



 UVU JOURNAL *of*
NATIONAL SECURITY

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The *UVU Journal of National Security* is Utah's first student-edited academic journal focused on national security issues. The *JNS* is published twice annually—in April and December—and is supported by the Center for National Security Studies (CNSS) at Utah Valley University (UVU). The *JNS* publishes timely, insightful articles on critical national security matters, including topics relating to foreign affairs, intelligence, homeland security, terrorism, and national defense. The *JNS* accepts articles from UVU students, alumni, faculty, staff, and administration. Submissions should be sent to the *JNS* Editor-in-Chief at nationalsecurity@uvu.edu.

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The CNSS at UVU was established in January 2016. The Center is the first of its kind in the State of Utah. The CNSS is a nonpartisan academic institution for the instruction, analysis, and discussion of the issues related to the field of U.S. national security. The mission of the CNSS is twofold: to promote an interdisciplinary academic environment on campus that critically examines both the theoretical and practical aspects of national security policy and practice; and to assist students in preparing for public and private sector national security careers through acquisition of subject matter expertise, analytical skills, and practical experience. The CNSS aims to provide students with the knowledge, skills, and opportunities needed to succeed in the growing national security sector.

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Thanks to the English 2050 editing class

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A NOTE FROM THE EDITOR-IN-CHIEF

Andre Jones

The Utah Valley University (UVU) Journal of National Security (JNS) is an undergraduate publication that provides a forum for students to publish scholarly work on national security related topics. Our goal is to feature prominent student research and academic work for the purpose of advancing the understanding and examination of national security. We are proud to present this first issue as the inaugural edition of the JNS here at UVU.

At the heart of our journal are the same ideas and passion that began within the inauguration of the Center for National Security Studies at UVU. Like the Center, this publication is the first of its kind in our state. Our vision for this journal is to focus on issues critical to national security such as global terrorism, nuclear proliferation, cyber security, weapons of mass destruction and persistent international conflict. The following pages demonstrate the intellect and potential of the students at UVU, who provide cutting-edge insight into a wide range of subject matters relating to international relations, homeland security, and other important topics. As the defense and intelligence communities begin to search for high caliber candidates for government agencies, our hope is that UVU will provide the next generation of national experts.

Contained inside this first issue is an impressive array of national security ideas and arguments. We begin with a foreword from *Congressman Chris Stewart (R-UT)*, Member of the House Permanent Select Committee on Intelligence and retired Air Force pilot. Representative Stewart's foreword focuses on the great national security challenges of our day and America's central role in meeting those challenges. Our faculty article from *Professor Ryan Vogel* outlines the primary challenges

facing the United States by the Rome Statute's new "Crime of Aggression." We then have four excellent student articles. The first, by *Samuel Corry*, analyzes the conflict in Ukraine and whether the United States should consider Russia a threat to national security. *Kyle Manola* then guides us through the Israeli–Palestinian Conflict, assessing the major terrorist threats to Israel. *Holly Sweeten* examines why suicide terrorism exists, focusing on female terrorists—from the Russian Black Widows in Russia to the Tamil Tigers of Sri Lanka. Lastly, *Trevor Williams* writes about Colombia, its president, and the Fuerzas Armadas Revolucionarias de Colombia (FARC), analyzing what a terrorist group looks like in a South American country battling revolutionaries and drug cartels. The work of these authors shed invaluable light on these difficult and sometimes controversial ideas and topics. We thank them for their work and willingness to share their opinions and insights.

I am honored to have served as the first Editor-in-Chief of the UVU Journal of National Security. Though it seemed like publishing was an unreachable feat, we made it—thanks to an exceptional team. In particular, I would like to thank Ryan Griffith for keeping everyone on track and helping us make our deadlines; Colby Oliverson for his editing skills (which may one day carry him into the Oval Office) and his patience with me as we began this journey; and of course, Deb Thornton and her English 2050 class, who allowed us to do in months what should have taken years.

Finally, I express thanks to my mentor, Ryan Vogel. I was thrilled to have the once in a lifetime opportunity to collaborate with a visionary leader like him. He enabled me to execute a vision that we shared, which has given me great experiences that I will never forget.

I encourage all students with an interest in any and all national security matters to submit their work in the future, and to grow your knowledge by reading this scholarly contribution on national security.

Andre Jones
Editor-in-Chief
Journal of National Security



FOREWORD: THE IMPORTANCE OF STUDYING NATIONAL SECURITY

The Honorable Chris Stewart
Congressman, Utah (R)

Peace and economic prosperity are remarkably rare phenomena in world history, and in the modern world they do not exist without a powerful nation-state willing to use force to create and protect them. With the end of World War II, the United States of America formally took its place as the superpower willing to bear that mantle. In a concept we often call *Pax Americana*, the United States used its economic and military superiority to usher in a period of unprecedented stability and relative peace throughout the world. The U.S. nuclear umbrella, alliances like NATO, and the generous use of foreign aid offered countries—including former enemies—the opportunity to rebuild from the destruction of the war and eventually become powerful partners, liberalizing trade, spreading democracy, and lifting millions out of poverty. Though it is certainly fair and appropriate to debate the merits of individual policies and military actions throughout the past 75 years, it is hard to deny that the world is a far better place than it would have been without U.S. leadership. And by leadership, I mean the willingness of the American people to fund the extension of American power and, more importantly, the willingness of American soldiers to fight and die to protect the United States and our allies.

I was honored to serve a small role in that process. As a pilot in the U.S. Air Force, first flying combat rescue helicopters and later the B-1 bomber, I viewed our role as not only protecting the United States but as advancing the human condition. As the son of a World War II pilot, I watched with pride and fascination the jets taking off and landing at Hill Air Force Base. As we often say, the sound of those jets is the sound of freedom, and I was fortunate to learn that principle as

a child. I will never regret the decision to follow my father's example of serving in the Air Force. The 14 years that my family and I served in the Air Force were challenging but also some of our most fulfilling and formative. It was an honor to work every day with people who believed in freedom and democracy—not just in a theoretical sense but with a conviction that compelled them to sacrifice time away from family and put their lives in danger. That courage and moral clarity is what has made America a beacon of hope for so many.

Unfortunately, America has taken a dangerous retreat from world leadership over the past several years. While our brave men and women in uniform continue to do everything asked of them, the United States has taken a backseat on too many issues of critical importance. Our allies now question our commitments, and our enemies have seized the opportunity to fill the vacuum.

As a member of the House Permanent Select Committee on Intelligence, I spend a great deal of time traveling abroad, meeting both with foreign leaders and with the men and women of our military and intelligence agencies. My meetings with American personnel leave me impressed with their competence and bravery. My meetings with foreign leaders leave me discouraged at the degree to which our allies no longer trust us. Again and again, I hear from our allies some version of the plea, "Where is the United States? We're not sure we can trust you anymore." They are not wrong to be concerned. For too long the United States has signaled a reluctance to continue the leadership role that the world has come to depend upon.

I am confident we can reverse that trend. Because our democratic republic requires elected leaders to listen carefully to the American people, it is crucial that the American people understand the nature of the world and the importance of American leadership. Each year I hold a national security conference in Salt Lake City, Utah, inviting foreign ambassadors, military and intelligence officers, business leaders, and think tank analysts to discuss America's role in the world. My goal is to provide Utahns an opportunity to learn and discuss the national security concerns that may not top public polls but are nonetheless essential for citizens of the world's most powerful democracy to understand.

To that same end, I am excited to see Utah Valley University create another forum for discussion of the most important national security

and foreign policy challenges of our time. I hope and expect that UVU's *Journal of National Security* will become a medium for healthy debate about where and how America can lead. And America *must* lead, not just out of a sense of altruism—though that is important—but because it is in our long-term interests to do so. We can have a robust influence in the world now, or we can pay the price in blood and treasure later.

Chris Stewart

U.S. Representative



CHALLENGES FOR THE UNITED STATES WITH THE ROME STATUTE'S "CRIME OF AGGRESSION"

Ryan J. Vogel

I. INTRODUCTION

From 31 May through 11 June 2010, delegates from around the world met in Kampala to consider a new "crime of aggression" that would fall within the jurisdiction of the International Criminal Court (ICC). Proponents for giving the ICC jurisdiction over the crime of aggression have long argued that aggressive war constitutes the "supreme international crime"¹ and have sought its inclusion as a prosecutable offense in an international judicial forum capable of holding individuals responsible for acts of unlawful aggression committed by the countries they lead. Indeed, aggression's inclusion in the ICC's Rome Statute is rightly regarded as a major development in international law. But many also see the Statute as a potential threat to the United States. All of the most significant concerns that have kept the United States from joining the Court thus far are present in and exacerbated by the new aggression offense.

U.S. reluctance to join the ICC has been predicated on two related concerns: 1) that politically motivated prosecutions or investigations could threaten either U.S. citizens or the legitimate foreign policy

* Ryan J. Vogel is the founding Director of National Security Studies and assistant professor of law and national security at Utah Valley University. Previously, Professor Vogel served in the Office of the Secretary of Defense, where he worked on U.S. policy toward the International Criminal Court and was a member of the U.S. delegation to the 2010 Kampala Review Conference. The author thanks William K. Lietzau and Tara L. Jones for their helpful review and edits. All errors are the author's.

¹ See Judgment of the International Military Tribunal, *Judgment: The Nazi Regime in Germany*, The Avalon Project, available at <http://avalon.law.yale.edu/imt/judnazi.asp#common>.

those citizens may devise and implement, and 2) that the framework of the ICC effects a change in international relations that diminishes the role of the Security Council by putting coercive authority in the hands of a new entity—the ICC—chipping away at the Council’s role as the unique and exclusive lawful authorizer of coercive force. The introduction of an aggression offense brings these concerns to the fore.

Aggression is the quintessential “political” offense. By its definition, it requires a political act by the government of a State. It is the kind of crime that one would think could not be determined by a single prosecutor; indeed, it is the community of nations that determines whether a given act was a lawful use of force or whether it amounts to aggression. And, as such, aggression is the ultimate offense that should implicate United Nations (UN) Security Council equities. At its very essence, aggression threatens international peace and security; permitting its adjudication without Security Council involvement is perhaps the most extreme structural alteration to the UN’s *jus ad bellum* regime since its inception.

Now that the dust has begun to settle on the ICC’s newest offense, and States are beginning to look ahead to the 2017 Review Conference and to determine whether they will ratify the crime of aggression, it is appropriate to take a look at how the United States stands with respect to aggression under the ICC. Are U.S. equities protected? Is the new offense written in such a way as to amplify U.S. concerns or to diminish them? What additional technical concerns may arise from the new crime, and how should the United States respond to this modification to the Rome Statute? The first step is putting Kampala in context.

This article begins by examining the historical background of the crime of aggression. This article then analyzes the Special Working Group’s (SWG’s) pre-Kampala draft definition, jurisdictional options, elements, resolution, and understandings;² considers the negotiated compromise texts that emerged from Kampala; and then assesses the United States’ vulnerability to investigation, prosecution, and other foreign policy harm from the aggression amendments to the Rome

² While a number of pre-Kampala SWG versions of the texts have been circulated, this article will rely on the 25 May 2010, Conference Room Paper (Draft) distributed by Prince Zeid bin Ra’ad al-Husseini before the opening of the Review Conference, available at https://asp.icc-cpi.int/iccdocs/asp_docs/RC2010/RC-WGCA-1-ENG.pdf.

Statute. This article concludes that although the United States may have delayed gravely detrimental outcomes from the Kampala Review Conference, serious challenges still lie ahead.

II. BACKGROUND

Allied Powers took a momentous first step with respect to the crime of aggression by prosecuting Nazi and Imperial Japanese “crimes against the peace” after World War II.³ Yet no subsequent international tribunal has included a comparable crime within its jurisdiction.⁴ Fifty years after the post-World War II tribunals, delegates to the 1998 United Nations conference in Rome negotiated and drafted the Rome Statute that created the ICC. In Rome, the parties could not come to agreement over the definition and operationalization of a proposed crime of aggression. As a result, a crime of aggression was included within the competence of the Court but was left undefined and without any mechanism for its operation. Instead, the Rome Statute provided for a future review conference to consider amendments seven years after the treaty entered into force.⁵ Kampala was that conference.

The Kampala Review Conference was preceded by nearly seven years of discussion and deliberation by the Special Working Group on the Crime of Aggression (SWG), in particular through the “Princeton Process.”⁶ Ultimately, the SWG produced negotiated “consensus” drafts of the resolution, definition, jurisdictional regime, elements, and understandings for the proposed crime of aggression in preparation

³ See Charter of the International Military Tribunal, Sec. I, art. 6(a) and Charter of the International Military Tribunal for the Far East, Sec. I, art. 5(a). Both charters define “crimes against peace” as “planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing,” available at <http://avalon.law.yale.edu/imt/imtconst.asp>.

⁴ Notably, the major international tribunals of the 1990s, the International Criminal Tribunal for Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR), did not include or recognize the existence of a “crime of aggression” within their respective jurisdictions.

⁵ Rome Statute of the International Criminal Court (Rome Statute), art. 123(1), available at https://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf.

⁶ For a full background on the Princeton Process and the SWG’s background documents, see Stefan Barriga *et al.*, *The Princeton Process on the Crime of Aggression*, (2009).

for the Review Conference. As the Princeton Process occurred during the zenith of official U.S. hostility toward the Court, the United States did not participate in the discussions or drafting and played no role in developing other SWG preparatory work on the crime of aggression.

Although the United States has long been a leader in the development of international law, including holding accountable those responsible for waging unlawful war, the last three administrations have deemed the Rome Statute to be so fatally flawed as to preclude the United States from joining. President Bill Clinton belatedly signed the Rome Statute just before leaving office, but he recommended to the Senate that it not give its advice and consent.⁷ President George W. Bush took a more actively hostile approach to the Court—first “un-signing” the treaty in 2002,⁸ and then vigorously pursuing “Article 98 agreements” with countries to eliminate the threat of Americans being investigated or prosecuted by the ICC.⁹ In President Bush’s second term, the U.S. position evolved into one of greater cooperation with the Court. This rapprochement was reflected by the United States’ abstention in the UN Security Council’s referral of the Darfur situation to the ICC prosecutor, thus allowing a case to move forward that otherwise would have been outside the ICC’s jurisdiction.

President Barack Obama made it a policy priority to re-engage with the ICC, including by sending high-level delegations to ICC meetings such as the annual Assembly of States Parties (ASP) and the Kampala Review Conference. While not a party to the Rome Statute, the United States retained its “observer” status with the ICC, allowing it to attend meetings, make interventions, and participate generally in the debates and discussion at ICC functions. However, like the Clinton and Bush administrations, the Obama Administration consistently opposed adding a crime of aggression to the ICC’s competencies.¹⁰

⁷ See BBC News, *Clinton’s Statement on War Crimes Court*, 31 Dec. 2000, available at <http://news.bbc.co.uk/2/hi/1095580.stm>.

⁸ See Curtis Bradley, *ASIL Insights: U.S. Announces Intent Not to Ratify International Criminal Court Treaty*, American Society for International Law, May 2002, available at <https://www.asil.org/insights/volume/7/issue/7/us-announces-intent-not-ratify-international-criminal-court-treaty>.

⁹ See, e.g., Georgetown University Law Center, *International Criminal Court—Article 98 Agreements*, available at <http://gull.georgetown.edu/record=b475236>.

¹⁰ See, e.g., Harold Hongju Koh, *The Obama Administration and International Law*, American Society for International Law (2010), available at <https://www.state.gov/documents/organization/179305.pdf>; Harold Hongju Koh & Stephen J.

The United States thus went to Kampala with the goal of influencing the discussion on aggression. The SWG had already produced and distributed “consensus” drafts of the aggression documents before the November 2009 ASP meeting in The Hague, so the United States, as an observer and latecomer, was viewed by some States Parties as a threat and potential spoiler. Although this put the United States at a distinct disadvantage going into Kampala, the U.S. delegation’s active role in Kampala and in two pre-Kampala ASP meetings gave the United States significant influence in the final result, even if the outcome was not to its full satisfaction.

III. RESULTS FROM THE KAMPALA REVIEW CONFERENCE

A. *The Definition of the Crime of Aggression*

A number of definitions of aggression have been proposed since the post-World War II international tribunals defined aggression within its “crimes against the peace.” In the end, however, only UN General Assembly (UNGA) resolution 3314 provided the significant institutional support and internationally negotiated language needed for a future, actionable definition.¹¹ Much of the SWG’s draft definition was drawn from UNGA resolution 3314.

The SWG definition begins by attempting to narrow the scope of application for the crime of aggression:

1. For the purpose of this Statute, “crime of aggression” means the planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a State, of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations.
2. For the purpose of paragraph 1, “act of aggression” means the use of armed force by a State against the sovereignty,

Rapp, *Briefing on the International Criminal Court Conference in Kampala, Uganda* (2010), available at <https://geneva.usmission.gov/2010/06/04/icc-conf-kampala/>.

¹¹ The UNGA adopted resolution 3314 on 14 December 1974. Notably, resolution 3314 recommended the proposed definition to the Security Council not as a truly legal definition but for guidance in determining when aggression had occurred, not anticipating any external, independent judicial response separated from the Security Council. See UNGA Res 3314 (XXIX) Dec. 14, 1974, available at <https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/739/16/IMG/NR073916.pdf?OpenElement>.

territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations.¹²

Of particular concern to the United States, this definition draws vague and ambiguous contours for what might constitute a crime. There is no subsequent clarification on the meaning of “manifest violation” within the definition or accompanying draft texts.¹³ There is no suggestion, for example, that humanitarian interventions intended to end mass atrocities—the very crimes that the Rome Statute purports to punish and prevent—would be acceptable under the definition. There is also no reference to self-defense or defense of others being outside the definition, including anticipatory or preemptive actions, which have taken on increased significance with the proliferation of weapons of mass destruction. Similarly, there is no mention of whether the definition would bar the use of force in failed or failing States, where consent is unobtainable or less meaningful and which are often used as platforms for illegal and destabilizing activity across borders. In sum, the definition creates more questions than it answers, and in a legal instrument intended to create an identifiable and prosecutable crime, the lack of definition constitutes a critical flaw.

The draft definition concludes by providing a list of acts that, “in accordance with” UNGA resolution 3314, would constitute an “act of aggression.” The list includes: a) “invasion or attack by the armed forces of a State of the territory of another State,” “military occupation,” or “annexation by the use of force;” b) bombardment or use of weapons by one State against another State; c) blockade of the ports or coasts of another State; d) attack on the “land, sea or air forces, or marine and air fleets” of another State; e) use of armed forces of one State “in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement;” f) allowing its territory to be used by another State

¹² Draft, *supra* note 2, art. 8 *bis*.

¹³ The introduction to the Elements of the Crime includes two provisions related to the “manifest” language in the definition: 1) “The term ‘manifest’ is an objective qualification” and, 2) “There is no requirement to prove that the perpetrator has made a legal evaluation as to the ‘manifest’ nature of the violation of the Charter of the United Nations.” Neither provision is particularly helpful in determining what kinds of force would be acceptable or unacceptable under the UN Charter.

for perpetrating an act of aggression against a third State; and g) sending “armed bands, groups, irregulars or mercenaries,” to use force “of such gravity as to amount to the acts listed above.”¹⁴ This list prompts additional questions on each individual item, and, more generally, whether the list is meant to be illustrative or exhaustive. Moreover, the approach of enumerating examples of “acts” of aggression, coupled with the ambiguity and vagueness in the preceding two definitional paragraphs, may encourage prosecuting the “acts” as “crimes” in a way never anticipated by either the international military tribunal charters of 1946 or UNGA resolution 3314.¹⁵

As expected by the delegates to the Review Conference, the definition did not change at all from the SWG draft to the adopted text. Christian Wenaweser, President of the ASP during the Kampala Review Conference, had assessed the situation correctly, asserting that the definition had been drawn from resolution 3314 and reflected wide-ranging consensus as a result of the Princeton Process.¹⁶ In the end, while some States, including the United States,¹⁷ had grave concerns about the definition, there was no willingness to modify it in any way in Kampala.

B. *The Elements of the Crime of Aggression*

The SWG’s draft elements could be said to be similarly flawed. For the most part, the elements represent a simple reproduction of the definition, with grammatical modifications necessary to put them in the format of the ICC’s elements of crimes. The draft elements provide in “Article 8 *bis*” that a person has committed the crime of aggression if

1. The perpetrator planned, prepared, initiated or executed an act of aggression.
2. The perpetrator was a person¹⁸ in a position effectively to exercise control over or to direct the political or military action of the State which committed the act of aggression.

¹⁴ Draft, *supra* note 2, art. 8 *bis*(3).

¹⁵ In fact, para. 1 of the Introduction to the Elements of the Crime further encourages this likelihood: “It is understood that any of the acts referred to in Article 8 *bis*, paragraph 2, qualify as an act of aggression.”

¹⁶ Barriga, *supra* note 6, at 10.

¹⁷ See, e.g., Koh, *supra* note 11.

¹⁸ Footnote from Element 2: “With respect to an act of aggression, more than one person may be in a position that meets these criteria.”

3. The act of aggression—the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations—was committed.
4. The perpetrator was aware of the factual circumstances that established that such a use of armed force was inconsistent with the Charter of the United Nations.
5. The act of aggression, by its character, gravity and scale, constituted a manifest violation of the Charter of the United Nations.
6. The perpetrator was aware of the factual circumstances that established such a manifest violation of the Charter of the United Nations.¹⁹

Note that, as with all ICC elements, the above list is supplemented by additional *mens rea* elements captured in the *chapeau* to the elements document (i.e., that “a person shall be criminally responsible and liable for punishment for a crime [. . .] only if the material elements are committed with intent and knowledge”²⁰). A person must be found to have met each element in order to have committed the crime of aggression. Because this crime pertains to an inherently political offense, the draft elements, like the draft definition, provide perplexingly vague and ambiguous standards for a criminal code. It is also unclear what criteria would be used to assess the “character, gravity and scale” of an act to determine whether it constituted a “manifest violation.”

In addition, the elements share with the definition a critical problem of scope. While the intent of the crime of aggression is ostensibly to hold the most senior political and military officials accountable for waging aggressive wars, the definition and elements do not necessarily prevent the prosecutor from investigating and prosecuting others who are lower on the command structure. Note that element one does not impose a requirement on how *much* the person helped with the planning, preparation, initiation, or execution of an act of aggression. Note also that element two provides two “or” tests—meaning one could either direct *or* exercise control over either a political *or* a military action of a State and be within the requirement of the elements

¹⁹ Draft, *supra* note 2, elements.

²⁰ International Criminal Court, Elements of Crimes, U.N. Doc. PCNICC/2000/1/Add.2 (2000) available at <https://www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf>.

and definition. This has the effect of greatly opening the range of potential people to prosecute. A plain reading of the definition and the first two elements therefore would not preclude prosecution of a field commander, for example, who was found to have violated the other elements. While some may not find this result to be objectionable, it is certainly not what proponents have asserted is the intent of the crime and could lead to some of the perverse results described in section IV.

As with the definition, the elements also saw no change from the SWG draft to the adopted text. When no changes were made to the definition, the delegates to the Kampala Review Conference determined that any changes to the elements might have been conflicting or compounding. Far more significant than any definitional issues, however, is the jurisdictional regime created for the offense.

C. The SWG Draft Jurisdictional Regime Options

Although the SWG was able to produce “consensus” drafts of the definition and elements before Kampala, the group was unable to reach agreement on jurisdiction. The SWG confronted challenges on a number of issues with regard to jurisdiction, including the role of the Security Council, the powers of the prosecutor, the role of the involved States, and the timing of entry into force. As a result, the SWG offered two options for a jurisdictional regime, with a number of “triggers” and “filters” contained within each.

The draft Article 15 *bis* provides that “where the Prosecutor concludes that there is a reasonable basis to proceed with an investigation in respect of a crime of aggression, he or she shall first ascertain whether the Security Council has made a determination of an act of aggression committed by the State concerned,” noting that “the Prosecutor shall notify the Secretary-General of the United Nations of the situation before the Court, including any relevant information and documents.”²¹ In both options, if the Security Council has determined that aggression has occurred, the Prosecutor has a “green light” and may proceed with the investigation.²² However, in the absence of such a Security Council determination, the SWG provides two alternative options in paragraph 4:

²¹ Draft, *supra* note 2, art. 15 *bis*.

²² *Id.*

4. (*Alternative 1*) In the absence of such a determination, the Prosecutor may not proceed with the investigation in respect of a crime of aggression,

Option 1—end the paragraph here.

Option 2—add: unless the Security Council has, in a resolution adopted under Chapter VII of the Charter of the United Nations, requested the Prosecutor to proceed with the investigation in respect of a crime of aggression.

4. (*Alternative 2*) Where no such determination is made within [6] months after the date of notification, the Prosecutor may proceed with the investigation in respect of a crime of aggression,

Option 1—end the paragraph here.

Option 2—add: provided that the Pre-Trial Chamber has authorized the commencement of the investigation in respect of a crime of aggression in accordance with the procedure contained in Article 15;

Option 3—add: provided that the General Assembly has determined that an act of aggression has been committed by the State referred to in Article 8 *bis*;

Option 4—add: provided that the International Court of Justice has determined that an act of aggression has been committed by the State referred to in Article 8 *bis*.²³

Alternative 1, Option 1 recognizes the primacy of the Security Council by creating a “red light” to ICC investigations if the Council decides for whatever reason to not take action on the matter. Alternative 1, Option 2, also recognizes the primacy of the Security Council by providing a “red light” unless the Council gives permission (i.e., “triggers” the jurisdiction) for the Prosecutor to proceed. Unlike the first option, Alternative 2 provides four variants of “green lights,” allowing the Prosecutor to proceed with an investigation even without Security Council approval if certain conditions are met. The Security Council still retains the first right of review in Alternative 2, but distinct “filters” in each option allow the investigation and prosecution without Security Council approval.

The SWG draft jurisdictional regime, therefore, presented a stark preliminary question for States Parties leading into Kampala: whether to recognize the Security Council’s primacy with regard to determin-

²³ *Id.* at art. 15 *bis*(4).

ing when aggression occurs and how to respond to it, or whether to expand the field of participants in the aggression discussion by adding the ICC Prosecutor and Pre-Trial Chamber (PTC), the UN General Assembly (UNGA), or the International Court of Justice (ICJ). Of course, either path would create a unique set of political and legal issues. If the Security Council “red light” option were chosen, critics would argue that the crime would become overly politicized and that some States, particularly the P-5, would never be subject to investigation or prosecution. However, if one of the “green light” options were selected, critics might argue that the Prosecutor, PTC, UNGA, or ICJ could just as easily make, or be perceived to make, politically motivated decisions, and that the role of the Security Council as the primary custodians of international security would be degraded. Either way, achieving consensus on the issue of jurisdiction over the crime of aggression—an inherently political and subjective act—as sure to be difficult to come to in Kampala, just as it was within the SWG.

Unlike the absence of changes to the definition and elements, the States Parties made substantial changes to the jurisdictional regime. Most apparent, the States Parties divided the regimes into two separate articles: “Article 15 *bis*” for State-initiated and prosecutor-initiated (*proprio motu*) jurisdiction, and “Article 15 *ter*” for Security Council-initiated jurisdiction.

Article 15 *bis* adopts alternative 2, option 2 from paragraph four of the draft jurisdictional regime, with an addition at the end of the sentence recognizing that the exercise of jurisdiction by the Prosecutor through the PTC is contingent upon “the Security Council ha[ving] not decided otherwise in accordance with Article 16.”²⁴ This decision thus at least partially enshrines the “green light” option, allowing for ICC investigations and prosecutions without Security Council authorization after six months and where the Security Council has not made a contrary finding. Article 15 *bis* also provides temporal restrictions for the exercise of jurisdiction for the crime of aggression. Paragraphs two through four of the adopted text provide: 1) a stay of jurisdiction until one year after thirty States have accepted the amendment, 2) a grant of jurisdiction, “subject to a decision to be taken after 1 January

²⁴ Rome Statute Amendment on the Crime of Aggression (Amendment), art. 15 *bis*, available at <https://www.icc-cpi.int/resource-library/Documents/RomeStatuteEng.pdf>.

2017 by the same majority of States Parties as is required for the adoption of an amendment to the Statute,” and 3) an opt-out for States that do not wish to be subject to the amendment, available at any time provided they lodge a declaration with the Registrar.²⁵ Lastly, and significantly, Article 15 *bis* provides blanket protection to non-State parties, assuring that “in respect of a State that is not a party to this Statute, the Court shall not exercise its jurisdiction over the crime of aggression when committed by that State’s nationals or on its territory.”²⁶ This provision was one of the most important conditions in securing the support—or at least avoiding the opposition—of critical non-party States, including China, Russia, and the United States.

Article 15 *ter* follows Article 15 *bis* and, in addition to reiterating the temporal restraints from the preceding article, adopts another “green light” approach to jurisdiction. Essentially, Article 15 *ter* allows the Court to exercise jurisdiction when the Security Council refers the matter to the Prosecutor under its Chapter VII powers. Thus, between the two jurisdictional approaches, the Security Council plays a role in the referral process but is not the final arbiter in determining when aggression occurs or how to respond.

D. The Resolution

Two primary issues are present in the SWG draft resolution, and both are of great importance. First, the entry into force provision from paragraph 1 of the operative language has significant ramifications on aggression and on the rest of the Rome Statute. Like the controversial jurisdictional questions, the SWG was unable to reach consensus on the question of how the amendments for the crime of aggression should enter into force, i.e., through the process described in Article 121(4)²⁷ or in Article 121(5).²⁸ The 121(4) process provides that any

²⁵ *Id.*

²⁶ *Id.*

²⁷ Draft, *supra* note 2, art. 121(4). “Except as provided in paragraph 5, an amendment shall enter into force for all States Parties one year after instruments of ratification or acceptance have been deposited with the Secretary-General of the United Nations by seven-eighths of them.”

²⁸ *Id.*, at art. 121(5). “Any amendment to articles 5, 6, 7 and 8 of this Statute shall enter into force for those States Parties which have accepted the amendment one year after the deposit of their instruments of ratification or acceptance. In respect of a State Party which has not accepted the amendment, the Court shall not exercise its jurisdiction regarding a crime covered by the amendment when

amendments to the Rome Statute not in Articles 5, 6, 7, or 8 will enter into force for all States Parties one year after seven-eighths of them ratify the amendment. In contrast, 121(5) provides that for amendments to Articles 5, 6, 7, and 8, the amendment enters into force one year after that State ratifies the amendment. The difficulty with the crime of aggression is that it amends Articles 5, 8, 9, 15, 20, and 25, bringing into question which process is statutorily proper. This is significant because depending on which amendment process the States Parties decided to use, the application of the crime of aggression could vary substantially.

Perhaps most importantly, the resolution introduces in the entry into force provision the extremely controversial issue of whether the Rome Statute and/or amendments to the Statute apply to States Parties not accepting the amendment or to States not party to the Statute at all. Under the so-called “positive understanding”²⁹ of Article 121(5), an amendment to the Statute (including the crime of aggression) applies: 1) to a State party that has not accepted the amendment if on the territory of a State party that has accepted the amendment, and 2) to a non-State party if either the nationals or the territory of a State party that has accepted the amendment is at issue. The more commonly accepted “negative understanding”³⁰ holds that amendments under 121(5) apply only to those that have accepted them—regardless of whose territory or nationals are involved—and seems to be a more accurate reading of the plain text. However, while the “positive understanding” of the application of amendments might be a minority view, it presents many risks and unknowns to parties and non-parties alike.

Second, the resolution leaves open the possibility of later review of the amendments adopted at Kampala. Knowing that the entire enterprise of adding a crime of aggression to the Rome Statute entered into controversial and uncharted territory, the SWG proposed, albeit in a footnote, opening up the debate on any amendment adopted in Kampala at a later review conference.³¹ This was likely added to reassure that wavering States that were unsure how this new crime might affect the Court’s other work that they would get another chance at

committed by that State Party’s nationals or on its territory.”

²⁹ See Barriga, *supra* note 6, at 45.

³⁰ *Id.*

³¹ Draft, *supra* note 2, resolution, FN1.

amending the Statute if desired. For example, the United States consistently made the argument before Kampala that adding a politically loaded competency to an already fledgling and developing institution would result in killing the Court in its infancy.³² The SWG appears to have seen this review, then, as a compromise option, allowing States to “try out” the crime of aggression for a period and then keep it if it worked well.

The States Parties made a few noteworthy changes to the draft resolution in Kampala. First, States Parties included an express, but rather innocuous, reference in resolution 1 to parties accepting the jurisdiction of the Court with respect to the crimes listed in Article 5, including the crime of aggression. Second, because of the delays added to the jurisdictional regimes, the resolution “resolves to activate the Court’s jurisdiction over the crime of aggression as early as possible.” Significantly, along with the hurdles put in place for the amendment to enter into force, State parties affirmatively resolved to “review the amendments on the crime of aggression seven years after the beginning of the Court’s exercise of jurisdiction.” Thus, the competing interests at work in the resolution are clear: on the one hand, those that desired as quickly as possible an amendment and entry into force, and on the other hand, those that cautiously opted for as much deliberation and review as possible.

Of course, the most noteworthy provision in the resolution deals with the amendment procedure itself. The final adopted text opted for Article 121(5) but remained silent on the controversial question of whether the “positive” or “negative” understanding was correct. The resolution also “notes that any State Party may lodge a declaration referred to in Article 15 *bis* prior to ratification or acceptance,” allowing States Parties to affirmatively opt out of the jurisdiction for the amendment even if they accept it.

E. The Understandings

The SWG made clear in its meetings and publications that the draft definition and elements for the crime of aggression reflected consensus, and therefore did not require modifications. However, the SWG did propose draft understandings to clear up any issues that needed more explicit clarification. Many of these proposed draft

³² See Koh, *supra* note 11.

understandings seek to clear up the most significant issues discussed above from the definition, elements, jurisdictional regime, and entry into force provision of the resolution.

The first set of the draft understandings attempt to define the role of the Security Council with greater precision. Dealing with Security Council referrals, the first understanding provides “jurisdiction over the crime of aggression on the basis of a Security Council referral in accordance with Article 13 (b)” once the amendment is either adopted or entered into force.³³ The second understanding makes clear that this Security Council referral power is effective “irrespective of whether the State concerned has accepted the Court’s jurisdiction in this regard.”³⁴ The SWG thus asserts that the Security Council should be complied with when it makes a positive determination that aggression has occurred and that the Prosecutor should investigate the situation for potential prosecution. This seems to be another “green light” attempt to reinforce the Security Council’s primary, though not exclusive, role within the UN system for maintaining international security and peace.

The second set of understandings deals with jurisdiction. While most of the draft jurisdictional regime covers *who* falls under the jurisdiction of the amendment and *where*, the understandings cover *when* it applies. Specifically, understanding 3 proposes that “in accordance with Article 11, paragraph 1, [. . .] the Court has jurisdiction only with respect to crimes of aggression committed after the amendment” has been either adopted or entered into force.³⁵ In addition, understanding 4 provides that “in accordance with Article 11, paragraph 2, of the Statute, that in case of Article 13, paragraph (a) or (c), the Court may exercise its jurisdiction only with respect to crimes of aggression committed after the entry into force of the amendment for that State, unless that State has made a declaration under Article 12, paragraph 3.”³⁶ Put together, these two understandings clarify that jurisdiction over the crime of aggression would not apply to situations before adoption or entry into force of the amendment, i.e., no *ex post facto* application.

³³ Draft, *supra* note 2, understandings.

³⁴ *Id.*, at no. 2.

³⁵ *Id.*, at no. 3.

³⁶ *Id.*, at no. 4.

The last set of proposed understandings relates to the entry into force provisions from the resolution, in the event that the amendment is adopted under Article 121(5). Understanding 5 states that “acceptance by the victim State is not required where the aggressor State has accepted jurisdiction” when the aggressor State has accepted the amendment. While the first understanding does not seem controversial, the next understanding re-engages the positive/negative understanding of Article 121(5) debate, this time with regard to victim States who have or have not accepted the amendment. Understanding 6 thus presents two alternatives: alternative 1, reflecting the “positive understanding,” clarifies that Article 121(5) “does not prevent the Court from exercising jurisdiction in respect of an act of aggression committed against a [victim] State Party that has accepted the amendment”; alternative 2, reflecting the “negative understanding,” clarifies that Article 121(5) prevents the Court from exercising jurisdiction in respect to an act of aggression committed by any State that has not accepted the amendment,” including victim States. The issue here is similar to the general jurisdictional issue: if the crime of aggression is adopted under 121(5), who falls under the Court’s jurisdiction? It is clear from the understandings that if the aggressor is a State Party that has accepted the amendment, that State falls under the Court’s jurisdiction. Unclear is whether the Court may apply jurisdiction where the victim State is a party that has accepted the amendment but the aggressor has not.

Similar to the resolution, the SWG bracketed space for further understandings that might emerge from negotiations at Kampala. This provision was especially significant, given the unresolved issues regarding the definition, elements, and jurisdictional regime.

Because the definition and the elements were effectively closed to any kind of modification, the understandings saw drastic change between the drafts and the final form. Understanding 1 relates to temporal restrictions and referrals by the Security Council, adding that the Court may only exercise jurisdiction on this basis in accordance with Article 15 *ter* and one year after thirty States Parties join the amendment, whichever comes later.³⁷ Understanding 3 makes the same temporal restriction, but it is removed from the Security Council referral.³⁸ Understanding 4 clarifies that amendments that address the

³⁷ Amendment, *supra* note 25, understanding 1.

³⁸ *Id.* understanding 3.

act and crime of aggression “do so for the purpose of this Statute only,” and are not intended to create customary international law.³⁹ In an effort to underscore the importance of the next line from draft understanding 4, the provision on domestic jurisdiction with respect to aggression committed by a second State is separated as understanding 5 in the final text.

The understandings then add two more provisions from the draft version, both related to the threshold for determining when aggression has occurred. In an attempt to narrow the terms of the definition, understanding 6 clarifies that “aggression is the most serious and dangerous form of the illegal use of force; and that a determination whether an act of aggression has been committed requires consideration of all the circumstances of each particular case, including the gravity of the acts concerned and their consequences, in accordance with the Charter of the United Nations.” Understanding 7 then emphasizes the test further: “It is understood that in establishing whether an act of aggression constitutes a manifest violation of the Charter of the United Nations, the three components of character, gravity[,] and scale must be sufficient to justify a ‘manifest’ determination. No one component can be so significant as to satisfy the manifest standard by itself.” Each of these last two understandings attempts to ensure that the Court will only take up the grossest violations of the UN Charter, or the clearest cases of unlawful aggression against another State.

IV. CHALLENGES FOR THE UNITED STATES

The negotiations on the crime of aggression went late into the night of 11 June 2010, and resulted in compromised, consensus approval for the entire legal instrument—the resolution, definition, jurisdictional regime, elements, and understandings. In light of the final, consensus-approved texts from Kampala, the United States avoided some of the most serious problems associated with the proposed crime of aggression, but it will still face a number of challenges from the adopted amendments.

A. Vulnerability to ICC Investigation or Prosecution

One thing the United States does not have to fear from the new crime of aggression is vulnerability to investigation or prosecution for that crime. The jurisdictional regime expressly carves out blanket

³⁹ *Id.* understanding 4.

protection for non-parties, with the only exception being Security Council referral, where the United States has a permanent veto. Whether the United States engages in armed conflict by itself or as part of a coalition, American political or military leadership and personnel are protected under the amendments against the threat of investigation or prosecution. Of course, the United States is unlikely to wage aggressive war intentionally. But, given the inherently political nature of the crime of aggression and the definitional ambiguities described in this article, and because the United States is an active force in international affairs, express exemption from jurisdiction of the Court on this crime is an important provision for the United States.

Yet, this overt exemption in the context of the crime of aggression might cause problems for the United States elsewhere. The United States has consistently argued that the ICC has no jurisdiction over it because it has not demonstrated consent by becoming a party to the Rome Statute. But the Rome Statute does not have similar exemptions to the crimes of genocide, crimes against humanity, and war crimes. Thus, including such an exemption with one crime and not the others might lead the Court or its proponents to argue that exemption does not exist for non-parties outside the crime of aggression.

B. Interoperability Concerns

Although United States personnel may not be at risk under the crime of aggression, many of its allies undoubtedly will, and that vulnerability could inhibit international coalitions in ways that will frustrate legitimate military operations. Virtually all NATO members are party to the Rome Statute, in addition to many of the United States' other traditional partners, such as Australia, Japan, New Zealand, and South Korea. It is possible that many of these countries will accept the crime of aggression amendments and that few, if any, will subsequently affirmatively opt out. The fact that our allies and traditional partners will be bound to this new treaty provision and the United States will not may lead to a perverse disincentive for coalition building and multinational missions. Because the definition of the crime of aggression remains ambiguous and vague, many States may not be willing to take the legal and political risks of joining humanitarian coalitions or other efforts to restore peace and security by force. This may put the United States in the uncomfortable position of going alone or doing nothing when real national security interests are at stake. Because aggression is

inherently political and subjective in nature, the adopted resolution and understandings did little to help the broader ambiguity problems with the amendments. Thus, the new crime of aggression has a real potential to result in serious degradation to the United States' capacity to build coalitions in order to protect itself and others and to maintain international peace and security.

C. Perception That the New Definition Reflects Custom

There is also risk that the crime of aggression, and particularly the definition, will be perceived as reflective of emerging custom. In spite of the limiting words from understanding 4, the fact that the definition does not meet the basic requirements of customary international law (i.e., widespread State practice followed out of a sense of legal obligation), and the fact that 3/5ths of those with a permanent veto in the Security Council are not party to the amendments or to the Rome Statute, there will undoubtedly be many who point to the consensus-adopted definition as evidence in itself of custom.⁴⁰ All of the other crimes within the competence of the Court (crimes against humanity, genocide, and war crimes) are recognized as custom. Consequently, while the United States will not be at risk of investigation or prosecution by the ICC for this crime, any future uses of force will likely be judged by the public and non-governmental organizations—and perhaps in foreign courts—against the standard pronounced in the definition. As stated above, because of the definition's lack of precision, this will likely affect a U.S. president's decision-making on whether to use force for a variety of national security interests, including preventive self-defense, humanitarian missions, peacekeeping missions, defense of others, and prevention of mass atrocities.

D. Diminished Role of the UN Security Council

No matter one's position on the outcome of the Review Conference in Kampala, the fact that the Security Council emerged from the Conference with diminished status is manifest. To be fair, the Kampala Review Conference recognized the Security Council's continuing role in international security, as is evidenced by the referral power and the

⁴⁰ See e.g., the International Committee of the Red Cross's (ICRC) use of definitions from other sections of the Rome Statute as evidence of customary norms in its *Customary International Humanitarian Law*, Volume I: Rules (2005) available at <https://www.icrc.org/eng/assets/files/other/customary-international-humanitarian-law-i-icrc-eng.pdf>.

variety of jurisdictional filters provided to the Security Council. Indeed, the Security Council plays a prominent role in the crime of aggression regime. But where the Security Council once exercised exclusive power over determining when aggression occurred (including within the General Assembly resolution that served as its predicate) and how to respond, the power is now shared with the ICC Prosecutor and PTC. As U.S. head of delegation in Kampala and then-State Department Legal Adviser, Harold Koh, pointed out several times at the Review Conference, using the sinking of a South Korean naval vessel by the North Korean military as an example, there are distinct disadvantages to having the issue of aggression be handled through judicial avenues.⁴¹

E. The Effect of Domestic Prosecutions of the Crime of Aggression

Lastly, one of the central aims of the Rome Statute is to encourage States to exercise universal jurisdiction over the most egregious crimes,⁴² in part to remove the burden of investigation and prosecution from the under-resourced Court. While this principle of “complementarity” is typically used to encourage States to prosecute their own and to prevent serious international criminals from avoiding justice for committing atrocity crimes, it is possible that States could enact domestic aggression laws of their own, mirroring the standards from the crime of aggression amendments, and begin to prosecute foreign nationals according to their own laws. This invites a number of threats to American political or military leadership and personnel. Consider, for example, if Serbia had had a domestic aggression statute in the 1990s when the United States conducted strikes against it. There is little question that a Serbian judge or jury would find unpersuasive the U.S. argument that its strikes were conducted as part of a humanitarian

⁴¹ See, e.g., Koh & Rapp, *supra* note 11. (Koh comments during the briefing: “Take the example of the recent sinking of the South Korean ship, the *Cheonan*. I think most observers believe that to be a lawless act. But most would also agree that in this very volatile political environment, the introduction of a criminal prosecution and an independent actor in that dialogue would not settle the situation down; it could well inflame it.”)

⁴² See Rome Statute, *supra* note 5, preamble. (“Affirming that the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation.”)

mission, and not as a “manifest violation” of Serbia’s sovereignty. The effect that domestic implementation of the crime of aggression, as opposed to the other crimes within the Court’s jurisdiction, could have on the international relations of the United States and other countries cannot be overstated.

V. CONCLUSION

It has now been seven years since the Kampala Review Conference, and more than thirty States have ratified the aggression amendments. Having satisfied both of these jurisdictional requirements, States Parties must now meet to decide whether to activate the crime of aggression by two-thirds vote. The timing of this re-examination of the crime of aggression, however, comes at an interesting time for the Court—in 2017, the future of the Court is more in doubt than ever. African defections, controversial preliminary examinations, and persistent perceptions of unprofessionalism and ineffectiveness have done great harm to the reputation and international standing of the Court. Yet, it would be a mistake for the United States to disengage from the Court now as long as a critical mass of States, including our primary allies, remains members of the Court and considers the Rome Statute to be reflective of customary international law.

Indeed, although the United States is unlikely to join the Court for the foreseeable future, it is in the United States’ interest to continue to engage and influence the direction of the Court in the coming years, particularly with respect to the crime of aggression. At the 2016 ASP, several States, including the United States, included in delegation remarks the need for clarity with regard to the aggression amendments. Since then, the working group on amendments has begun to address some of these issues in advance of any conference to activate the crime, to include addressing the ambiguities in order to avoid the unanticipated consequences of not defining who would be covered by these amendments, what criteria are applicable to the determination of when a crime has been committed, and other operational issues. The United States should remain actively involved in the process. The United States may have avoided some of the most immediate injurious outcomes from the Kampala Review Conference, but serious challenges lie ahead.



RUSSIA, UKRAINE, AND AMERICA: DILEMMA, DIFFICULTY, AND DE-ESCALATION

Samuel Corry

Since the fall of the Nazi Third Reich at the end of World War II, two opposing forces have dominated the international stage: the United States of America and Russia. These two powers, over ensuing decades, fought not directly but through proxy wars such as the Vietnam War and the Soviet invasion of Afghanistan. Nuclear arms proliferation was a constant factor during the Cold War and was a constant threat to peace. However, the Cold War ended. The United States seemed to come out on top. The Soviet Union collapsed, and the Russian Federation took its place. From a civilian perspective, one would hope that such an event would be the harbinger for greater cooperation between the two powers. However, that has not been the case. Increased tensions during the time Vladimir Putin has been the leader of Russia and the animosity growing from the conflict in Ukraine have approached Cold War levels.

The United States and Russia need to abandon the old Cold War mentality of national security and embrace a new look at security relations. Why is this? Russia is no longer the Soviet Union, and thus the threat of worldwide Communism is no longer nearly as prevalent. The United States and Russia are no longer complete ideological enemies although it could be conceded that some major ideological differences exist. Russia is no longer the pre-eminent threat it was during the Cold War, but the current conflict in Ukraine is an important indicator of whether or not Russia is a current and imminent national security threat to the United States, given its military encroachment in Ukraine. The situation, then, is two-fold: one, the matter of Ukraine is a European issue not a Russian issue, and the United States' policy should reflect that; two, Ukraine is a Russian issue, and Russia is not

the existential national security threat that many American and European politicians purport it to be. In short, the United States should not enmesh itself in the conflict in Ukraine, and Russia is not a primary or imminent national security threat.

Let us address the first perspective: the conflict in Ukraine is a European issue. Historical knowledge of what has been occurring in Ukraine can be helpful on this topic. The conflict in Ukraine has been going on for more than two years. The conflict is a manifestation of a deep-seated split among the Ukrainian people: one Ukraine attempting to embrace its own identity and aligning itself with Europe, and the other clinging to its Russian roots. It could be said that this conflict is almost as old as the Kievan Rus of CE 882. Since the rise of Moscow as a center for all things Slavic and Russian after the end of the Khanates at the end of the fifteenth century, Russia has kept a tight hold of the territory now known as Ukraine. From the days of the tsars to the Holodomor of Stalin, the Ukrainian people have been subject to much exigency and pain. Moscow has suppressed Ukrainian a language and culture for decades, if not centuries. It is such today: according to a census in 2001 taken by the Ukrainian government, 29 percent of the population say Russian is their native language.¹ Most Ukrainians speak and are taught Russian. Both Russia and Ukraine share common heritage and common pain from the Great Patriotic War (World War II).

The conflict also carries the remnants of a Ukrainian people divided during both world wars. Ukrainians, for many decades, were split between Poland, the now-extant Austro-Hungarian Empire, and the now-extant Russian Empire. In many ways, as was stated earlier, the conflict is a manifestation of a deep-seated split in Ukraine that can be partially explained by the aforementioned history of Ukraine having been divided between Russia and European nations throughout much of its history. Whereas many Ukrainians never really saw themselves connected to Russia, there are others who see a deep connection to the former Soviet Union nation. In 2014, the BBC documented this split through polling patterns in Ukrainian elections. The

¹ *All-Ukrainian Population Census 2001*, available at https://en.wikipedia.org/wiki/Russian_language_in_Ukraine. Note that according to The State Statistics Committee of Ukraine, 14.8 percent of actual Ukrainians speak Russian. See <http://2001.ukrcensus.gov.ua/rus/results/general/language/>.

BBC notes that the 2010 election in Ukraine had a very distinct line between the eastern and western parts of Ukraine. Eastern Ukraine strongly voted for pro-Russia candidate Viktor Yanukovich, while Western Ukraine voted strongly for pro-European candidate Yulia Tymoshenko.² Clearly, this conflict in Ukraine is a deeply European issue, one that has existed for decades if not for centuries.

Why, then, should the United States stay invested in Ukraine's situation? The United States has played a large role in Europe since the end of World War II and the formation of NATO and the United Nations. However, since the fall of the Soviet Union and the ending of the Cold War, the threat of Russian full-scale aggression towards Europe has diminished exceedingly. These international organizations have largely shifted and adapted to deal with terrorist threats coming from the Middle East. And on that note, it could be said that the United States now has much invested in the Middle East. The United States would be hard pressed to expend more resources in Ukraine when they still have issues in Afghanistan and Iraq that need to be concluded. To do so would be complex and time consuming.

Another question could be raised: in what ways are the United States tied to Ukraine? Why should the United States feel compelled to pressure Russia and to aid Ukraine? Some would point to the 1994 Budapest Memorandum on Security Assurances. This memorandum, which was signed by the United States, the United Kingdom, Russia, and Ukraine, set a path toward nuclear de-escalation. In the wording of the memorandum, promises were made by Ukraine to divest their nuclear weapons; in return they wanted protection. Parts of this agreement included promises to "respect the independence and sovereignty and the existing borders of Ukraine"; importantly, the only mention of aid in the case of aggression states: "If Ukraine should become a victim of an act of aggression or an object of a threat of aggression *in which nuclear weapons are used*" [emphasis added].³ The United States has made an agreement with Ukraine regarding aggression, but the caveat is that nuclear weapons have to be used in that aggression. In the case of the current conflict, that has obviously not occurred.

² BBC, *Ukraine Election 'Reversed Democracy,' OSCE Says*, (2012), available at <http://www.bbc.com/news/world-europe-20120888>.

³ United Nations, *United Nations Official Document*, (1994), available at http://www.un.org/en/ga/search/view_doc.asp?symbol=A/49/765.

However, the first clause, which supports the sovereign borders of Ukraine, may be pertinent. Two things must be addressed here: first is the Donetsk region of Ukraine. Russia also signed this agreement, so if Russia could be, without doubt, shown to be invading the Donetsk region, then they could be shown to be breaking the agreement. The second point pertains to Crimea. Russia's annexing of Crimea is what initially brought sanctions upon them. However, the annexation of Crimea is messy. While it was a takeover by the Russian government, there is a strong case to be made that the people of Crimea wanted that to happen, and political self-determination should be an important tenet for any international community. The BBC article cited above does show that Crimea is more than 50 percent ethnically Russian and that many of them want to be reunited with Russia. So even then the annexing of Crimea is not a clear violation of any agreement.

Now the second question needs to be answered. Why would the United States want to help Ukraine? One thing is for certain: any motivation to help Ukraine cannot be based on hurting a perceived enemy. Such would be too dangerous a precedent to build upon and would reflect a dangerous Cold-War-era sentiment of vindictiveness. The simple answer to this question, in regard to the current conflict in Ukraine, should be that the United States should not help. As mentioned before, this conflict should be addressed by the European allies of the United States. The United States can help with the deal to show solidarity with allies, but those allies should lead the way. Sergey Aleksashenko of the Brookings Institute states: "The skeleton of a deal over Ukraine is also imaginable: Russia withdraws from Donbas and ends its hybrid war against Ukraine in exchange for the removal of U.S. sanctions on Russia."⁴ Such a solution, while simple, could be a viable option for the now new President Trump as he seeks to mend relations with Moscow. This solution shows solidarity with the United States' European and NATO allies while giving Russia a viable avenue to reinstatement within the rest of the international community as a positive force. Aleksashenko does point out that such an agreement may come with more conditions: "Would the deal require that Washington guarantee Russia that Ukraine would not be

⁴ Sergey Aleksashenko, *Vladimir, Let's Make a Deal*, Brookings Institute (2016), available at <https://www.brookings.edu/blog/order-from-chaos/2016/12/26/vladimir-lets-make-a-deal/>.

admitted into NATO? Would Russia demand that the United States repeal the Magnitsky Act, imposing human rights-related sanctions on Russian officials?"⁵ These solutions could show a way forward in mending relations with Russia and getting the best possible outcome from the conflict in Ukraine.

There are other issues, however, related to helping Ukraine, such as U.S. motives for not allying itself with other countries; the United States avoids ties with countries they deem to be corrupt, tyrannical, undemocratic, etc. The United States accuses Russia of having many of these characteristics and cites those abuses as cause for unamiable relations towards Russia.

However, Ukraine is guilty of many of the same abuses. According to Transparency International, an organization that indexes and compiles data regarding amounts of corruption in government, Ukraine is on par with Russia. Both Ukraine and Russia rank at 131 of 176—the larger the number the greater the corruption.⁶ Such information should make a country such as the United States leery of helping a country like Ukraine. When the United States cites so many of those abuses to explain why Russia is bad and then helps Ukraine, many should suspect ulterior motives. When viewing the evidence of the problems surrounding U.S. involvement in Ukraine, it is plain to see that further involvement—especially military—in Ukraine would be folly and would further antagonize and deteriorate any positive relations with Russia.

The second major part of this work is to assert that Russia is no longer the pre-eminent and imminent threat many politicians deem it to be. Now it must be conceded that when it comes to nuclear armament Russia is, of course, the United States' greatest competitor. Such has been the case since the opening days of the Cold War. So, to say that Russia is not a threat at all would be extremely naïve. Russia is a threat to the United States, just as any nation with equivalent or nearly equivalent military force would be. Russia should be watched closely and skeptically just as any nation in that context should. However, to

⁵ *Id.*

⁶ *Transparency International: Ukraine Ranked 131 out of 176 Countries in World Ranking of Corruption Perception*, Ukrainian News (2017), available at <http://ukranews.com/en/news/474735-transparency-international-ukraine-ranked-131-out-of-176-countries-in-world-ranking-of-corruption>.

deem Russia to be the most imminent and pre-eminent threat to the United States right now would be incorrect. Senator John McCain, during a visit to Ukraine, said: “I believe that we must continue to improve our relations and to understand that Vladimir Putin—unless we stand up to him—will continue his aggression, and we must stand up to Vladimir Putin.”⁷ Senator McCain is notoriously hawkish towards Russia, and perhaps for some good reasons, but his current outlook is an artifact of the Cold War. He is correct in pointing out that Vladimir Putin is an aggressor.

The situation must be taken in context and scope. It could be safe to assume that Vladimir Putin does not have the best interests of the United States at heart (one would hope that a head of state, no matter where they are, would have only the best interests of their given country at heart). Vladimir Putin is a savvy political operator and should not be underestimated. As can be seen in Syria, Putin is fully capable of seizing upon Western weakness. Michael E. O’Hanlon, also of the Brookings Institute, contends:

We should also have a debate about an alternative eastern European security architecture that would create a zone of genuinely neutral states from Finland and Sweden down through Ukraine and Belarus and Moldova to Georgia. This would not be appeasement of Moscow. For it to work, Russia would have to verifiably pull out of the places in eastern Ukraine and northern Georgia where it is currently ensconced. And it would have to allow these countries access to whatever economic arrangements they chose over time—the decision not to consider them as potential candidates for NATO would not deprive them of broader economic and diplomatic prerogatives that any modern state is due.⁸

Vladimir Putin knows he can exercise influence over regions that once fell under the old Soviet Union and parts of the Warsaw Pact. However, this plan could be quite sound. As the situation in Ukraine is a European one, the European Union (EU) should realize that not

⁷ Margarita Antidze & Sergei Karazy, *Senator McCain Says U.S. ‘Must Stand up to Vladimir Putin,’* Reuters, (2017), available at <http://www.reuters.com/article/us-ukraine-crisis-mccain-idUSKBN14LOOR>.

⁸ Michael E. O’Hanlon, *U.S.–Russian Relations Beyond Obama*, Brookings Institute (2016), available at <https://www.brookings.edu/blog/order-from-chaos/2016/04/20/u-s-russian-relations-beyond-obama/>.

all nations can be given membership in the EU at this time. Russia still feels it should hold sway in the countries near its borders. The EU could help settle a “neutral” zone of free trade, thus mending relations with Russia because they feel threatened by continued EU expansion. Mr. O’Hanlon continues: “Such a plan should not be considered because Putin is polite or reasonable, but because it is probably the only way to avoid an ongoing action-reaction spiral in U.S.–Russian relations, with even worse consequences still to come.”⁹

The point should be made that ending the action-reaction spiral, as Mr. O’Hanlon puts it, is extremely important. As relations have reached Cold-War levels, cooler heads must prevail if there is to be a de-escalation. Theresa May, the current prime minister of the United Kingdom, stated recently during a visit to the United States: “With President Putin, my advice is to engage, but beware. . . . We should engage with Russia from a position of strength and build the relationship, systems, and processes that make cooperation more likely than conflict.”¹⁰ Aleksashenko says about Putin: “Even if Putin really wants to make a deal, he has a number of qualities that make him a difficult partner. Two of them are widely-known: he respects strength and tends to hold a zero-sum outlook about negotiation.”¹¹

Strength can be shown in many ways. As I have noted, winding down the United States’ involvement in the Middle East could signify strength. Ending the conflict is easier said than done, but doing so could go a long way in showing that the United States is a nation that not only starts but finishes its battles. The United States could also play an active part in carrying out the advice given by Prime Minister Theresa May during her visit to the United States. When talking about NATO, the UN, and the International Monetary Fund (IMF), she said: “Some of these organizations are in need of reform and renewal to make them relevant to our needs today.”¹² If President Trump follows through with such advice, we could see far more effective use

⁹ *Id.*

¹⁰ Steve Almasy, *Theresa May Praises Trump but Pledges End to ‘Failed’ Foreign Wars,* CNN (2017), available at <http://www.cnn.com/2017/01/26/politics/theresa-may-us-speech/index.html>.

¹¹ Sergey Aleksashenko, *Vladimir, Let’s Make a Deal*, Brookings Institute (2016), available at <https://www.brookings.edu/blog/order-from-chaos/2016/12/26/vladimir-lets-make-a-deal/>.

¹² Almasy, *supra*.

of these international organizations to ensure continued peace in Europe and the Middle East. Such reforms should include an emphasis in less American involvement in all European affairs such as the conflict in Ukraine. It is a fine line to walk, but one that could start a path to more efficient means of securing peace by focusing on the powers that lie within Europe and not America.

Now what would give one hope that Russia is no longer a primary threat? The lamp of history could shine light on the subject. Even within the depths of the Cold War, no situation ever went “hot.” At the apex of that conflict, when the nations were the closest to nuclear war, both sides were willing to come to the table and negotiate for peace. While proxy wars were happening in the timeline of the Cold War, neither side wanted to initiate direct, full-on conflict. If anything, this tells us that neither side wants war.

Why is Russia not a “primary” threat? While, yes, as I have mentioned, they are a nuclear power. However, when was the last time a terrorist attack happened on American soil with the backing of the Russian Federation? Compared to threats and attacks from Middle Eastern powers and entities, none. However, constantly antagonizing Russia could change that. The United States must build a new national security policy that prioritizes the real imminent threats to the nation. While Russia must still be viewed as a possible “threat,” such a title must not be used to gain political clout in the United States; instead it must be used to create a balanced and fair assessment of how much of a threat Russia really poses. Vladimir Putin must be kept at arm’s length while not altogether treating him as a Third-World despot and rejecting Russia as a whole. Skeptical and logical assessment must prevail if progress is to be made. A ray of hope is that neither side wants war. Both the United States and Russia are the premier nuclear powers in the world; to use those nuclear weapons is a zero-sum game. Negotiation and mutual respect have to happen on both sides to insure that such a zero-sum game is never played.

The United States needs to evaluate its role in European affairs. As a member of NATO, the United States plays a major part in almost every world affair. However, savvy delegation and trust in European ability to deal with Russia in a majority of issues would serve the United States well. Cooperation with those allies will save the United States considerable capital and perhaps make Russia feel more comfortable

in evaluating its own role in Europe. Peace in Europe must be sustained carefully, and Russia must be addressed in a moderate and practical way. This is not the Cold War anymore, nor can it be allowed for relations to deteriorate to that level. National security policy needs to reflect the changing and shifting powers developing in Europe and the lesser role the United States needs to play in the European theatre.



THREATS THAT LIE JUST BEYOND THE BORDER: ISRAEL'S TERRORISM THREAT

Kyle Manola

Since the creation of Israel in 1948, the nation has faced many terror threats from many different groups or terrorist organizations that seek to change the national will of Israel. Scholars have attributed many reasons as to what has led neighboring countries as well as various terrorist groups to conduct attacks, including religious or ideological differences and disputes over territories seized by varying parties. Throughout Israel's history, most of the terrorism that we have seen has been a byproduct of the Israeli-Palestine conflict, and as the years have passed and neighboring countries have ceased to wage war with Israel, we have seen the emergence of other groups and organizations that pose a threat to the security and safety of Israel. In our world today, four main groups or organizations have expressed disdain for Israel and constitute the greatest threats to Israeli security: Hamas, Hezbollah, Al-Qaeda, and the Islamic State in Iraq and Syria (ISIS). However, Israel has formulated a very effective counterterrorism strategy for deterring these groups. This paper will not only highlight a brief history of each group, but will also provide an outline of what Israel is currently doing in order to combat these threats and how effective the counterterrorism strategies have been towards the deterrence of these groups to carry out attacks. Before we can delve into the current events regarding these threats, we must start with the history of the conflict. Doing so will provide the foundation for understanding the present-day threats to Israel.

A BRIEF HISTORY OF THE CONFLICT

The Buddhist Monk and exiled Vietnamese peace activist Thich Naht Hanh said, "When you begin to see that your enemy is suffering,

that is the beginning of insight.”¹ As with any conflict, both parties have past grievances that led them to the current state of conflict. In order to help bring peace, one must understand both parties’ viewpoints of the conflict; only then can both parties move forward towards a strategy aimed at peace. Before the establishment of Israel in 1948, there had been regional conflicts for many reasons, but one major issue in the region had been the seizing of land by various factions. Israeli’s were predominately Jewish, and Palestinians were predominately Muslim. Many scholars argue that the conflict between Israel and Palestine is based solely upon the seizing of land and has nothing to do with the differing religious backgrounds. While I do agree that the main issue is the seizing of land; however, one aspect that needs to be taken into consideration is that both religions teach that present-day Israel is a holy land provided to them by God. So, therefore, land is the main issue but also has religious aspects that are intertwined into the issue as well.

During the early nineteenth century, the Jewish people residing in Palestine had a transient experience. The Jewish people were subject to several displacements throughout history that would scatter them throughout various parts of Europe in search of a home in which they would be free from persecution. During this time, an individual known as Theodore Herzl would help usher in a large Zionist movement that would ultimately pave the way for the establishment of Israel in years to come. Herzl, an accomplished, well educated, assimilated Jew from Vienna, became a strong supporter of the Zionist movement while he was a correspondent in Paris, France. After witnessing the Dreyfus Affair, wherein a Jewish French Army Captain, Alfred Dreyfus, was put on trial in what Herzl considered an anti-Semitic attempt at persecution, Herzl came to the conclusion that the only way the Jewish people could be secure and safe from oppression was to establish a homeland of their very own.² While many locations were considered after Herzl’s call for a legitimate homeland for the Jewish people, one stood out from them all, Palestine. After the Romans had removed the Jewish people from Palestine many years before, many Jews felt that it was only right to return to their home in Palestine.

¹ Thich Naht Hanh et al., *Peace Is Every Step: The Path of Mindfulness in Everyday Life* 120 (1991).

² James L. Gelvin, *The Modern Middle East: A History* 219 (2005).

Even though the Zionist Movement was met by strong resistance from the Palestinians, it obtained a huge victory after World War I. At this time, Britain would be given mandates over certain regions in the Middle East from the League of Nations, the forerunner of the United Nations (UN); one of these regions was Palestine. To heighten tensions, Britain officially endorsed the idea of a national homeland for the Jewish people in the Balfour Declaration (2 November 1917). This document states: “His Majesty’s Government view with favour the establishment in Palestine of a national home for the Jewish people, and will use their best endeavors to facilitate the achievement of this object.”³ Shortly after the declaration, Britain began allowing Jewish people to establish settlements in Palestine.

As conflicts brewed between the Israelis and the Palestinians, the UN determined that it must come to a solution in regards to this issue. After the end of World War II, Britain relinquished control of Palestine and, in turn, the United Nations came to a much-needed resolution of the conflict. The solution was the United Nations Partition Plan for Palestine (UN General Assembly Resolution 181), which was adopted on 29 November 1947. The resolution divided Palestine into a Palestinian and an Israeli state, leaving Jerusalem independent, a sovereign city. However, Israel gained more territory over the course of wars and conflicts in the next several decades; Israeli settlements have continued to press farther and farther into Palestinian territory. The Israeli seizure of Palestinean territory has contributed to the high tensions between the Israelis and the Palestinians and other nations in the Middle East that are hostile to Israel.

In short, since the Israeli-Palestine conflict began, many perceive that Palestine has lost considerable ground. The loss has caused much anger among the Palestinians and also among Muslims in other parts of the world. The anger and hatred that brewed over the last several decades have led many to feel that something needs to be done to eradicate the secular and Western world view that supports Israel, both politically and militarily; otherwise, the Palestinian way of life, as they know it, will become increasingly difficult to maintain. The long-term conflict has opened a doorway that has given rise to violent groups throughout the Middle East, including threats currently pressing right on Israel’s borders.

³ James L. Gelvin, *The Modern Middle East: A History* 230 (2005).

Hamas

One of the most immediate threats—if not the greatest threat—to Israel resides in the Gaza Strip and areas of the West Bank. Hamas has proven itself to be an extremely great threat to Israel on several accounts, such as military means and capabilities, as well as political power. Hamas derives from its humble beginnings in the Palestinian branch of the Muslim Brotherhood. After its establishment in the late 1980s, Hamas has continually declared the destruction of Israel and has continually carried out attacks against Israel in pursuit of this goal.

For example, one of the most disturbing aspects of Hamas is their military wing, known as the Izz ad-Din al-Qassam Brigades.⁴ This military wing is a vicious aspect of Hamas that has carried out attacks against Israel since as early as the 1990's. These attacks, while varied in form, from bombings and small-arms attacks, to roadside explosives, etc., are combined in a range to inflict the most damage.⁵ To make matters worse, an election held in 2006 resulted in Hamas obtaining leadership of the West Bank and the Gaza Strip.⁶ This came as a great worry to Israel not only because Hamas was a military might, but it was now also the official government of these areas.

The National Counterterrorism Center offers a brief summary of Hamas activity in recent years:

In May 2012, Hamas claimed to have established a 300-strong force to prevent other Palestinian resistance groups from firing rockets into Israel. Conflict broke out again in November. While Hamas had worked to maintain the cease-fire brokered by Egypt that ended the week-long conflict, other Palestinian militant groups flouted the cease-fire with sporadic rocket attacks throughout 2013 and 2014.⁷

Hamas does not seem to be closer to denouncing the violence it has conducted against Israel either. Hamas is not likely to discontinue

⁴ Izz ad-Din al-Qassam Brigades (2017), available at <https://www.trackingterrorism.org/group/izz-ad-din-al-qassam-brigades>.

⁵ *Terrorism Against Israel: Comprehensive Listing of Fatalities* (1993), available at <http://www.jewishvirtuallibrary.org/comprehensive-listing-of-terrorism-victims-in-israel>.

⁶ Steven Erlanger, *Victory Ends 40 Years of Political Domination by Arafat's Party* (2006), available at <http://www.nytimes.com/2006/01/26/international/middleeast/victory-ends-40-years-of-political-domination-by.html>.

⁷ National Counterterrorism Center. *HAMAS* (2014), available at <https://www.nctc.gov/site/groups/hamas.html>

attacks against Israel. Reports as recent as July 2016, state that Hamas is preparing for another war with Israel.⁸ Due to the means, capabilities, and the location that Hamas possesses, they are one of the biggest threats to Israeli security. However, Hamas is not the only group residing on the border of Israel that presents a great threat. Israel also needs to be concerned with the terrorist organization known as Hezbollah, which resides on their northern border in Lebanon.

Hezbollah (Hizballah)

This terrorist group, known affectionately as the “Party of God,”⁹ has been a thorn in the side of Israel for many years. Throughout Hezbollah’s history, they have conducted many anti-Israel attacks that have mostly consisted of hijacking airplanes and suicide truck bombings, including the bombing of the U.E. embassy in Beirut, Lebanon, in 1984.¹⁰ Hezbollah has taken the route of not only setting their sights on Israeli targets but also conducting operations against Israeli allies, such as attacking the interests of the United States abroad.

Similar to Hamas, Hezbollah presents a dynamic threat to Israel in terms of its military means, as well as the political power it holds. Hezbollah has been an active participant alongside the Lebanese government for many years, an alliance that shaped Hezbollah into a more dangerous and credible threat to the safety and security of Israel. This partnership, when it was finally seen as enough of a threat, forced the United Nations to determine that there was a need to intervene in order to prevent more chaos and bloodshed. In 2004, in response to this notion, the UN declared the UN Security Council Resolution 1559, which called for the “disbanding and disarmament of all Lebanese and non-Lebanese militias.”¹¹ As a result, most of the militias in

⁸ David Patrikarakos, *Hamas is Ready for War with Israel* (2016), available at <http://foreignpolicy.com/2016/06/07/hamas-is-ready-for-war-with-israel-gaza-strip/>.

⁹ Matthew Levitt, *Hezbollah: The Global Footprint of Lebanon's Party of God*, (2013), available at <http://www.washingtoninstitute.org/policy-analysis/view/hezbollah-the-global-footprint-of-lebanons-party-of-god>.

¹⁰ John Kifner, *23 Die, Including 2 Americans, in Terrorist Car Bomb Attack on the U.S. Embassy at Beirut; Blast Kills Driver*, available at <http://www.nytimes.com/1984/09/21/world/23-die-including-2-americans-terrorist-car-bomb-attack-us-embassy-beirut-blast.html?pagewanted=all>.

¹¹ *Security Council Declares Support for Free, Fair Presidential Election in Lebanon; Calls for Withdrawal of Foreign Forces There* (2004), available at <http://www.un.org/press/en/2004/sc8181.doc.htm>.

Lebanon disbanded, but Hezbollah continued to stand its ground, arguing that the sole purpose of the continuance of their group was vital to prevent any further Israeli aggression against Lebanon.

Hezbollah, like Hamas, continues to provide a great threat to the security of Israel due to its military might, political influence, and its close proximity to Israel. Hezbollah and Hamas are, by far, the greatest threat to Israel. However, Al-Qaeda lurks not too far away.

Al-Qaeda

While Hamas and Hezbollah pose an immediate threat to Israel, in regard to close proximity, this does not mean that Al-Qaeda is not a credible threat that should not be monitored because it is more distant. To ignore the potential threat of Al-Qaeda would be a grave mistake that could cost the lives of thousands. This terrorist group, which took form back in the late 1980s, was founded by a Saudi man named Osama bin Laden, who had led a group of Arab fighters in the Afghan war against the Soviet Union and was victorious. Since that victory, Al-Qaeda has only continued to express its ambitions of the creation and establishment of a pan-Islamic caliphate for Muslims throughout the world.

Al-Qaeda is a threat to Israel because many of the group's goals are not simply to establish a caliphate but to rid the world of Western influence and any government throughout the Muslim world that they deem to be secular and apostate. In one of his several fatwas, bin Laden wrote that one of the core tenets or issues of his war against Israel is this idea of "the near enemy."¹² He goes on to label the United States and other Western powers as "the far enemy."¹³ He believes that the United States and the West are the ultimate contributors to the oppression against the Muslim world, and he also argues that governments that are supported by the United States and are becoming more secularized, more apostate; and they should, therefore, be done away with. The desire to expel Western influence has led to many attacks around the globe, but they have been specifically focused on the United States and its allies, such as Israel.

While Al-Qaeda has not attacked Israel directly, they do show that

¹² Lawrence Wright, *The Looming Tower: Al-Qaeda and The Road to 9/11* (2011).

¹³ Daveed Gartenstein-Ross, *Declaring War on The 'Far Enemy'* (2011), available at <http://www.defenddemocracy.org/media-hit/declaring-war-on-the-far-enemy/>.

they possess the means and capability to conduct an attack if the opportunity presents itself. Such examples range from embassy bombings to the 9/11 attacks as well as many other attacks in various parts of the globe. These examples show that if Al-Qaeda has the means and capabilities to conduct attacks at such a great distance away from their base of operation, then they can certainly wreak havoc among those nations in close proximity to their base of operation.

Even with the direct hit in leadership to Al-Qaeda that occurred due to the killing of Osama bin Laden in 2011, they still pose a great threat that needs continual monitoring, not just for core Al-Qaeda, but even for their affiliates. In recent years, one such former affiliate, ISIS, has emerged as a great threat that continually encroaches closer and closer to Israel's doorstep.

Islamic State of Iraq and the Levant (ISIS)

Formerly known as Al-Qaeda in Iraq, which was led by none other than Abu Mus'ab al-Zarqawi, this group has wreaked havoc throughout Iraq and Syria in recent years. After conflicting opinions in regards to how operations against the enemy should be carried out and handled, Al-Qaeda and what is known today as ISIS split ways. In the aftermath of this separation, ISIS continues to grow and mature, as do their ambitions. ISIS has developed a reputation for employing brutal and violent tactics in order to achieve their primary objective. Similar to Al-Qaeda, ISIS also seeks to establish the caliphate of old and to govern through the very strict interpretation of Sharia law. However, unlike Al-Qaeda, which sought the caliphate as a long-term goal, ISIS seeks to establish that goal in a much shorter time frame.

ISIS presents a great risk to Israel because of the area that Israel occupies. The caliphate of old that ISIS refers to is the land that was occupied by the early Ottoman Empire, which comprises most of the Middle East, northern Africa, and parts of southeast Europe. ISIS has proven successful in the accumulation of territories throughout Iraq and Syria because of their increasing recruits, financial resources, military arms, and their coordination.

Although there is a bit of a buffer zone between Israel and ISIS, there continues to be a growing threat as they pursue their main goal of re-establishing the caliphate. Israel stands right in the midst of that goal. Despite the persistent and growing terror threats from Hamas,

Hezbollah, Al-Qaeda, and ISIS, Israel continues to stand strong and has employed a counterterrorism strategy that has emerged as one of the most effective in the world.

ISRAELI APPROACHES

Israel has become widely known for their expertise in combat and counterterrorism, especially in terms of terror or security threats they face. Its current counterterrorism strategy consists of five key factors: 1) intelligence collection and analysis, 2) military and paramilitary operations to disrupt terrorist infrastructure, 3) commercial aviation security, 4) defense against chemical and biological attacks, and 5) efforts to strengthen the psychological endurance of the Israeli civilian population. These five factors have helped propel Israel to the level of experts in counterterrorism within the international community.

To prevent any issue, there must first be an awareness of the issue. Israel has done a phenomenal job of training its civilians to be vigilant and prepared at all times. Israeli citizens are trained not only to be aware of anything suspicious or anything that seems out of the ordinary, but are also instructed to report any such issue to the authorities at a moment's notice. For example, Israeli citizens are trained to identify suspicious packages or actions by an individual that could result in the harm to the general public.¹⁴

However, in their efforts to be prepared in every sense of the word, Israel not only provides practical application through awareness but also provides citizens with experts from the International Policy Institute for Counter-Terrorism. These experts provide much-needed aid to citizens in terms of psychologically coping with the many atrocities that happen all around them, as well as to educate them regarding the issue of terrorism. Israel has done an exceptional job in its efforts to assist its citizens and continues to bolster the mindset of not allowing terrorists groups to dictate how they live their lives. For example, John Macfarlane, a professor at Utah Valley University, visits Israel every other summer with a group of university students. When I asked him what the mentality was of local Israelis, as it relates to terrorism, he said, "They just do not choose to engage in it. If a bus blows up one day, they will get on a similar bus the very next day." This is an aspect of Israel's strategy that I think all nations would be wise to develop.

¹⁴ Kevin D. Burton, *Managing Emerging Risk: The Capstone of Preparedness* (2012).

Having a strong citizenry can pay great dividends in the long run, and Israel is continually reaping the benefits of its cultural strategy. The vigilance of Israeli citizens yields tremendous intelligence that can be used in Israeli operations against these groups. In order to be successful in operations, it is imperative that you have the most reliable information possible. Otherwise, it could lead to the loss of life for your troops or innocent civilians. But ultimately, it could lead you two steps backward from your goal of eradicating these threats. Therefore, due to the continued diligence of Israeli citizens, as well as covert operations performed by Israeli security,¹⁵ Israeli agencies are receiving credible intel that has led Israeli forces to help stop many attacks from occurring.¹⁶ However, it is not merely the credibility of the intel that makes their military and paramilitary operations so effective; it is also the collaboration between agencies that really takes effectiveness to the next level. Israeli agencies work as one cohesive unit, united in the pursuit of the safety and security of their citizens. Because of this unity, Israel has never experienced an attack comparable to what the United States experienced on September 11, 2001. The lack of intel sharing between U.S. agencies was one of the reasons attributed to the 9/11 attacks. Many felt that if intel had been shared between different agencies, the terrorist attacks on 9/11 could have been avoided. When agencies have important intel but do not share and collaborate with one another, it becomes increasingly difficult to prevent attacks. Each intel report resembles a piece of the puzzle that needs to be solved. Only when you put all those pieces together can you realize the magnitude of a potential attack.

Similar to the United States, Israel places a high emphasis on aviation security because the stakes are so high in regards to a potential attack. For terrorist organizations, aircrafts can be viewed as an attractive target because of the amount of damage this kind of attack could cause. For example, a small explosion that occurs on the ground may only injure, or even kill, a small few. However, an explosion of the same size, thousands of feet in the air, could prove to be much more disastrous in terms of lives lost and commercial interruption. To help

¹⁵ Encyclopedia Britannica, *Mossad*, available at <https://www.britannica.com/topic/Mossad>.

¹⁶ *How Safe are America's Skies?* (2002), available at <http://www.nbcnews.com/id/3067286/t/how-safe-are-americas-skies/#.W0AU4zvyuUk>.

combat the potential risk that is associated with aviation, Israel has developed not only defensive measures outside the airport, including armed guards and vehicle inspections at check-points, but also an intensive passenger screening system within the airport.¹⁷

What makes Israel's airline passenger screening so effective is that it applies heavy emphasis on psychological profiling techniques. The United States focuses more on screening of baggage rather than people because of the legal issues that would arise as a result of profiling individuals. However, Israel prefers to focus more on human factors rather than technology because they believe that it can yield better results than simply relying on a monitor to detect a bomb. This effort has proven very effective in deterring attacks against Israel's global aviation locations.

One potential scenario that Israel has gone great lengths to defend against is that of the discharge of a biological or chemical weapon. As terrorist organizations have continued to evolve, these groups have looked for varying ways to inflict violence and damage. One of the options terrorist organizations have explored is the use of chemical or biological weapons. For example, Al-Qaeda was one such group that explored the possibility of weaponizing a chemical or biological weapon. However, after further review of the advantages and disadvantages of such a tactic, they ultimately discontinued their pursuit of a biological or chemical weapon because, once detonated, it cannot be contained.¹⁸ Once a biological or chemical agent is released, there is no control over where it goes or who it infects. With these possibilities in mind, Israel has formulated a response in the event of a discharge or explosion of a chemical or biological weapon.

Some preventive measures that Israel has begun to employ are the inclusion of a sealed room in every new building constructed within Israel. The idea is that if a biological or chemical weapon were to go off, citizens could retreat to the sealed room and be able to secure it from the penetration of biological or chemical agents.¹⁹ Israel also decided to employ even more extensive measures by providing citizens

¹⁷ Oren Liebermann, *Ben Gurion: The World's Most Secure Airport?* (2016), available at <http://www.cnn.com/2016/05/28/travel/ben-gurion-worlds-safest-airport-tel-aviv/>.

¹⁸ Lawrence Wright, *The Looming Tower: Al-Qaeda and the Road to 9/11* (2006).

¹⁹ Laura King, *Israel Tells Its Citizens to Ready Their 'Sealed Rooms'* (2003), available at <http://articles.latimes.com/2003/mar/19/news/war-israel19>.

with free kits that contain gas masks, including fitted gas masks for children, as well as anybody with respiratory issues. They also distributed injectors that can inject nerve-agent antidotes into the body.²⁰

CONCLUSION

In conclusion, Israel has been the target of many different terror threats throughout their history, and it continues to face widespread threats. However, no groups threaten Israel more than Hamas, Hezbollah, Al-Qaeda, and ISIS. They have the means, and are in such close proximity to Israel, that the possibility of attacks from these four groups is very high. However, even though Israel has many threats to their security, Israel has made itself well known for its highly effective counterterrorism strategy that has foiled or thwarted many potential terrorist attacks. Because there is not a lot of specific information regarding the full effectiveness of their counterterrorism strategy, we must focus on what has come as a result of their efforts. As we direct our attention towards the results that have come about, we see that Israel has been effective in combating terrorism to the point that they have had some attacks, but nothing to the magnitude of what the United States experienced on 11 September 2001. Israel will never be able to eradicate the terrorist threats they face completely, but they have done very well containing the various threats posed to them.

²⁰ *Israel Begins Distributing Gas Masks to Citizens* (2010), available at <http://www.sandiegouniontribune.com/sdut-israel-begins-distributing-gas-masks-to-citizens-2010feb28-story.html>.



FEMALE SUICIDE TERRORISM: A FOUNDATIONAL ANALYSIS AS A PATHWAY TO MITIGATION

Holly Sweeten

Female Suicide Terrorism (FST) is beyond most individuals to comprehend, and more difficult to accept on any level. It is shocking and challenges gender norms globally. It creates widespread media attention and is more effective than male suicide bombing. Its terror has caught people off guard in many parts of the world. However, it has not been used as a method of destruction in the United States of America, as of yet. This paper will attempt to analyze the many complexities of female suicide terrorism from its roots and foundations of thought. Understanding FST will assist in developing a critical lens into the faulty reasoning of such acts. What goes into the thought process of a willing participant? What theories can be used to decipher the complexities of FST, and how is gender a factor in similarities and differences of suicide terrorism? Is it possible to lessen or mitigate future threats of widespread violence among this population? We must also consider the possibility of future threats of this type to the United States.

Let us begin with an example of the horror that can be wrought among innocent people. Dzhanel Abdulleyeva, the Russian Black Widow, as she has been named since her 2010 attack, is a prime example of a female perpetrating extremist behavior in recent years. At the age of 17, she and another young woman made the fateful decision to become suicide bombers. Growing up in the southern region of Russia, Abdulleyeva lived with her single mother as a promising student who recited poetry in local competitions. When her family moved to a large city a few years later, Abdulleyeva became involved with a Chechen militant leader, thirty-year-old Umulat Magomedov. He became her love interest but was killed by Russian forces in a firefight in 2009. This event, sources say, led Abdulleyeva to become a suicide bomber.

On March 29, 2010, she traveled to Moscow with another female perpetrator (also a widow of a recently killed militant husband) and a male companion. After assembling bombs in an apartment there, Abdulleyeva and the other female blew themselves up in a Moscow subway, killing more than 40 individuals and wounding more than 80. Eyewitnesses to the horrific scene noted that one of the female perpetrators was unemotional; she did not blink and looked like she could have been under the influence of drugs.¹

Like Miss Abdulleyeva and her companion perpetrator, suicide terrorists fall within these definitional parameters: according to Yoram Schweitzer, former head of the Institute of National Security Studies in Tel Aviv, Israel, and a consultant to NATO on international terrorism, a suicide bombing attack is defined as a “politically motivated, violent attack, perpetrated by a self-aware individual who actively and purposefully causes his or her own death by blowing himself or herself up along with his chosen targets. The perpetrator’s death is a precondition for the success of the mission.”² Information from journalist reports collected by psychologist and leading authority on suicide David Lester assists in further revealing the psychodynamics of FST. Analysis from these open-ended sources is crucial in gaining insight into FST because most perpetrators do not survive the attacks. “Suicidology Online” analyzed 76 reports of FST, which assisted greatly in gleaning needed information. Past history and motivating factors by the perpetrators were carefully collected.

To facilitate better understanding of the motivating factors of FST, this examination will begin by analyzing various theories of suicide. Emile Durkheim, the French sociologist and classical social theorist, distinguishes four sub-types of suicide in his book *Le Suicide*: Egoistic, Altruistic, Anomic, and Fatalistic suicide.³ The first, Egoistic suicide, can happen when an individual becomes increasingly detached from other members of his or her community, or, as Durkheim refers to it, “excessive individuation” may occur. It comes as a result of not having

¹ David Lester, *Female Suicide Bombers: Clues from Journalists*, Suicidology Online (2011), available at <http://www.suicidology-online.com/pdf/SOL-2011-2-62-66.pdf>.

² Yoram Schweitzer, *Female Suicide Bombers; Dying for Equality?* The Jaffee Center for Strategic Studies 154–55 (2006), available at [http://www.inss.org.il/uploadimages/Import/\(FILE\)1188302013.pdf](http://www.inss.org.il/uploadimages/Import/(FILE)1188302013.pdf).

³ Emile Durkheim, *Le Suicide* (1947).

stability and from a prolonged sense of not belonging. Those who are not sufficiently bound to social groups (i.e., groups that have well-defined values, traditions, norms, and goals) are at risk. These variables can make a way for meaninglessness, apathy, melancholy, and depression, which can lead to suicide. Durkheim gives the example of single people having a higher risk of egoistic thoughts, especially single males. An individual who is isolated and alone without a support network is likely to be individualistic to the extreme and to have very low group attachment. The loss of the sense of reality and purpose, Durkheim would argue, can lead to Egoistic suicide. Research shows this sub-type has not presently demonstrated itself among the FST population.

The second sub-type, Altruistic suicide, is defined by being overwhelmed by a group’s goals and beliefs. This occurs within societies having high integration, where individual needs are seen to be less important than the society’s needs as a whole. Altruistic suicide is opposite from Egoistic suicide on the integration scale. Durkheim argued that if a society were altruistic, there would be little reason for a citizen to commit suicide. He saw one exception, namely, when one is expected to kill himself or herself on behalf of society. A primary example would be that of a soldier in the military, and, reasonably, any other highly integrated individual. Durkheim theorizes that true altruism comes at the heavy price of losing one’s own individualism and gives way to extreme group attachment. Priority of one’s individual life is replaced with the utmost significance being that of the group. Within the realm of females who commit these crimes, where informative data has been analyzed, some perpetrators of FST have been found to, at least in part, fall under Durkheim’s definition of Altruistic suicide.

The third, Anomic suicide, Durkheim would argue, may happen when an individual has a lack of social direction and moral confusion, connected by dramatic social and economic upheaval. All previous expectations about life are shattered, and the individual has to find a new way of looking at life before going on. There is a lack of structure and social ethics, which typically impose meaning and order. This is the product of moral deregulation, and it is a symptomatic failure of economic development and division of labor, which, according to Durkheim, produces organic solidarity. These types of individuals do not know where they fit in within their societies. Durkheim further explains that this is a state of moral disorder in which man does not

know the limits on his desires and is constantly in a state of disappointment. Behavior regulation, then, is very low. This phenomenon may have been a prerequisite condition for some of the female suicide bombers, as in the case of Dzhanel Abdullayeva. Her single-parent home and upheaval as a teenager may have led to a lack of social direction and instability in her life. Moral disorder can create confusion in decision making. Her choice to enter into a relationship with a dangerous militant points to what Durkheim describes as moral confusion. This was the starting point of her radicalization. Identifying these factors, combined with other critical information, can assist in identifying at-risk females, such as Dzhanel Abdullayeva.

On the opposite side of the spectrum from Anomic suicide is the fourth sub-grouping, Fatalistic suicide, which typically has very high behavior regulation. Individuals susceptible to Fatalistic suicide are excessively regulated and oppressively disciplined. Their needs and wants are completely disregarded, and their future offers no hope for change. Durkheim illustrates that this form of suicide is seen in oppressive societies, which may motivate people to prefer to die than to go on living under such stifling conditions. This is highly true for terrorist organizations in particular, where individuals are excessively regulated and controlled. An analysis of the societal framework that many of the FST participants were a part of, especially if they come from Middle Eastern societies, reveals that fatalistic behavior is often present. In general, societal norms for women in Middle Eastern societies are highly oppressive and controlling, and they command excessive behavior regulation.

While Durkheim's suicide theories may not offer a complete understanding about FST, he sets a foundation upon which contemporary social scientists can analyze and expand. Other scientists have suggested in more recent times a more individualistic approach in the incidence of suicide, extending Durkheim's variation among social environments. Certainly, it would be beneficial to study FST case by case, but because the incidence is currently a rarity, it is difficult to accomplish, as cultural norms differ among perpetrators and religiosity and the meaning associated with death vary. Using a wide variety of theories to understand the phenomenon of FST can only enhance an analytical perspective and improve the opportunity for solutions to this heinous crime. Sociology coupled with psychology, blended with

research on culture and tradition, will greatly expand our understanding in this field of research.

Other theories may be considered here by theorists and experts in the field of suicide. Gregory Zilboorg, a historian of psychiatry, theorized that suicidal individuals have an unconscious hostility to the love object, a breakdown in the victim's family, and an inability to love another.⁴ Two years later, Karl Menninger, an American psychiatrist, theorized the transitions from a wish to kill, to its denial into a wish to be killed, and into its further denial into the wish to die.⁵ Sociologist Charles William Wahl explained, "One cannot truly understand the deeper dynamics of suicide until he comprehends its relationship to death, and the unconscious significance and meaning which death has to us."⁶

Sociologist Jack D. Douglas theorized four common social meanings of suicide. 1) As a means of transforming the soul from this world to the other world. 2) Transforming the substantial self in the minds of others. 3) Achieving fellow-feelings, which seem to mean sympathy and or pity. 4) As a means of getting revenge on others.⁷ The final theory mentioned will be Maurice L. Farber's ideas. Sociologist and author of *Theory of Suicide*, Farber explains that he has moved back to a more general theory of suicide that "suicides in the main are committed by psychologically damaged personalities confronted by a deprivational situation."⁸ He goes on to explain that "the role of hope and loss and a sense of competence for which vulnerable people might be damaged, can create death ideations."⁹ This damage would be reflected in part by anti-social behavior.

Research conducted by Ami Pedahzur and Arie Perliger, university professors in political science, concurs with a multi-dimensional analysis in examining suicide terrorism among Palestinians. Their research indicates a two-dimensional perspective for suicide terrorism.¹⁰ First is the collective perspective seen as an obligation or duty to commit

⁴ Gregory Zilboorg, *Psychology of the Criminal Act and Punishment* (1954).

⁵ Karl Menninger, *Man Against Himself* (1938).

⁶ Charles William Wahl, *Suicide as a Magical Act in Clues to Suicide*, 26 (1957).

⁷ Jack D. Douglas, *Social Meanings of Suicide* (1967).

⁸ Maurice L. Farber, *Theory of Suicide* 11 (1968).

⁹ *Id.*

¹⁰ Ami Pedahzur et al., *Altruism and Fatalism: The Characteristics of Palestinian Suicide Terrorists*, (2011).

suicide to help serve in attaining the goals of the society or group to which they identify. Second is the individual perspective, which perceives suicide to be an escape route from a situation of no hope. In both dimensions, as proposed by Durkheim, feelings of the desire to die come as a result of social structure and social regulations combined with the individual world view of the perpetrator. Pedahzur and Perliger theorize that both play a major role in the realm of suicidal terrorism. "It seems that the combination of a society with excessive regulation and where the socioeconomic development of people is impeded and aspirations are stifled by an oppressive discipline, together with a strong social affinity to a groups' values and goals, creates a favorable platform for suicidal acts."¹¹ With these findings, their research concluded there should be a new category under Durkheim's typology of suicidal behavior, one that combines the characteristics of both altruistic and fatalistic sub-categories, to be termed, "Fatalistic-Altruistic" suicide.¹² Within the last three decades there have more than 40 assessment methods reported in an attempt to seek to explain suicide. This has been beneficial for scientists seeking to understand the complexity of suicide bombers and, more specifically, female suicide terrorists.¹³

What makes female suicide terrorists different from males who have the same agendas? Research shows that the theorists are deeply divided on the motivations of female suicide terrorism. Reasoning that is currently being challenged argues that women become suicide bombers out of despair, mental illness, religiously mandated subordination to men, and varying gender-specific factors. However, separate academic literature has emerged, challenging the gender-specific theories, showing a more intersectional dynamic. However, there is one thing most social scientists who research this topic do agree on: that is the fact that women's and men's motivations for suicide terrorism fundamentally differ.

Men who are suicide bombers among the Muslim population (also known as religious martyrs—Shahids), are seen as terrorists with two

¹¹ *Id.*

¹² Kathryn J. Johnson, *Durkheim Revisited: Why Do Women Kill Themselves? 9 Suicide and Life-Threatening Behavior* (1979).

¹³ Akbar Alivardinia & William Alex Pridemore, *Women's Fatalistic Suicide in Iran: A Partial Test of Durkheim in an Islamic Republic 15 Violence Against Women* (2009).

motivations. Religious beliefs and economic poverty play central roles for motivating them. They are often unmarried, religious men who are unemployed and who believed they would be rewarded for these attacks with a glorious afterlife and an eternal place in heaven.¹⁴ The average age of a suicide bomber is 21.¹⁵

According to Boaz Ganor, founder and director of the International Institute for Counter-Terrorism in Herzliya, Israel, men do not have to undergo a long process of indoctrination to participate in the suicidal act. Ganor explains, "The suicide terrorist was not typically an active member of any terrorist organization, and had not participated in any terrorist activities before his last fatal attack. On the contrary, in most cases he was a young, vulnerable person with strong religious affiliations."¹⁶ Ganor contends that "most recruitments are taking place in mosques and schools, and will be skillfully manipulated, in order to persuade him to take part in a terrorism plot."¹⁷ Suicide terrorism also has built-in tactical advantages over conventional terrorism. Expert on terrorism and right-wing extremism in Israeli politics and society, Ehud Sprinzak states:

It is a simple and low-cost operation (requiring no escape routes or complicated rescue operations); it guarantees mass casualties and extensive damage; . . . there is no fear that interrogated terrorists will surrender important information (because their deaths are certain); and it has an immense impact on the public and the media (due to the overwhelming sense of helplessness).¹⁸

Research suggests that while men and women who are recruited into terrorism, specifically suicide terrorism, share in being skillfully manipulated, the reasons that men and women are persuaded may be entirely different. Although men are seen as the leaders of terrorist plots, women have increasingly become key assets within the realm of suicide terrorism.

¹⁴ *The Characteristics of Suicide Terrorists: An Empirical Analysis of Palestinian Terrorism in Israel*, available at <http://http://poli.haifa.ac.il/~terror/pages/maamarim/profile.html>.

¹⁵ Amos Hamrel, *Profile of a Suicide Bomber: Single Male Average Age—21*, available at www.haretz.com/profile-of-a-suicide-bomber-single-male-average-age-21-1.67906

¹⁶ Boaz Ganor, *Countering Suicide Terrorism: An International Conference 134* (2001).

¹⁷ *Id.*

¹⁸ Ehud Sprinzak, *Rational Fanatics* 66, 68 (2000).

Terrorist groups cater to specific individual motives of potential female suicide attackers in order to recruit them.¹⁹ Among the individual female suicide research conducted, while no one specific profile has emerged, similarities among them have been determined through studying biographies and statements from terrorist leaders. Scholars in this field, such as Mia Bloom²⁰ and Lindsey O'Rourke, have documented these similarities and have found patterns in them. Female attackers on the whole have experienced a variety of traumatic personal events and have therefore concluded deep personal motivations as one cause. They are also motivated by group incentives. Rhetoric about allegiance to the groups' strategic goals coupled with individual motivations solidify decision making.

Additionally, the stressed psychological and mental states of the females is considered to be a crucial key cause when combined with a loyalty to their communities. As she is highly integrated within her community in societies that oppress females, she becomes vulnerable to altruistic suicide. Emile Durkheim recognized through his theories that individuals who were highly oppressed and highly integrated within their communities would be a high risk for negative altruistic thoughts and behaviors. People who are overly integrated into a community come to value their communities' welfare above their own. They become willing to sacrifice their own life for the cause.

Terrorist organizations are well aware of loyalties and individual motives, and they aim recruitment tactics that are specifically tailored for each potential attacker. Their arguments include the offer for redemption for a woman who violates the gender roles of her community, revenge, nationalism, religion, and feminist appeals for equal participation. Leaders of terrorist organizations will attempt to recruit from almost any personal motive that does not contradict the main strategic objective. Although empirical data regarding the motivations of female suicide recruits remains lacking and inconclusive, key patterns are emerging with which to build conclusive data.

Research about the organizational dynamics and political and strategic aspects assists in furthering the understanding of female suicide terrorism. First, groups that employ women into terrorism are

¹⁹ Lindsay A. O' Rourke, *What's Special About Female Suicide Terrorism?* 18 *Security Studies* (2009).

²⁰ Mia Bloom, *Dying to Kill* (2005).

among five major conflicts: Palestinian groups vs. Israel, Chechen separatists vs. Russia, Liberation Tigers of Tamil Elam or (LTTE) vs. Sri Lanka, Kurdistan Workers Party or (PKK) vs. Turkey, Lebanese groups vs. Israel and the South Lebanon Army. (Other terrorist groups who have used women as human weapons were left out of the empirical data because there was not enough information to present conclusive evidence.)²¹ Studies show that among attacks perpetrated by these groups, women were highly effective in causing more casualties than men in individual attacks. The women averaged 8.4 casualties compared to 5.3 casualties for men. The higher effectiveness of female suicide terrorism has led to deadlier team attacks over time, increasing mayhem and casualties. In the cases that women conducted the team attacks, success was even greater.

Failures in attacks were also weighed; that is, attacks producing no casualties. Men who conducted those attacks failed in one-third of them, while women failed in one-sixth of them. This research suggests that FST is more lethal with more casualties at both the individual and team levels. This brings up important connections that correlate directly with gender and the ways that gender norms are manipulated by terrorist organizations to create highly effective female weaponry.

O'Rourke lays out three major causes for the highly effective FST population. Each directly relates to the specific social norms within their societies. The role of women as used in their particular form of social construction makes their attacks highly effective. First, women arouse less suspicion. They do not fit the stereotype of a suicide bomber (although with FST on the rise, the public agencies handling these attacks are now more aware). Male Afghan and Iraqi suicide terrorists have disguised themselves as women and have been able to get past heavily guarded police stations without being noticed. After the terrorist attacks on 11 September 2001, females were excluded from the U.S. Department of Homeland Security's official profile of potential terrorists used to screen visa applicants. There are many other incidents such as these that support the claim made by O'Rourke that FST has been an effective way to be highly lethal.

Second, the societies in which women wear full-body, loose-fitting clothing, FST has been highly effective. The women are able to conceal explosives attached to their bodies without being discovered. At

²¹ O'Rourke, *supra*.

least twelve pounds of explosives can easily be hidden under garments of this type. In addition, there have been several cases in which female suicide terrorists have feigned pregnancy to conceal an even greater amount of explosives. Smuggling a large bomb is therefore much more feasible for a woman. The list of documented cases in which female suicide terrorists have feigned pregnancy includes Chechen, Kurdish, Palestinian, and Tamil attackers.²²

Examining evidence for the third crucial cause of FST effectiveness, once again, is a societal and cultural construction of what is and what is not appropriate in physical searches of women. In societies that employ women in FST, invasive body searches are regarded as threatening a woman's honor, therefore making them less likely to search as men. One British source claimed, "The terrorists know there are sensitivities about making intimate body searches of women, particularly Muslim women, and thus you can see why some groups might be planning to use a female bomber. Hiding explosives in an intimate part of the body means even less chance of detection."²³ In the Iraq war, women were not being searched five years into the conflict.

In addition to the causes of female suicide terrorism being highly effective strategically, the underlying impact of psychological damage victimizes the target state. The social sciences all agree that females are much less likely to be violent than men. When a violent act of homicide or suicide is perpetrated by a woman, it shatters social norms and provokes a sense of outrage and bewilderment. It also creates attention in the media and generates greater journalistic coverage. This creates a concern within the victim or target state and can hinder their ability to keep fighting. Thus, the social norms of the societies themselves, through gender norms, have ironically worked as a catalyst for the superior effectiveness of female suicide bombers. Greater surprise and deception are two key factors for terrorist recruiters to continue to employ females, making them highly desirable weapons to complete successful campaigns.

When examining the organizational dynamics of FST, empirical evidence suggests it has grown from a largely secular phenomenon. The participation of females in primarily secular campaigns suggests this conclusion. However, as secular terrorist campaigns have been

²² *Id.*

²³ *Id.*, at 690.

more effective when using FST, religious terrorist organizations have become increasingly more willing to employ women in their campaigns. Within both religious and secular organizations, recruitment propaganda for FST is similar: it emphasizes the need for both genders to demonstrate their commitment to the organization's cause. When both secular and religious terrorist groups employ females, they can be sure of several profitable outcomes, including effectively doubling the population from which they can recruit attackers, strengthening mass backing for the terrorist group, fostering support by women, signaling a group's commitment to their political cause shown by a willingness to use a female weapon, and gaining wide media coverage, which potentially can elicit sympathy for the organization's cause.

Thus far, an in-depth analysis has offered an increased understanding of the foundational causes of female suicide terrorism and the complexities surrounding the causes, motivations, and effectiveness of female suicide terrorism through an application of social theories, carefully examined and produced by experts in the field. The question remains: can anything be done to slow the infiltration of highly effective FST? First, if states targeted by FST were to revise their policies regarding gender laws or norms prescribing women's advantages in concealing explosives and creating surprise, FST is likely to decline very rapidly. The United States government should work with target states to develop gender-neutral laws regarding the searching of its people, especially in places where the U.S. provides security and military advisors. Female suicide terrorism is highly effective in locations where gender norms prevent reasonable security to take place. Is the United States at risk for such an attack? As the United States carries no such laws regarding females, in this area they are relatively safe. However, online radicalization of females to perpetrate attacks on the United States should be considered and investigated by key organizations, including law enforcement throughout the country.

In conclusion, understanding female suicide perpetrators' motivations with an intersectional analysis creates a valuable foundation for finding viable solutions in addressing this presently unexpected crime and can assist in assessing the risks and likelihood of future threats internationally or within the borders of the United States. While the causes and motivations of FST are varied and complex, discovering root motivations and developing gender-neutral security can assist in

creating a pathway to combat female terror. Systematic changes within this realm need to take place to ensure nation-state security and to establish a precedent for future risks to the United States.



THE FARC, PEACE, AND JUSTICE

Trevor Williams

The story of the Fuerzas Armadas Revolucionarias de Colombia (Revolutionary Armed Forces of Colombia or FARC) is not just a tale about a revolution. This is about an *evolution*, a metamorphosis. After spawning their movement from left-wing values, they progressively mutated into a world-class drug cartel, and it made a great profit through ransoming innocent victims of their hijackings and kidnappings. They have been listed on the U.S. Department of State's "Foreign Terrorist Organizations" for nearly 20 years.¹ As such, it is important to consider these aspects of crucial history when analyzing the controversial strategies of Álvaro Uribe and the peace accords brought about by incumbent Colombian President Manuel Santos.

Although the FARC was not officially organized until 1966, its history starts much earlier. The roots of the revolutionary movement originate in 1948 with *La Violencia*. The war was between conservative and liberal parties.² The parties were in conflict over the incumbent Conservative President, Mariano Ospina Perez, who was accused of using "the police and the army to repress" the Liberal party.³ As a result, the Liberals reacted by having the lower class revolt. Although the violence mainly took place in rural areas, it is safe to say that what

¹ U.S. Department of State, *Foreign Terrorist Organizations*, available at <https://www.state.gov/j/ct/rls/other/des/123085.htm>.

² United Nations Regional Information Centre for Western Europe, *The Guerrilla Groups in Colombia*, available at <http://www.unric.org/en/colombia/27013-the-guerrilla-groups-in-colombia>.

³ Adam Turel, *Colombia's 'La Violencia' and How It Shaped the Country's Political System*. E-International Relations (2013), available at <http://www.e-ir.info/2013/03/20/colombias-la-violencia-and-how-it-shaped-the-countrys-political-system/>.

spurred the civil war was “Bogotazo,” a three-day uprising that left the capital city, Bogotá, in ruins.⁴ In April of 1948, Jorge Gaitan, an extremely popular leader of the Liberal party, was assassinated.

Although the violence was curtailed by the Benidorm Pact, signed by both leaders of the Conservative and Liberal parties, the war had left its mark. *La Violencia*, which lasted from 1948 to 1958, accounts for an atrocious list of acts, including crucifixions, disembowelments, scalplings, and even the bayoneting of infants.⁵ But it was not merely the torture and physical brutality that would go on, but rather the spawning of a revolution that would long outlive the ten-year civil war.

After *La Violencia*, Colombian Communist Party member Manuel “Sureshot” Marulanda worked with Jacobo Arenas to settle in Marquetalia with the intention of forming a society where the rural people were prioritized, as opposed to the elitist conservatives.⁶ Borrowing from the Marxist-Leninist doctrine, the main goal of Marulanda would be to seize control of the country while ousting the Colombian government and also shedding any ties to American imperialism and financial capital monopolies.⁷

On May 27, 1964, the Colombian military attacked the community of Marquetalia. Marulanda and the public, with only 48 fighters, fought back. Seeing the need to gain more members, the community of Marquetalia met with other neighboring towns and held the “First Guerrilla Conference.”⁸ It would not be until two years later, in 1966, that the Second Guerrilla Conference would be held and they would rename themselves the FARC.

The group’s ideology was more simple than it was intellectual; they opposed “the privatization of natural resources and claim to represent the rural poor against Colombia’s wealthy.”⁹ This is in contrast

⁴ *Id.*

⁵ George James, *La Violencia in Columbia: Seeds Were Sown Long Ago*. The New York Times (1985), available at <http://www.nytimes.com/1985/11/09/world/la-violencia-in-columbia-seeds-were-sown-long-ago.html>.

⁶ Daniel Cassman, *Revolutionary Armed Forces of Colombia—People’s Army*. Stanford University, available at <http://web.stanford.edu/group/mappingmilitants/cgi-bin/groups/view/89>.

⁷ *Id.*

⁸ *Id.*

⁹ Danielle Rewick & Claire Felter. *Colombia’s Civil Conflict*. Council on Foreign Relations, available at <http://www.cfr.org/colombia/colombias-civil-coflict/9272>.

to their fellow rebel movement group, the National Liberation Army (known by its Spanish acronym, ELN), which has a stronger base of “students, Catholic radicals, and left-wing intellectuals,” whereas the FARC mainly consisted of “militant communists and peasant self-defense groups.”¹⁰ In addition to the new name, the organization started to place more emphasis on providing medical care and education to the faithful communities, instead of just attacking the government’s military. The new agenda seemed to coincide with the intentions of replacing the current state with an improved one, as they saw fit.

However, these new forms of social expenditures required a source of income in order to be sustainable. As a result, the FARC turned to kidnapping for ransom, mainly targeting politicians and elites.¹¹ Kidnapping not only brought them capital, but it also fit in with their revolutionary ideology to rebel against the elect and elitists.

Their formation continued to grow steadily under the training from Cuba and their supplements of weapons and finances. They also received financial aid from Hugo Chavez’s Venezuelan government.¹²

In addition, during the 1970s, the FARC started investigating legal routes of spreading their influence and accomplishing legitimacy in the political game. The first step was organizing a “general staff and secretariat to provide political direction.”¹³ Then, in the mid-1980s, during peace negotiations with then-President Betancur, the FARC gained more recognition through the creation of a political party called the Patriotic Union. They were successful in getting their own members rapidly elected. Although this was initially effective and a step in the right direction, the party was met with resistance by the more conservative groups. Assassinations took place against elected officials of the Patriotic Union, and the FARC resumed kidnapping and responding with violence as they felt the government’s actions were insufficient, despite the peace accords.¹⁴ As before—and perhaps justifiably so—the FARC was more willing to take the shortcut to try and achieve an end to their means. Doing so jeopardized their legitimacy

¹⁰ *Id.*

¹¹ Cassman, *supra*.

¹² *Id.*

¹³ Angel Rabasa & Peter Chalk, *Colombian Labyrinth: The Synergy of Drugs and Insurgency and Its Implications for Regional Stability* 26 (2001).

¹⁴ Cassman, *supra*.

and once again showed that their motives were aligned with winning at all costs.

All of this negative commotion started to impact the United States adversely, as by 1999, Colombia had increased its coca leaf production by 140 percent from 10 years earlier and was supplying the illegal drug trade in the United States with approximately 80 percent of its cocaine. It was also radically escalating its production of opium poppy, the raw material for heroin.¹⁵ Because of this, an initiative was started called “Plan Colombia.” The United States helped supply Colombia with financial aid to for military action against the insurrections and with herbicides that would kill the coca plants with the hope of decreasing the overall production.¹⁶

During this time, Colombian President Andres Pastrana was attempting to undergo peace negotiations with the FARC. Despite “years of negotiations,” the efforts “failed dramatically” and came to a “definitive end when the FARC hijacked a commercial airliner and kidnapped a sitting senator.”¹⁷ The FARC, at this point in time, simply demonstrated that peace was non-negotiable. Álvaro Uribe, who was a senator at the time and whose own father was killed by the FARC, started working with a private arms group, CONVIVIR. Although this group was able to push back against the FARC, they were accused of abusing the locals and even “killed Colombians deemed sympathetic to guerrillas or who refused to join.”¹⁸

Only a few years later, Uribe became president. Running his campaign on a promise to restore order to the country and deal harshly with the FARC, Uribe, as he did when he was a senator, worked with groups outside of the official Colombian National Army to help combat the resistance. This time, he worked with local, right-wing paramilitary groups. Once again, human rights violations tagged along with

¹⁵ Bruce Michael Bagley, *Drug Trafficking, Political Violence and U.S. Policy in the 1990s*. Colombia in Context, available at http://clasarchive.berkeley.edu/Events/conferences/Colombia/workingpapers/working_paper_bagley.html.

¹⁶ Michael Shifter, *Plan Colombia: A Retrospective*. Americas Quarterly, available at <http://www.americasquarterly.org/node/3787>.

¹⁷ Tom Long, *Peace in Colombia? Lessons from the Failed 1999-2002 Talks*. Latin America Goes Global, available at <http://latinamericagoesglobal.org/2015/12/peace-in-colombia-lessons-from-the-failed-1999-2002-talks>.

¹⁸ Human Rights Watch World Report, 1998. Colombia, available at https://www.hrw.org/legacy/worldreport/Americas-02.htm#P251_56163.

this strategy and tainted the overall efforts to eradicate the FARC. Working in conjunction with the United States to continue the Plan Colombia, “Uribe wielded the military, much improved by U.S. hardware, training and intelligence cooperation, in pursuit of unconditional victory.”¹⁹ He also “beefed up and deployed the coercive institutions of the Colombian state to improve the government’s position on the battlefield.”²⁰ Although the choice was harsh and brutal, it proved to be an extremely effective course of action, because within a matter of years, homicides, kidnappings, and massacres shrunk incredibly.²¹ The initiative “ultimately led to a ‘dramatic’ decrease in members and overall violence.”²² The FARC was decimated; it was brought to its knees.

However, due to the occurrence of the many human rights violations, many peoples’ initial reaction is to speculate that the loss of popular support (i.e., making the FARC so unpopular among the public that people would stop supporting it) would be a better way to lead to “the demise of the campaign.”²³ To most, it appeared that Uribe’s quest to end the FARC became the monster in order to defeat the monster. Many thought that although the FARC was unabashedly immoral, the government was not supposed to descend to their level in combat. If the government endorsed paramilitary groups to fight the war, then by proxy, the blood was also on their hands when it came to human rights violations. A strong militaristic approach had too many negative repercussions, and, thus, it would be better to look at taking away popular support. The most strongly suggested way to lose popular support is capitalizing on “the group’s own miscalculations, especially targeting errors.”²⁴ Poorly aimed violence can quickly “backfire” for the group.²⁵ While all this is true, a deeper look into the issue suggests that Uribe may have been correct all along.

¹⁹ Long, *supra*.

²⁰ *Id.*

²¹ Natalio Cosoy, *Has Plan Colombia Really Worked?* BBC News, available at <http://www.bbc.com/news/world-latin-america-35491504>.

²² BBC News, *What Is at Stake in the Colombian Peace Process?* Available at <http://www.bbc.com/news/world-latin-america-19875363>.

²³ Friedman *et al.* *Terrorizing Ourselves: Why U.S. Counterterrorism Policy Is Failing and How to Fix It* 18 (2010).

²⁴ *Id.*, at 18.

²⁵ *Id.*, at 18.

It is important to remember that before Álvaro Uribe even became president, in 1999, one-quarter of the entire Colombian population protested in large cities around Colombia, “No Mas” (No More). The FARC was *already* extremely unpopular. Their membership during this time had peaked at 18,000, and their kidnappings had reached 3,000.²⁶ The FARC had a method to gaining the following that it had, but the method was extremely unpopular.

As was previously mentioned, the FARC, in the late 1970s, began to fund its activities by getting involved with the drug trade. One of the reasons for doing so was because other drug traffickers were being protected by enemy paramilitaries, and they began to move into regions closer to the FARC. As they did, drug cultivation progressively grew into crucial parts of the local economies, and in order to keep “agricultural migrants,” guerrillas began to grow and protect the drug crops.²⁷ This, however, grew into a cash cow for the FARC as it ended up building a consistent yearly revenue of more than half a billion dollars.²⁸ With all this capital, it was very simple to attract isolated villages. With this rapid growth of power and numbers, the FARC had “taken control of some 100 municipalities,” which is roughly 10 percent of all Colombian municipalities. As a natural consequence, “kidnappings and assassinations and homicides were skyrocketing.”²⁹ Now factor in Pastrana’s failed peace negotiations, and the situation starts to make sense. The FARC was becoming too big to negotiate with; they were too financially successful to worry about a popularity contest among the people. Even earlier, when President Betancour attempted to facilitate a transition from guerrilla group to political party, it came to no avail. It was time to empower the state through the military as it is hard to tarnish a group’s reputation when the people you are trying to persuade are the ones benefiting financially from said group.

Although some may praise current President Manuel Santos for his advancement in peace negotiations, it is important to note that the progress is largely owed to “the success of Uribe’s war against FARC.”³⁰ This success is also supported by the fact that “Pastrana’s peace efforts

²⁶ Cassman, *supra*.

²⁷ Rabasa & Chalk, *supra*, at 26.

²⁸ Cassman, *supra*.

²⁹ Guy Burton & Ted George Goertzel. *Presidential Leadership in the Americas since Independence 183* (2016).

³⁰ Long, *supra*.

coincided with poor military performance,” as he negotiated from a “position of military weakness.”³¹ Although violence is extremely unpopular and very consequential, it is extremely difficult to take out a guerrilla army if there is no action to back it up. Such consequences as “undermined civil liberties” will be more than likely, but a perspective must be taken in terms of cost-benefit analysis and what is *received* in return for what is *given*.³² Recently, when the people of Colombia could vote either to ratify the peace agreement with the FARC rebels or reject it, they rejected it. After 50 years of bitter conflict, the people of Colombia *still* disagree with the terms that have been set to establish peace as they see it as unfair and favoring the rebels.³³

President Santos said that the accord between the FARC and the Colombian government would only be valid if “Colombian voters gave their blessing.”³⁴ However, now he is straying from his promise. Although the accords have been changed, Uribe claims that they were merely “cosmetic” and that the peace deal would, overall, undermine Colombia’s democracy.³⁵ Although it is urgent that peace be made, the FARC is now extremely weak and is somewhat at the mercy of the Colombian government because of Uribe’s previous efforts. It is not only Uribe’s opinion that matters, however; the convictions of the people who rejected the deal may matter even more. Following the will of the people would more than likely mean returning to attacks if they were deemed necessary. Since the FARC is down in membership, a much easier solution would be calculated, low-collateral damage attacks that could weaken them into complete submission.

After more than 220,000 dead and 7 million displaced by this conflict, one would think that those of the guerrilla army would receive jail sentences instead of government seats.³⁶ With Uribe’s 80-percent approval rating and Colombians voting “no” to the peace accords, it

³¹ *Id.*

³² Friedman, *supra*, at 18.

³³ Nick Miroff, *Colombians Vote against Historic Peace Agreement with FARC Rebels*. Washington Post, available at https://www.washingtonpost.com/world/colombians-vote-on-historic-peace-agreement-with-farc-rebels/2016/10/02/8ef1a2a2-84b4-11e6-b57d-dd49277af02f_story.html.

³⁴ Miroff, *supra*.

³⁵ Associated Press, *Colombian Government to Sign New Peace Deal with Farc Rebels*. The Guardian (2016), available at <https://www.theguardian.com/world/2016/nov/22/colombia-farc-peace-deal-new-version-rejected>.

³⁶ Miroff, *supra*.

remains clear that this option would be preferable for them.^{37,38} However, President Santos passed his revised peace agreement through the congress rather than allowing the people to vote on it again.³⁹ As many were concerned, leaders of the FARC refused to agree to terms stipulating that their leaders would be subject to jail sentences.⁴⁰

The controversy remains regarding what should receive imminent priority: peace or justice. The FARC will not concede to the accords unless their demands are met. It seems under most circumstances that this would be reasonable; seize the opportunity for peace while it is still available. But we are forgetting that this is not just about a *revolution*. This is about an *evolution* that took place with the FARC. After stemming from left-wing values, they progressively morphed into a world-class drug cartel that also made a great profit through ransoming victims of their hijackings and kidnappings (even after they promised to stop).⁴¹ Again, they have been listed on the U.S. Department of State's "Foreign Terrorist Organizations" for nearly 20 years.⁴² The FARC is not just a counter-culture, governmental revolutionary movement. Their mannerisms are mafia-esque, and these same leaders want "guaranteed" government seats in Colombia's congress. This is an offense in many ways as it not only gives these criminals a "get out of jail free" card, but also allows them to obtain an active role in participating in the government's lawmaking. The quest for peace should not become so desperate as to suffocate the breath of justice.

³⁷ John Otis, *Colombia: Cloud of Scandal Haunts Uribe's Legacy*. Time, available at <http://content.time.com/time/world/article/0,8599,2035765,00.html>.

³⁸ Chen Kelly & Natalie Gallón, *Colombians Reject Peace Deal with the FARC*. CNN, available at <http://www.cnn.com/2016/10/02/americas/colombia-farc-peace-deal-vote/>.

³⁹ The Guardian, *Colombia's Government Formally Ratifies Revised Farc Peace Deal*, available at <https://www.theguardian.com/world/2016/dec/01/colombias-government-formally-ratifies-revised-farc-peace-deal>.

⁴⁰ *Id.*

⁴¹ Cassman, *supra*.

⁴² "U.S. Department of State, *supra*."



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