth worst in the world.⁵² To add insult to injury, the collapse of the central government in 1991 encouraged foreign fishing vessels to pillage the rich fishing grounds off the Somali coast.⁵³ This approach had a devastating effect on local subsistence fishermen, many of whom depended on traps to feed their families which were destroyed by the large foreign flagged fishing trawlers.⁵⁴ Illegal dumping activities were also commonplace, as cash strapped leaders from warring Somali factions on land entered into deals of questionable legitimacy allowing foreign shipping firms to dump dangerous waste off the Somali coast for a fraction of the cost typical in other nations.⁵⁵ These dumping activities posed a serious health threat to Somali citizens in seaside communities, many of whom bathed in water polluted by toxic waste including uranium, lead, mercury, and other hazardous materials.⁵⁶

The first acts of piracy off the Somali coast were in response to the aforementioned activities, as Somali fishermen began to obtain weaponry and faster boats and form themselves into volunteer “coast guards” to patrol Somali waters.⁵⁷ Most attacks in the 1990s occurred close to shore, usually against vessels engaged in illegal fishing or dumping.⁵⁸ Initially, pirates would board these ships, pillage as much as they could, and return to shore without taking hostages or demanding ransom.⁵⁹ The perception that these activities were defensive in nature earned them a great deal of local popularity.⁶⁰ However, while Somali Piracy may have begun as an effort to defend legitimate maritime interests from foreign encroachment, pirate bands quickly realized the lucrative potential of hijacking and ransom.⁶¹ Thus, it was only a matter of time until Somalia’s pervasive economic woes motivated many of its young men to exploit its close proximity to the Gulf of Aden --one of the world’s busiest maritime shipping highways— to transform what began as a local act of resistance into an internationally connected criminal enterprise that has caught the attention of nations around the world.⁶²

While the root causes of Somali Piracy are complex, the motivation at the individual level is quite simple. In a country where the average person makes \$2.00 US a day⁶³ the draw of an individual share of a single pirate hijacking, which can range between \$35,000 and \$100,000 US,⁶⁴ is a significant incentive to engage in piracy. Over time, this massive economic incentive motivated Somali pirates to abandon the ‘board and steal’ model in favor of seeking ransom for captured vessels; a practice which has become the “lifeblood of the piracy industry”.⁶⁵ The busy shipping lanes in the Gulf of Aden and the surrounding waters provide nearly limitless targets of opportunity for these pirates. In this context, the same lack of government enforcement which spurred Somalis into action to defend their maritime interests now allows their piratical activities to continue

52 Stuart Yikona , “Pirate Trails: Tracking the Illicit Financial Flows from Pirate Activities off the Horn of Africa”, *A World Bank Study* (2012), 27.

53 Daniels, *Somali Piracy*, 33.

54 Daniels, *Somali Piracy*, 34.

55 Daniels, *Somali Piracy*, 34.

56 Daniels, *Somali Piracy*, 34.

57 Daniels, *Somali Piracy*, 35.

58 Daniels, *Somali Piracy*, 35.

59 Daniels, *Somali Piracy*, 35.

60 Daniels, *Somali Piracy*, 35.

61 Rebecca Fantauzzi, Rascals, Scoundrels, Villains, and Knives: The Evolution of the Law of Piracy from Ancient Times to the Present, 39. 3 *Int'l J. of Leg. Info.* 347, 373 (2013).

62 *Ibid.*

63 Daniels, *Somali Piracy*, 39.

64 Daniels, *Somali Piracy*, 39.

65 Daniels, *Somali Piracy*, 37.

to the present day unhindered by government interference.⁶⁶ Over time, the pirate's relatively unsophisticated attacks began to expand into a highly technical operation involving not just the use of AK-47's and RPG's but Global Positioning Systems and night vision goggles.⁶⁷ Eventually, through the use of hijacked vessels as "mother ships," Somali Pirates were able to expand their operational radius from 32 nautical miles off Somalia's coast in 2001, to more than 800 nautical miles just ten years later.⁶⁸ Through a combination of these factors, what began as a morally ambiguous struggle over the defense of local maritime interests has become a decidedly criminal enterprise⁶⁹ which has resulted in the successful hijacking of 179 ships yielding over \$400 million US in ransom payments since 2005.⁷⁰

Why should the world care?

A fitting starting point for the analytical portion of this article is a straight answer to the question: why should the world care about Somali Piracy? In short, it has been responsible for considerable costs, both in human lives lost and increased expenses for the worldwide shipping industry.⁷¹ When one considers that 90% of the world's traded goods are transported by sea, and 40% of those travel through the Gulf of Aden⁷², the potential economic impact of the piracy problem becomes quite clear. More often, however, it is the human cost of this phenomenon that tends to capture media attention, with some incidents ending in triumph and others in tragedy. The hijacking of the *Maersk Alabama* in 2009 ended in a triumphant hostage rescue by the United States Navy Seals,⁷³ earning the incident a portrayal in the blockbuster movie "Captain Phillips".⁷⁴ However, the tragic hijacking of the civilian Yacht, *Quest* in 2011, which left four American hostages dead after a rescue attempt failed, did not receive the same silver-screen attention.⁷⁵ Moreover, the vast majority of incidents go completely unnoticed, including the 35 hostages that were killed in piracy incidents in 2011 alone, a significant majority of whom were killed during failed rescue attempts.⁷⁶ This figure shows that rescue attempts by nation state naval forces in response to hostage takings are tactically tricky endeavors which have been met with dreadfully mixed results.

In addition to the human costs, the overall economic costs are also staggering. In 2011, Somali Piracy cost the world economy between \$6.6 and \$6.9 billion US.⁷⁷ Over 80% of that cost was borne by the shipping industry, which spent over \$2.7 billion US in 2011 rerouting ships or increasing their speed to avoid attacks.⁷⁸ In that same year, the shipping industry paid \$635 million US in insurance premiums for special war risk

66 Percy & Shortland, *The Business of Piracy*, 545.

67 Daniels, *Somali Piracy*, 36.

68 Daniels, *Somali Piracy*, 36.

69 Daniels, *Somali Piracy*, 35.

70 Yikona, "Pirate Trails", 28.

71 Jonathan Bellish, "The Economic Cost of Somali Piracy", *ICC International Maritime Bureau* (2012) 3-4.

72 Dutton, *Gunslingers on the High Seas*, 114.p

73 Robert D. McFadden and Scott Shane, "In Rescue of Captain, Navy Kills 3 Pirates", *NY Times*, Apr. 5, 2009, accessed May 6, 2014, <http://www.nytimes.com/2009/04/13/world/africa/13pirates.html?pagewanted=all>.

74 Mark Kermod, "Captain Phillips - Review", *The Guardian*, Oct. 19, 2013, accessed May 6, 2014, <http://www.theguardian.com/film/2013/oct/20/captain-phillips-review-mark-kermod>.

75 Adam Nagourney and Jeffrey Gettleman, "Pirates Brutally End Yachting Dream", *NY Times*, Feb. 22, 2011, accessed May 6, 2014, <http://www.nytimes.com/2011/02/23/world/africa/23pirates.html?pagewanted=all>.

76 Kaija Hurlburt, *The Human Cost of Somali Piracy*, *ICC International Maritime Bureau* (2011) 4.

77 Anna Bowden and Dr. Shikha Basnet, "The Economic Cost of Somali Piracy", *Oceans Beyond Piracy* (2011) 1.

78 Bowden and Basnet, "The Economic Cost of Somali Piracy", 1.p

and kidnap and ransom policies to indemnify them from losses associated with pirate hijackings.⁷⁹ Most significantly, the industry transferred \$160 million US that same year in ransom payments to pirates in successful hijackings.⁸⁰ In the ransom category, every dollar of those payments gets re-routed into an emerging *Pirate Economy*, providing resources to fund future operations.⁸¹ This phenomenon also has the unintended effect of inflating prices in the region; as demand for already under supplied materials consumed in pirate operations, such as fuel, sends other commodity prices, such as milk, sky high.⁸² One author identified these circumstances as a “piracy cycle” whereby poverty and economic fluctuations motivate residents of “maritime zones of ineffective law enforcement” to engage in piratical acts, the success of which renders them increasingly effective over time.⁸³

Perhaps even more surprising than the data from the incidents of 2011 is the fact that it all came to pass despite an investment of \$1.27 billion US from over 30 countries in support of naval counter-piracy operations in the region.⁸⁴ Further, despite all the criminal activity surrounding piratical operations, there has been a remarkable reluctance among the international community to prosecute those Somali pirates who are captured, with an estimated three out of every four captured pirates being released without trial as of 2012.⁸⁵ This reluctance undermines both the deterrent to their conduct and the incentive to hunt them.⁸⁶ Even among those who are brought to trial, as the sections below explain, many in the United States are acquitted of the charges due to evidentiary deficiencies or legal technicalities. All these facts make it clear that the ransom and release norm is unsustainable. Without a new model that focuses on the disruption of the piracy cycle through the prevention of hijackings, the overwhelming incentive for kidnap-and-ransom piracy will remain; and despite Hollywood portrayals to the contrary, the majority of incidents will not end in rescue.

Part II: Defending the defenders:

Why PMSCs are a vital part of counter-piracy efforts

2011 represented a high-water mark in costs associated with Somali Piracy.⁸⁷ The sudden rise of Private Maritime Security Companies (PMSC), both in formation and use, correlates directly with this cost peak, with 200 to 300 PMSCs forming in 2011 alone.⁸⁸ Shortly thereafter, armed security teams were employed by 50% of vessels traversing the Gulf of Aden⁸⁹ and its adjacent waters; an area referred to by private intelligence analysts as the “high risk area” (HRA).⁹⁰ That following year saw a 12.6% decrease in overall costs including a startling 80% decrease in ransom payments from over \$150 million US to around \$35 million US in just one year; a figure directly attributable to a

79 Bowden and Basnet, “The Economic Cost of Somali Piracy”, 1.p

80 Bowden and Basnet, “The Economic Cost of Somali Piracy”, 2.p

81 Yikona , “Pirate Trails”, 11.

82 Ibid.

83 J.L. Anderson, “Piracy and World History: An Economic Perspective on Maritime Predation”, *Journal of World History Vol. 6, No 2*, (1995) 175, 183, 199. p

84 Bowden and Basnet, “The Economic Cost of Somali Piracy”, 2.p

85 Nick Hopkins, “Outgunned Somali Pirates can hardly believe their luck”, *The Guardian*, May. 8, 2012, accessed, May 4, 2014, <http://www.theguardian.com/world/2012/may/08/outgunned-somali-pirates-luck>.

86 Hopkins, “Outgunned Somali Pirates”, 2012.

87 Yikona , “Pirate Trails”, 43.

88 Dutton, *Gunslinger on the High Seas*, 111.

89 Dutton, *Gunslinger on the High Seas*, 111.

90 Aegis Response, *Maritime Intelligence Report* 1 March – 1 April, 2014, 3.

lower number of captured vessels.⁹¹ Concomitantly, the cost of anti-piracy insurance policies fell 13% due in large part to a *voluntary* premium discount offered by insurance companies to clients who employed PMSC operators.⁹² Notably, these successes occurred despite evidence that nation state commitment to naval counter piracy task forces remained constant or even diminished slightly alongside increases in PMSC usage over the same period.⁹³ The phenomenon of fewer attacks has endured through 2013 and 2014, which have seen piracy attacks similar to 2012 figures.⁹⁴

When one considers the Private Maritime Security Industry's record of success, it is not hard to understand why some maritime insurance companies have started to encourage or require clients who travel through the HRA to have armed guards on board, either by providing premium discounts⁹⁵, or as a precondition for extending coverage.⁹⁶ After all, a company in the business of risk mitigation would be foolish not to incentivize a prevention method, which has thus far yielded a 100% success rate. However, despite its efficacy relative to other counter-piracy efforts, the employment of armed guards has not been without its critics. Some say that the use of armed guards could "escalate violence, involve unlawful use of force, endanger innocent seafarers, or cause international incidents."⁹⁷ Others see the industries activities as "a new potential channel for the flow of arms and ammunition into the region."⁹⁸ Whatever their specific focuses are, most PMSC critics agree that escalation of force is a concern and greater regulation on the part of nation-states is needed to govern this new industry.⁹⁹ However, this author argues that the reverse is actually true. PMSC operations have succeeded where other attempts have failed by disrupting the piracy cycle and the incentive for attacks, thus countering the growth of a phenomenon that has hitherto been fed by lawlessness and ever-increasing financial incentives. In the next two sections, this article will explain why other efforts are less effective than the employment of PMSC operators, and in some cases even counterproductive.

Shortcomings of Naval Task Forces: the inability to be "everywhere at once" and the tactical nightmare of hostage rescue

In the years since the piracy problem captured the attention of the world, three multinational naval task forces have arisen to combat it: Operation Atalanta launched by the European Union (EU), NATO's operation Allied Provider, and Combined Task Force 151 led by the United States Navy's Fifth Fleet.¹⁰⁰ The latter of these operations was formed with the stated mission of "'deter, disrupt, and criminally prosecute those involved in piracy" in the region.¹⁰¹ Despite the fact that approximately \$1 billion US is spent on these naval operations every year the forces deployed simply cannot guarantee

91 Jonathan Bellish, "The Economic Cost of Somali Piracy", *ICC International Maritime Bureau* (2012) 3.

92 Bellish, "The Economic Cost of Somali Piracy", 3.p

93 Bellish, "The Economic Cost of Somali Piracy", 3.p

94 Aegis Response,

95 Dutton, *Gunslingers on the High Seas*, FN 83, (citing: Ship Insurers Offers Discount for Armed Guards on Ship, *Shipping Herald: The Mar. Portal* (Oct. 24, 2011), <http://www.shippingherald.com/Admin/ArticleDetail/ArticleDetailsInsurance/tabid/121/ArticleID/1366/Ship-Insurers-Offers-Discount-for-Armed-Guards-on-Ship.aspx>, (Reporting that some companies offer premium discounts of up to 35%).

96 IBID.

97 Yvonne M. Dutton, *Gunslingers on the High Seas*, 110.

98 Harris, Dan and Dan Lieberman, "Pirate Attacks Down as Private Maritime Security Business Booms," *ABC News*, Sep. 7, 2012, available at: <http://abcnews.go.com/Blotter/pirate-attacks-private-maritime-security-business-booms/story?id=16352840&singlePage=true> last accessed: accessed May 7, 2014.p

99 Dutton, *Gunslingers on the High Seas*, 111.

100 Percy & Shortland, *The Business of Piracy*, 547.

101 Ibid.

safe transit for every vessel travelling through the HRA.¹⁰² In their own words, some of the commanders of these efforts admit that naval patrols alone are insufficient. Some critics have conceded this point in their own writings. One such critic quoted Major General Howes of the United Kingdom, Commander of Operation Atalanta, when he said, “83 ships would be needed to provide response conditions of half an hour”,¹⁰³ still too long of a time period for a naval vessel to respond to an incident unless it was very close by. Other officials have pointed to the fact that the operative radius of today’s pirates stretches over 2.9 million nautical miles, a space which is simply too vast to effectively patrol.¹⁰⁴ To make matters worse, naval forces generally will not engage in rescue operations after a boarding has taken place unless the crew has retreated to an appropriately fortified “strong room.”¹⁰⁵ This is likely a result of the fact that, once pirates have taken a ship, regular forces among nation-state navies simply do not have the skill set to conduct an opposed boarding and fight through a fortified position while avoiding death or injury to the hostages they are attempting to rescue.¹⁰⁶ The tactical difficulty of these situations is reinforced by the data, suggesting civilian casualties during rescue attempts are more likely than not.¹⁰⁷ By contrast, PMSCs usually operate ship-borne teams, some of whom exclusively employ highly trained former Special Forces operatives,¹⁰⁸ which travel with their clients’ vessels through the HRA; and as previously stated no ship carrying one of these teams has yet been hijacked in that region.¹⁰⁹ PMSCs have proven more effective than naval task forces because they operate with the necessary skill set and deployment posture to prevent attacks from occurring, and the latter, no matter how well funded, simply cannot be everywhere at once.

Like a dog chasing its tail: the catch and release policy, evidentiary concerns and other miscues

Possibly the most frustrating aspect of the piracy problem is the inability or unwillingness that has thus far prevented the international community from utilizing the doctrine of universal jurisdiction to consistently prosecute suspected pirates. The majority of pirates who are captured in counter-piracy operations are never prosecuted. Instead, as one witty commentator describes it, they “are treated with a catch and release philosophy that’s usually reserved for trout.”¹¹⁰ This catch and release policy was so common that between 2008 and 2009 only 212 of the 555 pirates captured were held for prosecution; and some among those released had been in the possession of dangerous weaponry or had taken hostages.¹¹¹ Some commentators have pointed out that this policy in some countries is motivated by concern that pirates might be able to make a case for asylum immediately upon arrival in another country.¹¹² In the EU, for example, all that a person must show is that there is enough “indiscriminant violence” occurring in their home state to justify a finding that their life would be at risk if they returned.¹¹³ Given the constant strife in Somalia, this standard is very likely met in a

102 Dutton, *Gunslingers on the High Seas*, 117.

103 *Ibid.*, 118.p

104 *Ibid.*, (citing a quote from US Deputy Assistant Secretary of Defense for Counter narcotics and Global Threats, William Wechsler).p

105 Percy & Shortland, *The Business of Piracy*, 548.

106 Thomas Rothrauff (President and CEO, Trident Group) in discussion with the author May 8, 2014.

107 Oceans Beyond Piracy, *The Economic Cost of Somali Piracy*, (One Earth Future Foundation, 2011), 1.

108 Thomas Rothrauff (President and CEO, Trident Group) in discussion with the author, May 8, 2014.

109 Dutton, *Gunslingers on the High Seas*, 109.

110 Amitai Etzioni, *Somali Pirates: An Expansive Interpretation of Human Rights*, 15 *Tex. Rev. L. & Pol.* 39, 40 (2010).

111 Etzioni, *Somali Pirates*, 43.

112 Percy & Shortland, *The Business of Piracy*, 549.

113 Etzioni, *Somali Pirates*, 53.p

majority of cases, creating a perverse incentive for some pirates to actually seek arrest or at least not fear it.

To make matters worse, those pirates who do see the inside of a court room stand to be acquitted due to evidentiary deficiencies or failure to comply with procedural prerequisites which are wholly inappropriate for the chaotic environment associated with repelling and capturing suspected pirates.¹¹⁴ In fairness, collecting evidence on the high seas in a manner that will survive scrutiny of its chain of custody is almost as impossible as ensuring mariners are read their *Miranda* rights in the midst of a pirate attack.¹¹⁵ However, even when the evidence and the facts favor prosecution, different interpretations of maritime jurisprudence in the flag state have also proven to be fatal to many prosecutions, especially in the United States. For example, when the assailants who fired AK-47s and RPGs at the U.S.S. Ashland in 2010 were hauled into court in the Eastern District of Virginia on charges of piracy, they saw their charges dismissed. In that case, Judge Raymond Jackson held that robbery was an essential element of piracy, and the defendants had not stolen anything.¹¹⁶ However, in a case with almost identical facts, the assailants who had fired on the U.S.S. Nicholas just a few weeks later saw their motion to dismiss denied.¹¹⁷ As a result of all of these challenges, as one commentator noted, there have only been a few successful prosecutions of pirates in states exercising universal jurisdiction.¹¹⁸ This is hardly the kind of consistent and potent deterrent needed to combat the piracy problem.

Stalling the Pirate Economy: Why an ounce of prevention may be worth a pound of cure

In the decades since the problem of Somali Piracy emerged nothing has been as effective as the employment of PMSC operators in disrupting the ransom payments that have fueled this phenomenon. In an area with as few economic opportunities as Somalia, piracy will continue so long as it remains profitable for its financiers and foot soldiers. However, it is important to understand just how profitable Somali piracy can be for those who choose to finance or participate in it. The typical cost to outfit a Pirate Action Group (PAG) is about \$6,000 US.¹¹⁹ For their initial investment, pirate financiers typically receive 30% of the proceeds of any ransom, which yields between \$1 and \$3 million US on average.¹²⁰ Under such circumstances, pirate financiers can expect to make a return of several hundred-thousand dollars on only a six thousand dollar investment. Even after the financiers take their massive profits and proceeds are distributed to other influential people in the region, the individual return a pirate foot soldier in Somalia can expect from one successful raid is more than they are likely to make in a lifetime of legitimate pursuits.¹²¹ Another staggering figure is that the World Bank estimates that nearly \$400 million US has been paid to Somali Pirates in ransom since 2005,¹²² representing nearly one-fifth of Somalia's GDP in any given year.¹²³

114 Ibid., 48. p

115 Ibid.

116 Tara Helfman, *Marauders in the Courts: Why the Federal Courts Have Got the Problem of Maritime Piracy (Partly) Wrong*, 62 *Syracuse L. Rev.* 53, 55 (2012).p

117 Ibid., 63.

118 Middelburg, *Piracy in a Legal Context*, 63.

119 Daniels, *Somali Piracy*, 38-39.

120 Ibid.

121 Ibid.

122 Stuart Yikona, "Pirate Trails: Tracking the Illicit Financial Flows from Pirate Activities off the Horn of Africa", *A World Bank Study* (2012), 40.

123 CIA World Fact Book, Somalia, accessed May 8, 2014, <https://www.cia.gov/library/publications/the-world-factbook/geos/so.html>.p

Were it not for its criminal nature and its terrible human costs, economists might consider Somali piracy to be one of the most successful business schemes of this century. An entire economy has sprung up around this enterprise; with cooks, financiers, and commodities providers all waiting for the ransom payment to satisfy the credit they have extended to pirate operators.¹²⁴ What is more, some among the shipping and insurance industries have begun to consider ransom payments as “the cost of doing business” and expressing opposition to making them illegal.¹²⁵ Such a fatalist attitude takes a selfishly myopic view which ignores the effect that overreliance on the payment of ransom is having on the nation of Somalia itself, and the incentive it represents for future operations. Nowhere is this more evident than when one considers that the pirate financiers who are making the lion’s share of the profits on these operations are investing them, not just in funding more attacks, but in illicit activities such as sex trafficking and the support of local militias who work closely with terrorist organizations.¹²⁶

The financial link between piratical activity in Somalia and Harakat Shabaab al-Mujahidin—commonly known as Al-Shabaab—should be especially troubling to anyone concerned with counter terrorist efforts on the mainland. As the militant arm of the Somali Council of Islamic Courts, Al-Shabaab has authored a violent insurgency against the fledgling Somali Federal Government and targeted international aid organizations in Somalia since the early 2000’s.¹²⁷ Al-Shabaab has been deeply disruptive to the peace process in Somalia and it has been designated a terrorist organization by the U.S. government since 2008 due to its pattern of attacks on civilian targets¹²⁸ and its allegiance to al-Qaeda.¹²⁹ In-depth studies of the financial flows of ransom payments have found that proceeds from Somali pirate operations have found their way, directly or indirectly, into the hands of terrorist militias like Al-Shabaab. In 2011, the World Bank reported that Somali pirates have shared as much as 20% of their ransom proceeds to local Al-Shabaab militias in control of the ports from which they launch.¹³⁰ That same report pointed out that out of 59 piracy financiers 19 were said to regularly use their considerably larger portion of ransom proceeds to “develop militias and political influence” on the mainland.¹³¹ The report concluded, “if these networks, fueled by proceeds from piracy, are not targeted and their financial capacities disrupted, they may well represent a threat to international staff entering and working in Somalia.”¹³²

Piracy may occur in international waters, but, as these reports have shown, it provides an integral funding stream for all criminal activities on the mainland. The only way to foster a long-term solution that does not exacerbate the already deplorable situation on the mainland is to shift focus toward its prevention rather than reinforcing the “business as usual” mentality. If an action which disrupts the payment of ransom is not taken, the parade of horrors that are inextricably linked to incentivizing piracy will continue. For all these reasons it seems clear that an ounce of prevention now could be worth a pound of cure later.

124 Yikona, “Pirate Trails”, 46.

125 Yikona, “Pirate Trails”, 40.

126 Yikona, “Pirate Trails”, at 62-64.

127 National Counterterrorism Center, Counter Terrorism Calendar 2014, accessed January 18, 2015 http://www.nctc.gov/site/groups/al_shabaab.html

128 National Counterterrorism Center, Counter Terrorism Calendar 2014, accessed January. 18, 2015 http://www.nctc.gov/site/groups/al_shabaab.html.

129 Yikona, “Pirate Trails”, 95.p

130 Yikona, “Pirate Trails”, 47.p

131 Yikona, “Pirate Trails”, 64.p

132 Yikona, “Pirate Trails”, 64.

Underpinnings of International Law: Piracy and the use of force in self-defense on the high seas

Piracy is one of history's oldest crimes, dating all the way back to ancient times.¹³³ Article 101 of the United Nations Convention on the Law of the Sea (UNCLOS) has most recently defined Piracy as "acts of violence or detention . . . committed for private ends by the crew or passengers of a private ship...and directed on the high seas against another ship...or against persons or property on board such ship."¹³⁴ The infamous nature of the crime of Piracy has earned the pirate the infamous title of *hostis humani generis*: an enemy of all mankind.¹³⁵ As a result, piracy has long been considered a crime of *universal jurisdiction*, that is, a crime over which any state may assert jurisdiction even without "a national . . . or territorial nexus".¹³⁶ However, despite the seemingly clear cut definition under the international law of Piracy, the legal framework within which PMSC personnel must operate is much less straightforward. First, pirates are not considered to be armed combatants in conflict with any national entity, just the same as PMSC operators aboard merchant vessels are technically civilians without license to use deadly force.¹³⁷ Accordingly, PMSC operators on the high seas may only use force in self-defense or in defense of others as a matter of international law.¹³⁸ To further complicate matters, the legality of the use of force—and the carrying of weapons-- is usually determined by the law of the flag state of the vessel upon which the PMSC operators are stationed.¹³⁹ Moreover, when the activity is within the territorial waters of a coastal state the law of that coastal state also applies.¹⁴⁰ With so many overlapping jurisdictions, it should be clear to the reader that nation-state regulation may not be the most efficient way of producing uniform standards for PMSC operations. However, when in international waters, international laws govern. Thus, on the high seas "the applicable test [for the use of force is] 'whether the response to the attack' met 'the [customary] criteria of . . . necessity and proportionality'".¹⁴¹ Still a further limitation under international law holds that "the use of force must be avoided as far as possible" and warning signals of some kind must be issued before the use of force is permitted.¹⁴² It is almost universally accepted that "a person who is unlawfully attacked or threatened with imminent attack is not criminally liable...for using force...when fending off the attack."¹⁴³ Under such circumstances, when the use of firearms is contemplated, there must be an imminent threat of death or serious injury.¹⁴⁴ Despite the concerns of the critics of PMSC operators, industry attempts at self-regulation have promulgated procedures, which are at least as stringent as these existing standards.

133 Fantauzzi, *Rascals, Scoundrels, Villains, and Knives*, 347.

134 United Nations Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 3.

135 Rothwell and Stephens, *International Law of the Sea* (Kindle Edition), location 5961, (Hart Publishing, 2010)

136 Helfman, *Marauders in the Courts*, 56.

137 Sony Vijayan, *The Use of Armed Forces on Merchant Vessels Without Strict Rules for the Use of Force*, 45 J. Mar. L. & Com. 15, 19 (2014).p

138 *Ibid.*

139 *Ibid.*, 20.p

140 Vijayan, *The Use of Armed Forces on Merchant Vessels*, 20., citing *Military and Paramilitary Activities in and Against Nicaragua* (Nicar. V. U.S.), 1986 I.C.J. (June 27) *Opinion on the Merits*. p

141 Vijayan, *The Use of Armed Forces on Merchant Vessels*, 21, citing *Military and Paramilitary Activities in and Against Nicaragua* (Nicar. V. U.S.), 1986 I.C.J. (June 27) *Opinion on the Merits*. p

142 *Ibid.*, (Citing *M/V Saiga*, ITLOS Rep, 10, at para. 155 (1999)).p

143 Anna Petrig, *The Use of Force and Firearms by Private Maritime Security Companies Against Suspected Pirates*, 62(3) I.C.L.Q. 665,688 (2013).p

144 *Ibid.*, 690.p

Responding to the critics: how the Maritime Security Industry has pre-empted nation-state regulation

Decrying the often nebulous enforceability of the existing legal regime some critics of PMSCs have called upon states to establish “a clear and coordinated set of laws and guidelines” and monitoring efforts to ensure that PMSCs employ operatives that “are well trained and prepared to safely transport, store, and use weapons”.¹⁴⁵ Those critics have suggested that if nation-states do not make a serious effort at regulation, “there are no assurances that [PMSCs] will do [their jobs] in a way that does not escalate violence, involve unlawful use of force, endanger innocent seafarers, or cause international incidents”¹⁴⁶. However, almost simultaneously with these critiques, the Maritime Security industry has adopted a self-regulation regime with standards at least as stringent as the aforementioned standards of customary international law relating to the use of force; and they have done so without excessive prompting from nation-states.

PMSCs have not been resistant to efforts at self-regulation. On the contrary most have actually welcomed them. This is evident from the widespread participation in the industry accreditation bodies such as the Security Association for the Maritime Industry (SAMI), which has over 180 members worldwide and ratification of the International Code of Conduct for Private Security Service Providers (ICOC) which has over 700 signatory companies.¹⁴⁷ SAMI, in particular, has been instrumental in developing the 100 Series Rules on the Use of Force (RUF) “to provide clarity and certainty as to lawful defensive and armed responses when pirates and/or armed robbers attack”.¹⁴⁸ SAMI claims that the RUF provisions have “undergone stringent operator, commercial and legal scrutiny from across the maritime industry”,¹⁴⁹ and this claim is supported by the content of the rules themselves. For instance, RUF Rule 103 provides that “when under attack or when an attack is imminent, reasonable and necessary use of force may be used in self-defense, including, as a last resort, lethal force”.¹⁵⁰ The rules further provide for the use of warning shots if they “may deter an actual, perceived or threatened attack.”¹⁵¹ These excerpts demonstrate standards, which are substantially similar to the aforementioned requirements of international law.

Alongside this effort, SAMI has also introduced a certification process for prospective PMSCs “to ensure that the maritime industry can easily identify reputable private maritime security companies”.¹⁵² This process involves a three-stage audit including an assessment of the PMSC’s operation and management procedures and an evaluation of those procedures in action.¹⁵³ While this robust certification process is still in development, it represents a desirable model whereby industry experts judge industry

145 Dutton, *Gunslingers on the High Seas*, 110-111.p

146 *Ibid.*, 110.p

147 International Code of Conduct for Private Security Service Providers Website, “About ICOC,” accessed May 8, 2014, http://www.icoc-ppsp.org/About_ICoC.html, accessed: May 8, 2014. p

148 SAMI Briefing “The 100 Series Rules An International Model Set of Maritime Rules for the Use of Force (RUF),” accessed January 19, 2015, <http://www.seasecurity.org/wp-content/uploads/SAMI-Briefing-Launch-of-100-Series-RUF-May-20131.pdf>.

149 SAMI Briefing “The 100 Series Rules An International Model Set of Maritime Rules for the Use of Force (RUF),” accessed January 19, 2015, <http://www.seasecurity.org/wp-content/uploads/SAMI-Briefing-Launch-of-100-Series-RUF-May-20131.pdf>.

150 100 Series Website, accessed January 19, 2015, <https://100seriesrules.com/>. p

151 Vijayan, *The Use of Armed Forces on Merchant Vessels*, 19, (Citing *M/V Saiga*, ITLOS Rep, 10, at para. 155 (1999).p

152 Security Association for the Maritime Industry Website, *Members/Sami Certification for PMSCs*, accessed January 19, 2015 <http://www.seasecurity.org/sami-certification-for-pmscs/#sthash.kjBa1pd1.dpuf>.

153 *Ibid.*p

hopefuls before they can participate in maritime security operations. This certification process will make it easy for prospective clients to ensure they only contract with providers who follow proper procedures in their operations. The development of the RUF demonstrates that the Maritime Security Industry has the expertise and the incentive to adopt procedures that are consistent with both industry imperatives and extant norms of customary international law. With such a model in place, it seems more sensible for nation-states to focus their regulatory efforts on punishing shipping companies who contract with uncertified providers rather than heaping redundant regulation on the PMSCs themselves.

Further, there is no evidence that nation-state participation in regulation would improve the substance of these efforts whatsoever, as past PMSC operations have actually *informed* the development of flag state positions relative to the use of force in self-defense by private actors on the high seas. For example, the United States Coast Guard's Port Security Advisory (3-09) was strongly influenced by lessons learned from an incident involving a PMSC.¹⁵⁴ On November 18, 2009, the tanker *Maersk Alabama*, the first attack on which was the subject of the movie *Captain Phillips*, was attacked a second time, but this time the pirates were not so fortunate. This time, operatives from Trident Group, a Virginia Beach based PMSC whose operators are all former United States Navy Seals, were on board. The operatives were able to fend off the attack through a measured combination of small arms fire and the use of advanced non-lethal acoustic devices which cause pain to the human ear.¹⁵⁵ The event was heralded by United States Navy Officials as "a great example of how merchant mariners can take pro-active action [sic] to prevent being attacked."¹⁵⁶ Following the incident, United States Government Officials debriefed Trident operatives¹⁵⁷ and formed the aforementioned PSA (3-09) "to provide guidance to U.S. flagged commercial vessels and [their onboard]... security personnel [in the] employment of force in self-defense or defense of others, as well as defense of the vessels."¹⁵⁸ PSA (3-09) is evidence that the U.S. acknowledges that the use of lethal force is lawful in self-defense or defense of others if there is "ample reason to believe that there is imminent danger of death or bodily harm."¹⁵⁹

The differences between the U.S. standards as laid forth in PSA (3-09) and extant customary international law are not significant. What is significant is that, in this case, the U.S. position--like customary international law itself--was informed by lessons from actual practice rather than a misguided attempt at prior regulation that may have resulted in impracticable standards ill-suited for the violent reality of combat. As the chain of events that led to PSA (3-09) demonstrates, Maritime Security Experts and former Special Forces operators are more qualified than the nation-state policy makers who would regulate them to formulate practicable standards amidst the dangerous circumstances of self-defense on the high seas because the former group understands the exigencies of combat.

154 Thomas Rothrauff (President and CEO, Trident Group) in discussion with the author, May 8, 2014.

155 Alan Cowell, "Pirates Attack Maersk Alabama Again," *NY Times*, Nov. 18, 2009, accessed May 8, 2014 <http://www.nytimes.com/2009/11/19/world/africa/19pirates.html>. p

156 Alan Cowell, "Pirates Attack Maersk Alabama Again," *NY Times*, Nov. 18, 2009, accessed May 8, 2014 <http://www.nytimes.com/2009/11/19/world/africa/19pirates.html>. p

157 Thomas Rothrauff (President and CEO, Trident Group) in discussion with the author, May 8, 2014.

158 Department of Homeland Security, *Port Security Advisory (3-09)*.

159 Vijayan, *The Use of Armed Forces on Merchant Vessels*, 20.

Setting the record straight: response to false cries of a “Blackwater Moment”

Despite all the evidence of the success of PMSC operations in combating the piracy problem, some critics remain unconvinced. They lie in seemingly anxious anticipation of what some call a “Blackwater Moment”, referring to an incident in 2007 when employees of private military contractor Blackwater Worldwide opened fire on civilians in Baghdad¹⁶⁰, attracting worldwide outrage. By harkening back to this incident, it seems PMSC critics harbor a skepticism bordering on prejudice against PMSCs. Some of those critics believe they have found this “Blackwater Moment” in a video that went viral two years ago, depicting an exchange between a Somali PAG and operators from the Trident Group.

The video in question was shot from the helmet camera of a Trident team leader during an exchange that occurred aboard the Eagle Bulk Shipping vessel *Avocet*.¹⁶¹ It shows Trident Operatives responding to an attack from small skiffs that were approaching the vessel’s starboard side at a high rate of speed.¹⁶² The Trident team leader orders the team to fire “warning shots” but within a matter of seconds, the skiff was within close range of the *Avocet*’s gunwales.¹⁶³ A barrage of rounds is audible and the team leader changes positions multiple times to respond to a second skiff, also on the starboard side, which is barely visible in the video due to the reflection of the sun.¹⁶⁴ Gunfire from the team leader’s semi-automatic rifle is audible throughout the video, as the team leader gives orders via radio to his team to address the threat posed by the second skiff.¹⁶⁵ Critics have proffered experts who claim this video represents an unlawful use of excessive force.¹⁶⁶ One of these experts was Daren Knight, a maritime security consultant and former Royal Marine, who claimed--entirely based on the video--that the rate of fire was a disproportionate response to the attack.¹⁶⁷ The folly of such a hasty conclusion becomes clear when the video is placed in its proper factual context. It also casts doubt on the claim that Trident’s actions were either disproportionate or unlawful.

Despite what critics of the video have come to believe, the incident aboard the *Avocet* simply cannot be understood using only the images themselves. As part of the research for this article, this author had the privilege of interviewing Thomas Rothrauff, President of the Trident group, to get the other side of the story. Rothrauff explains that the skiffs that attacked the *Avocet* were part of the same PAG that was responsible for pummeling an Indian Tanker with rocket propelled grenades just three days prior.¹⁶⁸ The Trident team leaders identified them as such when they attacked the *Avocet* the day before the footage in the video was taken, and the exchange shown in the video reportedly represented a second attempt.¹⁶⁹ Trident operatives reported that they were taking fire from the skiffs as they approached the *Avocet* at a high rate of speed.¹⁷⁰

160 Dutton, *Gunslingers on the High Seas*, 110.p

161 *Ibid.*,110-111.

162 Captain Blog, “Weapons Free” Pirates Decimated by Shipboard Security Team [Video],” Apr. 6, 2012, <http://gcaptain.com/weapons-free-pirates-decimated/?44043.p>

163 Captain Blog, “Weapons Free” Pirates Decimated by Shipboard Security Team [Video],” Apr. 6, 2012, <http://gcaptain.com/weapons-free-pirates-decimated/?44043.p>

164 Captain Blog, “Weapons Free” Pirates Decimated by Shipboard Security Team [Video],” Apr. 6, 2012, <http://gcaptain.com/weapons-free-pirates-decimated/?44043.p>

165 Captain Blog, “Weapons Free” Pirates Decimated by Shipboard Security Team [Video],” Apr. 6, 2012, <http://gcaptain.com/weapons-free-pirates-decimated/?44043.p>

166 Dutton, *Gunslingers on the High Seas*, 111.

167 *Ibid.*

168 Thomas Rothrauff (President and CEO, Trident Group) in discussion with the author, May 8, 2014.

169 Thomas Rothrauff (President and CEO, Trident Group) in discussion with the author, May 8, 2014.

170 *Ibid.*

Moreover, Rothrauff explained, the skiff that slammed into the side of the ship did not do so because its driver was killed, but rather as part of a common strategy to combine speed and an advantageous angle to help avoid fire from the security teams on board the ship.¹⁷¹ From that position in close proximity to the vessel, Trident operatives were reportedly able to identify rocket-propelled grenades and AK-47s in possession of their attackers brandished in firing position.¹⁷² This information drastically alters the calculus as to whether the situation represented an ‘imminent threat of death or serious bodily injury’. The Coast Guard’s aforementioned advisory, PSA (3-09), in effect at the time of the incident cited “brandishing weapons directed at crewmembers or security personnel, where there is a reasonable belief that the attacker also has the means and opportunity to inflict great bodily harm or death on the individual or others in the vicinity” as an example of “imminent danger”. Recalling that example, one could scarcely imagine a set of facts more indicative of the sort of imminent danger needed to justify the use of deadly force. This set of facts poses a serious challenge to the critic’s unreserved claims that Trident’s actions in this instance constitute the sort of “Blackwater Moment” some would claim warrants new regulation. Instead, this discrepancy between accounts demonstrates exactly the sort of misunderstandings that can happen when a rush to judgment occurs without a full knowledge of relevant facts.

Conclusion:

If there was ever a benchmark of achievements for an industry that would unequivocally warrant a shift in the burden of production onto its critics and antagonists, PMSC’s have certainly met or exceeded it. In the past three years since PMSCs began to gain acceptance, not a single ship has been taken under their watch and, as a result, ransom payments have fallen by a startling 80%. That is an 80% decrease in proceeds that had been contributing directly to expanding the firepower and reach of Somali Pirate groups. It is also an 80% decrease in proceeds that had been used to foster a thriving criminal terrorist network on the Somali mainland. Critics have voiced their concern that PMSC operations will result in the proliferation of arms or the provocation of incidents involving the unlawful use of force. However, the opposite is true in both cases. PMSC operations have actually disrupted the financial flows that had enabled pirates to purchase bigger and better weaponry, undermining their capabilities and contributing to a de-escalation of the use of force in the region. PMSCs have also proven to be anything but the kind of devil-may-care gunslingers that many critics try to depict them as. Widespread PMSC participation in self-regulatory bodies like SAMI and the ICOC demonstrates that PMSCs are sensitive to the strong market incentives incumbent upon them to maintain ethical standards for their operations, thus avoiding outside regulation and attracting new clients. Further, there is every indication that the influence of these emerging self-regulatory bodies will foster a legitimate marketplace upon which shipping companies can rely, if they so choose, to engage and contract with high quality organizations run by professionals and not pretenders. The day may come when more regulation may be necessary. Eventually, rogue organizations may emerge to pry their way into the market by employing miscreants and cutting corners. But when that day comes, the burden of regulation should be borne by the clients who contract with unsavory providers and not the responsible professionals who have thus far been batting a thousand for commercial clients worldwide.

171 Ibid.

172 Thomas Rothrauff (President and CEO, Trident Group) in discussion with the author, May 8, 2014.p

Balancing Ends, Ways, and Means: The Case for Reviving Support for “Regime Change from Within” in Iran

Dr. Ivan Sascha Sheehan



With talks between six world powers and Iran over a nuclear deal at an impasse, Congress and the White House continue to spar over how many sanctions to lift to keep Iran’s negotiators at the table.¹⁷³ In the meantime, Iran’s Supreme Leader, the Ayatollah Khamenei, has repeatedly said that his nation will “not bow” to pressure from world powers on the nuclear issue.¹⁷⁴ The Obama administration argues that despite the missed deadline, progress in talks is occurring and that the U.S. should stay the course.¹⁷⁵ Negotiation, after all, takes time, and the conflict with Iran is not just over nuclear weapons and such a reduction is not in the interests of the U.S.

Beyond the problem of nuclear weapons, Iran’s continued export of terror, its actions to destabilize other countries in the Middle East, and its disregard for the civil and human rights of its own citizens presents a complex challenge. Understanding these issues is critical to understanding the nature of the conflict. Complicating the situation is due to the presence of an ideology rooted in opposition to the U.S. This ideology, promoted by the regime’s Supreme Leader and implemented by its Islamic Revolutionary Guard Corps, has made it possible for the regime to rationalize a combination of conventional and unconventional warfare (including terrorism, sabotage, and surrogate war) beyond its borders and repression of its own citizens at home. The center of gravity, the focal point that holds the ideology and these activities together is the concept of *velayat-e-faqih* (absolute rule by the clerics) and its extension *sudur-i inqilab* (export of revolution).

Nature of the Conflict

An axiom of Carl von Clausewitz, the Prussian military theorist, is that accurate determination of the nature of a conflict is critical to choosing the right strategy. The nature of the conflict in Clausewitz’s words “influences its purpose and its means.”¹⁷⁶ The first step is assessing its nature. The conflict with Iran has multiple layers. At one level, it resembles protracted social conflicts rooted in decades of mistrust and suspicion.¹⁷⁷ At another level, it is a struggle for power and influence in the Middle East. At a third level, it is a “contest of ideas” about how societies should be governed and how

173 Zengerle, Patricia. 2014. “U.S. Congress seen backing extension of Iran nuclear pact.” *Reuters*, July 2014.

174 The Associated Press. 2014. “Khamenei: Iran won’t bow to pressure in nuclear talks.” *Haaretz*, May 13.

175 Hirschfeld Davis, Julie. 2014. “Obama Hints at Extensions for Iran Nuclear Tasks.” *New York Times*, July 16.

176 Clausewitz, Carl von. 1989. *On War*. Edited and Translated by Michael Howard and Peter Paret. Princeton: Princeton University Press, p. 90.

177 On the Iranian side, grievances go back more than 60 years spanning the U.S. role in the overthrow of Iran’s democratically elected prime minister in 1953, its subsequent support for the 26-year dictatorship of the Shah Mohammed Reza Pahlavi and its later backing of Saddam Hussein in his war against Iran. On the U.S. side grievances date to the 1979 takeover of the U.S. embassy in Tehran and the subsequent holding hostage of its staff for 444 days. They include Iran’s role in the terrorist attacks on U.S. forces in Beirut (1983), Saudi Arabia (1996), Iranian support for extremist anti-U.S. movements in Lebanon, Gaza, Iraq, Afghanistan and more recently Syria.

they should conduct their affairs globally.¹⁷⁸ Within these layers are multiple intertwined issues that cannot be easily separated and put back together. Each of these issues, in addition, has second or third order effects. While Iran's apparent pursuit of nuclear weapons, with its potential for a cascade of proliferation, has properly absorbed the administration's attention, the regime's continuing export of terror, its meddling in the affairs of other countries, and its brutal campaign of repression against its own citizens at home are equally troubling.

The nature of the Cold War between the U.S. and the Soviet Union is different from that between Iran and the U.S.; however, there are strategic lessons to be learned. In its contest with the Soviet Union, the U.S. used a combination of hard and soft power strategies to contain its adversary and support the aspirations of the Soviet peoples. This strategy was largely successful.¹⁷⁹ Today, Iran's supreme leader frequently complains that the Iranian regime is the target of a concerted "soft war" campaign (*jang-e-narm*), much like the one the U.S. used in the Soviet Union, to destroy its identity and bring about regime change.¹⁸⁰ In fact, the Clinton and Bush administrations did employ a number of soft war strategies to support the aspirations of the Iranian people, but the Obama administration has explicitly abandoned most of these efforts and it is Iran that has sought to master soft war strategies to pursue its own interests regionally and globally.¹⁸¹ To this end, the regime has even opened a "soft war headquarters tasked with planning and executing Iran's own soft war strategy." This may be because, while the U.S. has become increasingly fixed on hard power initiatives (carrots and sticks), Iran's leaders see soft power as the biggest threat to the continuation of the regime¹⁸² and fear most the prospect of regime change from within.

The Center of Gravity

Clausewitz reminds us that the Center of Gravity (CoG), "the hub of all power and movement," should be the focal point in the construction of strategy.¹⁸³ While the concept of CoG is variously defined (the U.S. marines equates it with the adversary's weakness whereas the U.S. army sees it as the "source of the adversary's strength"), there is a general agreement that the CoG is the hub or "centripetal force" that tends to hold the system or structure together¹⁸⁴ and allows it to "act or accomplish a task or purpose."¹⁸⁵ As such, it provides "a framework within which competing demands for resources can be prioritized."¹⁸⁶

178 Kagan, Frederick W., and Pletka, Danielle. 2014. "America vs. Iran: The Competition for the Future of the Middle East." *A Report by the American Enterprise Institute*, January. p.5

179 Joseph Nye, "The Decline of America's Soft Power," *Foreign Affairs* (May/June 2004), pp. 16-20.

180 Author's Note: In a recent speech for example, Khamenei clarified that for "the Arrogance confronting the Islamic regime....the priority today is what is called soft war; that is war using cultural tools, through infiltration [of our society], through lies, through spreading rumors" and "creating doubt in people's hearts and minds." Quoted in Farzan Sabet and Roozbeh Safshekan, "Soft War: A New Episode in the Old Conflict between Iran and the United States," *IranPolitick*, The Iran Political Analysis Project, Annenberg School of Communication, University of Pennsylvania (November 2013).

181 See Hiva Feizi and Babak Talebi, "Iran's Soft Power Borne of Necessity and Complexity of its Multi-Dimensional Audience," *Exchange: The Journal of Public Diplomacy*: Vol. 3, (1), Article 6, 2012. See also Sabet and Safshekan, "Soft War."

182 The Associated Press. 2012. "'Soft War' On Iran Is Biggest Threat to Country, Gen. Mohammad Ali Jafari Claims." *Huffington Post*, September 03.

183 Clausewitz, p. 703

184 Antulio Echevarria II, "Clausewitz's Center of Gravity: It's Not What We Thought," *Naval War College Review* LVI, no. 1 (Winter 2003).

185 Dale C. Eikmeier, "Center of Gravity Analysis," *Military Review* (July-August 2004), p. 2.

186 Tim Bird, "UK Effects-Based Planning and Centre of Gravity Analysis: An Increasingly Dysfunctional Relationship," *RUSI Journal*, April 2008, p. 48.

The current U.S. administration has defined the CoG in terms of Iran's nuclear program. But the "real center of gravity", against which U.S. and allied efforts should be focused on the regime itself.¹⁸⁷ More specifically, it is the ideology that underpins the regime and encourages Iran's unique combination irregular warfare abroad and repression at home as a means for Iran to export its revolution and pursue influence.¹⁸⁸

Since its inception, or at least since the Ayatollah Khomeini took over the reins of the revolution, the regime has been committed to the concept of *velayat-e-faqih* (absolute clerical rule) and its corollary *sudur-i inqilab* (export of revolution). In theory, the concept of *velayat-e-faqih* implied a "utopian Islamic society" in which "the state would be ruled over by a theocratic philosopher-king – a man so learned in Islamic law that all of his peers and all of his countrymen would recognize that only he could provide "right-minded" guidance."¹⁸⁹ In practice, the concept conferred absolute authority on a Supreme Leader, first the Ayatollah Khomeini, now the Ayatollah Khamenei, allowing each of these individuals in turn to trample on the democratic principles at the heart of the original revolution, establishing what the renowned religious scholar, Dr. Abdul Karim Soroush, has called a "religious tyranny."¹⁹⁰ Meanwhile the concept of "sudur-i inqilab" made it possible for the regime to rationalize terrorism and other forms of irregular war as a religious duty to "propagate Islam" (*tablig-e eslami*) and fulfill what the Ayatollah Khomeini envisioned as Iran's "manifest destiny" i.e. to become a superpower on a level with the United States.¹⁹¹ The ensuing state went on to engage in a campaign of brutal repression including the massacre of as many as 20,000-30,000 political dissidents at home in the 1980s.¹⁹² Unfortunately, the practice of executing dissidents has not ceased and if anything has worsened in the last year.¹⁹³

Ends, Ways and Means

Clausewitz was clear about the connection between ends, ways, and means describing them as a "paradoxical trinity."¹⁹⁴ The first task, he argued, in any contest (whether absolute war or a more limited contest), is to define the goal, the desired end-state at the conclusion of the conflict. The ends, as Col. Arthur Lykke points out, clarify the objectives: what is to be accomplished. The ways are the concepts and courses of action explaining how the ends are to be accomplished using available resources. The means are the resources needed to apply the concept or action.¹⁹⁵ Means may be tangible or

187 See Robert Maginnis "Iran's Real Center of Gravity," *Human Events*, August 14, 2012.

188 This conception of the CoG is in line with the view that "ideas principles and moral aspects may be the centripetal force" that constitutes the CoG and fuels and drives an organization. See Joakim Karlquist, *The Center of Gravity Concept: Informed by the Information Environment* (NY: BiblioScholar, Oct. 2012), p. 41.

189 Kenneth Pollack, *The Persian Puzzle: The Conflict between Iran and America* (NY: Random House, 2004), p. 144.

190 Soroush, Abdulkarim. 2010. "We must have a Referendum in Iran." Interview. February 1st.

191 Bar, Shmuel. "Iranian Terrorist Policy and Export of Revolution," Working Paper, The Ninth Annual Herzliya Conference on the Balance of Israel's National Security and Resistance, Feb 2-4, 2009.

192 Author's Note: The majority of those killed were supporters of the People's Mujahedin of Iran (PMOI), although supporters of other opponents including the Tudeh Party of Iran were executed as well. In 2012 the families of many of the victims initiated an international commission named Iran Tribunal to investigate the mass killing of Iran's political prisoners. See Bowcott, Owen. 2012. "Tribunal to investigate 1980s massacre of political prisoners in Iran." *The Guardian*, October 18. See also Ervand Abrahamian, *Tortured Confessions*, (University of California Press, 1999), pp. 209-228.

193 Rafizadeh, Majid. 2014. "Surge in Executions and Human Rights Violations in Iran: Evidence of Rouhani's 'Moderate' Rule?" *Huffington Post*, April 04.

194 Clausewitz, *On War*, 89.

195 See H. Richard Yarger, "Toward a Theory of Strategy: Art Lykke and the U.S. Army War College Strategy Model," in J. Boone Bartholomew, ed., *the U.S. Army War College Guide to National Security Issues, Volume I: Theory of War and Strategy* (Strategic Studies Institute of the US Army War College, July 27, 2010), pp. 45-52.

intangible and can include forces, people, monetary resources, and information. The challenge is to achieve a balance between ends, ways, and means. Otherwise, there is what Col. Bruce Reider calls a “strategic disconnect.”¹⁹⁶

How does the current administration conceptualize the end-state it wants to achieve in the situation with Iran? And how well do the ways and means the administration has chosen align with the end objectives?

Ends

President Obama has repeatedly said that the desired end-state he hopes for is an Iran without nuclear weapons. The U.S. State Department has put out broader objectives. According to a May 2013 statement, the desired end-state in Iran is a country that no longer “threatens the peace and stability of the region and tramples the freedom of its citizens.”¹⁹⁷ The extent to which the ways and the means the U.S. has adopted align with this goal, however, is debatable.

Means

To date almost all of the political discussion on Iran has focused on the means the administration can employ in the negotiating arena. Can Congress find the right number of carrots and sticks to keep Iran’s negotiators at the table? Particular focus has been on sanctions. Which ones should be eased? Which ones should be continued? What are the relative benefits of easing multilateral vs. bilateral sanctions and how will Iran’s Resistance Economy figure into the equation?¹⁹⁸ The means the U.S. and the P5+1 negotiators can employ are many. The problem, however, is not a matter of too few “means.” Rather, as Reider has argued in relation to another conflict, that in Iraq, it is a matter of finding the best “ways.”

Ways

The term “nuclear threat” has become the focal point for almost all of the policy debate. Within this debate there is a considerable controversy over whether Iran is enriching uranium for peaceful purposes (as its leaders claim) or to develop a nuclear arsenal (as many believe). But the problem with Iran is not simply its potential nuclear arsenal. The larger and more strategically critical challenge is the regime’s effort to project its influence using a combination of conventional and unconventional weapons that include nuclear arms but also encompass terrorism and asymmetric war abroad as well as brutal repression at home.

Iran continues to be the world’s leading sponsor of terrorism and there is no evidence that this activity with its own destabilizing effects is decreasing. If anything, according to the U.S. State Department’s most recent *Annual Country Report on Terrorism*, released in April 2014, Iran has been working tirelessly (through its Islamic Revolutionary Guard Corps-Qods Force (IRGC-QF), its Ministry of Intelligence and Security (MOIS) and its long-time ally Hezbollah) to extend its global terror network with a consequent “resurgence” in its state-sponsored terrorism worldwide.¹⁹⁹ These activities and their effects on international security are unlikely to be halted because of a nuclear deal.

196 Reider, Bruce J. “Strategic Realignment: Ends, Ways and Means in Iraq,” *Parameters*, winter 2007-2008, pp. 46-57. Reider makes the case that failure to adequately ascertain the nature of the conflict and balance ends, ways and means has led to a flawed strategy in Iraq.

197 Sherman, Wendy (U.S. State Department), “U.S. Policy toward Iran: Written Statement before the Senate Foreign Relations Committee” (Washington DC, May 2013).

198 For a discussion of Iran’s Resistance Economy see Afshar Babak, “Threat of Sanctions and Management of Resistance Economy in Iran,” *Am J Sci Research*, March 2013, pp. 111-116.

199 U.S. Department of State. Bureau of Counterterrorism. *Country Reports on Terrorism 2013*. NCES 225886. Washington, D.C.: U.S. United States Department of State Publication, April 2014.

Indeed, Rouhani's choices for government and foreign relations appointments bode poorly for such a scenario. According to some reports, Iran's new defense minister, Brig Gen. Hossein Dehghan, appointed in 2013, was actively involved in plotting the U.S. Marine Barracks bombing in 1983 and his whole career was spent in the Revolutionary Guards, an arm of the government that has specialized in exporting terrorism.²⁰⁰ More recently in April 2014, Rouhani appointed as Iran's UN ambassador, Hamid Aboutalebi, a known member of the student group that held 52 Americans hostage for 444 days in the 1979 seizure of the U.S. Embassy in Teheran.²⁰¹ (While Mr. Aboutalebi's role in the hostage crisis may have been minor, the underlying signal that, 35 years after the fact, the regime continues to promote such individuals, is troubling).

The regime's expanding use of proxies to destabilize its neighbors is another matter of urgent concern. Iran still provides small arms shipments and training to the Taliban in Afghanistan. In addition, and despite its pledge to support Iraq's stabilization, it gives regular guidance and training to Shia militants in Iraq. It has also deployed several hundred military specialists, including senior Quds Force commanders to Syria and is believed to have spent billions of dollars to support the Assad regime as it continues its brutal crackdown on the Syrian people, a crackdown that has resulted in the deaths of more than 70,000 civilians.²⁰² Additionally, Iran has been sending weapons to secessionist movements to foment dissent and destabilize Yemen.²⁰³ These activities too are unlikely to stop in the presence of a nuclear deal, if one occurs. As Iran's supreme leader, Ali Khamenei, indicated as recently as November 2013, Iran is determined on "challenging the influence of America in the region and extending its own influence"²⁰⁴ and it does not appear to be inclined to change how it pursues its influence "one iota."²⁰⁵

Further, to support these activities and defend against potential fallout, Iran has intensified a brutal crackdown on its own citizens. While the regime's record on human rights has always been poor, its repression of ordinary Iranians reached new heights in the wake of the disputed elections of 2009. Protestors were arrested en masse, tortured, raped and killed in prison. Today, as many as 500 Iranian dissidents, including minority rights and women's activists, are still behind bars. Leading opposition figures such as Mir Hossein Mousavi, Mehdi Karroubi, and Zahra Rahnava have now been held under house arrest for three years without charges or trial, and "despite President Rouhani's numerous promises to respect people's rights following his June 2013 electoral victory," serious rights abuses continue.²⁰⁶ One of the most alarming trends is the surge in executions. Iran is now ranked number one, above China, in executions per capita. According to Ahmed Shaheed, Iran's UN special rapporteur for human rights, 176 people were put to death in January, February, and early March of 2014 alone. Several were executed in public and many sources believe the numbers are much higher. According to other reports, including the Human Rights Documentation Center, more than 500 people have been executed since Rouhani took office.²⁰⁷ These trends, coupled with the regime's record of arbitrary detention and unfair trials, discrimination against minorities, mistreatment of political prisoners and restrictions on freedom of expression, led the UN Secretary General, Ban Ki-

200 Waterman, Shaun. 2013. "Iran's New Defense Minister: Hezbollah Chief who planned 1983 Marine Barracks Attack." *The Washington Times*, August 13.

201 Dehghan, Saeed Kamali. 2014. "Iran Nominates Man Accused of links to 1979 Hostage Crisis as UN Ambassador." *The Guardian*, April 03.

202 Sherlock, Ruth. 2014. "Iran Boosts Support to Syria." *The Telegraph*, February 21

203 Staff Writer. 2014. "Yemen's President Accuses Iran of Meddling." *Al Arabiya News*, March 31

204 Takeyh, Ray. 2014. "The U.S. Needs a Deal with Iran, not Détente." *The Washington Post*, January 12.

205 Paivar, Amir. 2013. "Iran Nuclear Talks: Tehran 'will not step back one iota.'" *BBC NEWS*, November 20.

206 Human Rights Watch. 2014. "Iran: Abuses Persist Under New Government." *HRW*, January 21.

207 Rafizadeh, Majid. 2014. "Surge in Executions and Human Rights Violations in Iran: Evidence of Rouhani's 'Moderate' Rule?"

moon, to deliver a sharp rebuke to Iran's president, Hassan Rouhani, as recently as March 2014.²⁰⁸ The problem is that such abuses not only affect individuals and communities. In "a world of complex interdependencies and trans-border activities," they also have "spillover effects."²⁰⁹ In particular they can increase the flow of refugees with destabilizing effects in neighboring countries. In addition, as Tim Dunne points out they "diminish the constraining capacity of key norms" and in the process give a "green light" to other states to engage in similar repression in blatant violation of international standards of behavior.²¹⁰ Logic dictates that multidimensional conflicts require multidimensional approaches. The "ways" need to fit the nature of the conflict, one that includes multiple layers and multiple issues and involves a spectrum of threats, not just the potential threat of Iran building nuclear weapons.

Limits of negotiation: Unfortunately the U.S. has become fixed on a course of action that is both singular in nature and limited in scope. As William Zartman of Johns Hopkins University reminds us, negotiation, a form of hard bargaining, is a useful tool for single-issue conflicts. It is not a panacea for multifaceted, multidimensional conflicts. Nor does it ensure reconciliation or remove the causes of the conflict.²¹¹ Negotiation has other drawbacks. In equal power situations, it often produces a deadlock. In asymmetric ones, such as that between the U.S. and Iran, the bigger power (in this case the U.S.) may try to dominate and impose its will, but the weaker side can employ a range of tactics to level the playing field. In his experience, Zartman found that the bigger party often "set the framework" while the "little party gnawed away at details." The little party also frequently used delay tactics: they blustered, dawdled, cajoled, borrowed power, vetoed temporarily (by walking out) or longer (by threatening withdrawal) – thereby increasing their effective power.²¹² Iran's past behavior in negotiations has followed this pattern and its current posture in P5+1 negotiations is with the same pattern. As Abe Sofaer observes, Iran has called for a "comprehensive, long term dialogue" and it expects to be rewarded for each gesture with the progressive lifting of sanctions. Unfortunately, a "long" process could well enable Iran to avoid or reduce the impact of current sanctions while allowing the regime to move closer to developing a nuclear arsenal.²¹³

Nor is it likely that the current nuclear negotiations will lead, as some believe, to a more systematic meaningful dialogue to resolve the larger palette of problems. As Ray Takeh points out:

"The two parties are on different sides in the regional context. They're on different sides in Syria. They're on different sides in the Gulf. They're on different sides in the Palestinian-Israeli conflict. They're on different sides on issues of terrorism. And they're on different sides on issues of Iraq."²¹⁴

208 Dehghan, Saeed Kamali. 2014. "Ban Ki-Moon Rebukes Iranian President for Human Rights Failings." *The Guardian*, March 12.

209 See Ihsan Dagi, "Human Rights and International Security: The Challenge for NATO in the Mediterranean," *Mediterranean Quarterly*, summer 2002, pp. 119-134. See also Eric Neumayer, "Bogus Refugees? The determinants of asylum migration to western Europe," *International Studies Quarterly*, September 2005, pp. 389-409 "Bogus Refugees? The determinants of asylum migration to western Europe," *International Studies Quarterly*, September 2005, pp. 389-409.

210 Dunne, Tim " "The Rules of the Game are Changing': Fundamental Human Rights in Crisis after 9/11," *International Politics*, March/May 2007, pp. 269-286.

211 William Zartman and Saadia Touval, "International Mediation in the Post-Cold War Era," in Chester Crocker, Fen Hampson and Pamela all, eds., *Managing Global Chaos* (Washington, D.C.: United States Institute of Peace Press, 1996), pp. 445-461.

212 William Zartman, "The Structuralist Dilemma in Negotiation," in Roy Lewicky, Robert J. Bies, Blair H. Sheppard, eds., *Research on Negotiation in Organizations* (Greenwich CT: JAI Press, 1997), vol. 6, pp. 227-246.

213 Abe Sofaer, *Taking on Iran: Strength, Diplomacy and the Iranian Threat* (Stanford, CA: Hoover Institution Press, 2013), p. 3. See also Cordesman, "The Best Deal."

214 Takeyh, Ray. 2013. "Media Call with Ray Takeyh on Iran Nuclear Deal." *Council on Foreign Relations*,

In addition, it is not necessarily in Iran's interest to "make peace" since opposition to the U.S. is such a core component of its identity.

Rethinking Strategy

To make progress in resolving the larger situation with Iran the U.S. needs to take several steps. First it needs to reassess the nature of the conflict, a conflict that has multiple layers and issues. Second the U.S. needs to better coordinate ends, ways and means. Is the U.S. only interested in a non-nuclear Iran or does it seek the broader objective outlined by the U.S. State Department (an Iran that no longer continues "on a path that threatens the peace and stability of the region and tramples the freedom of its citizens")? Iran's neighbors are watching closely. The Saudis and other Gulf Cooperation Countries (GCC) have an interest in a non-nuclear Iran, but fear that a final deal could be at their expense. As Ian Black, writing for *The Guardian*, points out, "Iran's backing for Assad, its intimate relationship with Hezbollah in Lebanon and support and inspiration for Shias in Iraq, Bahrain and Saudi Arabia's eastern province are all issues of profound concern."²¹⁵ The Saudis have voiced special concern about sanctions relief. Referring to the \$7 billion dollars in interim relief, Anwar Eshki, Chairman of the Middle East Centre for Strategic and Legal Studies in Jeddah, for example, has asked "whether these funds will be used by the Iranian regime for its own people, or to further finance crises in the region."²¹⁶

Iran's people are also watching. Is the U.S. willing to sacrifice *their* aspirations for a nuclear deal? Human rights lawyer and 2003 Nobel Prize peace prize laureate, Shirin Ebadi, together with Payam Akhavan, a founder of Iran Human Rights Documentation, worry that this may be the case. Noting that even as Iran's foreign minister sat with his Western counterparts in Geneva in November, shaking hands and celebrating an interim nuclear agreement, "the lifeless body of a young man hung from a crane in a bleak public square in Tehran, spreading fear among Iranians who suffer the world's highest per capita rate of executions." Iranians ask: "will the world community disregard human rights in the coming months to conclude a comprehensive nuclear deal?"²¹⁷

The Obama administration has so far signaled that its predominant objective is a nuclear deal. While the U.S. has plenty of resources to make a deal with Iran's negotiators, there is no guarantee that Iran's Supreme Leader will agree to a final deal or that Iran will follow through and comply with it.²¹⁸ Nor will a deal solve the larger problems posed by the Iranian regime. Third, there is a need to shift strategy. The strategy (ways) needs to fit the nature of the conflict, one that includes multiple layers and multiple issues and involves a spectrum of threats.

The U.S. needs to pressure Iran with strategic combinations. In addition to hard power in the form of negotiation, sanctions and military threats, the U.S. should use its soft power resources to address the real center of gravity in Iran by reviving support for the Iranian opposition and its efforts to bring about "regime change from within."

Contrary to what many expected from a leader promoting the "audacity of hope," the Obama administration has avoided asserting meaningful "soft power" particularly in

November 25.

215 Black, Ian. 2013. "Iran Nuclear Deal: Saudi Arabia and Gulf React with Caution." *The Guardian*, November 24.

216 Staff Writer. 2013. "Nuclear Deal Sparks Iran Hegemony Fear." *ARAB NEWS*, November 25.

217 Akhavan, Payam, and Ebadi, Shirin. 2013. "In Iran, Human Rights and Nuclear Security go Hand in Hand." *The Washington Post*, November 29.

218 Cordesman, Anthony H. "The Best Deal with Iran That We Can Get," Center for Strategic and International Studies (CSIS), Nov 24, 2013.

relation to Iran where, as Mark Lagon observes, it might have made a difference not only for Iran but for American interests as well.²¹⁹ At no time was this more apparent than in June of 2009 when millions of Iranians poured into the streets to protest the results of an Iranian presidential election that was widely viewed as rigged and fraudulent. As the number of protestors swelled, filling the streets of Teheran, Orumiyyeh Rasht, Tabriz and Zahedan, the U.S. administration was faced with a strategic and moral dilemma. Two months earlier, the president had declared in Prague that he wanted to work on curbing Iran's nuclear arms efforts and would seek "engagement with Iran based on mutual interests and respect."²²⁰ Should he now side with those protesting the theft of an election, even if that meant antagonizing Iran's leaders and possibly narrowing the channels for nuclear diplomacy? For several days the president was silent. When he did speak up, he equivocated. "It is up to Iranians to make decisions about who Iran's leaders will be," he said, adding, "We respect Iranian sovereignty and want to avoid the United States being the issue inside of Iran."²²¹ Within days protestors were arrested en masse. Many were tortured. Many are still incarcerated. The Green Movement with its potential to bring about some degree of regime change (or at a minimum some degree of regime modification in the direction of a more democratic state) was crushed, at least temporarily.

There were those who said that defending the protesters would only encourage Iranian authorities to scapegoat them as pawns of the West, but Iran's leaders would do so anyway. The president clearly lost an opportunity. As Council on Foreign Relations President Richard Haass wrote in *Newsweek* the following January:

"I am a card-carrying realist on the grounds that ousting regimes and replacing them with something better is easier said than done... Critics will say promoting regime change will encourage Iranian authorities to tar the opposition as pawns of the West. But the regime is already doing so. Outsiders should act to strengthen the opposition and to deepen rifts among the rulers. This process is underway... Even a realist should recognize that it's an opportunity not to be missed."²²²

Robert Kagan of the Brookings Institution has long made the point that regime change in Teheran is the "best nonproliferation policy" and that the "odds of regime change are higher than the odds that the regime will give up its nuclear program." Unfortunately, the president has gone out of his way in Martin Indyk's words "to demonstrate acceptance of the government of Iran." This was a key element, as Kagan observes in the president's "grand bargain." In return for Iran agreeing to participate in nuclear talks, the U.S. would guarantee that it would not support Iran's opposition or in any way seek regime change.^{223 224} Regrettably, this decision put the American president and his administration on the side of a government that represses its own people and continues to pursue its interests by exporting terrorism and promoting instability in a growing number of regimes worldwide.

The U.S. needs to shift its strategy towards increasing the prospects for regime change. As a first step, the administration needs to revise the idea that regime change in

219 Lagon, Mark P. 2011. "The Values of Values: Soft Power under Obama." *World Affairs Journal*, September/October 2011.

220 Obama, Barack. "Remarks by President Barack Obama." Hradcany Square, Prague, Czech Republic. The White House, Office of the Press Secretary. April 5, 2009

221 Obama, Barack. "Remarks by President Barack Obama." Hradcany Square, Prague, Czech Republic. The White House, Office of the Press Secretary. June 15, 2009.

222 Richard Haass, "Haas Regime Change is the Only Way to Stop Iran," *Newsweek*, Jan 21, 2010.

223 Kagan, Robert. 2010. "How Obama Can Reverse Iran's Dangerous Course." *The Washington Post*, January 27.

224 Kagan, Robert. 2009. "Obama's Iran Realism." *The Guardian*, June 17.

Michael Reisman's words is "almost always a bad idea."²²⁵ It is true that the right of states, however small or weak, to govern themselves without interference from outside states or powers, is a fundamental principle of the modern international system and any "general legitimization" of regime change is not likely to be tolerated under international law, as Reisman points out.²²⁶ It is also true that the forcible toppling of states in the form of "military adventurism" can bring about consequences that are more catastrophic than the regimes they are meant to replace.²²⁷ In addition, it is a known fact that regime change, whether from within or without, does not necessarily ensure an orderly transition to democracy. At the same time, the concept of regime change cannot simply be relegated to the trash bin of failed policies. As Reisman himself observes, international law does not simply guarantee sovereignty. It also guarantees human rights.²²⁸ Moreover, in U.N Secretary General Kofi Annan's words, "state sovereignty in its most basic sense is being redefined ... States are now being widely understood to be instruments at the service of people and not vice versa."²²⁹ In Annan's words, "when an individual state should undertake to use force to change the regime of another state, because the regime is both hideous and dangerous, both pathological and pathogenic, and because the formal decision structures of the international legal system prove inoperable."²³⁰ In such cases, other overriding principles such as the Right to Protect²³¹ and the concept of Responsible Sovereignty promoted by Stephen Krasner may apply.²³²

As a second step, the U.S. needs to abandon the idea that pressure on Iran in the form of support for "regime change from within" will only derail talks. As Kenneth Pollack has pointed out, Iran does not moderate when the pressure is off but when it is high.²³³

225 Michael Reisman, "Why Regime Change is (Almost Always) a Bad Idea." Manley O. Hudson Lecture. *The American Journal of International Law* 98, July 2004, pp. 516–525.

226 Ibid, p. 516.

227 Falk, Richard, Stevens, Jacqueline, and Rajagopal, Balakrishnan. *International Law and the Third World: Reshaping Justice* (Routledge Cavendish, 2008), p. 205.

228 Reisman, 516

229 Annan, Kofi. 1999. "*The Question of Intervention: Statements by the Secretary General*." United Nations, New York: United Nations, 1999

230 Reisman, p. 524.

231 For more on Right and Responsibility to Protect, see Perez de Cuellar, "Report of the Secretary-General on the Work of the Organization," A/46/1, September 13, 1991; Francis Deng, Sadiikiel Kimaro, Terrence Lyons, Donald Rothchild and William Zartman, *Sovereignty as Responsibility: Conflict Management in Africa* (Washington D.C.: Brookings Institution, 1996); ICISS, *The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty* (Ottawa: IDRC, 2001); and UN GA, 'World Summit Outcome', A/60/1, October 24, 2005, at paragraphs 138–9. According the latter document, the responsibility to protect lies first with the state. However, there is an additional assertion that bystander states or the "international community" not only have a right but a collective responsibility to assist states in protecting their populations in situations where the host state is failing to do so. For more on history of the emergence of this concept, see Alex J. Bellamy, *Responsibility to Protect: The Global Effort to End Mass Atrocities* (Cambridge: Polity, 2009), chapters 2–3; and Bellamy, *Global Politics and the Responsibility to Protect: From Words to Deeds* (New York: Routledge, 2011), chapters 2–4. While these emerging norms are still a matter of debate since they conflict with long held principles of state sovereignty and the right of states freedom from external interference, they are beginning to take on the form of "enforceable customary law" to protect vulnerable populations from mass atrocities. See Luke Glanville, "The Responsibility to Protect beyond Borders," *Human Rights Law Review* 12, no.1 (2012): 1–32; Luke Glanville, "In Defense of the Responsibility to Protect," *Journal of Religious Ethics* 41, no. 1 (2013): 169–182. These trends have provided a rationale for a range of pro-active efforts to prevent human rights emergencies including democracy promotion and non-violent regime change.

232 Drawing on the observation that conflict threats, in the form of transnational terrorism, irregular war, regional war and humanitarian problems such as disenfranchisement and human rights abuses, are rooted in corrupt and insensitive governance, the concept of Responsible Sovereignty is especially relevant to Iran. See Stephen D. Krasner, "An Orienting Principle for Foreign Policy," *Policy Review* (Oct/Nov 2010).

233 Pollack, Kenneth M. *The Unthinkable: Iran, the Bomb and American Strategy* (New York: Simon and

As a third step, U.S. leaders need to be more forthright in speaking out on behalf of the Iranian people and their rights to a government that serves the people, not the other way around. Rouhani's human rights record if anything has been worse than that of his predecessor. The U.S. also needs to do whatever it can to push back against the power of Iran's Revolutionary Guards. Not only is the Revolutionary Guard Corps the primary force inside Iran that wants to militarize its nuclear program, as Abe Sofaer argues, it is the primary executor of the regime's terrorist agenda; it has been "complicit in the genocide in Syria" and it is the main force in the repression of Iran's people.²³⁴

Conclusions

If the U.S. is serious about meeting the ongoing challenge posed by Iran, it needs to rethink its strategy. First, we need to reassess the nature of the conflict. The problem is not just the potential for Iran to develop a nuclear weapon. Iran's irregular behavior in the international sphere and its brutal repression of its own people at home are also profound concerns.

Second, we need to reexamine whether ends, ways and means are consistent and connected in the context of a larger strategy and the center of gravity in Iran. The means the U.S. has to ensure some level of a nuclear deal are sufficient. The U.S. however needs to move beyond a singular focus on the nuclear issue and develop more comprehensive ways to reduce Iran's export of terror and its brutal repression of its own citizens.

Third, the U.S. needs to find a strategy that is appropriate to the complexities of a multidimensional conflict that includes a potential for nuclear war and proliferation but also encompasses terrorist activity surrogate war and human rights violations. The notion that hard bargaining is the only alternative to the stark choice between accepting a nuclear Iran and preemptively striking its nuclear facilities is a false dichotomy. There are multiple "ways" and the U.S. should make use of a multi-dimensional approach that blends hard and soft power. In particular, the U.S. needs to direct more of its energies to combatting the ideology at the heart of these activities and the best way to accomplish this is by reviving support for regime change from within.

Schuster, 2013).

234 Sofaer, Abraham D. 2014."Hurt Iran's Hawks, Not It's People." *New York Times*, February 26.

The Treason Imperative: Terror as Treason

Dorothy Martucci, Esq.



Article III, Section III

“Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court. The Congress shall have power to declare the Punishment of Treason...”²³⁵

Introduction

In the War on Terror, the enemy has taken a variety of forms. Perhaps the most unsettling have been Americans who have taken up arms against the United States. While Americans are morally justified in a particular disdain for these enemy actors, the American legal system cannot justify a deprivation of the process protections to which they are entitled. Nevertheless, the pursuit of justice in terrorism cases has set off in a dangerous direction, prioritizing expediency and information security over the integrity of the legal system. A fairly recent illustration of this decision-making pattern is the targeted killing of Anwar al Awlaki.

Anwar al Awlaki was an American citizen by birth.²³⁶ He spent the first seven years of his childhood in New Mexico before moving to Yemen, after which he returned to the United States and attended college at Colorado State University.²³⁷ It is generally accepted that, during the final years of his life, al Awlaki was engaged in a deliberate, conspiratorial betrayal of his country, and that his intentions were to cause significant harm to the United States and to his fellow American citizens.²³⁸ In 2011, the United States government ended his life in a targeted drone strike.²³⁹ No judge or jury determined his guilt or his sentence. The degree of process that al Awlaki was afforded is disputed, as is its adequacy; however, it is undisputed that al Awlaki was deprived of a public trial, that he was afforded no opportunity to put forth a defense, and that he was given no opportunity to procure counsel.²⁴⁰ While the executive branch unilaterally decided his fate, al Awlaki was in Yemen, 8,000 miles away.²⁴¹

Many have argued that al Awlaki was entitled to standard due process – a trial in a competent forum, an attorney, and an opportunity to testify.²⁴² Given his American citizenship and other factors, however, this paper will argue that al Awlaki, and in

235 U.S. Constitution, Article III, Section III. Available at http://www.usconstitution.net/xconst_A3Sec3.html.

236 Shane, Scott. “Anwar al-Awlaki – From Condemning Terror to Preaching Jihad,” *The New York Times* (8 May 2010). Available at <http://www.nytimes.com/2010/05/09/world/09awlaki.html?pagewanted=2&r=0>.

237 *Id.*

238 *Id.*

239 Raddatz, Martha. “Anwar al-Awlaki Targeted By U.S. Drones After Osama Bin Laden Raid.” *ABC News* (6 May 2011). Available at <http://abcnews.go.com/Blotter/anwar-al-awlaki-targeted-us-drones-osama-bin/story?id=13549218>.

240 *Al-Aulaqi v. Panetta*, Complaint Filed Jul. 18, 2012, at 2. Available at <http://www.aclu.org/national-security/al-aulaqui-v-panetta-complaint>.

241 *Id.*

242 *Id.* See also Benjamin McKelvey, *Due Process Rights and the Targeted Killing of Suspected Terrorists: The Unconstitutional Scope of Executive Killing Power*, 44 *Vand. J. Transnat'l L.* 1353, 1355 (2011).

some cases, other American citizens who defect to the ranks of the enemy in the War on Terror are entitled not only to general criminal due process protections, but also to additional procedural protections under the Treason Clause.

The Treason Clause of the United States Constitution is unique in three significant ways. First, treason is the only crime explicitly delineated in the Constitution. Second, treason carries procedural protections in addition to standard constitutional due process. Finally, unlike most crimes, only an American citizen can commit treason. The inclusion of a Treason Clause at all imputes a degree of significance to the crime, a significance that is reinforced by the inclusion of additional procedural protections. It requires no stretch of the imagination to conclude that the drafters of the Constitution believed that Americans accused of treason require particular attention and exceptional procedural protections.²⁴³

The War on Terror is an unusual war. Enemy lines are anything but clear, and enemy actors are difficult to distinguish from harmless or even friendly actors.²⁴⁴ In this context, the status of an American who betrays his country to fight on behalf of the enemy is easily obfuscated. He will not be wearing a uniform, and often, he will not be armed. He may deny his involvement and provide other reasons for his suspicious behavior. Similarly, a day will likely come when loyal Americans are mistakenly accused of treachery.

This paper will argue that the existence of the Treason Clause requires its application in all prosecutions that prove its elements. In some prosecutions, the factual allegations, in light of the charged statutory offense, require the prosecution to prove all six elements of treason in order to prove the charged statutory crime. In these cases, the identical nature of the elements to be met permit the government to essentially prove a treason case against the defendant without the added burden of the two-witness rule. While it can be significant for sentencing purposes that the convictions in these cases would be for crimes other than treason, for all other purposes, the prosecution is able to achieve the same objective as it would with a treason conviction without meeting the necessary procedural burden. This may occur, for example, in some prosecutions for material support of terrorism.²⁴⁵

Put simply, a prosecution that, in proving the charged crime, proves treason, is a de facto treason prosecution, even if treason is not explicitly alleged. In these circumstances, the defendant is entitled to the exceptional procedural protections of the Treason Clause. The legally obligatory nature of a charge of treason in these kinds of cases will be referred to as the treason imperative.

This paper will argue that the history of the Treason Clause serves only to reinforce the need for its application in the above-noted contexts, and that the consequences of a failure to protect American citizens by affording the full extent of the process that the Constitution requires could prove damaging to the integrity of the American legal system.

243 Watson, Bradley, C.S. *The Heritage Guide to the Constitution: Treason*. The Heritage Foundation. Available at <http://www.heritage.org/constitution/#!/articles/3/essays/119/treason>.

244 Jeh Johnson Speech at Oxford University (Nov. 30, 2012), Lawfare Blog. Available at <http://www.lawfareblog.com/2012/11/jeh-johnson-speech-at-the-oxford-union/>.

245 "Whoever knowingly provides material support or resources to a foreign terrorist organization, or attempts or conspires to do so, shall be fined under this title or imprisoned..." 18 U.S.C.A. § 2339B (West).

A History of the Treason Clause

The text of the Treason Clause was based in large part upon English Common law regarding treason.²⁴⁶ The framers adapted the language of the Clause to particular American norms of individual liberty, and to Madisonian concerns regarding the corruptibility of government.²⁴⁷ The framers took precautions, in drafting the clause, to protect defendants in treason cases from potential abuses of the charge, such as the pursuit of personal and political vendettas.²⁴⁸ The clause was carefully and deliberately constructed to provide sound procedural protections.²⁴⁹

Notably, the clause includes a requirement that a treason charge be supported with the testimony of two witnesses – a significant added burden for the government, particularly given the nature of the crime. For this reason and others, treason charges have been both scarce and largely unsuccessful throughout American history.²⁵⁰ Indeed, per the Heritage Foundation, “the exercise of federal prosecutorial discretion has...led to the prosecution on other grounds of individuals for acts that arguably amount to treason...or to failure to prosecute at all.”²⁵¹

Early American Treason Cases: Defining Treason

In 1807, in *Ex Parte Bollman*, Chief Justice John Marshall decided a habeas corpus petition in a case in which treason was charged.²⁵² The *Bollman* Court rejected the implementation of the doctrine of “constructive treason,” an English Common law doctrine that provided for the use of a treason charge in cases in which treasonous behavior is merely contemplated or in which a conspiracy falls short of levying war.²⁵³ This rejection of constructive treason set a precedent that, in order to commit an act meriting charge under the Treason Clause, an individual would have to participate in a conspiracy that actually resulted in the levying of war against the United States.²⁵⁴ In the Justice’s own words,

To constitute that specific crime for which the prisoners now before the court have been committed, war must be actually levied against the United States. However flagitious may be the crime of conspiring to subvert by force the government of our country, such conspiracy is not treason. To conspire to levy war, and actually to levy war, are distinct offences. The first must be brought into operation by the assemblage of men for a purpose treasonable in itself, or the fact of levying war cannot have been committed.²⁵⁵

246 Heritage Treason, *supra* note 9. “The drafters of the Constitution reached back (as had the Continental Congress) to language in the statute of 25 Edward III (1350), which limited treason, among other things, to compassing or imagining the death of the king, levying war against the king, or adhering to the king’s enemies, giving them aid and comfort.”

247 Heritage Treason, *supra* note 9. “Reflecting the American Founders’ concern with protecting individual rights and their fear of arbitrary governmental power, the Framers of the Constitution sought a precise and permanent definition of treason, the permissible means of proving it, and the limitations on the punishment for it.”

248 Heritage Treason, *supra* note 9. “They did not include the language of “compassing or imagining,” which had been the basis of the English doctrine of “constructive treason,” an effective and easily abused method for dealing with political opponents.”

249 Heritage Treason, *supra* note 9.

250 Heritage Treason, *supra* note 9.

251 Heritage Treason, *supra* note 9.

252 Kurland, Philip. *The Founders’ Constitution*. Article 2, Section 3, Clauses 1 and 2: *Ex parte Bollman & Swartwout*. The University of Chicago (2000). Available at http://press-pubs.uchicago.edu/founders/documents/a3_3_1-2s21.html.

253 Heritage Treason, *supra* note 9.

254 Kurland, *supra* note 18.

255 Kurland, *supra* note 18.

In short, the Court held that, “[c]onspiracy short of the actual levying of war is insufficient.”²⁵⁶ Notably, the Justice discussed the importance of legislation criminalizing activity short of treason.²⁵⁷ He explained that the severity of actual treasonous activity merited the particularly serious punishments and accompanying strict procedural protections that characterized a treason charge and conviction, and that lesser, but similar crimes could be addressed in federal legislation.²⁵⁸ Significantly, Justice Marshall’s admonition to Congress was explicitly to create laws to punish conduct *short* of treason, rather than to create laws to punish conduct constituting treason through other means requiring fewer procedural protections.²⁵⁹

Crimes so atrocious as those which have for their object the subversion by violence of those laws and those institutions which have been ordained in order to secure the peace and happiness of society, are not to escape punishment because they have not ripened into treason. The wisdom of the legislature is competent to provide for the case...²⁶⁰

Pertaining to the same conspiracy as that adjudicated in *Ex Parte Bollman*, in 1807, former Vice President Aaron Burr was brought to trial on treason charges.²⁶¹ Burr had begun communications with a British Minister, plotting to work with Britain to aid the secession of Louisiana from the United States.²⁶² The conspiracy was uncovered, and Burr was brought to trial in Richmond, Virginia on charges of treason and high misdemeanors.²⁶³

Justice Marshall wrote to grant Burr’s motion to end the trial during the prosecution case-in-chief and send the decision to the jury, which ultimately acquitted Burr on insufficiency of the evidence.²⁶⁴ The Justice reiterated the Court’s rejection of the doctrine of constructive treason, explaining that “[t]here is no difficulty in affirming that there must be a war, or the crime of levying it cannot exist.”²⁶⁵ The Justice explained that the issue was not that Burr had participated in the conspiracy at a distance, but rather that the conspiracy had never risen to the level of treasonous conduct. “If those who perpetrated the fact be not traitors, he who advised them [Burr] cannot be a traitor.”²⁶⁶ Importantly, *United States v. Burr* set the precedent that a defendant, “if not physically present in an assemblage of men, could still be convicted of treason on the testimony of two witnesses that he actively helped effect or aid such an assemblage—in effect, aided in the levying of war.”²⁶⁷

256 Heritage Treason, *supra* note 9.

257 Kurland, *supra* note 18.

258 Kurland, *supra* note 19.

259 Kurland, *supra* note 19.

260 Kurland, , *supra* note 18.

261 Linder, Doug. The Treason Trial of Aaron Burr (2001). UMKC. Available at <http://law2.umkc.edu/faculty/projects/ftrials/burr/burraccount.html>.

262 *Id.*

263 *Id.*

264 *Id.*

265 Treason Against the United States. The New York Times. <http://www.nytimes.com/1861/01/25/news/treason-against-the-united-states.html?pagewanted=2>.

266 Linder, *supra* note 27.

267 Heritage Treason, *supra* note 9. Justice Marshall noted that this construction of the Treason Clause differed from the decision in *Bollman*; however, the Justice explained that the portion of the *Bollman* opinion regarding treasonous activity from a distance was, in fact, dicta, and could therefore be ignored. ““It may now be proper to notice the opinion of the supreme court (sic) in the case of the United States against *Bollman* and *Swartwout*. It is said that this opinion, in declaring that those who do not bear arms may yet be guilty of treason, is contrary to law, and is not obligatory because it is extra-judicial and was delivered on a point not argued. This court is therefore required to depart from the principle there laid down.” Opinion of John Marshall in the Aaron Burr Trial (August 1807). UMKC. Available at <http://law2.umkc.edu/faculty/projects/ftrials/burr/burropinion.html>.

In *Cramer v. United States*, a 1945 case involving a naturalized citizen of German origin affiliated with the defendants in *Ex Parte Quirin*,²⁶⁸ the Court delved into the elements of the constitutional crime of treason.²⁶⁹ “[T]he Supreme Court held that a specific intent—adherence to the enemy, and therefore to harm the United States—is necessary, rather than the simple rendition of aid.”²⁷⁰

Most importantly for purposes of the treason imperative, the Court recognized the exceptional nature of the treason charge as a constitutional crime and of the accompanying procedural protections, explaining that the founders “wrote into the organic act of the new government a prohibition of legislative or judicial creation of new treasons. And a venerable safeguard against false testimony was given a novel application by requiring two witnesses to the same overt act.”²⁷¹ *Cramer* reiterated the significance of the framers’ use of procedural protections in the Treason Clause, and explained that, “[t]he temper and attitude of the Convention toward treason prosecutions is unmistakable. It adopted every limitation that the practice of governments had evolved or that politico-legal philosophy to that time had advanced.”²⁷²

The Court noted that the founders structured the Treason Clause as they did to avoid two significant evils.²⁷³ First, the framers worried that a treason charge would be misused to oppress political opposition.²⁷⁴ Second, and most relevant to a discussion of the treason imperative, the founding fathers feared the “conviction of the innocent as a result of perjury, passion, or inadequate evidence.”²⁷⁵ The Court explained that the second evil was “one which would be diminished mainly by procedural requirements—mainly but not wholly, for the hazards of trial also would be diminished by confining the treason offense to kinds of conduct susceptible of reasonably sure proof.”²⁷⁶

The *Cramer* Court provided a guide in separating treason from non-treasonous conduct.

A citizen intellectually or emotionally may favor the enemy and harbor sympathies or convictions disloyal to this country’s policy or interest, but so long as he commits no act of aid and comfort to the enemy, there is no treason. On the other hand, a citizen may take actions, which do aid and comfort the enemy - making a speech critical of the government or opposing its measures, profiteering, striking in defense plants or essential work, and the hundred other things which impair our cohesion and diminish our strength—but if there is no adherence to the enemy in this, if there is no intent to betray, there is no treason.²⁷⁷

In 1947, the Court heard *Haupt v. United States*, another case related to *Quirin*. *Haupt* clarified the evidentiary standards for treason.²⁷⁸ Petitioner, a naturalized citizen, was the father of one of the defendants in *Quirin*.²⁷⁹ Following his son’s arrival in the United States for purposes of spying on behalf of Germany, Petitioner provided his son with assistance and shelter.²⁸⁰ The indictment alleged,

268 *Ex parte Quirin*, 317 U.S. 1, 63 S. Ct. 1, 87 L. Ed. 3 (1942).

269 *Cramer v. United States*, 325 U.S. 1, 3, 65 S. Ct. 918, 919, 89 L. Ed. 1441 (1945).

270 *Heritage Treason*, *supra* note 9.

271 *Cramer v. United States*, 325 U.S. 1, 23-24, 65 S. Ct. 918, 929, 89 L. Ed. 1441 (1945).

272 *Id.*

273 *Id.*

274 *Id.*

275 *Id.*, at 27.

276 *Id.*, at 27-28.

277 *Id.*, at 29.

278 *Haupt v. United States*, 330 U.S. 631, 634, 67 S. Ct. 874, 875, 91 L. Ed. 1145 (1947).

279 *Id.*

280 *Id.*

first, the charge that this defendant accompanied his son to assist him in obtaining employment in a plant engaged in manufacturing the Norden bomb sight; second, the charge of harboring and sheltering Herbert Haupt; and third, the charge of accompanying Herbert to an automobile sales agency, arranging, making payment for and purchasing an automobile for Herbert. Each of these was alleged to be in aid of Herbert's known purpose of sabotage.²⁸¹

The Court distinguished the case from *Cramer*, which "was reversed because the Court found that the act which two witnesses saw could not on their testimony be said to have given assistance or comfort to anyone, whether it was done treacherously or not."²⁸² By contrast, the prosecution in *Haupt* had significant evidence that Petitioner had provided aid and comfort, and merely required two witnesses to testify to Petitioner's awareness of his son's treacherous intentions.²⁸³ As one scholar explained, "[t]he Court effectively relaxed *Cramer's* standard of proof by holding that the testimony of two witnesses to overt acts might be supported by other evidence as to the accused's treasonable intent, including out-of-court confessions and admissions."²⁸⁴

In 1952, the U.S. Supreme Court heard *Kawakita v. U.S.*, in which a dual American-Japanese citizen contested a treason conviction.²⁸⁵ The Court discussed the implications of a case in which the defendant had taken up residence in Japan and claimed to have renounced his citizenship, defeating his eligibility for a treason charge.²⁸⁶ The defendant also claimed that an American citizen could not be convicted of treason for acts committed outside the borders of the United States.²⁸⁷ The Court found that a treason defendant's citizenship status is a question of fact for a jury to determine, and that a defendant can indeed commit treason against the United States from outside its borders.²⁸⁸

In addition, the Court discussed the evidentiary requirements of the two-witness rule, explaining that the witnesses need not agree on every detail of an overt act, but rather must be able to testify to the same overt act generally.²⁸⁹ "The Court of Appeals concluded, and we agree, that the disagreement among the witnesses was not on what took place but on collateral details. 'While two witnesses must testify to the same act, it is not required that their testimony be identical.'"²⁹⁰

With regard specifically to speech, the Supreme Court's admonition in *Cramer* that a citizen's speech without "intent to betray" cannot constitute treason carried with it the implication that speech with intent might indeed constitute treasonous conduct.²⁹¹ While the Supreme Court has not addressed the question of speech as treason, and in fact indicated, in the 1969 decision in *Brandenburg v. Ohio*, that speech generally cannot be criminalized unless it is delivered to incite imminent violence, lower courts have addressed the issue.²⁹²

281 *Id*

282 *Id.*, at 876.

283 *Id.*, at 876.

284 Heritage Treason, *supra* note 9.

285 *Tomoya Kawakita v. U. S.*, 343 U.S. 717, 720, 72 S. Ct. 950, 954, 96 L. Ed. 1249 (1952).

286 *Id.*

287 *Id.*

288 *Id.*

289 *Id.*

290 Henry Mark Holzer, *Why Not Call It Treason?: From Korea to Afghanistan*, 29 S.U. L. Rev. 181, 189-90 (2002).

291 *Cramer*, *supra* note 37.

292 *Brandenburg v. Ohio*, 395 U.S. 444, 89 S. Ct. 1827, 23 L. Ed. 2d 430 (1969). "Ha[nd] fashioned the principle that the constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to

In 1950, the D.C. Circuit addressed the question of speech and treason in *Gillars v. U.S.*²⁹³ The court determined that the defendant's participation in the production of recorded propaganda on behalf of the German government during wartime constituted "words spoken on 'behalf of the enemy,'" and "were treasonable."²⁹⁴ In 1950, the First Circuit addressed a similar fact pattern in *Best v. U.S.* The defendant in *Best* was accused of contributing to radio broadcasts on behalf of the enemy, which the court determined to be treasonous conduct.²⁹⁵

It is unclear whether these cases, both of which occurred prior to the 1969 *Brandenburg* decision, still hold. Of particular significance in this determination is that speech likely to be classified as treasonous is rarely delivered for the purposes of inciting *imminent* violence. However, it is important to note that the Court has not ruled on the issue, and that a prosecution for treasonous speech is therefore legally possible, if not likely.²⁹⁶

It is also important to note that, per the text of the Treason Clause itself, a defendant's confession in open court will suffice to prove treason in lieu of the two witnesses otherwise required by the clause.

From the above-noted case law, a set of six elements of treason can be gleaned: treason: 1) must be committed by a citizen, 2) must be actual, and not constructive, 3) must contribute to the levying of war, 4) requires a specific intent to betray, 5) must provide aid and comfort to the enemy, and 6) must be an overt act. Notably, an individual with dual citizenship can commit treason, and, at least theoretically, speech can constitute treasonous conduct. All individuals charged with treason are entitled to the heightened procedural protection of the two-witness rule, unless the defendant provides a confession in open court.

Treason as Optional: Cases in Which Treason Was Not Charged

In 1999, the Second Circuit heard *U.S. v. Rahman*.²⁹⁷ The court determined that a charge of treason was inappropriate for the defendant in question, but discussed prevailing judicial uncertainty surrounding the possibility of a treason imperative.²⁹⁸

The Supreme Court has identified but not resolved the question whether the [treason] clause applies to offenses that include all the elements of treason but are not branded as such...The question whether a defendant who engaged in subversive conduct might be tried for a crime involving all the elements of treason, but under a different name and without the constitutional protection of the Treason Clause, therefore remains open.²⁹⁹

Whether the government must charge treason in cases in which the evidence supports a treason prosecution is judicially unresolved.³⁰⁰ However, an examination of the nature of the Treason Clause, and of the framers' intent in including the Treason Clause demonstrates that the process protections of a treason charge are an imperative rather than simply an option in cases in which treason applies.

inciting or producing imminent lawless action and is likely to incite or produce such action." <http://yulr.org/the-treason-clause-and-free-speech/>.

293 *Gillars v. United States*, 182 F.2d 962, 966 (D.C. Cir. 1950).

294 Benjamin A. Lewis, An Old Means to A Different End: The War on Terror, American Citizens . . . and the Treason Clause, 34 *Hofstra L. Rev.* 1215, 1232 (2006).

295 *Id.*

296 Klipper, Robert. The Treason Clause and Free Speech (Jun. 5, 2012). *Yale Undergraduate Law Review*. Available at <http://yulr.org/the-treason-clause-and-free-speech/>.

297 *United States v. Rahman*, 189 F.3d 88, 113 (2d Cir. 1999).

298 *Id.*

299 *Id.*

300 *Id.*

The following are two cases, one of espionage and one of material support of terrorism, in which the defendants were not charged with treason, but, based upon the government's allegations, should have been. It is important to note that because these individuals were not charged with treason, they were or will be deprived of the two-witness rule process protections that would have accompanied a treason charge, lightening the government's burden of proof to an unconstitutional degree.

In 1979, the 9th Circuit heard *U.S. v. Boyce*, a case involving an American citizen who acted as a spy for the Soviet Union. Christopher Boyce was working for a military contractor and had access to sensitive information. Boyce and Andrew Lee, a childhood friend, engaged in a conspiracy to sell information to the enemy. "During 1975 and 1976, Lee sold the Russians thousands of documents or photographs of documents provided by Boyce. The U.S.S.R. paid them \$70,000, of which \$15,000 went to Boyce."³⁰¹ Boyce was charged with,

[C]onspiring to transmit national defense information to a foreign nation, with aiding and abetting an attempt to transmit national defense information, with conspiring to gather and actually gathering national defense information intending, or having reason to believe, that the information would be used to the advantage of a foreign nation, with unauthorized possession of national defense information and transmitting such information to non-authorized persons, with disclosure of classified information, with acting as an agent of a foreign government without prior notification to the Secretary of State, and with theft of government property valued in excess of \$100.³⁰²

As Henry Mark Holzer explains in his piece, *Why Not Call It Treason?: From Korea to Afghanistan*, Boyce's criminal activity clearly supported a treason indictment. Holzer applied the facts of *Boyce* to the requirements of a treason charge.³⁰³

A jury could certainly have found at least one overt act in the...documents passed...A jury could certainly have found that there was two-witness proof of the defendants' overt acts, since...there was available evidence from surveillance, wiretaps, turncoats, family members, friends, or law enforcement personnel. A jury could certainly have found that [Boyce] intended by his overt act to betray the United States through providing documents and other information to this country's enemies...the Soviet Union...A jury could certainly have found that the material delivered to those countries gave our then-enemies aid and comfort.³⁰⁴

Similarly, when compared to the six elements of treason established *supra*, the defendant in *Boyce*: 1) was a citizen, 2) committed actual, not constructive, acts of treason, 3) contributed to the levying of war by the Soviet Union against the U.S., 4) had the specific intent to betray the U.S. by selling its secret information, 5) provided aid and comfort to the enemy in the form of valuable information, and 6) committed an overt act.³⁰⁵ Furthermore, as Henry Mark Holzer explains, the prosecution likely had sufficient testimonial support to meet the two-witness requirement. Given the complete overlap in the evidence presented during trial with the elements of treason, it is clear that the variety of offenses alleged in the indictment merely combined to create a treason charge under other names. The treason imperative applies to the offenses for which Boyce was tried and convicted, as the prosecution's case in chief, in proving the alleged offenses, proved the elements of treason.

301 *United States v. Boyce*, 594 F.2d 1246, 1248 (9th Cir. 1979).

302 *Id.*, at 1248-1249.

303 Holzer, , *supra* note 56.

304 Holzer, *supra* note 56.

305 *Boyce*, *supra* note 67.

On March 5, 2013, the FBI arrested Reaz Qadir Khan, a naturalized American citizen, in Portland, Oregon.³⁰⁶ The indictment charged Khan with one count of conspiracy to provide material support to terrorists.³⁰⁷ “According to the indictment...Khan conspired with an individual named Ali Jaleel and others to provide material support and resources and to conceal the nature of such support and resources, knowing they would be used in a conspiracy to kill, maim, or kidnap persons abroad.”³⁰⁸ Khan allegedly communicated with Jaleel via email and intermediaries, provided financial support specifically for activities such as a training camp to prepare for the attack, and provided advice on how to best accomplish the violent jihad.³⁰⁹

Given the nature of the case, the treason imperative is pertinent. Applying the facts of the case to the six elements of treason, the defendant 1) is a citizen, 2) engaged in activity that was outright, and not constructive, 3) contributed to the levying of war by the enemy in the War on Terror, 4) had specific intent to betray, 5) provided aid and comfort to the enemy actor, Jaleel, and 6) committed the overt act of providing financial support. As a result of the emails and the use of liaisons, a charge of treason could likely be supported by the testimony of two witnesses.³¹⁰

As Khan’s criminal activity, as represented by the indictment, meets all of the elements of a treason charge, the treason imperative dictates that Khan is not only vulnerable to a treason charge, but is in fact entitled to one. Per the treason imperative, the government cannot skirt the demands of the Treason Clause simply by charging Khan with exclusively a different, less procedurally demanding crime. In brief, because, in view of the government’s allegations, Khan qualifies for a treason charge, he is entitled to the process protections of the Treason Clause, and he must be afforded those protections during the adjudication.

The Only Treason Charge in the War On Terror So Far

As in order to commit treason, one must provide aid to the enemy during wartime, it must be addressed whether the War on Terror qualifies as such a war. In the days that followed the attacks of September 11, 2001, Congress issued the Authorization for the Use of Military Force (AUMF) delineating the bounds of what has come to be known as the War on Terror. Following the enactment of the AUMF, President Bush responded with a statement regarding the nature of the war.³¹¹ In combination, these two branches of government declared war against the perpetrators of the September 11, 2001 attacks, specifically al Qaeda, and arguably against affiliated terrorist organizations.³¹² Thus, for the purposes of the treason imperative, this paper will assert that the United States is at war with al Qaeda and with affiliated terrorist organizations.

306 Oregon Resident Charged with Conspiring to Provide Material Support to Terrorists in Connection with Suicide Bombing of ISI Headquarters in Pakistan. U.S. Attorney’s Office for the District of Oregon(Mar. 5, 2013). Press Release, Federal Bureau of Investigations: Portland Division. *Available at* <http://www.fbi.gov/portland/press-releases/2013/oregon-resident-charged-with-conspiring-to-provide-material-support-to-terrorists-in-connection-with-suicide-bombing-of-isi-headquarters-in-pakistan>.

307 *Id.*

308 *Id.*

309 *Id.*

310 *Id.* With regard to element three, the enemy in the War on Terror is difficult to identify, and the acts Jaleel committed occurred outside the borders of the U.S. However, the enemy in the War on Terror is best characterized, for purposes of this kind of prosecution, as Islamist terrorist actors – those who commit violent acts of Islamist terrorism for the purpose of furthering the large-scale ideological takeover of the Islamist movement.

311 CNN, President George W. Bush Address (Sept. 11, 2001). *Available at* http://articles.cnn.com/2001-09-11/us/bush.speech.text_1_attacks-deadly-terrorist-acts-despicable-acts?_s=PM:US.

312 Martucci, Dorothy. With Liberty and Justice for All: Americans as American Targets in the War on Terror (Nov. 1, 2013). *King’s Law Journal. Available at* <http://www.ingentaconnect.com/content/hart/klj/2013/00000024/00000003/art00004?crawler=true>.

On October 11, 2006, al Qaeda spokesman Adam Gadahn was charged with treason and providing material support to a foreign terrorist organization.³¹³ Gadahn is the first and only person to be charged with treason in connection with the War on Terror.³¹⁴ An American citizen by birth, Gadahn was raised on a farm in California by Christian parents.³¹⁵ Gadahn converted to Islam in 1995 at a mosque in Orange County, California, and moved to Pakistan in 1998, where he began to serve as a spokesman for al Qaeda.³¹⁶

Since his initial involvement in al Qaeda, Gadahn has produced several videos threatening the United States and encouraging other people, Americans and non-Americans, to participate in violence against Americans.³¹⁷ According to the U.S. Attorney for the Central District of California at the time, “By aligning himself with al Qaeda, by moving overseas to be closer to al Qaeda’s base...and by joining...al Qaeda’s terrorist agenda, an agenda that includes the overthrow of the United States government and the murder of American citizens, Adam Gadahn has committed treason against the United States of America.”³¹⁸

In 2006, on the anniversary of 9/11, Gadahn released a video in which he stated, “[a]ll the brothers who took part in the raids on America were dedicated, strong-willed, highly motivated individuals with a burning concern for Islam and Muslims.”³¹⁹ In 2007, in another video, Gadahn stated, “Your failure to heed our demands ... means that you and your people will ... experience things which will make you forget all about the horrors of September 11th, Afghanistan and Iraq and Virginia Tech...”³²⁰

His other videos included a response to the Fort Hood massacre, praising the shooter and describing him as a “role model,” and a 2011 video in which he encouraged his followers to attack, exhorting, “America is absolutely awash with easily obtainable firearms. You can go down to a gun show at the local convention center and come away with a fully automatic assault rifle without a background check and...likely without having to show an identification card. So what are you waiting for?”³²¹ In 2008, Gadahn released a video renouncing his U.S. citizenship; however as Gadahn failed to follow the proper procedures, a jury would likely find that Gadahn’s renunciation carried no legal effect.³²²

313 Finegold, Sam. *Treason in the War on Terror* (Dec. 7, 2011). Harvard Political Review. Available at <http://harvardpolitics.com/covers/constitution/treason-in-the-war-on-terror/>.

314 “Nonetheless, in the entire War on Terror, only one individual, Adam Gadahn has been charged with treason, and he remains at large.” *Id.*

315 Adam Gadahn: Al Qaeda’s American Voice. Terrorism Profiles. Anti-Defamation League. Available at http://archive.adl.org/terrorism/profiles/Adam_Gadahn/background.asp?m_flipmode=4.

316 *Id.*

317 CNN Library: Adam Gadahn Fast Facts (Mar. 23, 2013). CNN. Available at <http://www.cnn.com/2013/03/23/us/adam-gadahn-fast-facts>.

318 U.S. Citizen Indicted on Treason, Material Support Charges for Providing Aid and Comfort to al Qaeda (Oct. 11, 2006). National Security Division, United States Department of Justice. Available at http://www.justice.gov/opa/pr/2006/October/06_nsd_695.html.

319 CNN, *supra* note 83

320 CNN, *supra* note 83.

321 CNN, *supra* note 83.

322 CNN, *supra* note 83. “A person wishing to renounce his or her U.S. citizenship must voluntarily and with intent to relinquish U.S. citizenship: appear in person before a U.S. consular or diplomatic officer, in a foreign country (normally at a U.S. Embassy or Consulate); and sign an oath of renunciation. Renunciations that do not meet the conditions described above have no legal effect. Because of the provisions of Section 349(a)(5), U.S. citizens cannot effectively renounce their citizenship by mail, through an agent, or while in the United States. In fact, U.S. courts have held certain attempts to renounce U.S. citizenship to be ineffective on a variety of grounds, as discussed below.” Renunciation of U.S. Citizenship (Jan. 1, 2013). U.S. Department of State, Bureau of Consular Affairs. Available at http://travel.state.gov/law/citizenship/citizenship_776.html.

The most significant challenge in prosecuting an individual under the Treason Clause is the two-witness rule. This rule may prove even more burdensome to prosecutorial teams in the War on Terror, as eyewitnesses are almost impossible to obtain. However, the Gadahn case provides an illustration of the availability of a novel tool in treason prosecutions. Gadahn's voluntary production and distribution of videos likely serve to satisfy the requirement of either two-witnesses or a confession in open court.³²³

The question inevitably arises as to whether videos like Gadahn's satisfy what was initially intended as an eyewitness requirement, or as a requirement that the defendant provide a confession in person in open court; however, an examination of the overarching purpose of the rule and the framers' intentions in including it makes clear that the framers' goal was to protect individuals from political oppression. A correct application of the two-witness rule and the confession rule significantly decreased the likelihood that a disgruntled leader could successfully frame a political opponent for treasonous activity. Today, videos such as Gadahn's satisfy that requirement.

Assuming that the videos were not made under duress, which is not in dispute in this case, the videos, and individuals who can testify to their meaning, serve to protect a treason defendant from potentially unsubstantiated treason accusations. Still, as Gadahn is "the first person to be charged with treason against the United States since the World War II era," the question of whether witnesses to videos satisfy the two-witness requirement or the confession alternative has yet to be addressed in the judicial system.³²⁴

Gadahn's treason charge serves as a commendable illustration of the use of a treason charge in the War on Terror. Gadahn, as an American citizen, has engaged in conduct meriting a treason indictment, the full process guarantees of a treason charge, and, upon likely conviction, the substantial sentence that a treason conviction will precipitate.³²⁵

When The Treason Imperative Applies

As Justice Marshall noted in his opinion in *Bollman*, there is an array of criminal activities falling short of treason that Congress is authorized to address statutorily.³²⁶ Prosecutorial teams are free to seek convictions for those crimes without also charging treason. It is only when the prosecution's case in chief proves the elements of treason in proving the alleged crime that the treason imperative applies.

As noted earlier, there are six elements of any treason prosecution. In a treason prosecution, all evidence as to any of those six elements will be relevant. In a prosecution for any other crime, some of that evidence will not be relevant, and will therefore be subject to exclusion. In de facto treason prosecutions, despite the fact that

323 "In today's world, unlike the days of hand-delivered secret coded messages and radio broadcasts, Gadahn's statements were professionally produced videos beamed across the world via the media and Internet. Likewise, his written statements have been similarly distributed. His pronouncements have been forever documented, and there can be little, if any, doubt about the nature of his intentions. Prosecutors will likely never identify or have the cooperation of one or more persons who actually witnessed Gadahn making such statements. What they do have are the videos with picture and audio of Gadahn's vitriolic propaganda aimed almost exclusively at the death of U.S. citizens and destruction of U.S. property and interests." Kash, Douglas A. *The United States v. Adam Gadahn: A Case for Treason* (2008). *Capital University Law Review*. Available at law.capital.edu/WorkArea/DownloadAsset.aspx?id=20697.

324 *Id.*

325 "The charge of treason carries a range of penalties from a mandatory minimum sentence of five years in jail to a maximum sentence of the death penalty. The charge of providing material support to a designated foreign terrorist organization carries a potential sentence of 15 years in prison." Department of Justice, *supra* note 84.

326 Kurland, *supra* note 18.

treason is not charged, all evidence necessary to establish treasonous conduct will be presented, and all such evidence will be admissible as relevant. In such cases, the treason imperative applies, and the two-witness rule is required.

For example, Defendant X is charged with material support of terrorism, a crime established by the PATRIOT Act. Defendant X is a United States citizen, and was apprehended outside of the United States. Given the factual circumstances, as well as the requirements of the statute, the government must prove, in brief, that the defendant 1) knowingly, 2) provided support, 3) in the form of material support or resources, 4) to a foreign terrorist organization. Because the defendant was apprehended outside of the United States, the prosecution must prove that the defendant is a national or legal resident of the United States, that the offense occurred in whole or in part within the United States, that the offense occurred in or affected interstate or foreign commerce, or that the offender aided or abetted any person over whom jurisdiction existed.³²⁷

During its case in chief, in order to prove that the Defendant is guilty of material support of terrorism, the prosecution proves that Defendant X is a citizen of the United States, who transferred money to a bank in Switzerland that in turn transferred the money to a bank account traced to a known Al Qaeda operative. The prosecution proves, through the Defendant's communications, that Defendant X was aware of Al Qaeda's status as a foreign terrorist organization, and that Defendant X intended to support Al Qaeda's efforts against the United States by transferring funds in the above-mentioned fashion to a training camp in Yemen.

At the end of the prosecution's case in chief, this author would suggest that defense counsel make a motion requesting the court to instruct that the prosecution amend its charges to allege a crime whose elements differ in some way from a treason charge, or that the prosecution produce two witnesses in support of a charge of treason. As an alternative, the motion would suggest that the court issue a directed verdict dismissing the charges, as the government has constructively alleged treason, and has not met the burden for a treason prosecution.

Does It Matter?

In reviewing the concept of the treason imperative, it must be addressed whether the use of the treason charge specifically is significant. Assuming the prosecution has chosen to charge essentially the same crime under a different name, does it matter? It may be argued that, if the sentencing options for treason are more severe than those available for other crimes that the prosecution may chose to substitute, the heightened procedural requirements of a treason charge may not be necessary. However, a thorough analysis of sentencing options reveals that a perceived disparity in sentencing options may be overcome under particular factual circumstances.

Of note, treason is a level 43 crime under the federal sentencing guidelines, which is the highest level under the 2014 federal sentencing guidelines.³²⁸ Material support of terrorism, by contrast, has a base level of only 26, with two available level increases for aggravating factors such as use of dangerous weapons or firearms.³²⁹ On the 2014 Sentencing Table for the Federal Sentencing Guidelines, the only suggested penalty for level 43 crimes is life imprisonment, whereas the maximum suggested penalty for a

327 18 U.S. 2339A, *supra* note 11.

328 Sentencing Table. United States Sentencing Commission (Nov. 1, 2014). Available at http://www.ussc.gov/sites/default/files/pdf/guidelines-manual/2014/2014sentencing_table.pdf.

329 2014 Guidelines Manual. United States Sentencing Commission (Nov. 1, 2014). Available at <http://www.ussc.gov/guidelines-manual/2014/2014-chapter-2-l-x>.

level 26 crime is 120-150 months.³³⁰ Additionally, treason is one of four non-murder crimes subject to the federal death penalty, the others being espionage, high-volume drug trafficking, and attempted murder of a juror, officer, or witness in cases involving a continuing criminal enterprise.³³¹ Given this information, it could be argued that there is no necessity of charging treason to provide the added procedural protections because, in exchange for lessened protections, the defendant is subject to a much lower maximum prison sentence, and is not vulnerable to capital punishment.

However, in 2005, the U.S. Supreme Court decided *United States v. Booker*, in which the Court determined that the Federal Sentencing Guidelines are advisory only, and that courts are required to evaluate each case individually when determining an appropriate sentence.³³² Congress may create a statutory maximum sentence, as distinct from the federal sentencing guidelines; however, a court may impose a sentence above the statutory maximum sentence if a jury finds, beyond a reasonable doubt, that such a deviation is appropriate.³³³ It is also necessary to consider whether, by compiling a variety of convictions that essentially amount to treason, the prosecution could procure a life sentence. For instance, per the 2014 Federal Sentencing Guidelines, espionage is a level 42 crime, punishable by 360 months to life.³³⁴

In addition, a prosecutor may succeed in procuring the death penalty for a charge other than treason. For example, per Section 2M5.3 of the of 2014 Federal Sentencing Guidelines Manual, if an offense of material support of terrorism results in an intentional killing, the applicable section of the Guidelines is the section regarding first degree murder, which is a level 43 crime under the 2014 Federal Sentencing Guidelines.³³⁵ The federal statute regarding first degree murder, 18 U.S.C. 1111, is punishable by death.³³⁶

Practical Implications of a Treason Imperative

The two-witness rule can be a cumbersome aspect of prosecution. In the context of the War on Terror, the application of the rule can be particularly difficult. As one scholar noted, “[p]erhaps the most contentious issue for the American government, which has frequently repeated its desire to maintain secrecy around its intelligence-gathering operations, is the evidentiary requirement for two witnesses to the same overt act.”³³⁷ In addition to information security concerns, practical considerations arise as well. In a treason prosecution for an American who joins the ranks of al Qaeda abroad, it can be difficult, dangerous, and tactically unadvisable to obtain witnesses to this activity.

In essence, a treason imperative can arguably inhibit the efforts of U.S. Attorneys to effectively and efficiently prosecute Americans who join or aid the enemy in the War on Terror. Pursuing only a charge of material support of terrorism without an added treason charge may yield a conviction and several years in prison for a defendant, while the added protections of a treason prosecution may make proving the defendant’s treasonous overt acts much more difficult.

330 Sentencing Table, *supra* note 93.

331 Death Penalty for Offenses Other Than Murder. Death Penalty Information Center (2014). Available at <http://www.deathpenaltyinfo.org/death-penalty-offenses-other-murder>.

332 *United States v. Booker*, 543 U.S. 220 (2005). Cornell University Legal Information Institute. Available at <http://www.law.cornell.edu/supct/html/04-104.ZO.html>.

333 *Id.*

334 Guidelines Manual, *supra* note note 94.

335 Guidelines Manual, *supra* note note 94.

336 Federal Laws Providing for the Death Penalty. Death Penalty Information Institute (2014). Available at <http://www.deathpenaltyinfo.org/federal-laws-providing-death-penalty>.

337 Lewis, *supra* note 60.

Nevertheless, the Constitution is clear, and the framers undoubtedly intended the two-witness rule to serve as an impediment in treason prosecutions in order to protect Americans from possible abuses of the charge.³³⁸ Though the two-witness rule may seem unduly cumbersome, as the series of videos from Adam Gadahn has demonstrated, the enemy in the War on Terror is often vocal in ownership of its acts, and treason suspects with strong ideological motivations may publicly provide evidence to support the two-witness requirement, or alternately, the confession requirement.³³⁹

The enemy in the War on Terror has a variety of media via which to communicate its intentions to millions of people, and satisfying the two-witness rule or the confession rule in this technology-infused era may prove much simpler than it was in earlier decades. The aid of cameras, emails, wire transfers, wiretaps, and blogs will likely counteract the difficulties unique to finding witnesses to testify to treasonous conduct in the War on Terror. In light of these considerations, proving treason is no more impracticable than maintaining a defendant's Fourth, Fifth, or Sixth Amendment rights.

Conclusion

The Treason Clause of the U.S. Constitution cannot simply be overlooked or circumvented. As long as the text of the Constitution contains the Treason Clause, prosecution teams cannot constitutionally employ statutory law in a manner that effectively charges a crime of treason under a different name, and without the added procedural protections of the two-witness rule.

It may be argued that the objective of a treason conviction, from the perspective of the government, is not to punish the crime for its nature, but rather to have access to the heightened sentence ceilings that come with a treason charge. Taking this argument to its logical conclusion, a defendant would be protected from the dangers of a treason conviction, namely harsher sentences, in having been spared a treason charge. In this scenario, trying the defendant for a nearly identical crime under a statute instead of charging him or her with treason would not violate process protections unless the possible sentence were as high as the possible sentence for a treason conviction. However, under the right factual circumstances, a prosecutor could obtain a sentence identical to that which would have been imposed for treason with the successful conviction of another crime or series of crimes. In such a case, the prosecutor would be merely circumventing the requirements of the Treason Clause with other, less procedurally demanding charges.

In addition, the drafters of the Treason Clause included additional protections not only to counteract the severity of the sentences available for a treason conviction, but also to curtail the government's ability to punish political action. In short, the protections of the Treason Clause were intended, not only to protect defendants from harsher sentences, but to protect citizens from unjust convictions for the crimes that constitute the betrayal of one's country.

338 Heritage Treason, *supra* note 9.

339 CNN, *supra* note 83.

In light of this historical backing, the treason imperative is an important constitutional protection.³⁴⁰ The framers anticipated the difficulties of the two-witness rule, and it was in part for those difficulties that the rule was included.³⁴¹ To statutorily circumscribe those protections is unconstitutional. Possible solutions are twofold. First, the treason imperative can be heeded, which will require that prosecutorial teams always charge treason if proving the charged statutory crime will also prove treason. Second, if Congress determines that the Treason Clause is obsolete and unnecessarily prohibitive to successful prosecution of traitors, a constitutional amendment can remove the Treason Clause altogether. Any other course of action is in violation of the constitutional procedural rights to which a citizen-defendant, if prosecuted for betraying his or her country, is entitled.

340 Heritage, *supra* note 9.

341 Heritage, *supra* note 9.

Is Boko Haram Likely to Move Towards More Effective Governance?

Katrin Heger



Background

Boko Haram, founded by Mohammed Yusuf in 2002, has its origin in Borno State in the northeast of Nigeria. Its name literally translates to 'Western education is a sin'. The group's official name is 'Sunni Community for the propagation of the Prophet's Teaching and Jihad' (*Jama'atu Ahlis-Sunnah Lidda'awati Wal Jihad*). In the region, Boko Haram is also known as the Nigerian Taliban.³⁴² Starting out as an ideological movement, the sect opposed everything it considers Western and aimed for the creation of a state ruled by Sharia Law in the north-eastern region of the country. Boko Haram has become increasingly violent since 2009, when the group's leader Yusuf was captured by Nigerian security forces and publicly assassinated.³⁴³ Yusuf's death constituted a turning point for Boko Haram in its organizational structure, its goals, and its tactics. With Imam Abubkar Shekaur claiming Boko Haram's leadership, Boko Haram declared its aim to overthrow the Nigerian government and engaged more in terrorist tactics. Boko Haram's violence grew increasingly sectarian, targeting churches and Christians, as well as moderate, non-Salafist Muslims. However, despite intensifying violence and a broader range of targets, there seemed to be no coherent strategy for the destabilization of the state. Attacks seemed randomly directed towards Christians in the region, security personnel, or other direct opponents³⁴⁴, as well as towards targets of international significance such as the UN headquarters in the capital Abuja in 2011.³⁴⁵

Alarmed by Boko Haram's uprising and increasing international attention, the Nigerian government implemented more repressive policies against the group and proclaimed a state of emergency in the states of Borno, Yobe and Adamawa in 2013.³⁴⁶ As a consequence of the emergency rule, the government has deployed more security forces to the region. The security forces were accused of corruption, repression, human rights violations, such as massacres and extra-judicial killings, and arresting civilians without trial. Their unlawful behavior has led to the alienation of the population from the Nigerian soldiers, with an increasing amount of people seeking protection by Boko Haram.³⁴⁷

Within the last year, Boko Haram has increased the sophistication and lethality of its attacks and extended its geographic reach. Pressure on the Nigerian government

342 Cooke, Jennifer G. 2011. "Boko Haram – Emerging Threat to the US Homeland", *Center of International and Strategic Studies*, <http://homeland.house.gov/sites/homeland.house.gov/files/Testimony%20Cooke.pdf>, [accessed 12/12/2014].

343 Campbell, John. 2014. "Boko Haram: origins, challenges, and responses", *Norwegian Peacebuilding Resource Center*, <http://www.peacebuilding.no/Regions/Africa/Nigeria/Publications/Boko-Haram-origins-challenges-and-responses> [accessed 11/19/2014].

344 De Montclos, Marc-Antoine Pérouse. 2014. "Nigeria's Interminable Insurgency? Addressing the Boko Haram Crisis, Chatham House: The Royal Institute of International Affairs, http://www.chathamhouse.org/sites/files/chathamhouse/field/field_document/20140901BokoHaramPerousededeMontclos_0.pdf, [accessed 12/10/2014], pages 2-3.

345 Cooke, Jennifer G. "Boko Haram – Emerging Threat to the US Homeland".

346 De Montclos, page 15.

347 Ibid.

became stronger, when in April 2014 the abduction of 200 girls from a school attracted the attention of international media.³⁴⁸ The government has launched a substantial military offensive against the group but has neither been able to rescue the abducted nor has it been successful at preventing further violence. Rather the opposite, Boko Haram has reportedly been actively seizing territory and has expand its control outside its usual hideouts.³⁴⁹ The group was able to gain full control over “a territory about the size of Rhode Island”³⁵⁰ by expelling Christians and Muslims opposing the group and murdering regional politicians. Up until now, about 12,000 people have been killed by Boko Haram attacks³⁵¹ and the group’s violence displaced about 13,000 people.³⁵²

Purpose and Outline of this Paper

In August 2014, Boko Haram took a more decisive step to achieve their political goal of creating an Islamic state by proclaiming a ‘caliphate’ in the local government area of Gwoza in Borno, which is inhabited by around a quarter million people.³⁵³ Applying the same rhetoric as the Islamic State of Iraq and Syria (ISIS) and making considerable territorial gains within the Nigerian territory, Boko Haram has been put on the spotlight for establishing the first Islamic State in Africa.

This paper sets out to examine whether Boko Haram is likely to move towards more effective governance from where it stands now. In discussing this question, I first evaluate why more effective governance could be in Boko Haram’s interest and, second, explain the determinants of more effective governance. The analysis will show that Boko Haram would on the one hand have to face severe challenges in implementing more effective governance and on the other, it will reveal that Boko Haram might not have a serious interest in governing effectively.

The paper proceeds as follows: After (2) introducing some definitions, I (3) discuss briefly Boko Haram’s current status and why it could be beneficial to the group to develop more effective governing structures. In (4), I develop an analytical framework on rebel governance that I (5) apply to Boko Haram. The paper ends with a (6) conclusion.

Methodological Considerations

This section defines some of the key concepts crucial when talking about insurgent governance. It will further very briefly look at the discussion of rebel governance in the literature.

Rebel Governance

Mampilly broadly defines *governance* “as decisions issued by one actor that a second is expected to obey. [It] refers to the control of social interactions by both state and non-state

348 Meagher, Kate. “Beyond terror: addressing the Boko Haram challenge in Nigeria”, NOREF Norwegian Peacebuilding Resource Center, 11 November 2014, <http://www.peacebuilding.no/Regions/Africa/Nigeria/Publications/Beyond-terror-addressing-the-Boko-Haram-challenge-in-Nigeria>, [accessed 11/15/2014], page 1.

349 Pham, J. Peter. “Africa’s Islamic State?”, *The Atlantic Council*, 8 September 2014, <http://www.atlanticcouncil.org/blogs/africasource/africa-s-islamic-state> [accessed 12/17/14].

350 Campbell, John. 2014. “U.S. Policy to Counter Nigeria’s Boko Haram”, *Council on Foreign Relations*, <http://www.cfr.org/nigeria/us-policy-counter-nigerias-boko-haram/p33806>, [accessed 11/21/2014], page 10.

351 Meagher, page 1.

352 “Boko Haram attacks in Nigeria force 13,000 to flee to Cameroon”, *UNHCR*, 11 November 2014. <http://www.unhcr.org/546228896.html> [accessed 12/10/14].

353 de Montclos, page 13.

actors.”³⁵⁴ Mampilly demarcates government from this notion of governance by assigning to it a more formal character. *Governments* are bureaucratic “bounded organization[s]”³⁵⁵ that have the power to create and implement laws but cannot enforce informal rules. Governance, as a more comprehensive term, includes both formal and informal mechanisms, as well as the provision of goods and services. *Rebel governance* “can be viewed as the series of institutions established by an insurgent organization to manage relations with civilians living in the territory under its control that set in place a system of taxation and a series of rules (formal and informal) for governing civilian life”³⁵⁶.

Effective Rebel Governance

An insurgency in control of territory exercises *effective governance* when it has been able to develop the following three capacities: First, there must be a policing force that guarantees a minimum of stability in order for the other governance mechanisms to function. Second, the rebel group should establish a dispute resolution mechanism that is de facto used by the civilians to resolve their disputes. Third, the insurgency should provide public goods and services such as health care and education.³⁵⁷ In addition to these capacities, effective governance requires that the governance systems meet the needs of the population to some degree and the population makes use of the governance system. Mampilly considers a governance system partially effective when an insurgency provides security only, and noneffective, when a rebel group decides not to set up a governance system or the system is rejected by the population.³⁵⁸

Institutions

North defines institutions as “humanly devised constraints that structure political, economic and social interactions.”³⁵⁹ Interaction needs to be constrained because imperfect knowledge and imperfect information makes transacting – searching for and coordinating of information, monitoring, enforcing contracts and the like – costly.³⁶⁰ “Institutions [thus] exist to reduce uncertainty in [a] world”³⁶¹ of transaction costs, they are the constraints that human beings impose on human interaction. North distinguishes between formal and informal institutions, where he takes the former to denominate formally recorded constitutions, laws, and regulations, while the latter comprise conventions, norms, codes of conduct and the like.³⁶²

Rebel Governance as a Dependent Variable

Rebel governance has been discussed in academic literature in rather static and one-dimensional terms so far. Linking it to either economically motivated warlordism or ideological movements, rebel governance was reduced to one single variable (either

354 Mampilly, Zachary C. *Rebel rulers: Insurgent governance and civilian life during war* (Ithaca: Cornell University Press, 2011), page 2.

355 Ibid. page 3.

356 Jeremy Weinstein, *Inside Rebellion: The Politics of Insurgent Violence*, p (New York: Cambridge University Press, 2007), page 164.

357 Mampilly, pages 17, 62.

358 We will later see that partially effective governance corresponds to what Arjona calls “aliocracy” (the provision of security and taxation only) and effective governance is a “rebelocracy” (the provision of goods exceeding security and taxation) in Arjona’s terms.

359 Douglas C. North, “Institutions”, *The Journal of Economic Perspectives*, Vol. 5, No. 1. (Winter, 1991): pp. 97-112, page 97.

360 Douglas C. North and John J. Wallis, “Integrating Institutional Change and Technical Change in Economic History A Transaction Cost Approach.” *Journal of Institutional and Theoretical Economics (JITE)/Zeitschrift für die gesamte Staatswissenschaft* (1994): 609-624, page 609.

361 Douglas C. North, *Institutions, institutional change and economic performance*, (Cambridge: Cambridge University Press, 1990), page 12.

362 Ibid, page 6.

source of funding or ideological orientation), concentrated mostly on the rebel leader as decision-maker, and was treated as a “path dependent”³⁶³ process. Yet, rebel governing behavior is a function of the initial priorities of rebel leaders and the interaction of the rebel groups with other actors involved in the conflict. It might undergo transformations, triggered by endogenous conflict variables to which insurgents adapt their governance strategies.³⁶⁴ This is not to say that ideological movements and the greed and grievance debate have no explanatory value – they tell us a lot about the why people start rebellions in first place.

From Terrorism to Insurgency

Sánchez-Cuenca distinguishes between different kinds of political violence by spanning a continuum between the two extremes of political violence; traditional military strength and the power to hurt. With military power, one can weaken its opponent or gain control over its territory and property. The power to hurt, as opposed to that, constitutes a “bargaining tool”³⁶⁵, which allows for hurting the opponent until war becomes unendurable for the enemy. On the spectrum of political violence, pure military strength corresponds to traditional warfare, whereas at the other side of the spectrum, terrorism corresponds to the pure power to hurt. Terrorist organizations neither have the military power nor the intention to destroy their enemy. Rather, they try to cause as much pain as possible for him. On this spectrum, insurgencies are located closer to the terrorism end although they use some military power to seize territory, mostly in rural areas, from the government. By “penetrat[ing] the enemy zone”³⁶⁶ and exercising military operations against security forces and civilians, insurgencies try to threaten the government’s monopoly of force to the point of state collapse. Terrorists, on the other hand, are mainly based in urban areas and have no quest for territorial control. Conducting attacks against civilians and security forces, their main goal is coercion and not the military debilitation of their enemies. Terrorism constitutes the most asymmetric form of political violence, with terrorist organizations being much weaker in military terms than insurgencies. However, Sánchez-Cuenca admits that the difference between terrorism and insurgencies is not always as clear cut since insurgents may use terrorist tactics.

Boko Haram started out as a Salafist sect that – despite its extreme ideology – did not engage in violence. Aiming for the state-wide implementation of Sharia law, Boko Haram peacefully opposed western secular statehood by boycotting elections and actively engaging in dialogue with politicians.³⁶⁷ Boko Haram turned violent in 2009, when its leader was captured and publicly assassinated by Nigerian security forces. The subsequent revolt by Boko Haram against the security forces was aggressively countered by state forces, who tried to destroy the movement completely. The forceful campaign by the state forced Boko Haram to go underground and break up in small independent cells. A further consequence of the state’s effort to destroy Boko Haram was the killing of many moderate members of the movement. The moderates either fell victim to the security forces because they were easier to identify due to their cooperative behavior or they were killed by radical members of the sect. The elimination of the moderates and the transformation of Boko Haram’s organizational structure into an underground movement operating in cells marked the beginning of Boko Haram as a terrorist

363 Mampilly, page 15.

364 Ibid, pages 15-16.

365 Sánchez-Cuenca, Ignacio. 2004. “Terrorism as War of Attrition: ETA and the IRA”, Vol. 204. Instituto Juan March de estudios e investigaciones, page 4.

366 Ibid, page 5.

367 De Montclos, pages 7-8.

organization.³⁶⁸ Over the next three years, Boko Haram was carrying out suicide attacks against western symbols, such as the UN headquarters in Abuja, and Christian targets, which resulted in the designation of Boko Haram as a terrorist organization by the United States in 2013.³⁶⁹

Beginning in spring 2014, Boko Haram's attacks seem to have become more strategic, targeting infrastructure and provoking more sectarian violence by killing Christians. Since August 2014, Boko Haram has captured large towns in Borno state and neighboring Yobe and Adamawa states outside of its usual hideouts. The same months, the group took a more decisive step to achieve its political goal by proclaiming a 'caliphate' in the local government area of Gwoza in Borno, which is inhabited by around a quarter million people.³⁷⁰ This bold move demonstrates Boko Haram's increased confidence in their organization and its willingness to actively challenge the government.³⁷¹

In conquering territory, Boko Haram has engaged in battles with Nigerian security forces. The seizure of territory and the consequent threat to the government's monopoly of force, as well as direct combat with the opponents are clear characteristics of more traditional forms of political violence, which moves the group along the spectrum from terrorism towards insurgency.³⁷² Despite these recent developments, Boko Haram still perpetrates terrorist attacks. The abduction of the 200 school girls, as well as regular attacks on targets all over Nigeria indicate that Boko Haram indeed is similar to the FARC, an insurgency that uses terrorism as a means of violence.³⁷³

The Advantages of Governing Effectively

As reviewed by Arjona, civil war scholars argue that insurgent groups holding territory might want to establish some form of governance in that territory because it benefits them in at least three ways. First, assuming that rebels aim at maintaining the seized territory, institutions create monitoring capacities that facilitate civilian control and thus prevent civilian defection. Second, institutions benefit the insurgent groups themselves because they allow the groups to shape economic, political, and social affairs in their own interest. Insurgencies could administer matters like recruitment and resource accumulation through their institutions but would also be able to harness the institutions for putting forward their ideologies and political agendas. Third, by providing – at least to a certain extent – goods and services for the populations, rebel groups might gain voluntary support from the population, which might render violence, if not unnecessary, at least less frequent.³⁷⁴

368 Ibid, page 11.

369 Ibid, pages 11-13.

370 Ibid, page 13.

371 "Special Report: North East Nigeria on the Brink: Losing control of the north-east: Boko Haram's seizure of territory", *Nigeria Security Network*, 2014, <https://nigeriasecuritynetwork.files.wordpress.com/2014/09/ne-on-the-brink-special-report.pdf>, [accessed 11/19/2014].

372 Throughout this paper, I use the term "insurgency", "insurgents", "rebels", "rebel group", and "rebellion" interchangeably, regarding all of them as armed actors, organized in a faction, that use violence to defy the state. These groups are different from "militias", a term incorporating all armed groups, including government forces, and "guerilla", which refers to a specific military strategy exercised by armed groups (See Mampilly, page 3).

373 The Nigerian government is still in denial of experiencing an insurgency within its territory and keeps calling Boko Haram a terrorist group. This also has strategic reasons since help from the international community is more likely in a fight against terrorism than in a counterinsurgency agenda (See Campbell, "U.S. Policy to Counter Nigeria's Boko Haram", page 9; See de Montclos, page 13).

374 Arjona, Ana. 2014. "Wartime Institutions A Research Agenda", *Journal of Conflict Resoltion*, pages 1361-1362.

This last point especially pertains to Boko Haram, which uses coercion and excessive violence, engaging in assassinations, kidnapping, and suicide bombing.³⁷⁵ For example, a study from Johns Hopkins University School of Advanced International Studies showed that Boko Haram has killed at least 11,100 people in total, 7,000 of them last year alone.³⁷⁶ But “violence alone can [never] be politically productive”³⁷⁷. Rebels cannot only rule based on coercion but must take into account to some degree what civilians want “in order to guarantee their loyalty”³⁷⁸. Thus, they should establish a form of effective governance that both allows them to find out what civilians want and provide it to them. In the next chapter I look at what determines whether they can.

Framework of Analysis: Determinants of Rebel Governance

The analytical framework I propose in this section conceptualizes determinants of rebel governance by drawing heavily on Mampilly’s as well as Arjona’s approach to rebel governance and trying to combine the two. Mampilly describes rebel governance as “an evolutionary process”³⁷⁹, in which rebel leaders identify opportunities, address challenges and adjust their strategies accordingly. Rebel governance strategies are influenced by (1) the institutional set-up of the society, (2) the ultimate strategic goal of the group, (3) the internal organization of the group and its resource allocation tactics, and (4) the group’s interaction with other social, political national and transnational actors.³⁸⁰

Institutional Set-up

Human interaction in conflict is shaped by both newly emerging as well as pre-existing institutions. Arjona argues that, against the commonly held perception, states in civil war are not simply “chaotic and anarchic”³⁸¹. Instead, local informal institutions replacing the weakened state institutions are likely to emerge. These local “wartime institutions”³⁸² shape human interaction in warzones by influencing the behavior of civilians and combatants. Her research shows that these institutions vary “across different spheres of local life, within and across armed groups, and over space and time”³⁸³. She introduces the concept of *wartime social order* to conceptualize these variations, using a) social contract theory and b) the scope of armed groups’ intervention into civilian life as her two analytical dimensions. Drawing on Hobbes’ political philosophy, Arjona defines situations in which a social contract between armed groups and civilians has been established as situations of order. With both sides entering in the contract simultaneously, citizens and the sovereign need to fulfill their part of the contract by abiding to certain “rules of conduct”³⁸⁴. This set of rules creates predictability for both the ruler and the ruled. As opposed to that, in a situation of

375 “Explaining Boko Haram, Nigeria’s Islamist Insurgency”, The New York Times, 10 November 2014, <http://www.nytimes.com/2014/11/11/world/africa/boko-haram-in-nigeria.html> [12/09/2014].

376 Shankar, Snehar. 2014. “Boko Haram-Led Violence In Nigeria Has Killed More Than 11,000 People Since 1998”, *International Business Times*, <http://www.ibtimes.com/boko-haram-led-violence-nigeria-has-killed-more-11000-people-1998-report-1700247>, [accessed 12/10/14].

377 Hannah Arendt, on violence (Houghton Mifflin Harcourt, 1970), pages 41-42.

378 Arjona, Ana. 2014. Civilian Resistance to Rebel Governance, *Households in Conflict*, No. 170, page 9.

379 Mampilly, page 16.

380 The proposed framework does not claim to be exhaustive. Rather, it tries to capture some of the main determinants of rebel governance and attempts to systemize them.

381 Arjona, Ana. *Wartime Institutions A Research Agenda*, page 1360.

382 Ibid.

383 Ibid, page 1374.

384 Arjona, Ana. *Wartime Institutions A Research Agenda*, page 1374.

disorder either the local population, the combatants, or both fail to fulfill their part of the social contract, thereby curtailing reliability regarding expectations about the behavior of the other actors. When rebels do not adhere to the agreed upon set of rules, they prevent civilians from developing reliable expectations about rebel behavior. In return, local populations can break the social contract and create unpredictability by either alternating between different set of rules or by disobeying altogether. In case of an existing social contract, the variation in the institutional framework depends on the second dimension, the scope of armed groups' intervention into civilian life. Combatants can intervene in local affairs either narrowly or broadly. With the objective of maintaining control over a territory, it is an armed group's priority to secure its monopoly of violence and its funding. Each group is thus likely to engage in at least narrow intervention into local affairs to guarantee the fulfilment of these needs. Arjona calls this form of governance *aliocracy* – the rule of the others – since other matters of civilian life are still taken care of by local or state actors. Broad intervention exceeds security and the collection of material contributions, encompassing rebel influence on areas such as politics, the economy, and social interactions. In Arjona's concept this social order is a *rebelocracy* – a "rule of rebels"³⁸⁵.

Mampilly equally appeals to the idea of a social contract but is more concerned with the legitimacy it creates for rebel governance.³⁸⁶ "Legitimacy refers to an authority relationship that achieves the appropriate combination of coercion and consent"³⁸⁷. In pursuing legitimacy, insurgents thus face the constant dilemma of coercing civilians into support or convincing them of the benefits of rebel governance by developing a system of governance. If insurgents fail to fulfill their part of the social contract, they quickly turn the population against them.

Although Mampilly discusses the establishment of a social contract between rebels and civilians, he does not conceptualize it similarly to Arjona. However, he develops a theoretical account of how pre-existing institutions, or a state's "penetration into society"³⁸⁸ can influence rebel governance. "Penetration into society" refers to the relationship between the state and its society prior to the conflict, which can be assessed by the fiscal policy of the state prior to the war. States pursue different taxation policies: Whereas merchant states rely on their citizens' tax payments, rentier states find other sources of funding. In merchant states, citizens actively engage in political decision-making because they are direct stakeholders of the state through their tax payments. They expect the state to provide extensive goods and services in return for their payments. Rentier states, on the other hand, do not rely on the financial contributions of their citizens, thereby detaching the population from politics, by depriving them of any ownership in the political process. Funding themselves through corruption or the extraction of natural resources, rentier states do not feel obliged to provide public services to their citizens.

385 Arjona, Ana. *Wartime Institutions A Research Agenda*, page 1375. This typology revolves around the role of the rebels in certain territories and says nothing about the presence of other political actors within the territory. Even in a rebelocracy, additional sources of authority might not be completely absent. It would be interesting to explore further how levels of authority change with the emergence of difference sources of authority.

386 Arjona answers the legitimacy question by stressing that she relies on Hobbes' notion of the social contract, rather than the Rousseauian one. The mere existence of a social contract implies only the existence of clear rules and does not necessarily establish legitimacy of the rulers (See Arjona, *Wartime Institutions A Research Agenda*, page 1374).

387 Mampilly, page 52.

388 *Ibid*, page 72.

As a result of these different forms of statehood, two types of citizens, that articulate their demands differently, emerge: Citizens of a merchant state, states with high penetration into society, are used to having influence on political decisions and consider welfare provision as reciprocal, whereas civilians in rentier states with low state penetration lack the awareness that they are able to impact the political process. The success of rebel groups depends on how well the group can respond to the more (merchant state) or less (rentier state) clearly articulated demands of civilians. Building on these theoretical considerations, Mampilly hypothesizes that rebel groups emerging in a state with minimal penetration into society are less likely to develop effective governance structures than groups that emerges in a state with deep penetration.³⁸⁹ Citizens of deep penetration states are more articulate in what they expect from their rulers and hence give the insurgent leaders the chance to take into account civilians' needs, which, in turn, fosters a good relationship between rebels and civilians. Mampilly further argues that insurgencies emerging in states with high penetration can make use of highly cohesive pre-existing institutions and can employ them for their own purpose, thereby improving governance provision.

In her theory of civilian resistance, Arjona elucidates the variation in local civilian support for or resistance against rebels along both institutional dimensions and takes into account the quality of pre-existing institutions as well as wartime social order (aliocracy, rebelocracy). Resistance can be both partial and full. Partial resistance is an act of opposition – showing disagreement or active disobedience – against specific conducts of rebel rule but not the rule in general. Full resistance refers to showing disagreement or disobedience with rebel rule altogether. While in an aliocracy civilian resistance is always partial, resistance in a rebelocracy depends on the quality of the pre-existing institutions and can be either partial or full. Arjona defines the quality of pre-existing institutions along the dimensions of legitimacy and efficacy. Legitimate institutions are those founded on the normative beliefs of the community, efficacy means that most people obey the rules set by the institutions. High quality institutions need to be “both legitimate and effective, whereas low quality institutions are illegitimate, ineffective, or both”³⁹⁰. The better the pre-existing institutions, the more likely are communities to resist against a rebelocracy because they don't want to give up their preferred institutional framework and they find it easier to organize themselves collectively to oppose the rebellion.

Summing up, newly emerging as well as pre-existing institutions play a role in the relationship between civilians and rebels. Pre-existing institutions might build a basis for institutions created by rebels, and they influence civilians' ability to influence rebel governance by expressing their needs. Both pre-existing and newly created institutions play a role in the emergence of civilian resistance.

Ultimate Strategic Goal

Mampilly argues that insurgencies try to convince civilians of their agenda by invoking both strategic and ideological arguments. Strategically, an insurgency can follow two objectives: It can either aim for ousting the central government (center-seeking groups) or separating a certain territory from the state (secessionist groups). Leaders of secessionist groups can exploit the great mobilizing power of ethnic claims. Especially in post-colonial states that were created by using arbitrary borders, disregarding ethnic divides, populations might be highly sensitive to ethnic arguments. Ethno-nationalist rebel groups can garner support by selectively targeting certain populations that are not part of their nationalist or ethnic group. Although ethno-nationalist insurgencies

389 Ibid.

390 Arjona, Ana. *Civilian Resistance to Rebel Governance*, page 6. p

can mobilize along such cleavages, they nevertheless must convince their own kin from their ability to govern in the to-be-separated territories, which encourages them to “prov[e] their ability to serve as de facto governments”³⁹¹. Hence, secessionist or ethno-nationalist insurgencies are more likely to develop an effective system of governance than groups that seek to capture power at the center.³⁹²

While Mampilly does not consider ideology a relevant aspect of rebel leaders’ initial governance decision, he holds that organizations will deploy an ideology that creates rules that best help them to achieve a particular goal, such as government overturn.³⁹³ Consequently, although rebel leaders may communicate a certain ideology to the outside, they only organize their governing structure according to that ideology when it helps them strategically.

Internal Organization and Resource Allocation

With regard to the internal organizational structures of insurgencies, Mampilly hypothesizes that rebel groups with “a unified political command”³⁹⁴ are more likely to establish an effective governance system than fractioned groups. If a command split for example into rival factions and competition over controlled territory arose, this would hinder severely the establishment of cohesive governance. Rebel leadership must further pay close attention to the configuration of local populations they intend to govern, since fragmentations within the population might spread to the rebel group itself, thereby making effective governance less likely. Hence, effective governance requires both unity in rebel leadership as well as in the group itself.

Effective governance generally requires the devotion of resources to it. Behaving strategically, rebels are more inclined to shift their spending to serve civilian demands during “periods of relative peace through either a stalemate or a ceasefire”³⁹⁵ compared to periods of active combat. Insurgents’ main competitors are the forces of the incumbent states they operate in. While Arjona treats the incumbent state’s behavior as completely exogenous to rebel governance, Mampilly points out that in “areas of divided or contested control”³⁹⁶ the insurgent group and the government compete for power. Rebel leaders thus direct their resources accordingly in response to state behavior. They have to make choices between establishing sustainable governance in their controlled territory and relocating capacities in order to not lose a position.

Relationship with Other Transnational and Local Actors

Civil wars usually have an international dimension because first, they can rarely be kept within the borders of a single state and spill over its boundaries, and second, they attract transnational organizations. It might thus be important to explore the underlying dynamics that explain how insurgent governance is influenced by other actors, supporters and competitors, active in their territory. Interacting with transnational actors, such as international nongovernmental organizations, patronage states, diaspora organizations, and foreign corporations can benefit insurgents because they provide them with resources. This does not necessarily improve the rebel governance, though, since the rebels might simply redirect the resources towards their military capacities, as explained above. However, if an insurgency can incorporate humanitarian organizations into its actual governance system, it is more likely to develop effective governance.

391 Mampilly, page 76.

392 Ibid, page 73-77.

393 Ibid, page 78.

394 Ibid, page 80.

395 Ibid, page 8.

396 Ibid, page 59.

Further, rebels are more likely to develop more effective governance if their leadership is publicly pressured by local or transnational civil society actors for using violence against civilians.³⁹⁷ An active civil society can in that sense help improve rebel governance.

After identifying these general challenges to rebel governance that arise from the institutional set-up of society, the strategic goals of the insurgency, the rebel groups organizational structure and resource allocation, and the interaction with other actors, I now turn to the case of Boko Haram.

Application of the Framework to Boko Haram

The exact current status of Boko Haram governance in its controlled areas is difficult to determine since media coverage from northeastern Nigeria is scant. Based on the available information at this point, Boko Haram can be categorized as governing partially effective in at least some areas. Local media has reported that Boko Haram has captured the city of Mubi and renamed it into “the city of Islam and peace”³⁹⁸. The insurgent group is said to have established security checkpoints and tries to implement Islamic law. In addition to those characteristics of partially effective governance, the local media claimed that Boko Haram paid for the civilians’ shopping, which could be interpreted as providing goods on a small scale. Whether true in detail or not, it looks like Boko acts like an aliocracy and has been able to establish partially effective governance systems in some areas.

Institutional Set-up

The institutional set-up in Nigeria is characterized by a strong north-south divide. The strong ethnic polarization between the Muslim north and the Christian south goes along with economic and political inequality. People in the north are more affected by poverty and deprivation than the people in the south, with 72% of the northerners living in poverty compared to 27% in the south.³⁹⁹ Thus, despite an average growth rate of 7% per year for the country as a whole, not all parts of the population benefit equally, which exacerbates the cleavage between Muslims and Christians.⁴⁰⁰ The North has to deal with infrastructural disadvantages, suffering from increasing deindustrialization and difficult conditions for agricultural business. Public service provision in the northern part of the country is problematic and especially education remains a challenge with only one in five adults in the Muslim north being literate, compared to 80% in southern Nigeria.⁴⁰¹

As a consequence, the southern economy, relying both on better infrastructure and better educated people, benefits from newly arising opportunities in a liberalizing and diversifying Nigerian market. Disadvantaged in comparison to the south, northeastern Nigeria has thus not been able to profit from the country’s emerging economy. Unemployment in the north is three times as high as in the south and even educated people face difficulties in finding employment in the formal as well as the informal sector. Well-educated young people holding university degrees take on low-skill labor, thereby ousting uneducated people from those jobs. On the one hand, this stimulates resentment in the poor people against graduates educated in the west that take away the few jobs available in the region, and on the other, it leads to a distrust in western education. At the same time, the Koranic school system is eroding and more and more

397 Ibid, pages 90-91.

398 Campbell, John. 2014. “Nigeria’s Boko Haram Moving toward Governance?” *Council on Foreign Relations*, <http://blogs.cfr.org/campbell/2014/11/07/nigerias-boko-haram-moving-toward-governance/>, [accessed 12/10/14].

399 “Backgrounder Boko Haram”, The Council on Foreign Relations, 2014, <http://www.cfr.org/nigeria/boko-haram/p25739>, [accessed 12/09/2014].

400 Meagher, page 1.

401 Ibid, page 2.

people leave rural areas for cities, in which they hope to find better living circumstances. It is especially the young that feel neglected and have developed a growing resentment against the government. They organize themselves in gangs that become increasingly detached from society and loot northern Nigerian cities.⁴⁰²

Nigeria is a prime example of what Mampilly calls a rentier state. Nigeria's abundance in oil has provoked corrupt behavior in politicians that has manifested itself over the last decades. Both politics in the north and in the south are dominated by resource extracting elites that benefit from the oil on the expenses of regional development. Playing a corrupt "zero-sum-game", they divide up the revenues amongst themselves, thereby excluding the majority of Nigerians from the oil wealth.⁴⁰³ It is thus not only the inequality between north and south but also between the Nigerian population and the elites that govern it that cause grievances. Nigerian people outside these elite circles seem to fear the government and perceive the influence citizens can have on policy-making as humble.⁴⁰⁴ Moreover, oil wealth has fostered an elitist struggle over political power in the country since only those in power can exert control over the resource. An informal power-agreement has established that Christians and Muslims take turns in holding presidency. In the 2011 elections, however, this agreement was ignored with the Christian southerner Jonathan taking office.⁴⁰⁵ Consequently, many Muslims in the north consider the Nigerian government illegitimate, which resulted in post-election violence in 2011 and an ever-growing cleavage between the Muslim-majority in the north and the Christian-majority in the south.⁴⁰⁶

Nigeria, with its low institutional capacity, corrupt governance, political and economic inequality, social tensions, and disenchantment with politics comes down to what Mampilly designated as a state with minimal penetration. Using his theory, two conclusions can be derived from that: First, Boko Haram is not able to exploit an already existing institutional structure on the state level that could, for example, support the provision of goods and services by Boko Haram. Second, with a low participation of civilians in political matters, rebels are unlikely to learn about civilians' needs and concerns and act according to it, which makes the establishment of an effective government less likely.

However, Mampilly's theory might not be as applicable to the case of Boko Haram as Arjona's. Nigeria has a strong federalist system, which diminishes the reach of state institutions per se and makes local institutions more likely to play an important role. The strong divide between the north and the south feeds into this dynamic. A telling example of federalism is the implementation of Sharia law in some of the northern states of Nigeria about 15 years ago. Borno, Yobe and Adamawa, the states that experience most Boko Haram activity, are all ruled strictly by the Islamic code that consists of both legal but also moral principles.⁴⁰⁷ Since Arjona explicitly includes informal institutions into her theory, Sharia law can be considered a high quality institution on the local level in the respective regions. However, Sharia law is only an example of one local institution, and weak federal governance in the northern states probably outweighs its effect on society and overall institutional quality remains low.

402 Ibid.

403 Ibid.

404 Campbell, John. "US Policy to Counter Boko Haram", page 6.

405 Campbell, John. "U.S. Policy to Counter Nigeria's Boko Haram", page 7: Muslim president Umaru Yar'dua died in 2010, two years into his four-year term. According to the Muslims' interpretation of the informal power-agreement, another Muslim should have been elected into office. In the post-election riots more than 800 people died.

406 "Backgrounder Boko Haram", The Council on Foreign Relations, 2014.

407 "Political Shari'a"? Human Rights and Islamic Law in Northern Nigeria", Human Rights Watch, September 2004 Vol. 16, No. 9 (A). <http://www.hrw.org/reports/2004/nigeria0904/nigeria0904.pdf> [accessed 12/11/2014].

Assuming that Boko Haram has up until now only established alioocracy-like governance systems, the quality of the pre-existing institutions do not matter for determining civilian resistance anyway since in alioocracies, resistance is only partial. according to Arjona. Theoretically, it is not clear why there can be no full resistance in alioocracies. Although it might be true that alioocracies do not intervene enough into civilian life to trigger full resistance, this does not rule out that in some cases the opposite might hold true. Boko Haram is a case in point here: Despite governing only partially, it experiences full resistance from self-organized vigilante groups that try to fight the insurgency with guerilla warfare. Knowing the territory very well, they have been able to ambush Boko Haram fighters and reconquered some of previously held Boko Haram towns.⁴⁰⁸

Overall, it seems that the current institutional set-up in Nigeria and the region does not favor more effective Boko Haram governance. The rebel group cannot make use of pre-existing institutions and neither seem to be able nor willing to find out what civilians would expect from their governance. In addition, Boko Haram is already experiencing resistance from self-organized guerilla fighters that have been successful in containing the insurgency in some areas.

Ultimate Strategic Goal

Boko Haram believes in the total implementation of Sharia law, thus a fundamental change in Nigeria's political regime is necessary because secular statehood and democracy hinder Sharia law of being implemented completely. Boko Haram's strategic goal is therefore clearly defined as the overthrow of the Nigerian government. Yet at the same time, Boko Haram makes appeals to ethnicity and religion, targeting Christians and Muslims from other branches of Islam. This does not seem a coherent strategy for taking over a state in such a diverse society like Nigeria.⁴⁰⁹

On a local level, Boko Haram tried to resolve this problem by giving Christians a three-day warning to either convert to Islam or get expelled from the territory.⁴¹⁰ This strategy cannot work on a national level though because with the Christian majority in the south, the quota of non-Salafist Muslims throughout the country is just too high. The targeting of Christians and non-Salafi Muslims hints at a deeply rooted ideology that – against Mampilly's claim – is more than just an instrument to mobilize people. Boko Haram is willing to practice what it preaches and transform its anti-Western, anti-secular, antidemocratic ideology into its governance system.⁴¹¹ At the same time, unlike with other radical Islamic groups, Boko Haram's ideology is not supported by any influential Islamic leader and finds at its core only minor support from Nigerian Muslims.⁴¹² Given its current ideological orientation and the lack of popular support for it, Boko Haram is unlikely to reach its ultimate strategic goal of an Islamic State in Nigeria, which makes a development towards more effective governance structures unlikely.

408 Okeowo, Alexis. 2014. Inside the Vigilante Fight against Boko Haram", The New York Times, http://www.nytimes.com/2014/11/09/magazine/inside-the-vigilante-fight-against-boko-haram.html?_r=0 [accessed 12/06/2014].

409 "Backgrounder Boko Haram", The Council on Foreign Relations, 2014: Apart from a strong religious divide, the 178 million Nigerians are part of more than 350 ethnic groups and speak more than 250 different languages.

410 de Montclos, pages 12-13.

411 Campbell, "U.S. Policy to Counter Boko Haram", page 11.

412 Cook, David. 2014. "Boko Haram: A New Islamic State in Nigeria, Doctoral Dissertation, Rice University, pages 9-15.

Internal Organization and Resource Allocation

Not a lot is known about Boko Haram's internal organizational structure but that it "operates a cellular structure with common goals and a broad strategy"⁴¹³. This diffuse structure emerged mainly because of two events – Yussuf's death in 2009 and the proclamation of a state of emergency in northeastern Nigeria in 2013.

After Yusuf's death in 2009, the organization has splintered into several subgroups spreading out all over the country. Yusuf left behind a power vacuum that created room for various fractions to emerge, making it more difficult for observers to understand the organizational structures of the organization.⁴¹⁴ With Shekau taking the lead after Yusuf's death, violence increased and became more and more secular, which was disapproved of by many other Boko Haram members. Ansaru is one of the splinter groups emerging after the Yusuf era. The group has committed itself to the mission of protecting all Muslims since Boko Haram under Shekau frequently killed non-Sunni Muslims.⁴¹⁵

With the exclamation of a state of emergency in 2013, security presence in the northeast increased as well as monitoring and surveillance. Boko Haram was forced to adapt to that challenge by further decentralizing its power, becoming even more fluid and mobile across the country. Although Boko Haram still mainly operates from its region of origin in the north-east of Nigeria, there have been bombings throughout the country, including in the major cities Abuja and Lagos.⁴¹⁶ Splintering and different cells following different agendas has also led to confusions about which group is responsible for which attack.⁴¹⁷ With leadership unity making more effective governance more likely, Boko Haram cannot be expected to develop more effective governance soon.

With regard to resource allocation, Boko Haram's behavior does not confirm Mampilly's correlation between cease-fires and spending on civilians. The one supposedly negotiated cease-fire between Boko Haram and the government was broken by the rebel group within a day. From that I conclude that Boko Haram was not concerned with shifting its resources somewhere else but was more interested in continuing its violent campaign. Apart from that, it is difficult to tell whether Boko Haram reacts to military occurrences and strategically shifts its budget. Taking into account the weakness of the corrupt and mal-trained Nigerian military that is often outweighed in numbers by Boko Haram, the insurgents might not deem it necessary to shift resources in order to outbalance the military threat by the incumbent state forces.⁴¹⁸ Summing up, the diffused Boko Haram leadership and organizational structure will not facilitate the development of more effective governance. In addition, too little is known about the resource allocation between Boko Haram activities.

413 Smith, Patrick. 2014. "Djihadisme sans frontières – Boko Haram's regional and international link", Norwegian Peacebuilding Resource Center, <http://www.peacebuilding.no/Regions/Africa/Nigeria/Publications/Djihadisme-sans-frontiers-Boko-Haram-s-regional-and-international-links> [accessed 12/03/2014].

414 Campbell, John. "Boko Haram: origins, challenges and responses", page 2.

415 Ibid.

416 Meagher, page 1.

417 Smith, Patrick. page 3.

418 Campbell, John. "Nigeria's Boko Haram Moving Towards Governance?", page 13.

Relationship with Other Transnational and Local Actors

While Boko Haram's primary focus lies within Nigeria's borders, their influence reaches into the neighboring states Niger, Chad and Cameroon. Boko Haram disregards the north-eastern borders of the country since they are a mere legacy of colonial rule and disrespect the tribal structures of the region.⁴¹⁹ Cameroon has been especially affected by Boko Haram's operations. The group has not only found a certain degree of support from the Muslim population in Northern Cameroon but also uses the Cameroonian border region as a hideout when the situation in Nigeria becomes too difficult. However, the Cameroonian government has started launching military operations since November 2014, which makes it increasingly difficult for Boko Haram to use the border region as a power base.⁴²⁰

The spread of Boko Haram over the borders to Nigeria's neighboring countries has displaced thousands of people in the region. International humanitarian agencies and organizations deliver aid to those affected by Boko Haram's violent campaign. I suggest that the Boko Haram insurgency is different from other insurgencies in that its radical ideology forbids it to cooperate with any nationally or internationally funded organization that embodies Western values. Thus, Boko Haram is very unlikely to co-opt humanitarian agencies into its framework and exploit them for its own purpose.

Civil society has not yet managed to be heard and taken seriously by Boko Haram and hence will not change the insurgency's governing behavior. Boko Haram rather gives short shrift to opponents and influential critics and uses lethal violence against them.⁴²¹

Conclusion

This paper set out to evaluate whether Boko Haram is likely to move towards more effective governance from where it is now. I first established why it could be beneficial for Boko Haram, at this stage of its partially effective governance, to move towards a more effective governance system. I then developed an analytical framework that conceptualizes determinants of effective governance. In a second step, I investigated the case of Boko Haram with regards to these determinants and found that Boko Haram is unlikely to establish a more comprehensive governance structure. First, it is the institutional framework of Nigerian society that makes it challenging for Boko Haram to develop a more effective governance structure. Neither national nor local institutions are far-reaching and could be exploited for establishing rebel governance. The state's low penetration into society further deprives Nigerians from political ownership, they fear the government and thus stay out of political matters. Yet more effective rebel governance would require interaction with the population to learn about their needs and react accordingly to them. One further aspect I found that stands against Boko Haram exceeding its governance is civilian resistance.

Although Arjona's theory predicted otherwise, vigilante groups have emerged that resist Boko Haram fully. Second, Boko Haram is heavily influenced by its ideology and its goal to overthrow the government and put in place Sharia law all over Nigeria. This turns out to be an ambitious aim in such an ethnically and religiously diverse country like Nigeria. Third, with its current organizational structure, Boko Haram is unlikely

419 de Montclos, "Nigeria's Interminable Insurgency? Addressing the Boko Haram Crisis, pages 6-9.

420 "Cameroon Army frees Boko Haram Hostages", Al-Jazeera, 19 January 2015, <http://www.aljazeera.com/news/africa/2015/01/dozens-abducted-boko-haram-cameroon-201511955045579476.html>, [accessed 1/31/2015].

421 Marquand, Robert. 2014. "Nigeria's Boko Haram targets top leaders at home and abroad", The Christian Science Monitor, , <http://www.csmonitor.com/World/Security-Watch/Under-the-Radar/2014/0728/Nigeria-s-Boko-Haram-targets-top-leaders-at-home-and-abroad-video> [accessed 12/22/14].

to develop more effective governance structures. A more coherent leadership and less autonomy for the cells would be needed to do so. Fourth, Boko Haram does not use relationships with other international and national actors to work towards more effective governance. Instead, its anti-Western ideology prevails once more. Overall, prospects for a more effective governance of Boko Haram are low.

To say that Boko Haram is unlikely to develop more effective rebel governance is, however, not to say that it will not try and expand its partially effective governance attempts to a wider area and will secure them with an increasing level of violence. Driven by its ideology and motivated by its aim of establishing an Islamic State, Boko Haram is likely to continue its violent campaign against anyone who is unwilling to subscribe to its agenda.

Out of the Mountains? A Quantitative Approach to Political Violence and Urban Spaces

Lukas Bretzinger, Cameron Reed, & Sascha Schuster



Introduction

In the past few years, armed, non-state actors have attracted attention using urban centers as stages. In 2008, Pakistan-based Lashkar-e-Taiba launched a coordinated assault on Mumbai, India, which lasted three days and resulted in 164 civilian deaths. In 2013,

Somalia-based Al-Shabaab infiltrated the Westgate mall in Nairobi, Kenya, killing 67 and injuring 175 civilians. In January of 2015, two Al-Qaeda-affiliated gunmen massacred, in broad daylight, 12 employees of the satirical magazine, *Charlie Hebdo*. In all three cases, the perpetrators exploited the complex flow of systems pervading and constituting urban life to achieve desired outcomes.

High-impact incidents, such as those mentioned above, illustrate the need for the ongoing debate about armed groups' current and future targeting practices. How do we understand, forecast, and mitigate attacks in the face of global trends of population growth, migration, urbanization, and increasing licit and illicit flow of people, goods, services and information? Renowned researchers have argued that these trends will likely shape the vulnerable environments in which conflicts emerge. This has developed into a strong theme in the discourses on violent non-state actors, asymmetrical warfare, terrorism, political violence, insurgencies, and hybrid threats. Furthermore, it is expected that megacities present fertile grounds for inequality and conflict, as well as the globally connected, large, human and physical subsystems that are vulnerable to disruption and exploitation by criminal and terrorist organizations.

Practitioners and academics alike are concerned with the pressing question: what will conflict look like in the future? Practice-driven, predictive research in the fields of political violence and conflict studies shape future responses of state and local governments, as well as international institutions. The allocation of resources for recruiting, training, further research, and procurement programs is driven by the assumptions individuals and organizations make about the future.

Many predictions about future conflict environments create convincing narratives and make plausible predictions based on anecdotal evidence and qualitative case studies. It has often been pointed out that there is a general lack of large-n studies that inform, and be informed, by their popular approaches.⁴²² Existing studies are often conducted with limited scope. Our study attempts to fit this gap; we conduct a large-N study to investigate

422 see for example Alex Braithwaite and Shane D. Johnson, "Space-time modeling of insurgency and counterinsurgency in Iraq," *Journal of Quantitative Criminology* 28 (January 2012), pp. 31-48; Michael G. Findley and Joseph K. Young, "Terrorism and Civil War: A spatial and temporal approach to a conceptual problem," *Perspectives on Politics* 10 (2012), pp. 285-305; Kaisa Hinkkainen and Steve Pickering, "Strategic risk of terrorist targets urban vs. rural locations," working paper delivered at the Peace Science Society Workshop in Disaggregation in Terrorism Studies, Philadelphia, USA, October 9, 2013; Jennifer J. Webb and Susan L. Cutter, "The Geography of U.S. Terrorist Incidents, 1970-2004," *Terrorism and Political Violence* 21 (2009), pp. 428-49.

claims on the future environment of political violence. Using the most comprehensive open source database on incidents of political violence on a national, regional, and global scale ranging from 1970 - 2013, we analyze the spatial distribution of events between urban and rural spaces over time. We assume that if existing processes like urbanization and population growth are in fact the main drivers of future conflict environment, we would expect to see this trend in recent history. Does the data lead us to believe that of all possible scenarios for the future conflict environment, the urban, crowded, connected, and littoral space should be the most likely?

This paper proceeds as follows: we first present the building blocks of a widely accepted vision proffered by David Kilcullen and embed them in the research of political violence. We then briefly describe our methodological approach and highlight the potential possibilities of our dataset. We present the key analytical results and how they relate to contemporary predictions in the field.

Conflict in the Urban Space

Political violence in the urban space is by no means a new concept, as it arises in guerilla, riot, terrorism and insurgency literature.⁴²³ Indeed, the urban context was a feature of Walter Laqueur's early study on guerilla warfare. Groups like the Mau Mau of Kenya, the Irish Republican Army, and the Front de Liberation Nationale employed attacks against colonial powers that targeted aspects of urban life and space.⁴²⁴ Martha Crenshaw's seminal piece on the causes of terrorism highlighted the enduring importance of modernization and urbanization, which she saw as an ever growing opportunity for terrorist groups to execute attacks.⁴²⁵ Others describe the urban space as a ground for recruitment, hiding and communication, as well as the variety of possible targets.⁴²⁶ Most of the 20th century literature recognized the urban element one way or the other, but did not fully theorized linkages between urbanization and national security.

Indeed, after two long wars in Iraq and Afghanistan in which the operational setting was dominated by asymmetric warfare and rural settings ended, the US and other Western nations have voiced concerns over the impending nature of conflict. New technology, like Unmanned Aerial Vehicles (UAVs), improves and proliferates at a high pace, which increases the ability of government to monitor remote and sparsely populated areas. In this vein, the security literature widened its scope to account for the irrevocable conditions shaping the environment of tomorrow. Stated differently, prominent theorists of modern warfare re-problematized conflict, taking into consideration large-scale trends of urbanization, rapid population growth, and connectedness. In 2009, respected journalist, Robert D. Kaplan, in his 2009 book, *Revenge of Geography*, stated, "Crowded megacities, beset by poor living conditions, periodic rises in the price of commodities, water shortages, and unresponsive municipal services, will be fertile petri dishes for the spread of both democracy and radicalism, even as regimes will be increasingly empowered by missiles and modern, outwardly focused militaries."⁴²⁷ Even military

423 Martha Crenshaw, "The causes of terrorism," *Comparative Politics* 13 (1981), pp. 379-399; Peter N. Grabosky, "The urban context of political terrorism," in Michael Stohl, ed., *The politics of terrorism* (New York, NY: Marcel Dekker, 1979), pp. 51-76; Philip A. Karber, "Urban terrorism: Baseline data and a conceptual framework," *Social Science Quarterly* 53 (1971), pp. 512-533; Walter Laqueur, *A history of terrorism* (Edison, NJ: Transaction Publishers 1977); Peter A. Lupsha, "On theories of urban violence," *Urban Affairs Quarterly* 4 (1967), pp. 273-299.

424 Walter Laqueur, *A history of terrorism* (Edison, NJ: Transaction Publishers 1977).

425 Martha Crenshaw, "The causes of terrorism," *Comparative Politics* 13 (1981), pp. 379-399.

426 Peter N. Grabosky, "The urban context of political terrorism," in Michael Stohl, ed., *The politics of terrorism* (New York, NY: Marcel Dekker, 1979), pp. 51-76.

427 Robert D. Kaplan, *The Revenge of Geography: What the Map Tells Us about Coming Conflicts and the Battle Against Fate*, (Random House Publishing Group, 2012), pp. 120.

strategists, such as Steven Metz in his article, "Strategic Horizons: How the U.S. Military Might Get Involved in a Megacity", said, "Failing to prepare for military operations in dangerous megacities could leave a future president without the means to do something that he or she considers to be in the national interest."⁴²⁸ Cities are becoming the vanguard unit of analysis for studying conflict.⁴²⁹ Geographers have offered a research agenda for their field in the face of the rising importance of the ancient social phenomena of terrorism.⁴³⁰ It is often assumed that growing urban environments, especially in the developing world, become increasingly attractive as targets for violent extremists, resulting in more attacks on urban systems, but mostly single case studies, like the Mumbai case of 2008, are referenced in support of that claim--larger empirical studies are rare.⁴³¹ Some scholars even believe a traditional characteristic of terrorism studies is that much is written on the basis of little empirical analysis.⁴³²

Few studies offer quantitative, systematic investigation of political violence and urban spaces. More recently, the literature has shifted toward critically analyzing geospatial determinants of political violence, which advances the understanding of where attacks take place. Geospatial analysis of these trends gained traction after 9/11 and have since been growing in importance and policy relevance. A seminal study exists on the geolocation of terror and political violence incidents on the U.S. level.⁴³³ Another cogent working paper by Hinkkainen and Pickering has used the Global Terrorism Database (GTD) to study urban and rural targeting by terrorist groups, but they used a time invariant measurement of infrastructure complexity as proxy for urbanity.⁴³⁴ Findley and Young find, through geospatial analysis, found that certain characteristics, such as proximity to capital cities, international borders, mountainous terrain, areas with low forest coverage, areas of recent civil war, and high populations raise exposure to transnational terrorism⁴³⁵. Also, Nemeth, Mauslein, and Stapley discovered similar characteristics when exploring domestic geospatial determinants of attacks, adding that poorer, dense populations, as well as autocratic regime types increase the likelihood of attacks.⁴³⁶ Finally, on the regional level, scholars have found a trend pointing to a larger incidence of political violence diffusing toward the Middle East in the post-9/11 environment.⁴³⁷ Incorporating geographical methods and analysis, as well as

428 Steven Metz, "Strategic Horizons: How the U.S. Military Might Get Involved in a Megacity," *World Politics Review*, March 19, 2014. <http://www.worldpoliticsreview.com/articles/13639/strategic-horizons-how-the-u-s-military-might-get-involved-in-a-megacity>

429 David Kilcullen, *Out of the Mountains: the coming age of the urban guerrilla*, (New York, NY: Oxford University Press 2013).

430 Susan Cutter, Douglas B. Richardson, and Thomas J. Wilbanks, *The geographical dimensions of terrorism* (London: Routledge, 2005).

431 Jo Beall, "Cities, terrorism and development," *Journal of International Development* 18 (2006), pp. 105–120; Edward L. Glaeser and Jesse M. Shapiro, "Cities and warfare: The impact of terrorism on urban form," *Journal of Urban Economics*, 52 (2002), pp. 205–224; Stephen Graham, *Cities, war, and terrorism: towards an urban geopolitics* (Oxford: Blackwell, 2008); Saskia Sassen, "When the city itself becomes a technology of war," *Theory, Culture & Society* 27 (2010), pp. 33–50; Hank V. Savitch and Grigoriy Ardashev, "Does terror have an urban future?" *Urban Studies* 38 (2001), pp. 2515–33.

432 Albert J. Jongman, *Political Terrorism: A new guide to actors, authors, concepts, data bases, theories, and literature* (Edison, NJ: Transaction Publishers, 1988).

433 Jennifer J. Webb and Susan L. Cutter, "The Geography of U.S. Terrorist Incidents, 1970–2004," *Terrorism and Political Violence* 21 (2009), pp. 428–49.

434 Kaisa Hinkkainen and Steve Pickering, "Strategic risk of terrorist targets urban vs. rural locations," working paper delivered at the Peace Science Society Workshop in Disaggregation in Terrorism Studies, Philadelphia, USA, October 9, 2013.

435 Michael G. Findley and Joseph K. Young, "Terrorism and Civil War: A spatial and temporal approach to a conceptual problem," *Perspectives on Politics* 10 (2012), pp. 285–305.

436 Stephen C. Nemeth, Jacob A. Mauslein, and Craig Stapley, "The primacy of the local: Identifying terrorist hot spots using geographic information systems," *The Journal of Politics*, 76 (2014), pp. 304–317.

437 Walter Enders and Todd Sandler, "Distribution of transnational terrorism among countries by income

geospatial visualization has helped scholars understand the conditions under which an attack might be more or less likely to occur, including factors directly related to the aforementioned megatrends, such as urbanized, dense spaces. Geographical evidence that is domestic, international, and regional in scope is becoming a larger part of the discourse illuminating the nature of future conflict. Thus, operating under the assumption that large-scale attacks are planned, geospatial analysis, or mapping other types of analysis onto geographical illustrations, provides insights into strategies of targeting and decision-making. In fact, applied geographers have discovered trends in the environment that signal a trend toward targeting areas with high populations.⁴³⁸

We discuss the claims on the urban as the primary future conflict environment in the way they have quite recently been argued for by David Kilcullen in his 2013 book, *Out of the Mountains: The Coming Age of the Urban Guerilla*.⁴³⁹ Kilcullen uses an exploratory case-study approach and an analogy of cities as biological metabolism to argue that urban spaces will be the primary environments in which armed non-state groups will execute their attacks. While non-state, armed group violence had previously been a phenomenon of landlocked, distant, and rural communities, this form of conflict would see a dramatic shift to urban, crowded, coastal, and connected environments, Kilcullen argues. Areas close to the sea, densely populated, and often semi- or quasi-governed would be the most vulnerable targets. Various types of infrastructures like waterways, telecommunication, real time-news feeds and social media allow armed groups to design and execute attacks of higher impacts. This infrastructure is marked by the modern information environment and already enabled attackers to achieve worldwide attention. Kilcullen creates a fascinating and alarming narrative on how the opportunities and benefits of modernization that leads us to move to big cities, also attracts those looking for control over our lives.

Kilcullen's model of the urban, crowded, connected, and coastal space as the primary future conflict environment both epitomizes the general discussion on the importance of urban spaces in conflict studies and lends itself to statistical modeling. His contribution is highly respected as a scholar and practitioner, and is very likely to achieve substantial resonance from practitioners in the future.⁴⁴⁰ In academic circles, Kilcullen's studies have already been incorporated widely, reaching over 30 citations in less than two years since being published. For example, scholars tackling issues from a range of disciplines, including transnational organized crime, civic security, urban insurgency, and armed conflict use Kilcullen's vision to substantiate claims. Clearly, Kilcullen's ideas garnered a breadth of support from many prominent thinkers and remains the foundation of future-oriented discourse on conflict and warfare.

class and geography after 9/11," *International Studies Quarterly* 50 (Spring 2006), pp. 367–393.

438 Karim Bahgat and Richard M. Medina, "An overview of geographical perspectives and approaches in terrorism research," *Perspectives on Terrorism* 7 (2013), pp. 38–72; Kaisa Hinkkainen and Steve Pickering, "Strategic risk of terrorist targets urban vs. rural locations," working paper delivered at the Peace Science Society Workshop in Disaggregation in Terrorism Studies, Philadelphia, USA, October 9, 2013.

439 David Kilcullen, *Out of the Mountains: the coming age of the urban guerrilla*, (New York, NY: Oxford University Press 2013).

440 In his post-military career in the Australian army, he served as a Senior Advisor on counterterrorism and counterinsurgency in the State Department and American military, most notably under General David Petraeus and Secretary of State Condoleezza Rice. Kilcullen's body of scholarly and policy-oriented work remains highly influential. Beyond his notable book, *The Accidental Guerilla and Counterinsurgency*, Kilcullen wrote the counterinsurgency field manual for the US Army (2006). Also, Kilcullen played a large role in designing the 2007 "Surge" in Iraq and other large-scale operations. He continues to serve as an advisor to governments, militaries, international organizations, and private sector clients on a range of issues dealing with conflict, violence, and crime.

What can the data tell us?

Our analysis is based on the Global Terrorism Database (GTD), maintained by the National Consortium for the Study of Terrorism and Responses to Terrorism (START) at the University of Maryland⁴⁴¹. The GTD is the most comprehensive open source database on incidents of political violence, containing over 125,000 events from 1970 - 2013, and listing from 45 - 120 properties per attack. Variables include aspects such as location details, victims or targets, and information on the perpetrators. The database's usage of terrorism in the name may be misleading when it comes to the kind of incidents included. START uses a three-level approach combining automated and manual methods for information gathering. To circumvent critiques on a potential selection of incidents on the basis of the highly contested definition of terrorism, START has established a set of required criteria for incident inclusion that aims to broaden the range of potentially listed events as much as possible. GTD's necessary requirements for incident inclusion entail three core elements⁴⁴²: (1) the incident needs to be intentional, (2) perpetrated by a sub-national actor, and (3) include violence or a threat of violence. Additionally, inclusion requires fulfillment of at least two out of three other criteria: (1) the incident must be aimed to achieve a political, religious, social, or economic goal (other than pure for profit), (2) it must be aimed at conveying a message at some form of wider audience other than just the victims, and/or (3) the act must be outside of legitimate warfare activities (as given by the Geneva Convention). This set of criteria opens up the scope of inclusion of incidents to wide definitions of political violence, giving the user the chance to select incidents on all existing variables for his or her analysis.⁴⁴³

One of core strengths of using the GTD lies in its origin. It was created by the Pinkerton Global Intelligence Service (PGIS) as a tool of for-profit risk assessment for its clients to analyze potential investment risks stemming from violence in target countries. As far as that is possible, the GTD is therefore not created ex-post looking back at former incidents, but was expanding on from its inception. As far as that can be said, its DNA is inherently apolitical. At the same time, the long history of the GTD and the transition of the database to different maintaining institutions over time resulted in legacy and consistency issues that can only be remedied to a limited extent.

Apart from an intensive cleaning and tidying process, the main factor influencing the explanatory power of our analysis are issues of over- and underreporting. We see an explosion of reported incidents starting in the early 21st century. While data collection

441 National Consortium for the Study of Terrorism and Responses to Terrorism (START), "Global Terrorism Database," January 20, 2015, <<http://www.start.umd.edu/gtd>>.

442 National Consortium for the Study of Terrorism and Responses to Terrorism (START), "GTD Codebook" January 20, 2015, <<http://www.start.umd.edu/gtd/downloads/Codebook.pdf>>.

443 David Kilcullen does not give a detailed account of what qualifies incidents of political violence in his theory of urbanized conflicts. All case studies he uses to build his argument however are incidents included in the GTD. This cannot disguise the fact that we are moving in an environment of heavily contested and overlapping concepts such as political violence, criminality, terrorism, and insurgencies, whose discourse (especially on terrorism) in the recent past has been very much dominated by a very narrow conceptualization of acts of violence affiliated with Islam in a narrowly defined space. Especially in this context, the title Kilcullen chose for his book, *Out of the Mountains: The Coming Age of the Urban Guerilla*, unconsciously invokes the picture of the Iraq or Afghanistan insurgent, while Kilcullen's scope of urban conflict includes far more acts of violence. But, since he does not give a precise definition of conflict, we have no substance to compare with the detailed definition of the GTD. Just as established definitions of political violence and/or terrorism may share many properties, and differ mainly at the extent of their boundaries, we assume the same to be true for the implicit nature of political violence used by Kilcullen and the explicit definition given by the GTD. Both conceptualizations include violent acts perpetrated by non-state actors. Even if their implicit and explicit definitions may not be perfectly compatible, we assume that in the face of over 100,000 attacks driving our analysis, potential for distortion of a statistical effect is negligible. The GTD is the best-suited tool to analyze Kilcullen's claims.

methodology was kept across different institutions, this explosion does not only coincide with the time that acts of political violence appeared on the global agenda, but also with the rise of the internet. We think that the extent with which the number of events has risen since 1998 cannot only be explained through more incidents occurring, but must also be attributed to those two factors. The most significant statements can therefore be made for the time period after 1998.

While the GTD gives us detailed information on violent incidents themselves, we use several open source datasets to give us information on the environments in which these attacks took place. We use global datasets on cities to relatively geo-reference the GTD's events, also including control variables for capitals, coastal cities, and urban centers consisting of various smaller urban sub-centers. We attribute incidents of political violence to urban centers if they fall within a certain distance, depending on the type of target. Other dataset include: (a) Open source data on cities and urban centers, including their geographic location, area and population density; (b) World Bank data on population, demography and urbanization; (c) Various dataset from the Correlates of War project to include control variables for incidents happening during war or war-like situations; (d) Geospatial data from various sources to capture land use, changing population density, intensity of night light, road accessibility and distance to the coastline We combine all information to operationalize the concepts of crowded, connected, littoral, and - most importantly - urban spaces.

We analyze the spatial distribution patterns of attacks (measured by the number of victims both killed and injured) globally and for each year between 1998 and 2013. We consistently refer to the relative share of attacks between environment A and non-A of all attacks in that year, because in order to make descriptive inference about the trends of conflict environments, we need to account for socioeconomic and demographic developments that would otherwise blur our findings. Deriving from that, we express our results as the change of relative likelihood of becoming a victim of political violence in environment A vis-a-vis the probability of becoming a victim of political violence in environment non-A over time. This approach makes it hard to describe how high the absolute probability of becoming a victim in either of these environments is at a certain point in time, but facilitates analysis on how that probability has changed. In fact, several possible scenarios could account for a change of attack distribution between years leading us to speak of a shift of attacks between environments. First, it could be possible that the overall amount of victims remained stable between years, but that a decreasing number of victims in environment A were replaced by an increasing number of environment non-A. Second, it may also be the overall level of victims increased or decreased, but in environment A, the number of victims increased or decreased more than in environment non-A. It may also be that a shift in the conflict environment was not caused by a changing number or spatial distribution of attacks, but by a change in the distribution of population. If, for example, urbanization as a concept holds between years and we observe more people living in cities than in rural communities, but the level of attacks remained stable, there would be an increase in the likelihood of becoming a victim in rural communities.⁴⁴⁴

With our approach we can best analyze potential shifts in conflict environments. We also have the tools to control for specific effects, like changes in population distribution and observe if resulting trends remain the same. But, in order to unveil causal relations behind shifts or non-shifts in conflict environments, resource-intensive analysis with detailed attention to specific circumstances of each attack would be necessary.

444 Analogous to that, arguments for other changes of spatial distribution of populations, like population growths, or intra- and international migration, could be made.

Our findings on trends in political violence

Global Patterns: Rural vs. urban environments and changes over time

Our results support the literature in a major claim: living in big cities is more dangerous than living elsewhere. Over the timespan between 1998 and 2013, the average risk of becoming a victim of political violence in urban agglomerations per year (cities of more than one million inhabitants) was 0.0006%. In areas outside of these agglomerations, it was a mere 0.0003%. Given that violent groups can expect higher visibility and potential impact by targeting urban life, especially in capital cities, this finding is in line with the literature. With a globally growing number of acts of political violence, it is also true that the likelihood of becoming a victim of political violence by non-state actors became higher.

However, if we compare the trends in urban and rural environments, the results look quite different. The likelihood of becoming a victim of political violence by non-state actors increased by 7.6% each year for individuals outside of urban agglomerations, but only 2.4% inside of them.⁴⁴⁵ In urban agglomerations on the coastline, it was only 1.3%.⁴⁴⁶ The likelihood of becoming a victim within a landlocked urban agglomeration was twice as high as in an urban agglomeration at the coast. This means that if we examine relationships comparatively between landlocked-urban and coastal-urban spaces, the likelihood of becoming a victim in coastal-urban spaces was closer to the likelihood of becoming a victim in rural spaces, rather than in landlocked-urban spaces.

Urban, crowded, connected and littoral environments

Using more rigorous methods of testing, we can analyze the relationship of incidents of violence along a more diverse spectrum than just urban - rural, also including variables for crowded, connected, and littoral environments. We define these environments as time variant relative terms on the country level and use various geospatial and geostatistical measures to operationalize these concepts.⁴⁴⁷ With this approach, our model explains that conflict environments became less urban, less crowded, and less connected at a rate of -0.471% (urban), -0.398% (crowded) and -0.454% (connected) each year. The decrease also accelerated in recent years. This trend is not true for the littoral character of conflict environment. Unlike the urban, crowded, and connected, violent groups choose littoral environments for their attacks to the same degree to

445 Since 2003, almost half of the GTD's incidents per year are reported in Baghdad and other cities suffering from some form of war, which created a huge potential to shape the outcome of such global analysis. If we take out countries in (civil) war in the sample the difference becomes less obvious: 9.9 % (non-urban) and 7.4% (urban) respective yearly increase in likelihood of becoming a victim of political violence. The level for urban conglomerates on the coastline remained below 2% nonetheless. This is just to show how outliers like Iraq/Baghdad shape our global results, a reason why we introduce statistical tools that account for outliers later on. Findley and Young already showed that different forms of violence are correlated, like civil war and terrorism, and our finding indeed hold true if excluding or including countries during different forms of war (see Michael G. Findley and Joseph K. Young, "Terrorism and Civil War: A spatial and temporal approach to a conceptual problem," *Perspectives on Politics* 10 (2012), pp. 285-305).

446 When using alternative indicators to the ones presented here (like attacks on the largest 100 cities, or capital cities, or using the attacks count instead of number of victims), resulting trends remain stable. Incidents of political violence take place more and more outside of big cities (or capitals) over time, in war- and in peacetime.

447 That allows for tracking if violent groups choose more crowded (etc.) spaces for their attacks over others. "Crowded" consists on time variant geospatial measures of population density, growth of population density in recent years, as well as the (in)equality of night light distribution among the population in the respective area. The most crowded place would show a high population density, recent growth and an unequal distribution of night light (as proxy for uneven access to electricity, and with that infrastructure) The statistical models are fixed effects models based on panelized data for both countries and violent groups. That way we account for shifts in conflict across countries and regions, as well as for changes in the activity of the various (international) groups and organizations.

which people live there. A one percent increase in a countries population living at the coastline led to a one percent increase in people becoming victims of political violence on the coastline.⁴⁴⁸

Sense-making at the country level

One way to understand results at a global level is to look at country situations. Table 1 shows the 16 countries in which more than 5,000 people became victims of political violence carried out by non state actors between 1998 until 2013. For 11 out of 12 countries with statistically significant results, there was a relative trend of conflict shifting away from urban, crowded, connected, and littoral environments. Only in India the shift pointed towards these spaces. As we learned that the trend of urbanization results in more attacks occurring in the growing urban space, the picture changes when controlling for urbanization. For 6 out 10 countries with significant results, the conflict's shift away from relative urban, crowded, connected, and littoral space is not accounted for by growth of that space: Afghanistan, Colombia, the Philippines, Pakistan and Thailand have growing cities, but even if they were not growing, the average citizen became safer from political violence there. This sets these countries apart from Algeria, Iraq, and Nigeria, where only the growth of the urban space made it safer for the average inhabitant. In Algeria, Iraq, and Nigeria, urbanization, crowdedness, connectedness, and littoralization of political violence is not holding pace with the urbanization of the people, whereas in Afghanistan, Colombia, the Philippines, Pakistan, and Thailand, political violence is not urbanizing at all, despite the trend of urbanization. Here again, we only observe this phenomenon in India.

| Country with more than 5,000 victims 1998-2013 | # Attacks | # Victims | Trend towards relative urban, crowded, connected and littoral environments of conflict? | Trend towards relative urban, crowded, connected and littoral environments of conflict - if statistically holding urbanisation at zero? |
|------------------------------------------------|-----------|-----------|-----------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------|
| Afghanistan | 5,830 | 33,686 | No | No |
| Colombia | 1,717 | 7,528 | No | No |
| Algeria | 1,554 | 9,521 | No | Yes |
| Israel | 754 | 5,141 | No | N/A |
| India | 5,334 | 25,161 | Yes | Yes |
| Iraq | 11,957 | 119,188 | No | Yes |
| Kenya | 255 | 6,037 | No | No |
| Sri Lanka | 872 | 10,192 | N/A | N/A |
| Nigeria | 1,474 | 7,835 | No | Yes |
| Philippines | 2,324 | 7,878 | No | No |
| Pakistan | 7,636 | 41,308 | No | No |
| Russia | 1,784 | 10,506 | N/A | N/A |
| Somalia | 1,453 | 7,439 | No | N/A |

448 Additional variables in a multivariate model provide further insights. Controlling for urbanization, the shift of conflict towards the less urban, crowded and connected show a pace twice as high. Stated differently, a one percent increase in urban population is associated with less than half a percent increase in people becoming victims of political violence in the urban, crowded and connected space. For the fifteen years of observations, it appears as if the average conflict environment's urbanity would have decreased by almost one percent per year, while the growth in urban spaces increased targeting the urban space by almost half a percent, resulting in a yearly de-facto decrease in average conflict environment's urbanity by half a percent. pThe growth of the littoral space has no effect on our variables of conflict environment, which is to say that conflict shifted with the population's shift towards the littoral space, unlike the population's shift towards the urban space.

| | | | | |
|------------------|--------|---------|-----|-----|
| Syria | 502 | 7,012 | N/A | N/A |
| Thailand | 2,433 | 7,159 | N/A | No |
| Yemen | 1,086 | 5,570 | No | N/A |
| All of the above | 46,965 | 311,161 | No | No |
| World | 57,629 | 366,616 | No | No |

Table 1. Country-level analysis of attacks, victims, and trend directions.

Sense-making at the group level

Analysis on the group level is more problematic than on the country level for a variety of reasons. First, many incidents of political violence cannot be attributed to a specific group. Whereas the 16 most targeted countries account for around 85% of all attacks and victims, the 27 most active groups account for less than 33% of all victims worldwide and 25% of all attacks carried out. Second, groups cannot be clearly distinguished over time and space: they emerge, merge, cooperate, and dissolve. Third, these organizations operate across regions and transnationally, while data for socio-economic trends like urbanization is primarily available on a national level.

Still, looking at groups lends additional perspective and potential robustness to our findings. Indeed, as shown in Table 2, hardly any of the most active group shows a trends for targeting relative urban, crowded, connected, and littoral environments over others. Only Lashkar-e-Taiba (LeT), Tehrik-i-Taliban Pakistan (TTP), and the United Liberation Front of Assam (ULFA) shifted their focus on these spaces. LeT and ULFA are active in India, adding persuasive power to our previous finding that data on India displays a different pattern. TTP operates mostly in Pakistan and in recent years increasingly attacked targets in large cities, such as Karachi or Peshawar. But, with its share of attacks (11%) or victims (26%) within their home country, the country-level trend is still pointing away from the urban space.⁴⁴⁹ This could either be because TTP does not claim responsibility for attacks carried out in rather rural areas, or that they do focus increasingly on targets in urban environments. As TTP, LeT, and also ULFA received increased focus from national security forces during the observed time period, these groups might provide a case for the workings of spatial and hierarchical diffusion - under the impression of higher presence and scrutiny by government, they choose rather distanced and symbolic national targets (in urban environments), instead of pursuing a territorial and regional agenda. Generally, the most violent non-state actors do not show a pattern of targeting that runs against the global finding that there was no trend of the environment of political violence becoming more urban, crowded, connected, or littoral. This also holds true if limiting the data to categories like governmental vs. civilian targets, or countries in war vs. in peace.

449 As part of our ongoing research process, we also conduct qualitative case studies on selected groups targeting practice behavior. While we could not give a detailed account of the causal dynamics underlying data, we see several possible explanations: First, the findings could be explained either because TTP does not claim responsibility for attacks carried out in rather rural areas, or that they do focus increasingly on targets in urban environments. Also, as TTP, LeT, and also ULFA got more into the focus of national security forces during the observed time period, they might provide a case for the workings of spatial and hierarchical diffusion--under the impression of higher presence and scrutiny by government, they choose rather distanced and symbolic national targets (in urban environments), instead of pursuing a territorial and regional agenda.

| Violent groups causing more than 1000 victims and carrying out more than 100 incidents between 1998 and 2013. | # Attacks | # Victims | Trend towards relative urban, crowded, connected and littoral environments in targeting? |
|---------------------------------------------------------------------------------------------------------------|-----------|-----------|------------------------------------------------------------------------------------------|
| Abu Sayyaf Group (ASG) | 229 | 1,515 | No |
| Al-Aqsa Martyrs Brigade | 161 | 1,232 | N/A |
| Algerian Islamic Extremists | 373 | 1,222 | No |
| Al-Qa`ida in Iraq | 633 | 13,601 | No |
| Al-Qa`ida in the Arabian Peninsula (AQAP) | 471 | 3,573 | No |
| Al-Qa`ida in the Lands of the Islamic Maghreb (AQLIM) | 204 | 1,681 | N/A |
| Al-Shabaab | 871 | 5,383 | No |
| Armed Islamic Group (GIA) | 116 | 1,462 | No |
| Boko Haram | 806 | 5,456 | No |
| Chechen Rebels | 317 | 4,250 | N/A |
| Communist Party of India - Maoist (CPI-Maoist) | 1,513 | 3,438 | No |
| Hamas (Islamic Resistance Movement) | 226 | 2,706 | N/A |
| Islamic State of Iraq (ISI) | 144 | 6,209 | N/A |
| Islamic State of Iraq and the Levant (ISIS) | 367 | 5,089 | N/A |
| Kurdistan Workers' Party (PKK) | 365 | 1,798 | No |
| Lashkar-e-Taiba (LeT) | 116 | 2,561 | Yes |
| Liberation Tigers of Tamil Eelam (LTTE) | 656 | 7,987 | N/A |
| Lord's Resistance Army (LRA) | 195 | 2,532 | N/A |
| Maoists | 599 | 1,891 | N/A |
| Moro Islamic Liberation Front (MILF) | 302 | 1,796 | No |
| National Union for the Total Independence of Angola (UNITA) | 141 | 2,468 | N/A |
| New People's Army (NPA) | 657 | 1,342 | No |
| Revolutionary Armed Forces of Colombia (FARC) | 1,072 | 5,089 | N/A |
| Salafist Group for Preaching and Fighting (GSPC) | 214 | 1,013 | N/A |
| Taliban | 3,200 | 20,253 | No |
| Tehrik-i-Taliban Pakistan (TTP) | 872 | 10,944 | Yes |
| United Liberation Front of Assam (ULFA) | 251 | 2,441 | Yes |
| All of the above | 15,071 | 118,932 | No |
| World | 57,629 | 366,616 | No |

Table 2. Group-level analysis of attacks, victims, and trend directions.

Conclusion

A considerable amount of compelling evidence points to an increasingly busy, crowded society. Right now, over half of the world lives in urban centers and 27 cities have populations of over 10 million people. According to the UN's most recent estimates, 46 cities will have inhabitants over 10 million by 2030, and by 2050, two-thirds of the world's population will reside in cities.⁴⁵⁰ Additionally, the areas projected to have the highest levels of growth over the next few decades will be Africa, the Middle East, and Asia, rather than the Americas or Europe. Fittingly, the close relationship of the aforementioned trends to conflict scenarios has garnered serious interest from security institutions and figures. Recently, it appears as though an aura of urgency and re-problematization of urban conflict fits neatly with the most visible egregious acts occurring in the recent past, including the massacres of Mumbai, Nairobi's Westgate Mall, Israel-Gaza exchanges, the Islamic State in Syria and Iraq, and more recently Peshawar, Baga, and Paris. The actors perpetrating acts seem to both operate within and target urban spaces comfortably; the ability of governments to protect their own people seems called into question among the worst cases and in need of preparatory adjustments among the best cases.

Our quantitative assessment of threat predictions, tested against recent developments, draws on prominent examples of forecasts for the future conflict environment. We can present seven important findings on the relationship of political violence and the urban space:

- Individuals in the landlocked-urban space are targeted by violent, non-state actors more than they are in the rural or coastal-urban space.
- While political violence has caused more victims generally, individuals in rural spaces were increasingly targeted over individuals in the urban space.
- Among the most important countries, in Afghanistan, Colombia, the Philippines, Pakistan, and Thailand, political violence is not urbanizing (and shifting to the coast), despite changes in the population's geographical distribution.
- In Algeria, Iraq, and Nigeria, urbanization and littoralization of political violence takes place, but is not holding pace with the urbanization (and littoralization) of the population's locality.
- Only in India is political violence shifting into more urban, crowded, connected, and littoral environments.
- Accordingly, out of the 27 most important violent non-state actors, only three are increasingly targeting the more urban, crowded, connected, and littoral space - two of the groups mostly choosing targets located in India (LeT, ULFA) and one in Pakistan (TTP).
- Our findings are robust to additional tests run on countries in (civil) war, excluding capital cities, excluding governmental targets or using the number of attacks instead of the number of victims.

450 United Nations, "World's population increasingly urban with more than half living in urban areas," 07/10/2014, <<http://www.un.org/en/development/desa/news/population/world-urbanization-prospects-2014.html>>

Our findings challenge the prediction that accelerating urbanization and the emergence of the coastal megacity will come with an intensification and emergence of political violence, including terrorism in these spaces. This is not to say that other hazards like organized crime, health crises, and natural disasters are of less concern when assessing the increased vulnerability of these social sub-systems. Non-state actors might also exploit these vulnerabilities for activities challenging national or regional governments, however, we do not find evidence for these activities being accompanied by violent conflict within these spaces. For example, while groups opposing the government might use cities controlled by criminal entities for acquiring arms or resources, it does not also imply they use these areas as staging grounds. Here, a nuanced understanding of an area might give law enforcement and security organizations or aid agencies a finer grasp of the problem. For example, rather than immediately designating crowded or drug-heavy areas as being fragile or unstable, perhaps they function well for settling political conflict nonviolently, just under a different set of rules. In this case, a context-specific analytical lens might paint a more accurate picture of the dynamic differences between countries, cities, and groups, not generalizations about the global environment. While global trends have global impacts, the nature of these impacts remains context-specific. From the results of our analysis, we do not find compelling reason for policymakers, military leaders, law enforcement, and development professionals to be focused on the prospect of open conflict, political violence, and terrorism associated with the emergence of fragile megacities at the expense of other hazards facing coastal and urban spaces already.

Beyond the Jihadi Bride: Our Distorted Understanding of Women's Motivations to Join Extremist Organizations

Emily Schneider & Elizabeth Weingarten⁴⁵¹



Introduction

Many people may have been surprised by the fact that one of the terror suspects in the recent fatal shooting of a policewoman in Paris following the Charlie Hebdo massacre turned out to be a woman. That suspect, Hayat Boumeddiene, is believed to have traveled to Turkey and then on to Syria on January 2, 2015, but she left behind a number of questions about her involvement in the plot to attack Charlie

Hebdo and her broader motivations for ascribing to a violent ideology that traditionally subverts women.⁴⁵² In the past, extremist Islamic organizations have not been open to equal opportunities for women. Take the Taliban in Afghanistan, for example, which denied women the ability to work outside the home or access any sort of education under their rule.⁴⁵³

This article aims to first, examine the growing phenomenon of female foreign fighters from the West to Iraq and Syria and second, discuss possible motivations and situational factors that contribute to the influx of women into terrorist organizations. Within that discussion, we seek to distinguish personal and private motivations from political and pragmatic ones. Finally, we briefly discuss how women might shape the future of the Islamic State and how situational factors present in certain countries, like Jordan or Lebanon for example, may make its female population more or less susceptible to joining the Islamic State.

Data Collection Methodology

The International Security Program at New America collected information regarding 480 individuals who we deemed foreign fighters.⁴⁵⁴ To be considered a foreign fighter, a person either traveled to a conflict zone, such as Iraq or Syria, to participate in the conflict or was arrested or charged on their way to participate in the conflict. In some cases, minors have been intercepted on their way to a conflict zone by authorities and released to their parents without being charged with a crime. In these instances, they were not included in the New America data since they neither participated in a conflict nor were arrested or charged with any crime. We included the following information for each person: name, country of origin, the militant group they joined or attempted to join, the last known location, their age and sex, the disposition of their case, if there was a notable social media presence, and if there were familial ties to jihadism. By

451 Emily Schneider is a research associate in the International Security Program at New America. Elizabeth Weingarten is the associate director of New America's Global Gender Parity Initiative.

452 Peter Bergen & Emily Schneider, *Rise of the Female Jihadists*, CNN (Jan. 10, 2015, 6:11 PM), <http://www.cnn.com/2015/01/10/opinion/bergen-female-jihadists/>.

453 *The Taliban's War Against Woman*, U.S. Department of State, Bureau of Democracy, Human Rights and Labor (Nov. 17, 2001), <http://www.state.gov/j/drl/rls/6185.htm>.

454 The authors would like to thank Peter Bergen, the Vice President of New America and Director of the International Security Program, for reviewing this article and David Sterman, Courtney Schuster, and Justin Lynch at New America for their research, which contributed to this article.

disposition, we mean whether the individual was arrested, charged, missing, actively participating in the conflict, or killed, for example. An individual's active social media presence was adjudicated on a case-by-case basis and we simply noted whether or not the individual had a Twitter or Facebook account that other sources verified as belonging to that person.

The data collected should be taken with the caveat that reliable numbers do not exist for many countries, especially countries in the Middle East region where governments do not report any information regarding their citizens participating in conflicts like the one in Syria. Thus, our data overwhelmingly focuses on Western countries. All information was gathered using open sources, i.e. news articles, public records and court documents, official statements made on the record, and social media accounts. The numbers were last updated January 15, 2014.

Data and Analysis

Country Statistics

Individuals from Western countries have been traveling to war zones in Muslim countries in the Middle East for more than a decade. According to U.S. government figures cited by the New York Times, about 1,000 militant recruits from around the world join the fight in Syria and Iraq each month.⁴⁵⁵ The Netherlands has contributed more than 1,000 fighters, according to a recent statement by Rob Bertholee, the director-general of the Dutch General Intelligence and Security Service.⁴⁵⁶ France's Interior Minister Bernard Cazeneuve said in a recent interview that there have been around 930 citizens from France that have gone to train or fight in conflict zones.⁴⁵⁷ There are said to be 500 United Kingdom citizens with the Islamic State.⁴⁵⁸

Female Foreign Fighters

Of the 480 people New America was able to identify individually as foreign fighters, almost 9 percent were female. We were able to identify 40 female foreign fighters with an average age of 18 years old. The youngest was only fourteen years old and the oldest was thirty-three. The country with the most named female foreign fighters was the United Kingdom, with eight. We counted the next highest number of foreign fighters from the United States, with a total of six female foreign fighters. There were five named female foreign fighters in our database from the Netherlands, Belgium, and France, respectively.

The majority of female foreign fighters chose to join the Islamic State.⁴⁵⁹ Fifty-five percent went to Iraq or Syria or attempted to do so and were intercepted by law enforcement in order to join the Islamic State. Only five percent joined or attempted to join al-Nusra Front in Syria.⁴⁶⁰ The other forty percent were unclear in their affiliations.

455 Eric Scmitt & Michael S. Schmitt, *West Struggles to Halt Flow to War Zones*, N.Y. Times (Jan. 13, 2015), http://www.nytimes.com/2015/01/13/world/west-struggles-against-flow-to-war-zones.html?_r=0.

456 Rob Bertholee, *Jihadism on the Rise in Europe: The Dutch Perspective*, The Washington Institute (Dec. 4, 2014), <http://www.washingtoninstitute.org/policy-analysis/view/jihadism-on-the-rise-in-europe-the-dutch-perspective>.

457 *France says 930 citizens or residents involved in jihad*, France 24 (Sept. 15, 2014), <http://www.france24.com/en/20140914-france-jihad-islamic-state-citizen/>.

458 Jane Perlez, *ISIS Lutenient Emerges From Australian Red-Light District*, N.Y. Times (Sept. 26, 2014), http://www.nytimes.com/2014/09/27/world/asia/isis-australia-mohammad-ali-baryalei.html?_r=0.

459 The Islamic State in this article refers to the terrorist group formerly known as the Islamic State in Iraq and the Levant (ISIL) or the Islamic State in Iraq and Syria (ISIS). We choose to refer to them as the Islamic State since that is how they self-identify.

460 *Al-Nusra Front*, The National Counterterrorism Center, http://www.nctc.gov/site/groups/al_nusrah.html.

Motivations

The question of why women would choose to join the ranks of groups like the Islamic State or al-Nusra is perplexing to outsiders, as these groups engage in activities (using rape as a weapon of war, for instance⁴⁶¹) that perpetuate egregious gender inequality by Western standards. Yet although the Islamic State, espouses governance in which women are men's slaves (and where a population of Yazidi women – a religious minority from Iraq – have become slaves for everyone, including women⁴⁶²), it has recruited many women to join its ranks.

Notably, the fact that this reality is surprising exposes the entrenched gender stereotypes in the Western world that we tend to assign explicitly to Islamic groups; that we continue to question why women might choose to work for a terrorist organization or to execute an act of terrorism is symptomatic of a much larger problem in security studies: It is that while “men's participation in political violence is assumed and taken for granted...women's needs proof and explanation.”⁴⁶³ This compulsion to explain women's decision to take up arms strips women of their political agency, argues Katherine E. Brown. “Women's political violence, it seems, needs to be explained away rather than incorporated in order to refine existing theories of violence.”⁴⁶⁴ In their book *Mothers, Monsters, Whores*, Laura Sjoberg and Caron Gentry point out that explanations of violent women often advance gender stereotypes of women as “mothers, monsters and whores,” while rationales for men's violence rarely discuss gender.⁴⁶⁵

Media reports have described many motivations for female foreign fighters—emphasizing factors related to private life that in some cases seem to advance those gendered stereotypes. The Islamic State appeals to women, some reports say, because it offers them a life of adventure, purpose⁴⁶⁶, and access to devout, strong Muslim husbands.⁴⁶⁷ They find the idea of raising a Muslim family in a Islamic state alluring, particularly surrounded by a strong sisterhood of likeminded women, which they can see via their social media accounts.⁴⁶⁸ For many Muslim women, especially those coming from the West, joining a community that will not only accept them as Muslim but may help them deepen their commitment to Islam could be an attractive prospect; many feel vilified and ostracized by their communities and their governments at home.⁴⁶⁹

461 Aki Peritz & Tara Maller, *The Islamic State of Sexual Violence*, Foreign Policy (Sept. 16, 2014), <http://foreignpolicy.com/2014/09/16/the-islamic-state-of-sexual-violence/>.

462 Paul Wood, Islamic State: Yazidi woman tell of sex slavery trauma, BBC (Dec. 22, 2014, 7:39 ET), <http://www.bbc.com/news/world-middle-east-30573385>.

463 Katherine E. Brown, *Blinded by the Explosion? Security and Resistance in Muslim Women's Suicide Terrorism*, in *Women, Gender and Terrorism* 194-226, 203 (Laura Sjoberg and Caron E. Gentry eds.).

464 Id.

465 Laura Sjoberg & Caron Gentry, *Mothers, Monsters and Whores: Women's violence in Global Politics* 1-27 (London: Zed, 2007).

466 Sarah Kaplan, 'Jihadi Brides': Young British woman are among Islamic State's newest recruits, Wash. Post (Sept. 10, 2014), <http://www.washingtonpost.com/news/morning-mix/wp/2014/09/10/jihadi-brides-british-young-women-are-among-islamic-states-newest-recruits/>.

467 *ISIS Luring Teenage Jihadi Brides*, CBS News (Oct. 6, 2014, 6:59 AM), <http://www.cbsnews.com/news/isis-luring-young-european-muslim-girls-as-jihad-brides/>.

468 Id.

469 Dr. Katherine Brown, *Analysis: Why are Western woman joining the Islamic State?*, BBC (Oct. 6, 2014, 10:08 ET), <http://www.bbc.com/news/uk-29507410>.

Muslim women joining ISIS or al-Nusra in the Middle East North Africa region may not have quite the same motivating factors, as many may come from countries where Islam is more accepted. Moreover, these women tend to travel with their families, so motivations may be tied more closely to the desire of their husbands to fight, or perhaps to the relative security – both physical and financial – that groups like the Islamic State can offer their families.⁴⁷⁰

And yet, what we see less of in media reports are the political, economic and pragmatic reasons that women also join groups like the Islamic State and al-Nusra.⁴⁷¹ In reality, for both women and men, motivating factors often include a combination of the personal, economic and political.⁴⁷² Women, for example, may choose to come to the Islamic State because, according to some experts, the IS pays them for their service.⁴⁷³ It pays men a higher salary because men are considered the “providers” of the family whereas women aren’t required to use their earnings towards the care of their family, and hence do not need as much.⁴⁷⁴ In addition to a salary, IS also reportedly pays for rent⁴⁷⁵, medical services and, according to some experts, offers compensation for children.⁴⁷⁶ Given the tenuous economic situation for women and men across the Middle East (unemployment rates are high across the region⁴⁷⁷, and in many cases they are higher for women than for men⁴⁷⁸) and given that in the West, there are higher levels of unemployment⁴⁷⁹ among populations of Muslims (partly due to discrimination), this could be a powerful motivating factor.

Women may also join IS or al-Nusra because they are passionate ideologues, determined to fight for an organization that promises a return to a golden Islamic era where Muslim people thrived – a kind of Islamic utopia.

And yet, these economic and political factors cannot be as easily sexualized or scandalized, and so they may appear less frequently in media reports. Research conducted by Karen Jacques and Paul Taylor, which assessed the archives of coverage of female suicide terrorism, illuminates trends in that coverage that may be similar to trends in coverage of women joining ISIS, although more research is needed to verify

470 Mia Bloom (Professor, University of Massachusetts Lowell) in discussion with the author, January 13, 2015, 5:30 PM.

471 Dr. Katherine Brown (Lecturer in Defence Studies, Kings College London) in discussion with the author January 12, 2015, 11:00 AM.; Mia Bloom (Professor, University of Massachusetts Lowell) in discussion with the author, January 13, 2015, 5:30 PM.

472 Brown, *supra* note 19.

473 Brown, *supra* note 19; Elijah Magnier (AL RAI Chief International Correspondent) in discussion with author, January 12, 2015, 11 AM.

474 Brown, *supra* note 19; Magnier, *supra* note 23; Bloom, *supra* note 20.

475 Mia Bloom, *How the Islamic State is recruiting Western teen girls*, Wash. Post (Oct. 9, 2014), <http://www.washingtonpost.com/posteverything/wp/2014/10/09/how-the-islamic-state-is-recruiting-western-teen-girls/>.

476 Brown, *supra* note 19; Bloom, *supra* note 20.

477 *Global Employment Trends 2013: Facts and figures for Middle East*, International Labour Organization (Jan. 22, 2013), http://ilo.org/global/research/global-reports/global-employment-trends/2013/WCMS_202319/lang--en/index.htm.

478 *Middle East and North Africa: Woman in the Workforce*, The World Bank (April 2010), <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/MENAEXT/EXTMNAREGTOPPOVRED/0,,contentMDK:22497617~pagePK:34004173~piPK:34003707~theSitePK:497110,00.html>.

479 *UK Muslim Demographics (C-RE8-02527)*, The Telegraph (Feb. 4, 2011), <http://www.telegraph.co.uk/news/wikileaks-files/london-wikileaks/8304838/UK-MUSLIM-DEMOGRAPHICS-C-RE8-02527.html>.

this.⁴⁸⁰ They found that women's motivations in this context were associated more with personal and emotional motivations than religious or nationalistic motivations – like the need to take revenge.

It is important to recognize this gender bias in considering terrorism motivations because “recognizing women's agency...challenges the gender order, which deems women inferior owing to their supposed emotional and physical weaknesses,” Brown argues.⁴⁸¹ In a phone interview, she also contrasted the coverage of the two teen sisters from Manchester who fled in the middle of the night to join ISIS this past summer with the coverage of the brothers who carried out the attacks at Charlie Hebdo. Coverage of the sisters focused on their private lives, she contended, whereas the stories about the brothers were very much about the politics they represented.

Notably, no matter their motivations for being there, the primary role for most women in the Islamic State⁴⁸² is to serve as domestic caretakers. Although some women have managed to secure positions on all-female policing brigades (in al-Khansaa and Umm al-Rayan, for example⁴⁸³) enforcing Sharia'a among the population of women, serving as guards or joining men at checkpoints so they can search other women for contraband, the vast majority are tethered to the kitchen: There, they spend their days cooking, baking, caring for their male fighter and for their children. The Islamic State has even gone so far as to open a sort of finishing school for its female recruits, called al Zawra, which aims to “prepare sisters for the battlefields for jihad,” according to its mission statement.⁴⁸⁴ The institute also released a cookbook for the wives of jihadis.⁴⁸⁵ In contrast, al-Nusra tends to offer women more nuanced, operational roles; they are less frequently used as “rewards” for the men, and are often deployed in support positions.⁴⁸⁶

The Future of the Islamic State

While ISIS propaganda seems to point to a plan to expand into Jordan next⁴⁸⁷, many experts agree that the organization is unlikely to grow beyond Iraq and Syria because it is not yet strong enough in those two countries.⁴⁸⁸ In Iraq and Syria, the group was reportedly losing territory⁴⁸⁹ in the last few weeks of 2014.⁴⁹⁰ But if anything can help predict where the Islamic State will strike next, it is tracking where there is unrest and potential security vacuums. ISIS has exploited the sectarian conflicts in both Syria and

480 Karen Jacques & Paul J. Taylor, *Male and Female Suicide Bombers: Different Sexes, Different Reasons?* *Studies in Conflict and Terrorism* 304-26 (Vol. 31, Issue 4) (2008).

481 Katherine E. Brown, *Blinded by the Explosion? Security and Resistance in Muslim Women's Suicide Terrorism*, in *Women, Gender and Terrorism* 194-226, 203 (Laura Sjoborg and Caron E. Gentry eds.).

482 Katie Zavadski, *Meet the Female Recruiters of ISIS*, *N.Y. Magazine* (Sept. 4, 2014, 10:10 AM), <http://nymag.com/daily/intelligencer/2014/09/meet-the-female-recruiters-of-isis.html>.

483 Amanda Taub, *ISIS rapes and enslaves woman. So why are so many joining the cause?*, *VOX Media* (Jan. 14, 2015, 4:00 PM), <http://www.vox.com/2014/10/20/6987673/isis-women>.

484 Al-Zahra Institute, <http://alplatformmedia.com/vb/showthread.php?t=65497>.

485 The first recipe was for date balls since “it is a quick recipe for a mild appetite to be eaten with coffee or with water and eaten at any time, especially during the intermission in battles,” according to the official post. Al-Zahra Institute, <https://www.alplatformmedia.com/vb/showthread.php?t=67403>.

486 Brown, *supra* note 19.

487 *ISIS: The End of Sykes Picot*, You Tube (June 30, 2014), <https://www.youtube.com/watch?v=FWHn96DXRDE>; *Islamic State move to neighbouring country Jordan*, You Tube (Dec. 2, 2014), <https://www.youtube.com/watch?v=A079kfBJE1Y>.

488 Brown, *supra* note 19; Magnier, *supra* note 23.

489 *ISIS Loosing Ground in Syria and Iraq*, *ALALAM* (Dec. 1, 2014, 12:22 PM), <http://en.alalam.ir/news/1654115>.

490 *See How Much of Iraq Does ISIS Control*, *New America Foundation*, <http://securitydata.newamerica.net/isis/analysis>; *ISIS Loses Ground to Kurds in Syria's Kobane*, *Al Arabiya News*, <http://english.alarabiya.net/en/News/middle-east/2014/12/27/ISIS-loses-ground-to-Kurds-in-Syria-s-Kobane.html>.

Iraq, though it did not cause those conflicts itself. If similar tensions begin to boil over in Jordan or even in Lebanon, we may find the group swooping in to create their version of law and order amidst weakened state security forces, and a fearful, fractured, and frustrated population.

Regardless of where it may go next, the Islamic State seems to have figured out what some other terrorist organizations seem unwilling to admit: that women are a resource not only worth tapping into, but critical to the survival of the organization. What's more, women have complex, nuanced motivations for affiliating themselves with the Islamic State. The West must also recognize this fact, and acknowledge that women will continue to be a part of terrorist organizations -- counter to still-ingrained gender stereotypes -- for myriad reasons. Failing to accept reasons other than personal ones as acceptable justification for women aligning with terrorist organizations leaves a large and obvious gap in analyzing how these organizations operate. Relinquishing these stereotypes may enable us to consider foreign female fighters – and the organizations that they work for – in a different light, allowing for deeper and more forward-looking analysis.

European Jihadi-Tourism: A Review on European Foreign Fighters and Europe's Counterterrorism Responses in 2014

Kitty Veress



Abstract:

An increase in the number of European foreign fighters travelling to Syria and Iraq has augmented the threat they pose to their home countries. Due to a “veteran effect”,⁴⁹¹ European foreign fighters may jeopardize their home country's national security as their experiences with extreme levels of violence and newly acquired battlefield expertise may cause these individuals to exhibit radicalized behavior upon return. As it stands, both the European Union's as well as state-level policies are insufficient to counter the threat posed by foreign fighters. A hardliner approach of stigmatization and punishment, such as implemented in the United Kingdom and France, may be counter-productive in the longer term as it risks alienating the broader Muslim community. Softer, rehabilitative measures, such as practiced in Denmark, may make for more effective provisions for returnees, but fail to deter prospective foreign fighters. In terms of future considerations, a multi-pronged strategy should include stakeholders from local, national and intergovernmental levels to prevent an impact on international security.

Introduction:

Ever since the eruption of the Syrian Civil War in 2011, foreign fighters have travelled to the area in flocks, with numbers rising exponentially by 2013. National security agencies and experts estimate that over 12,000 foreign fighters from 82 countries have gone to Syria to fight since the civil war began. This number is highly disproportionate to foreign fighter flows in previous conflicts, as Syria has already attracted more foreign fighters than Afghanistan did in ten years.⁴⁹² While individuals from the Arab World make up the great majority of foreign fighters, approximately 3,000 foreigners are believed to have come from Western countries. With respect to Europe, EU Counterterrorism coordinator Gilles de Kerchove stated in April 2014 that over 2,000 EU citizens were currently fighting in Iraq and Syria.⁴⁹³ However, this number is believed to have further experienced a sharp increase over the second half of 2014, with the latest estimates referring to 3,000-4,000 European foreign fighters.⁴⁹⁴ Most of these radicalized individuals are from Western European countries, such as Belgium, the Netherlands, Germany, France, and the United Kingdom. The latest state-specific numbers estimate that France has roughly 1,000 foreign fighters,⁴⁹⁵ the United Kingdom

491 ^[1] Thomas Heghammer, “Should I stay or Should I go? Explaining Variation in Western Jihadists' Choice Between Domestic and Foreign Fighting,” *American Political Science Review*, February 2013, 7.

492 ^[2] Richard Barrett, “Foreign Fighters in Syria,” The Soufan Group, New York, June 2014, 6.

493 ^[3] *Ibid.*, 14

494 ^[4] Ian Traynor, “Major terrorist attack is ‘inevitable’, as ISIS fighters return, say EU officials,” *The Guardian*, September 25, 2014. <http://www.theguardian.com/world/2014/sep/25/major-terrorist-attack-inevitable-isis-eu>.

495 ^[5] “Nearly 1,000 Frenchmen join jihad, dozens of women and kids ,stopped enroute,” RT News, Last edited October 2, 2014. <http://rt.com/news/187696-france-citizens-jihad-isis/>.

(UK) more than 500⁴⁹⁶, while Germany just upped its numbers to 500 as well.⁴⁹⁷ In terms of foreign fighters per population, Belgium (250) and Denmark (100) have the highest proportions.⁴⁹⁸ The numbers usually stem from official national intelligence estimates and research centers that monitor individuals at risk and track publicly accessible social media profiles. However, they are nothing more than estimates as foreign fighters manage time and time again to slip through the nets. While some foreign fighters like to boast about their undertakings on social media, others, who plan on keeping their intentions covert, can reach Iraq and Syria easily without alerting the authorities. At times, relatives of a disappeared person only learn about their loved one's involvement on the Syrian battlefield after receiving a phone call telling them that the person has died.⁴⁹⁹ The lack of accurate data also derives from the problems associated with defining a foreign fighter. It is unclear whether this term pertains to individuals who have already left their home country en route to Syria and Iraq, or to individuals who are only playing with the idea of joining the battle. The European Union seems to have no unified definition of what a foreign fighter encompasses, leaving the determination up to the member states.⁵⁰⁰

Several factors may be responsible for making Syria disproportionately more attractive to foreign fighters than earlier overseas conflicts. Elaborate, global social media campaigns (such as those propagated by groups like the Islamic State of Iraq and Syria (ISIS)) are especially appealing to teenagers and adolescents whose affinity for the internet makes them an easy target for radicalization in their own bedrooms. The geographical proximity of Europe to Turkey, the prime entry point into Syria, as well as the open border policy within Europe, result in logistical ease of travel.⁵⁰¹ Very few foreign fighters seem to have any prior connections to Syria and their motivations varies. The less ideologically committed may be thrill- and risk-seekers who regard their engagement in the Syrian and Iraqi battles as one big adventure while others travel to the conflict zone to provide humanitarian assistance and help fellow Muslims in need. The biggest group may be ideologues that follow the extremist groups' call for *hijra*⁵⁰² out of their deep religious convictions. The jihadist narrative seems to be common across all nationalities and is a major draw-factor for radicalized individuals as the influx of foreign fighters increased markedly since ISIS' declaration of the Caliphate.⁵⁰³ Across all divisions, radicalized Europeans seem to be disaffected, aimless and lack a sense of belonging; with many having just recently converted to Islam and seeking a greater sense of purpose in their lives.⁵⁰⁴

Once in Iraq or Syria, the foreign fighters disperse to join different groups. The groups that attract the most foreigners, Ahrar Al-Sham, Jabhat Al Nusra, and ISIS, are the most extremist. These militant organizations tend to be more disciplined, better organized

496 ^[6] Traynor, "Major terrorist attack is 'inevitable', as ISIS fighters return, say EU officials"

497 ^[7] "Zahl der deutschen Kaempfer auf 550 gestiegen," Handelsblatt, November 21, 2014. <http://www.handelsblatt.com/politik/international/is-terrormiliz-zahl-der-deutschen-kaempfer-auf-550-gestiegen/11016726.html#>.

498 ^[8] Peter R. Neumann, "Syrian Foreign Fighter: 10 Questions for Government," International Centre for the Study of Radicalisation and Political Violence (ICSR), London, 2014.

499 ^[9] Barrett, "Foreign Fighters in Syria," 12.

500 ^[10] Cara de Vidts, "How big is the threat to the EU of foreign fighters?," Isis Europe Blog, June 23, 2014. <http://isiseurope.wordpress.com/2014/06/23/how-big-is-the-threat-to-the-eu-from-foreign-fighters/>.

501 ^[11] Daniel Byman and Jeremy Shapiro, "Homeward bound? Don't hype the threat of returning jihadists," Foreign Affairs, November/December 2014. <http://www.foreignaffairs.com/print/139264>.

502 ^[12] ISIS uses the Islamic concept of *hijra* calls upon Muslims to migrate back to the area of al-Sham to help form the Islamic Caliphate for the entire Muslim community, the *Umma*.

503 ^[13] Barrett, "Foreign Fighters in Syria," 6.

504 ^[14] *Ibid.*, 18

and better resourced than moderate groups that struggle to fight effectively and cooperate with each other.⁵⁰⁵ ISIS' continuous military successes since their summer 2014 offensives has made the group more attractive for new recruits that want to be part of the victorious campaign. Extremist groups may also be better suited to integrate foreigners across their ranks as their jihadi narrative of defending a global community, the Muslim *umma*, may be more inclusive than the more locally focused grievances of other groups. All these groups show either former or present ties to Al-Qaeda (AQ). AQ has sent senior operatives to liaise with extremist groups because it regards the Syrian conflict as a great recruitment source for future overseas attacks.⁵⁰⁶ As the situation in Syria and Iraq goes on and the countries become more divided, extremist groups will be able to establish safe havens and strengthen ties with the local population. These safe havens create new breeding grounds for terrorism and further the extremist problem, as well as cause long-term instability.

National security and law enforcement agencies have difficulties assessing who has travelled to Syria because of Europe's open border agreements. These open border agreements, referred to as "Schengen", have immensely scaled down border security procedures. Likewise, authorities' efforts of tracking the fate of foreign fighters upon their arrival are severely handicapped due to a lack of on-the-ground intelligence. It may only be through social media profiles that governments learn which group a fighter has joined, who decided to settle in Syria, who died, and who decided to return home. At present, there are no estimates available for the ratio of foreign fighters returning let alone their reasons for doing so. France provides a detailed breakdown of its foreign fighters. A parliamentary statement declared that among its 950 foreign fighters, 220 are preparing to depart, 150 French nationals are on their way, with 350 individuals already fighting there, and about 180 returning.⁵⁰⁷ The decision to return home is an under-researched field for both academia and policy-making. Among those who return home, there are some who – instead of completely pulling out of radicalized circles – travel back and forth to Iraq and Syria on a regular basis or serve as facilitators for other recruits. Nor is it known why others burn their passports and choose to stay and settle in Syria, or move on to other conflicts.⁵⁰⁸ Others embark on suicide missions and die as martyrs or on the battlefield.

Not all returnees travel back home with the explicit intent to wage a domestic attack. However, all carry with them the experience of being exposed to a very extreme form of radicalization and violence, combat training, terrorist and guerilla tactics as well as radical Islamist thinking that will steer their future lives.⁵⁰⁹ The experience of being in a warzone will leave a lasting imprint on these individuals. Returnees may not be able or willing to resume their old lives because the seed of extremism they carry overburdens them. Upon their return, foreign fighters display different behaviors: whereas some exhibit disillusion, trauma or further signs of psychological damage, others might come equipped with a propensity for political violence. According to a study by Norwegian academic Thomas Heghammer, one out of nine foreign fighters, who were involved in overseas battles, turned into domestic terrorists upon their return.⁵¹⁰ Thus, only a small fraction of returnees may continue to wage attacks on their home soil. Conversely, a "veteran effect" proposes that most of the domestic terrorists turn out to be veterans of an overseas conflict. Heghammer states that these individuals have spent time gathering

505 ^[15] Ibid., 10

506 ^[16] Ibid., 6

507 ^[17] "Nearly 1,000 Frenchmen join jihad, dozens of women and kids ,stopped enpRoute.

508 ^[18] Richard Barrett, "Foreign Fighters in Syria", 22.

509 ^[19] Ibid., 7

510 ^[20] Thomas Heghammer, "Should I stay or Should I go? Explaining Variation in Western Jihadists' Choice Between Domestic and Foreign Fighting," *American Political Science Review*, February 2013, 7.

battlefield experience abroad, honing their operational skills and increasing their radicalized networks prior to their attacks on their homeland.

One incident involving a foreign fighter this year not only demonstrated potential spillover effects by returnees but also highlighted the vulnerabilities in European monitoring. On May 24, 2014, radicalized French national Mehdi Nemmouche conducted a shooting with automatic machine guns at a Jewish museum in Brussels, Belgium, leaving four visitors dead. The Algerian perpetrator was formally affiliated with ISIS, according to the statement of a French journalist who recognized him as one of his captors while taken hostage in Syria.⁵¹¹ Upon leaving Syria, Nemmouche had travelled from Turkey to Frankfurt, Germany. Although the European-wide SIS system flagged him at German customs and subsequently alerted the French, he was allowed to continue his journey to Brussels where he perpetrated the attack.⁵¹² Officials regard this incident as worrisome as it demonstrates their inability to prevent returnees' violent attacks upon the innocent, even when monitored by state authorities.

The European Union's counter-measures

There is a blatant lack of targeted counter-measures initiated at the EU level. There are no specific references to foreign fighters in the general EU Counter-Terrorism Strategy, nor do the recommendations in the latest EU Counter-Terrorism Strategy discussion paper, authored by EU Counterterrorism Coordinator Gilles de Kerchove in 2012, discuss the problem of foreign fighters in detail. While the EU Strategy for combating radicalization and recruitment has been revised to study the foreign fighter phenomenon more closely, its recommendations lack comprehensiveness as well as practical guidelines. The EU has been trying to come up with a counter-terrorism strategy for the past 18 months. The process may have accelerated due to the increasing influx of jihadi returnees, but officials are concerned that the results will be too little, too late.⁵¹³

A notable exception to the European Union's hesitancy is the Radicalisation Awareness Network (RAN). Established by the EU Commission in October 2011, it serves as a compendium of good practices in the prevention of radicalization. The network is composed of over 700 "first-liners", practitioners that are the closest to a community at risk, such as social workers, local authorities and community policemen. RAN's 'lessons learnt' give a good overview of measures that need to be implemented to better address foreign fighter flows. However, the support offered by RAN remains rather passive as it depends upon individual countries' calls for support. By 2015, RAN is to be transformed into a "European knowledge hub" with the help of a 20 million Euro program. It will then act as a support center for pooling experiences and recommending best practices on fighting foreign fighter flows upon member states' requests.⁵¹⁴ Eventually, RAN is to help create national platforms of excellence that introduce radicalization prevention strategies tailored to a country's individual characteristics.

Notwithstanding striking policy gaps, there are several ways the European Union can advance forward. One of the first steps to be taken is to find a common definition of what a foreign fighter is in order to streamline international monitoring practices. An EU-led initiative, possibly in collaboration with the EU's Radicalisation Awareness Network

511 ^[21] "Nations trying to stop their citizens from going to the Middle East to fight for ISIS," *New York Times*, September 13, 2014. http://www.nytimes.com/2014/09/13/world/middleeast/isis-recruits-prompt-laws-against-foreign-fighters.html?_r=0.

512 ^[22] Traynor, "Major terrorist attack is 'inevitable', as ISIS fighters return, say EU officials".

513 ^[24] Traynor, "Major terrorist attack is 'inevitable', as ISIS fighters return, say EU officials".

514 ^[23] "Brussels acts to stem flow of EU's radicalised 'foreign fighters,'" *EurActiv*, January 16, 2014. <http://www.euractiv.com/justice/member-states-address-radicalisi-news-532799>.

(RAN), should be responsible for narrowing down the term “foreign fighter”, and decide whether it also extends to prospective jihadists who are merely in the planning phase. Ways need to be found to take pressure off the respective law enforcement agencies that are trying to keep up with the increased demand on monitoring individuals. It does not help that joint initiatives, such as the EU-wide Passenger Name Record system that would help to identify suspects based on key parameters, are faltering due to competing priorities in different states that fear the collection date of the innocent.⁵¹⁵ This system would greatly benefit law enforcement and intelligence professionals, as well as increase inter-agency and inter-state intelligence sharing. Intelligence sharing should be explicitly encouraged by the EU to track prospective and current foreign fighters, monitor online communications and share airline passenger information in a more effective way that reveals foreign fighters’ often elaborate travel patterns.⁵¹⁶ A further measure consists of improving border security between Turkey and Syria. Turkey’s government officials have been hesitant to bolster their border security due to their diverging national interests.⁵¹⁷ It is up to the EU to exert diplomatic pressure on Turkey and to support the country with resources to establish stricter border screening procedures. Some EU-initiated measures can, however, be useful to track and monitor foreign fighters: The Schengen Information System (SIS) has the ability to flag suspicious individuals who travel throughout the EU-territory. Yet, it is incomprehensive and incomplete as national intelligence services are cautious to provide data out of fear of compromising their sources. The United Kingdom, one of the countries with the biggest foreign fighter problem, has opted out of all programs under the EU’s justice and home affairs portfolio, including the SIS, which effectively curtails the reach of the program.⁵¹⁸

State-specific approaches

Policy-making on the individual state level does not seem to be connected to EU policies at this time, mostly because the EU hesitates to lead any major initiatives. One of the most prominent approaches taken by European nations rests on stigmatization and punishment. The policy is focused on restrictive measures that are geared towards preventing prospective foreign fighters from leaving the country and punishing them upon their return.

In line with the resolution fostered at the UN Security Council September 2014 session chaired by President Obama, the approach criminalizes the participation in a foreign war or membership in a designated group.⁵¹⁹ Foreign fighters face legal consequences, upon detection or return to their home countries, such as a revocation of citizenship and confiscation of passport, as well as a criminal investigation. This approach is supported by stricter travel policies that rely to a great extent on intelligence and monitoring. France recently implemented a new anti-terror law aimed at stopping French extremists from joining fighters abroad. The new legislation allows authorities to impose a travel ban on suspected jihadists by confiscating passports and detaining individuals.⁵²⁰ The novelty about the law is that it allows the targeting of lone-wolf individuals, as opposed to groups. The UK, one of the countries with the toughest anti-terror laws, already has legislation in place that allows authorities to revoke citizenship of a dual national and

515 ^[25] Traynor, “Major terrorist attack is ‘inevitable’, as ISIS fighters return, say EU officials”.

516 ^[26] “Nations trying to stop their citizens from going to the Middle East to fight for ISIS,” *New York Times*.

517 ^[27] Byman and Shapiro, “Homeward bound? Don’t hype the threat of returning jihadists”.

518 ^[28] Traynor, “Major terrorist attack is ‘inevitable’, as ISIS fighters return, say EU officials”.

519 ^[29] Daniel Byman and Jeremy Shapiro, “The Foreign Policy Essay: A Better Response to the Foreign Fighter Threat,” *Lawfare*, November 16, 2014. <http://www.lawfareblog.com/2014/11/the-foreign-policy-essay-there-and-back-again/#>.

520 ^[30] “Segolene Allemandou, “France debates tough new anti-terror bill: what do the experts think?,” *France 24*, September 16, 2014. <http://www.france24.com/en/20140916-france-debates-tough-new-anti-terror-bill-what-do-experts-think/>.

detain British suspects for up to 14 days without charge. Terror training at home and abroad is further punishable by a prison sentence of up to ten years.⁵²¹ In addition, the UK has recently implemented new anti-terror legislation to confiscate passports of those who leave to be British foreign fighters, to temporarily prevent British jihadists from re-entering the UK and to relocate foreign fighters away from radicalized hotspots upon their return.⁵²² Fighters returning home face surveillance, terror charges and potential jail time. While there are several de-radicalization programs in the UK, none of them are specifically targeted towards British foreign fighters who have engaged in battle in Syria.⁵²³ Besides criminalizing all activities and association with ISIS on German soil under penal law, Germany has already implemented laws to confiscate suspected jihadists' passports and ID-cards. By the end of the year, Germany also plans to criminalize the mere intent of participating in terrorist activities abroad, in an effort to target would-be foreign fighters who are in their planning phase.⁵²⁴ The reasons for this hard-line approach are clear: no government would like to take the blame for having failed to detain a dangerous foreign fighter and thus actively facilitating a potential, future terrorist attack.⁵²⁵

On the other end of the spectrum, some countries rely on soft measures aimed at fostering favorable conditions for the reintegration of returnees. Preventative steps entail rehabilitation programs, as well as cooperation and communication with local, vulnerable communities.⁵²⁶ While EU member states such as Belgium, Denmark, the Netherlands, and to a lesser extent Germany and the UK, have started engaging communities in monitoring foreign fighters, most of the countries do not possess specifically targeted community and rehabilitation-based programs for individuals at risk of radicalization. A notable exception to this is Denmark, the country with Western Europe's second largest number of jihadist fighters per person. Denmark recently unveiled a new rehabilitation program for foreign fighters in Aarhus that protects returnees from prosecution provided they do not carry out terrorist operations at home.⁵²⁷ Fighting in Syria is not considered a crime, and returnees do not have to fear prosecution. Upon their return, foreign fighters are given the offer to participate voluntarily in the rehabilitation program that entails counseling sessions, psychological aftercare and practical assistance in finding housing, and employment. A change of beliefs is not required for participation. Danish government officials state that the program is designed to offer help while also keeping a close watch.⁵²⁸ Only recently activated, it remains to be seen whether the program that emphasizes forgiveness and support rather than punishment will successfully reduce the threat of domestic attacks, especially since participation in the program remains voluntary. There is a good chance, however, that Danish jihadists will open up more readily about their experiences when they feel less stigmatized by society and are given the opportunity to go back to leading a normal life.

521 ^[31] Allemandou, "France debates tough new anti-terror bill: what do the experts think?"

522 ^[32] "PM's anti-terror law 'not thought through' – govt legal expert," *RT*, November 27, 2014. <http://rt.com/uk/209359-cameron-jihadi-terror-unplanned/>.

523 ^[33] "Denmark offers some foreign fighters rehab without jail time – but will it work?," *CNN*, October 28, 2014. <http://www.cnn.com/2014/10/28/world/europe/denmark-syria-deradicalization-program/>.

524 ^[34] Veit Medick, "Kampf gegen IS: Koalition will Terror-Touristen hart bestrafen," *Der Spiegel*, October 20, 2014. <http://www.spiegel.de/politik/deutschland/is-islamischer-staat-harte-strafen-fuer-terror-touristen-a-998101.html>.

525 ^[35] Byman and Shapiro, "The Foreign Policy Essay: A Better Response to the Foreign Fighter Threat".

526 ^[36] Barrett, "Foreign Fighters in Syria," 29.

527 ^[37] Leela Jacinto, "The regretful jihadists of the Islamist State," *Foreign Policy*, October 23, 2014.

528 ^[38] "Denmark offers some foreign fighters rehab without jail time – but will it work?" *CNN*.

Several problems arise with member states' current approaches to foreign fighters. With most of the programs targeting foreign fighters, it is often not clear who should take the lead. Most member states do not possess clearly delineated responsibilities and provisions for multi-agency collaboration.⁵²⁹ European countries need to form useful operating procedures and cooperation between law enforcement and security services, social services, local authorities, private sector, communities, and key individuals.⁵³⁰ This entails practical and legal challenges as to who will do what, how national and local authorities are to cooperate, and how counter-measures are to be implemented. Legislative gaps such as the measure of passport confiscation need to be revised, for the reason that they are not sufficient to curb foreign fighter movement as individuals can simply use their national ID cards to get as far as Turkey.

The stigmatization approach brings about several caveats. While governments are increasingly under pressure to identify returnees who pose a risk at home, they risk alienating the broader Muslim community by introducing restrictive measures on their peers. The policy of tracking and monitoring foreign fighters may also not be sustainable as the number of foreign fighters is set to increase even more and monitoring resources are already stretched.⁵³¹ There are already websites that tell individuals how to avoid controls, and which travel routes to take, according to Counterterrorism European Union Coordinator Gilles de Kerchove.⁵³² A complete surveillance of potential suspects and returnees would thus be impossible, not only because of a lack of resources, but also due to the open borders inside the Schengen area. Excessive surveillance would furthermore infringe on civil liberties, a freedom that highly coveted by EU citizens. A lack of coherent policies towards returnees in the whole of Europe is evident, as restrictive measures dominate and societal dissuasion and reintegration are often under-prioritized.

However, European nations need to make provisions for foreign fighters who are regretful about their decision to join the fight and want nothing more than to return to a normal life at home, but are prevented from doing so out of fear of being arrested. British media has already reported on instances where a group of British jihadists was hesitant to return because of their fear of arrest.⁵³³ Constructive engagement with returnees is essential, as they can play a significant role in devising better measures against dangerous foreign fighters. They are a treasure trove of intelligence and can help to gain more insights into radicalized individuals' reasons for overseas engagement and their decision to return. Furthermore, former foreign fighters can improve preventive measures by serving as deterrence for would-be jihadists. The use of returnees as a credible source and the spread of their counter-narrative may facilitate engagement with radical communities that feel disadvantaged by society.⁵³⁴ Initiatives emphasizing counter-narratives, such as RAN's "Abdullah X" YouTube series, need to be promoted, to expose ISIS' propaganda and promises. Returnees are suited best for presenting vulnerable individuals with alternative viewpoints and clearing up romantic or naïve preconceptions about conditions on the ground. In line with the U.S. State Department's "Think again, Turn Away" initiative that presents counter-narratives to Islamist narratives, European states should thus spend more resources on utilizing social media to undermine narratives and expose discrepancies in extremists' tales.

529 ^[39] Edwin Bakker, Christophe Paulussen and Eva Entenmann, "Dealing with European Foreign Fighters in Syria: Governance Challenges & Legal Implication," International Centre for Counter-Terrorism (ICCT), The Hague, December 2013.

530 ^[40] Barrett, "Foreign Fighters in Syria," 31.

531 ^[41] Barrett, "Foreign Fighters in Syria," 27.

532 ^[42] de Vidts, "How big is the threat to the EU of foreign fighters?"

533 ^[43] Jacinto, "The regretful jihadists of the Islamist State".

534 ^[44] Barrett, "Foreign Fighters in Syria," 30.

How state authorities treat their returnees will play a big role in determining these individuals' future behavior, especially if hard measures outweigh rehabilitative measures. The measure to prevent foreign fighters from re-entering their countries as well as forced relocation may fuel grievances, not only in the expelled jihadist but also in his home community. The opportunity to engage in community-based dialogue may then be cut off as whole communities may decide not to come forward because of fear of prosecution.⁵³⁵ Some academic experts state that hard punishments may serve to create 'suspect communities' that may decide against collaboration with the authorities out of fear of being arrested and because of perceived discrimination against the community as a whole.⁵³⁶ This may exacerbate favorable conditions for radicalization into violent extremism and wear on communities' trust in their governments.

The key will be to invest in community based approaches to identify and engage with returnees and to interview returnees about their experiences. This will help differentiate the individuals that simply want to go back to their old lives from the ones that pose a threat to society.⁵³⁷ A special focus should be on the engagement of disaffected, aimless individuals that lack a sense of belonging, be it immigrants, families with different cultural and religious practices or troubled teenagers. Community and family-based engagement is crucial both for countering radicalization and facilitating de-radicalization as communities are the prime holders of expertise in identifying people at risk and supporting reintegration.⁵³⁸ Vulnerable individuals need to be offered alternatives without alienating whole Muslim communities or communities at risk.

The very few rehabilitation programs that have so far been introduced are still in the making and will have to adapt as problems arise and lessons learnt are applied. Future studies will determine the markers of success for reintegration to tailor rehabilitation programs to the needs of both the returnee and the society. A combined approach, complementing hard measures with soft measures, may constitute the most appropriate measure to address the issue of foreign fighters on all ends, from radicalization to de-radicalization. This necessitates a closer collaboration of different entities, be it local administration, law enforcement, or branches of a country's government. It should be in the European Union's interest to take a lead on this and coordinate these approaches, to provide maximal support to its members and minimize potential acts of violence inspired by the jihadist narrative.

It is evident that more research on foreign fighters is needed to closely examine the reasons why a foreign fighter engaged in the conflict, what he experienced during his time overseas and why he decided to come back. Spending more resources on answering these questions will improve European states' abilities to prevent potential foreign fighters from leaving, keep track of foreign fighters abroad and deal with returning foreign fighters in an effective way. After all, the flow of foreign fighters is not likely to go away in the near future. If anything, it has only just begun and Europe needs to be ready to deal with it.

535 ^[45] Bakker, Paulussen and Entenmann, "Dealing with European Foreign Fighters in Syria: Governance Challenges & Legal Implication".

536 ^[46] Byman and Shapiro, "The Foreign Policy Essay: A Better Response to the Foreign Fighter Threat".

537 ^[47] Barrett, "Foreign Fighters in Syria," 27.

538 ^[48] Bakker, Paulussen and Entenmann, "Dealing with European Foreign Fighters in Syria: Governance Challenges & Legal Implication".

Contributors

Dorothy Martucci

Dorothy Martucci is currently serving as an Assistant State's Attorney in McLean County, Illinois. Prior to joining the McLean County State's Attorney's Office, Ms. Martucci worked as a Special Assistant State's Attorney at the Cook County State's Attorney's Office, and served as a law clerk for the National Security Division of the United States Attorney's Office and the INTERPOL Washington Bureau. Ms. Martucci graduated from Northwestern University and from William & Mary Law School, and has published with the *King's Law Journal*. Ms. Martucci's scholarship focuses on national security law, with a particular emphasis on constitutional questions surrounding national security related prosecutions.

Emily Schneider

Emily Schneider is a program associate in the International Security Program at New America. She holds a J.D. from Syracuse University and a M.A. from the University of Rochester. Prior to joining New America, she worked at the Institute for National Security and Counterterrorism, a joint research center at Syracuse University's College of Law and the Maxwell School.

Elizabeth Weingarten

Elizabeth Weingarten is the associate director of the Global Gender Parity Initiative, a project of New America's Breadwinning and Caregiving Program. Before joining New America, she worked on the editorial staffs of *The Atlantic*, *Slate* and *Qatar Today* magazine. Outside of New America, Elizabeth is the CEO of TRIBELLE, a business that cultivates female entrepreneurship among low-income populations in Israel. She is a graduate of Northwestern University's Medill School of Journalism.

Kitty Veress

"Kitty Veress is an M.A. Candidate in the Security Studies Program at the School of Foreign Service at Georgetown University, Washington, D.C., where she focuses on the nexus between psychology and sub-state violence. About to graduate in May 2015, she aims to pursue a PhD in the United Kingdom on European foreign fighters and their decision-making processes. This paper stems from research conducted for her M.A. thesis on Europe's counter-terrorism responses to the foreign fighter threat."

Katrin Heger

Katrin Heger is enrolled in the Transatlantic Dual Degree Program in International Security and Development Policy between Syracuse University's Maxwell School, the Hertie School of Governance in Berlin, and the Institute of Social Sciences in The Hague. During her time at Maxwell, she is pursuing a Masters in International Relations with a focus on International Relations theory, conflict, and post conflict reconstruction. Katrin graduated from the University of Bayreuth in Germany, where she received her Bachelor's Degree in

Philosophy & Economics. Her special interest in West Africa stems from her experience working in the economics and culture department of the German Embassy in Ghana and an NGO focusing on small-scale businesses in Nigeria.

Lukas Bretzinger

Lukas Bretzinger is a Master's degree candidate in International Relations at the Maxwell School of Citizenship and Public Affairs at Syracuse University, and is attending as part of the Atlantis Transatlantic Degree Program in International Security and Development. His academic interests include statistical programming, gender, weapons of mass destruction and renewable energy. Mr. Bretzinger graduated with a Bachelors degree in International Relations from Dresden Technical University (Germany) in 2013. He interned for the German Foreign Office, two development agencies and a brewery in Geneva, Berlin, Brussels, and Ravensburg. lbretzin@syr.edu

Cameron Reed

Cameron Reed is a Master's degree candidate in International Relations at the Maxwell School of Citizenship and Public Affairs and a Master of Public Policy candidate at the Hertie School of Governance, both as an Atlantis fellow in the Dual Degree Program for International Security and Development. He is also a Certificate candidate in Security Studies from the Institute for National Security and Counterterrorism and holds an Executive Certificate for Counter-Terrorism Studies from the Interdisciplinary Center's Lauder School of Government in Herzliya, Israel. His academic interests include substate actors, violent extremism and radicalization, US foreign policy, and leadership and decision-making. He received his Bachelor's degree in Anthropology and Arabic from Trinity College in Hartford, CT. Mr. Reed has worked for the Department of Energy-Savannah River Site, AmeriCorps VISTA, and the International Institute for Counter-Terrorism. ccreed@syr.edu

Sascha Schuster

Sascha Schuster is a Master's degree candidate in International Relations at the Maxwell School of Citizenship and Public Affairs, Syracuse University, and a Master of Public Policy candidate at the Hertie School of Governance, Berlin. He is a fellow of the Atlantis Transatlantic Dual Degree Program in International Security and Development. His academic interests are international intervention, large public project management, global arms policy, and security studies. He holds a Bachelor's degree in History and Geography from Tübingen University. Mr. Schuster is a reserve officer of the German Mountain Infantry, and has worked for Airbus Defence & Space and the German Council on Foreign Relations. saschust@syr.edu

Ivan Sascha Sheehan, Ph.D.

Dr. Ivan Sascha Sheehan is an Assistant Professor of Public and International Affairs at the University of Baltimore where he directs the graduate programs in Negotiation and Conflict Management and Global Affairs and Human Security in the College of Public Affairs.

Sheehan specializes in the intersection of global terrorism, counterterrorism and international conflict management. He came to the University of Baltimore in 2009 after serving on the faculty at the University of Massachusetts Boston in the John W. McCormack School of Policy Studies. A frequent speaker on U.S. counterterrorism efforts, Sheehan has addressed diverse audiences from academic forums in Europe and the Middle East to policymakers in the U.S. Congress and the National Press Club. Sheehan also taught at Bentley University, Tufts University, and George Mason University, after receiving a Ph.D. in 2006.

Sheehan's early research—including his first book—involved quantitative analyses of terrorism incident data and examined the impact of preemptive force on terrorist activity. He has also published in peer-reviewed journals on topics related to evidence-based counterterrorism policy, terrorism courses, terror tagging, counter-insurgency, suicide terrorism, and regime change from within. Sheehan's latest work involves both peer-reviewed scholarship and policy-oriented writing on the Islamic Republic of Iran and their democratic political opposition.

Sheehan's first book, *When Terrorism and Counterterrorism Clash: The War on Terror and the Transformation of Terrorist Activity*, was published in December 2007. His articles have appeared in *The Washington Times*, *The Hill*, *Roll Call*, *The Baltimore Sun*, *Haaretz*, *The Jerusalem Post*, *United Press International*, *Townhall* and in numerous academic journals. Sheehan's publications have been translated into French and Farsi, and he has participated in media around the world. Learn more about Dr. Sheehan at www.professorsheehan.com

Jeff Howell

Jeff S. Howell Jr. Esq., holds a Bachelor's Degree in Political Science and History from the University of Virginia and a Juris Doctor from Syracuse University College of Law (SUCOL) where he completed a curricular program through the Institute for National Security and Counterterrorism (INSCT). Jeff is admitted to the Bar in the Commonwealth of Virginia, and is currently serving as the Executive Director and Chief Counsel of the Global Accountability Initiative (GAI). Before that, he was the founding Director of the Syrian Accountability Project (SAP) based at SUCOL. In both capacities, he has investigated war crimes and crimes against humanity in the context of the Syrian Civil War. In addition to his research on Somali Piracy, he has also researched the legal

implications of aerial drone use by domestic law enforcement in the United States, an effort which formed the basis of the current INSCT project now known as "Domesticating the Drone". Jeff can be contacted at Jshowell86@gmail.com.

Dr. Steven Bucci

Dr. Steven P. Bucci, Director, Allison Center for Foreign and National Security Policy Studies, & Senior Fellow, Homeland Security & Defense Issues The Heritage Foundation Dr. Steven P. Bucci is the Director, Allison Center for Foreign and National Security Policy Studies. He is also Senior Fellow at the Heritage Foundation for all issues involving Homeland Security and Defense. He is the strategy and thought leader, and serves as a Subject Matter Expert for Cyber Security, Special Operations, and Defense Support to Civil Authorities. Bucci brings over 30 years of leadership at the highest levels of our Government in response to all security threats to America.

Bucci assumed the duties of the Military Assistant to the Secretary of Defense Donald H. Rumsfeld on 1 July 2001, saw the 9/11 attacks, the War on Terrorism, and led a team of 25 US military experts to Baghdad to directly assist the Coalition Provisional Authority. He daily reviewed all intelligence for the Secretary.

He was next appointed to serve as the Deputy Assistant Secretary of Defense, Homeland Defense and Defense Support to Civil Authorities, overseeing policy issues involving the Defense Domains (Air, Land, Maritime, & Cyber), National Guard domestic operational issues, domestic Counter Terrorism, all Readiness Exercises, and Defense response to natural and manmade disasters (e.g., floods, hurricanes, wildfires, and industrial accidents), acting as the primary civilian oversight of U.S. Northern Command.

Bucci worked for three years for the IBM Corp, and has published numerous articles on cyber security issues, as well as being the regular cyber contributor to Security Debrief, a leading national security blog. He speaks widely at cyber security related conferences and is sought after for his insights into leading edge cyber policy issues.

He is also an adjunct professor at George Mason Univ. in Leadership, and an Associate Professor at Long Island Univ. in Terrorism Studies and Cyber Security Policy. Additionally, he serves on the Advisory Board of MIT's Geospatial Data Center and is an advisor to the Prince of Wales/Prince Edward Fellows at MIT and Harvard.

Maura Cremin

Maura Cremin is a recent graduate of the University of Oklahoma, where she earned a Bachelor's in International Security Studies, as well as a Master's in International Studies. Her research has covered various aspects of international security, including organized crime, terrorism, and counterinsurgency tactics. Cremin is currently a resident of Grayslake, Illinois, although she plans to begin law school in the fall of 2015.

The Journal on Terrorism and Security Analysis

is sponsored by:

INSCT

INSTITUTE FOR NATIONAL SECURITY AND
COUNTERTERRORISM SYRACUSE UNIVERSITY



SYRACUSE UNIVERSITY COLLEGE OF LAW

