

**NATIONAL SECURITY COUNCIL RECOMMENDATION:**  
**TO CREATE A NATIONAL SECURITY COUNCIL TASK FORCE (NSCTF) TO**  
**IDENTIFY AND PUNISH THE ACTORS, AIDERS, AND**  
**ABETTORS OF THE ISIS GENOCIDE**

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**Executive Summary**

This proposal calls for the creation of a National Security Council task force to coordinate an inter-agency effort to identify the aiders and abettors of the ISIS genocide and related terrorism, and to recommend courses of action to the National Security Advisor, the White House, relevant agency heads, and others designated by the Trump Administration. It also suggests that a Task Force Findings Review Board could be created to review task force findings and make recommendations to the National Security Advisor to pursue the aiders and abettors through the prudent facilitation of civil litigation. Such litigation would advance U.S. national security and humanitarian interests by punishing the aiders and abettors of ISIS and other terrorist organizations, thereby deterring such conduct by sympathizers in the future. This litigation may be facilitated by the declassification of U.S. government information, in accordance with the procedures for the declassification of national security information.

This paper proposes an aggressive course of action for the Trump administration, the National Security Advisor, and those agencies and institutions charged with safeguarding America's security interests.

## **Recommendation**

Create a National Security Council Task Force (NSCTF) to focus the resources of the federal government in an effort to identify the network of supporters who contributed to the ISIS genocide and related terrorism; to make recommendations about criminal charges, assets seizures, or other action against the aiders and abettors of genocide, terrorism, and related crimes; to further government action that will punish aiders and abettors and deter future support for ISIS and ideologically affiliated organizations.

The National Security Advisor might also consider creating a National Security Council Task Force Review Board that would consist of national security and human rights experts who would review the findings and recommend courses of public or private action.<sup>1</sup>

### **Background: ISIS, Genocide, and Terrorism Financing**

On March 17, 2016, U.S. Secretary of State John Kerry acknowledged the unanimous (393-0) resolution by the U.S. House of Representatives and declared that ISIS is committing genocide against Yazidis, Christians and other groups in Iraq and Syria.<sup>2</sup> His declaration was only the second time since World War II that the U.S. government officially recognized that a genocide was currently underway. Unfortunately, the genocide continues and expands as ISIS utilizes its connections to international *jihadi* and organized crime networks to engage in the trafficking of persons, cultural treasures and natural resources such as oil.

ISIS is an outgrowth of Al Qaeda's terrorist network. Along with other organizations that share its fundamentalist-terrorist ideology<sup>3</sup>, it is best understood as a global *jihadi* network that includes terrorists, businesses, bankers, clerics, academics and military officers. With significant ties to organized crime and the international banking sector, it constitutes a grave national security threat not only to the U.S. homeland, but also to America's allies, whether states or citizens, in the Middle East and globally. ISIS and the global extremist network of terrorist organizations will continue to pose a threat long into the future as long as it has access to the substantial resources of petro-wealthy individuals and entities in the Middle East who use formal and informal banking channels and extremist-linked charities to promote extremism and terrorism around the world.

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<sup>1</sup> A National Security Council Task Force Findings Review Board would make recommendations to advance U.S. national security interests as they relate to ISIS, its aiders and abettors, and public-private action that might punish and deter those who support terrorism; to review NSCTF investigative findings with respect to actors, aiders, and abettors of ISIS and ideologically affiliated organizations; to facilitate, where prudent and feasible, civil litigation against those persons or entities guilty of aiding and abetting ISIS genocide and terror in order to advance compelling national security and humanitarian interests.

<sup>2</sup> H. Con. Res. 75: "Expressing the sense of Congress that the atrocities perpetrated by ISIL against religious and ethnic minorities in Iraq and Syria include war crimes, crimes against humanity, and genocide."; S.Res.340: " (unanimous consent); S.Res.340: "[I]t is the sense of the Senate that-- (1) the atrocities perpetrated by the Islamic State of Iraq and the Levant (ISIL) against Christians, Yezidis, Shi'a, and other religious and ethnic minorities in Iraq and Syria constitute war crimes, crimes against humanity, and genocide" (July 7, 2016) (unanimous consent)..

<sup>3</sup> Assaf Moghadam, Ph.D., *The Salafi-Jihad as a Religious Ideology*, CTC SENTINEL 1:3 (Combating Terrorism Center at West Point, February 2008).

ISIS has become largely self-sufficient financially. It raises revenue through kidnapping and extortion, human trafficking, black market sales of oil, commodities and cultural artifacts, and other methods. Private individuals have provided and likely continue to provide substantial funds to support the worldwide extremist network of terrorist organizations and ideologically sympathetic organizations. This is generally done through wire transfers via an elaborate network of shell organizations and financial institutions that are insufficiently regulated by local governments and banks. Individuals who gave money to ISIS, transacted business with them, or otherwise lent support to them are regarded by U.S. law as aiders and abettors of terrorism – and perhaps of genocide. Such crimes may, of course, be punishable by government prosecution. Civil litigation by private parties may also be an effective remedy.

The lack of consideration given to the role of civil litigation in curtailing international terrorism is surprising. Congress has enacted and significantly expanded (see below) several statutes designed to subject those who fund terrorism to suits in American courts. Given the increase of terrorism affecting the United States, one would expect these laws to give rise to any number of suits in the litigation-friendly climate in the United States. Civil actions based on these laws have not been pursued to the degree necessary either to advance U.S. national security interests by punishing and deterring support for genocidal terrorist organizations such as ISIS, or to seek financial remedies for their victims.

Whether by state action or civil litigation or both, U.S. national security interests are served by pursuing the aiders and abettors of terrorism, genocide and other war crimes. Whether filed by prosecutors, government lawyers or private parties, such litigation is designed to be punitive, to restore victims to justice and to deter future funding of terrorism and genocide. Across a variety of other contexts, civil litigation has served as a powerful tool for punishing economic actors who cause harm to others. The efforts of regulators, intelligence analysts and prosecutors, no matter how capable, are limited by political priorities as well as access to human and financial resources. Properly-focused civil litigation would therefore fill important gaps in the national effort against ISIS by incentivizing private actors to seek recourse for injuries suffered. It is a powerful deterrent, especially when paired to important national interests.

Given the importance of the war against terrorism, it is all the more curious that we have failed to utilize our strongest weapon against terrorism: the global reach of our financial and legal systems. The same people who fund terrorism are often those who utilize the protections of American laws: conducting business operations, owning real estate, bank accounts, or other financial assets in the United States.

### **National Security and Human Rights: Pursuing Actors, Aiders, and Abettors of Genocide and Terrorism**

It is in the national security interests of the United States to pursue and destroy ISIS. There is a military dimension, of course. And while the political objectives and ideologies of ISIS and AQ and its affiliates may differ, they are rooted in the same violent, militant ideology. So long as the financial and ideological resources exist to channel recruits into direct terrorist action, ISIS and other parts of the *Salafi-jihadi* network (such as Nigeria's *Boko Haram* and Indonesia's *Jemaah Islamiyah*) will always have recruits. It is therefore a national security imperative to pursue the ideological and financial supporters that make ISIS possible, to identify and punish past supporters, and to deter future supporters.

National security and human rights rarely overlap in a manner that permits the development of a clear strategy. With respect to ISIS and its ideological affiliates, however, the threats against America's citizens, interests, and allies (nations and peoples) are aligned. To destroy ISIS and cut off the financing that underwrites both its acts of terrorism and the spread of its underlying ideology, the U.S. must pursue an aggressive strategy that goes beyond simply eliminating terrorists who subscribe to its violent ideology and claim territory in its name. We must pursue and punish those who aid and abet the ongoing recruitment of new terrorists as well as the terrorism and genocide that the terrorist network continues to perpetrate against the United States and its allies.

Secretary Kerry's March 17, 2016 statement on ISIS and genocide rightly made it a priority for the U.S. to coordinate "with our coalition partners to choke off [ISIS's] finances."

Informed observers have known for decades that the financing of terrorism and extremist ideology emanates from the Persian Gulf<sup>4</sup>. Since the emergence of ISIS, numerous sources have documented the widespread financial support for ISIS,<sup>5</sup> including that provided by putative allies<sup>6</sup>, along with general ideological support for terrorism and extremism.<sup>7</sup> In the most favorable analysis, the nations of the Gulf region have been negligent.<sup>8</sup> Kamel Daoud put the matter bluntly in a *New York Times* op-ed, calling Saudi Arabia "an ISIS that has made it," noting that "In its struggle against terrorism, the West wages war on one, but shakes hands with the other."<sup>9</sup>

This financial and ideological backing has resulted in widespread terrorism, directed against Muslims, Yazidis, Christians, and others across the Middle East, Africa and South Asia, as well as attacks against civilians in the United States and Western Europe. In the ISIS Genocide alone, thousands have been executed in gruesome fashion, children have been gang raped, defenseless civilians imprisoned and tortured, and child-soldiers are being indoctrinated in an Islamist ideology that demands the perpetration of violence worldwide.<sup>10</sup>

As Juan Zarate wrote in *Treasury's War*, "Distinguishing between some of the international *Wahhabi* organizations and terrorist support networks was nearly impossible, especially when support for Al Qaeda

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<sup>4</sup> "The problem was that the Saudis had built an infrastructure of donors, charities, and sponsors in the 1980s to help the Afghan mujahideen and foreign Islamic fighters in their opposition to the Soviet invasion of Afghanistan. That infrastructure still existed, and violent jihadist causes took full advantage of it. Fighters battling the Russians in Chechnya, the Israelis in the Palestinian territories, the Americans in Afghanistan, and apostate or infidel regimes in Asia reaped the rewards of this system." *Treasury's War*, Juan Zarate, page 68.

<sup>5</sup> "Who's Funding ISIS? Wealthy Gulf 'Angel Investors,' Officials Say," Robert Windrem, NBC News, September 21, 2014.

<sup>6</sup> "America's Allies Are Funding ISIS," Josh Rogin, The Daily Beast, June 14, 2014.

<sup>7</sup> "Saudis and Extremism: 'Both the Arsonists and the Firefighters,'" Scott Shane, New York Times, August 25, 2016. This article documented the relationship between Wahhabism, the fundamentalist religious ideology that provides the basis for much of the extremism and terrorism in the world.

<sup>8</sup> "Qatar and Terror Finance – Part I: Negligence," David Andrew Weinberg, Center on Sanctions & Illicit Finance, Foundation for the Defense of Democracies, December 2014.

<sup>9</sup> "An ISIS That Made It," Kamel Daoud, The New York Times, November 20, 2015.

<sup>10</sup> H. Con. Res. 75, in recognizing genocide noted that the "atrocities against Christians, Yezidis, and other minorities have included mass murder, crucifixions, beheadings, rape, torture, enslavement, the kidnaping of children, and other violence deliberately calculated to eliminate their communities from the so-called Islamic State."

and support for spreading *Wahhabi* beliefs seemed to blend together so seamlessly. ... It was ultimately about challenging a fundamental element of Saudi policy by constricting how the Saudis and their institutions funded activities abroad.”<sup>11</sup> (There are of course those in the Gulf states who share America’s concerns about ISIS and related terrorist organizations and they should share the common objective of rooting out the support network of terrorism and extremism.)

Pursuing the actors, aiders, and abettors of ISIS’s genocide and terrorism is an unambiguous example of the merging of U.S. interests and our Nation’s respect for freedom of conscience and equality of citizenship. A well-coordinated effort to identify, punish, and deter those who directly or indirectly contribute to genocidal terrorism through all means at the disposal of the U.S. government should be among the highest priorities of the Trump administration.

### **Creation of a National Security Council Task Force to Identify and Punish the Actors, Aiders and Abettors of ISIS Genocides**

The White House should create the National Security Council Task Force to Pursue Actors, Aiders, and Abettors of ISIS and Other Terrorist Organizations (NSCTF).

The NSCTF mandate would be to identify the actors, aiders, and abettors of ISIS and related *Salafi-jihadi* terrorism and genocide; to oversee interagency canvassing of classified information that may lead to the identification of actors, aiders, and abettors; to meet weekly with and direct the findings of interagency staff; to submit findings to an *ad hoc* National Security Council Task Force Findings Review Board; to review classified information that may lead to federal prosecution, the facilitation of civil litigation, or both; to make recommendations to the National Security Advisor on prosecution and declassification of intelligence as may be consistent with U.S. national security interests.<sup>12</sup>

As discussed earlier, civil litigation provides an effective counterpart to government action. But laws alone are not enough. Here, the anti-terrorism laws drafted by Congress have made little difference because lawyers have been unable to get access to the necessary evidence, which is often classified and not subject to subpoena or discovery requests. This is akin to Congress barring employment discrimination through Title VII but requiring that all corporate human resource matters be classified and beyond the reach of plaintiffs and their lawyers. For this reason, statues such as the Anti-Terrorism Act (18 U.S.C. § 2331) have been largely ineffective at punishing those who have funded ISIS and Al Qaeda.

If it is determined by the National Security Advisor that the declassification of information would not compromise “intelligence sources or methods, or cryptology,”<sup>13</sup> then the National Security Advisor may make a recommendation, with the concurrence of the Director of National Intelligence, in the interests of

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<sup>11</sup> Juan Zarate, *TREASURY’S WAR: The Unleashing of a New Era of Financial Warfare*, 2013, page 69.

<sup>12</sup> Executive Order 13526- Classified National Security Information, Sec. 3.1(a)(4)(d) “It is presumed that information that continues to meet the classification requirements under this order requires continued protection. In some exceptional cases, however, the need to protect such information may be outweighed by the public interest in disclosure of the information, and in these cases the information should be declassified. When such questions arise, they shall be referred to the agency head or the senior agency official. That official will determine, as an exercise of discretion, whether the public interest in disclosure outweighs the damage to the national security that might reasonably be expected from disclosure.”

<sup>13</sup> Executive Order 13526, “Classified National Security Information,” December 29, 2009

American national security, to recommend declassification. This would serve a compelling and obvious national security interest – punishing the aiders and abettors of terrorist organizations. (Federal prosecution or prosecution by other nations against the aiders and abettors of terrorism and genocide would not, of course, be precluded by such actions.)

### **NSCTF Composition**

The NSCTF would be headed by a Director and consist of a Deputy Director, Special Liaison to the Department of the Treasury, Special Liaison to the Department of State, Special Liaison to the Intelligence Community, Special Liaison to Congress, and a small support staff. The Task Force Director (Director) and task force would report to the National Security Advisor and manage, with the Deputy Director, the research and investigative findings of the Special Liaisons to Treasury, State, the Intelligence Community, and Congress.

The Special Liaisons would have broad research and investigative authority on behalf of the National Security Council. The Special Liaisons would work with their host agencies to identify that information that may further prosecution or civil litigation against the actors, aiders, and abettors of terrorism and genocide. This information would be shared with the NSCTF for review by the Director, Deputy Director, and the designees of the National Security Advisor. Recommendations on action would then be made to the National Security Advisor.

### **National Security Council Task Force Findings Review Board**

The National Security Advisor may, if he deems it prudent and advisable, appoint members to an *ad hoc* Task Force Findings Review Board. The purpose of this panel would be to review report findings and make recommendations to the National Security Advisor. The Review Board should consist of members of the National Security Council (NSC) and cleared representatives from non-governmental organizations with expertise in law, national security, and human rights.<sup>14</sup>

### **U.S. Government Resources:**

#### **State, Treasury, Justice, the Intelligence Community, and Congress**

The principal actors of ISIS and related *Salafi-jihadi* organizations, their military leaders, fighters and sleepers, are the most visible manifestation of the direct national security threat. The aiders and abettors of ISIS and related terrorist organizations are not so readily known. Insufficient resources have been directed toward identifying them and bringing them to justice. It is estimated that private individuals, particularly in places such as Qatar, Saudi Arabia, Kuwait, and Turkey have contributed hundreds of millions of dollars – perhaps more – to ISIS and affiliate Islamist terrorist organizations. Vast financial resources continue to fund ideological extremism, which often leads to terrorism, though and the means to deter such contributions have thus far proved insufficient.<sup>15</sup>

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<sup>14</sup> Where appropriate and prudent, depending on the scope and mandate, the Review Board could actually play a role in preventing frivolous litigation and ensuring the integrity of process in a public-private role.

<sup>15</sup> See, e.g., Chris Chaplin, *Imagining the Land of the Two Holy Mosques: The social and doctrinal importance of Saudi Arabia in Indonesian Salafi discourse*, ASEAS – AUSTRIAN JOURNAL OF SOUTH-EAST ASIAN STUDIES, 7(2), 217-236 (2014); Hayat Alvi, *The Diffusion of Intra-Islamic Violence and Terrorism: The Impact of the Proliferation of Salafi/Wahhabi Ideologies*, Middle East Review of International Affairs (Online) 18.2 (Summer 2015) 38-50.

Legislation since September 11, 2001 gives vast powers of oversight and regulation to the U.S. government. This has implications for both government and civil legal actions.

U.S. government agencies charged with protecting national security interests are likely in possession of information that would permit aggressive pursuit of the aiders and abettors of ISIS and their *Salafi-jihadi* terrorist allies. It has long been common knowledge, however, that diplomatic and other strategic priorities sometimes inhibit the U.S. government's ability to develop a coherent strategy that targets both *jihadi* fighters and those who support the spread of its genocidal, terrorist ideology<sup>16</sup>.

This is especially true in the Middle East, where tenuous relationships with states that support terrorist networks often require the delicate balancing of interests. Where a state does not, for example, comply with requests to add persons to terrorist watch lists [Qatar], or permits Al Qaeda's Syrian branches to raise funds openly [Saudi Arabia], American diplomats face difficulties due to diplomatic relationships in a way that private party actors – who may simultaneously advance compelling national security and humanitarian interests – are not. The prudent facilitation of civil litigation, governed by public-private oversight and direction, may advance these interests.

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Several key agencies play a critical role in safeguarding America and protecting its interests, values, and allies abroad. The NSCTF will coordinate efforts with these agencies to identify actors, aiders, and abettors; review documents related to persons or organizations that may have aided and abetted ISIS; make recommendations on pursuing federal prosecution, asset seizures, sanctions, or facilitating other actions; generally marshal U.S. government resources to identify and punish those who aided and abetted genocide and related terrorist crimes.

### **Department of the Treasury**

The Department of the Treasury plays a crucial role in identifying illegal financing of terrorism and extremism worldwide and offers the U.S. government broad authority to interdict and deter terror financing. The Bush administration undertook swift action to refocus its resources to fight terrorism. The Patriot Act (2001) granted “the Secretary of the Treasury the authority, upon finding that reasonable grounds exist for concluding that a foreign jurisdiction, institution, class of transaction, or type of account is of ‘primary money laundering concern,’ to require domestic financial institutions and financial agencies to take certain ‘special measures’ against the entity of primary money laundering concern.”

The Office of Foreign Assets Control (OFAC) at Treasury has played a particularly crucial role.<sup>17</sup> “OFAC power,” as Juan Zarate wrote in *Treasury's War*, is “an inherently international power because of the importance of the American banking system and capital markets.”

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<sup>16</sup> See, e.g., Editorial Board, “The Unlikeliest of Coalitions: Can Adversaries Become Allies to Fight ISIS?”, *New York Times*, Sunday Review, September 30, 2014.

<sup>17</sup> OFAC “administers and enforces economic and trade sanctions based on US foreign policy and national security goals against targeted foreign countries and regimes, terrorists, international narcotics traffickers, those engaged in activities related to the proliferation of weapons of mass destruction, and other threats to the national security, foreign policy or economy of the United States. OFAC acts under Presidential national emergency powers, as well as authority

The Financial Crimes Enforcement Network (FinCEN) at Treasury has seen an increase in money laundering activity as an unintended consequence of the Bank Secrecy Act amendments in the Patriot Act, and the way those amendments have been enforced. Bank derisking has not only pushed many bad actors underground, it has slowed and in some cases reversed the spread of access to banking services in the developing world. Free enterprise capitalism is our greatest long term strategy for peace. Reform of this office is essential to both unleashing the banking sector as President-Elect Trump has promised to do, and catching terrorists and other money launderers. The Special Liaison to Treasury would provide essential communication between the Task Force and Treasury during the Trump administration's reform of this office.

Treasury also spearheaded interagency coordination to fight terrorism by identifying illicit terrorist financing through the creation of The Financial Action Task Force (FATF) and other task forces.

### **Department of State**

The principal function of the Department of State is diplomacy. Several bureaus and offices at State also have counterterrorism, intelligence, and criminal justice functions. In particular, State's Bureau of Counterterrorism and Countering Violent Extremism (CT),<sup>18</sup> Bureau of Intelligence and Research (INR),<sup>19</sup> and the Office of Global Criminal Justice (GCJ)<sup>20</sup> are vital to national security and to advancing U.S. interests and values.

### **Intelligence Community**

The purpose of the U.S. Intelligence Community (IC) is to "provide the President and the National Security Council with the necessary information on which to base decisions concerning the conduct and development of foreign, defense and economic policy, and the protection of United States national interests from foreign security threats."<sup>21</sup> The IC is an agglomeration of intelligence agencies overseen by the Office of the Director of National Intelligence, which reports to the President and the National Security Council.<sup>22</sup>

The various agencies of the IC, civilian and military, have different mission focuses that may be of use to a comprehensive approach to punishing and deterring the actors, aiders, and abettors of terrorism and

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granted by specific legislation, to impose controls on transactions and freeze assets under U.S. jurisdiction. Many of the sanctions are based on United Nations and other international mandates, are multilateral in scope, and involve close cooperation with allied governments."

<sup>18</sup> CT's mission is to "promote U.S. national security by taking a leading role in developing coordinated strategies and approaches to defeat terrorism abroad and securing the counterterrorism cooperation of international partners."

<sup>19</sup> INR's "primary mission is to harness intelligence to serve U.S. diplomacy. Drawing on all-source intelligence, INR provides value-added independent analysis of events to U.S. State Department policymakers; ensures that intelligence activities support foreign policy and national security purposes; and serves as the focal point in the State Department for ensuring policy review of sensitive counterintelligence and law enforcement activities around the world."

<sup>20</sup> GCJ "advises the Secretary of State and the Under Secretary of State for Civilian Security, Democracy, and Human Rights on issues related to war crimes, crimes against humanity, and genocide. In particular, the Office helps formulate U.S. policy on the prevention of, responses to, and accountability for mass atrocities. To this end, the Office advises U.S. Government and foreign governments on the appropriate use of a wide range of transitional justice mechanisms, including truth and reconciliation commissions, lustrations, and reparations, in addition to judicial processes."

<sup>21</sup> Executive Order 12333--United States intelligence activities

<sup>22</sup> Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA)



genocide. The National Geospatial Intelligence Agency (NGA), for instance, may have imagery that reveals corporations purchasing black market petrol from ISIS near the Syria border. Such corporations could be prosecuted or sued for aiding and abetting terrorism and genocide and their assets seized. The NSCTF, upon finding this information, could share this with the Review Board and a recommendation may be made to the National Security Advisor to pursue prosecution or facilitate civil litigation by declassifying the information. Similarly, State or Treasury may have information about illicit fund transfers through financial institutions in the Middle East. Here again, the NSCTF, upon discovering this information, at the direction and in coordination with the National Security Advisor's designees, could make a recommendation to the National Security Advisor to prosecute or share with plaintiffs seeking redress. (In all instances, as noted, declassification would not occur if it would compromise sources or methodologies.)

Like the diplomatic community, the intelligence community may be disinclined to see relationships with foreign countries strained. Like the diplomatic community, it may also be institutionally inclined to protect agency prerogatives, interests, and programs. These are prudential determinations to be made at the highest level of government, by elected officials and their designees, who alone have the authority to manage and set policy priorities.

### **Department of Justice**

The Justice Department's National Security Division's (NSD) Office of Intelligence (successor to the Office of Intelligence Policy and Review (OIPR)) ensures that "Intelligence Community agencies have the legal authorities necessary to conduct intelligence operations, particularly operations involving the Foreign Intelligence Surveillance Act (FISA); that the office exercises meaningful oversight over various national security activities of Intelligence Community agencies; and that it can play an effective role in FISA-related litigation. The office has grown from fewer than 20 lawyers in 2000 to approximately 100 lawyers today and has structured itself into three specific sections aligned with the office's core functions: operations, oversight and litigation."

## United States Congress

Through its constitutional powers over appointments, policy, and the purse, Congress has extensive powers to oversee and influence foreign policy. It does so through briefings and congressional oversight hearings into agency compliance with legislation and resolutions. In recent years Congress has played an active role in asserting the interests and values of the American people in U.S. foreign policy. This is sometimes at odds with the inclinations of the foreign policy establishment and the complex of Washington, DC-based interest and lobby groups, foreign and domestic, that seek to influence U.S. foreign policy. Congressional action has also been resisted by various executive agencies, which seek to safeguard their institutional prerogatives.

The role of Congress in keeping federal agencies focused on national security interests, protecting authentic allies, whether states or peoples (particularly in the Middle East), and recognizing egregious human rights violations remains vital to the prudent conduct of U.S. foreign policy.

Congress has introduced numerous mechanisms that are designed to empower both the national security apparatus and citizens of the U.S. to pursue the actors, aiders, and abettors of terrorism. The task ahead is not so much to introduce new legislation, but to utilize that which exists in a concerted manner to advance U.S. national security interests.

### **A New Front? Facilitating Civil Litigation: Advancing National Security and Humanitarian Interests**

Civil litigation offers an efficient means for punishing the aiders and abettors of terrorism and genocide, deterring future terrorist financing, and restoring the victims of genocide to justice. There are several federal and state laws that allow private parties to bring civil suits in federal court in the United States against parties who have funded terrorism. Initially seldom used, these vehicles have become more widely used in the aftermath of September 11, 2001, and have garnered judgments in the billions of dollars. Some of the legal mechanisms allowing for recovery include the Anti-Terrorism Act<sup>23</sup>; the Terrorism Risk Insurance Act of 2002 (TRIA)<sup>24</sup>; the Alien Tort Act (28 U.S.C. § 1350)<sup>25</sup>; 28 U.S.C. § 1605A<sup>26</sup>; and 28 U.S.C. § 1610(a)<sup>27</sup>. Recent precedent in civil lawsuits provides further grounds on which the victims of terrorism and genocide might bring suit.

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<sup>23</sup> The Anti-Terrorism Act (ATA) (18 U.S.C. § 2333) allows American citizens to sue for injuries resulting from acts of international terrorism. Significantly, the definition of terrorism is broad and includes acts that are “in violation of the criminal laws of the United States or any state.” This essentially extends to the entire penal code of the U.S. and converts it into tort actions capable of recovery.

<sup>24</sup> § 201(a) of the Terrorism Risk Insurance Act (2002) authorizes the execution of judgments against “blocked assets of [a] terrorist party (including the blocked assets of any agency or instrumentality of that terrorist party”).

<sup>25</sup> The Alien Tort Act (28 U.S.C. § 1350) allows non-citizens to bring suits based on violations of customary international law to include acts of violence and terrorism.

<sup>26</sup> 28 U.S.C. § 1605A allows American nationals to file suits against “a foreign state for personal injury or death” that was caused by acts of terrorism, including extrajudicial killing ... hostage taking, or the provision of material support” to terrorist activities.

<sup>27</sup> 28 U.S.C. § 1610(a) permits the holder of a judgment against a foreign state to execute on property of the foreign state “used for commercial activity in the United States” upon satisfaction of several conditions.

The fact that these statutes have not obtained widespread traction is unusual given the prominent role of civil litigation as a forceful deterrent to actions covering the spectrum of federal law. For better or worse, civil litigation – often in the form of class action lawsuits or mass torts – has been demonstrably more effective in punishing and deterring certain behaviors than government regulation. Indeed, whole swaths of human activity in the U.S., from employment law to manufacturing to medical care, have been shaped (again for better or worse) by civil litigation. It is therefore all the more curious that the American government seems to be leaving unsheathed one of its most powerful weapons against terrorism: Lawsuits.

While civil litigation has been underutilized by the victims of terrorism, recent precedent and the growing number of terrorist and genocide victims now residing in the U.S. suggest that civil lawsuits are likely to be forthcoming, perhaps in substantial numbers. Among the relevant rulings *Linde v. Arab Bank PLC*,<sup>28</sup> *Bank Markazi (Central Bank of Iran) v. Peterson*,<sup>29</sup> *Strauss v. Credit Lyonnais*,<sup>30</sup> *Boim v. Holy Land Foundation for Relief and Development*,<sup>31</sup> *Chiquita Brands International Derivative Litigation*,<sup>32</sup> *Hausler v. JP Morgan Chase*,<sup>33</sup> and others.

These lawsuits advanced the interests of the U.S. by punishing aiders and abettors of terrorism to the tune of billions of dollars, undoubtedly deterring future terrorist funding in the process. The overwhelming success that victim communities have had with these lawsuits has been due to cooperation with the Department of the Treasury, specifically OFAC (Office of Foreign Asset Control). Many of the assets sought in civil suits have already been seized by OFAC, so a party must engage Treasury in addition to bringing a suit. Civil litigation offers one means by which the U.S. can punish the financiers of terrorism

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<sup>28</sup> In *Linde v. Arab Bank PLC*, 97 F. Supp.3d 287 (S.D.N.Y. 2016), the Southern District of New York upheld a jury verdict against a Jordanian bank on behalf of 24 American plaintiffs who had family members killed in terrorist attacks in Israel. The plaintiffs alleged that the defendants provided financial services to Hamas from 2000–2005.

<sup>29</sup> In *Bank Markazi (Central Bank of Iran) v. Peterson*, 136 S.Ct. 1310 (2016), the Supreme Court allowed representatives of hundreds of Americans killed in Iranian-sponsored terrorist attacks to bring suit under the Terrorism Risk Insurance Act (TRIA) and the Iran Threat Reduction and Syria Human Rights Act of 2012. The plaintiffs sought turnover of \$1.75 billion in assets based on unpaid compensatory damages judgments against Iran stemming from terrorist attacks. Such assets were held by the Iranian central bank.

<sup>30</sup> In *Strauss v. Credit Lyonnais*, 925 F.Supp.2d 414 (E.D.N.Y. 2013), family members of 15 victims of terrorist attacks in Israel brought successful actions against a French bank under the ATA for providing material support to foreign terrorist organizations responsible for attacks against their family members. Following summary judgment, the case settled for an undisclosed amount.

<sup>31</sup> In *Boim v. Holy Land Foundation for Relief and Development*, 549 F.3d 685 (7th Cir. 2008), the Seventh Circuit, sitting en banc, affirmed a district court judgment exceeding \$156 million dollars (accounting for treble damages and attorneys' fees) against three organizations associated with Hamas. The plaintiffs were the parents of a teenager with dual Israeli-American citizenship who was shot to death at a bus stop near Jerusalem. They brought suit under 18 U.S.C. § 2333. Sitting en banc, the Seventh Circuit held that liability under the statute extends also to organizations that provide money to terrorist groups.

<sup>32</sup> In *Chiquita Brands International Derivative Litigation*, 690 F. Supp.2d 1296 (S.D. Fla. 2010), the estates of American citizens kidnapped and murdered by terrorists in Columbia recovered against Chiquita because the company made payments to the terrorist group in exchange for the protection of its workers. This case appears to have settled for an undisclosed amount prior to trial.

<sup>33</sup> In *Hausler v. JP Morgan Chase*, 740 F.Supp.2d 525 (S.D.N.Y. 2010), an estate brought suit against JP Morgan to release seized assets belonging to Republic of Cuba and in the bank's possession. The court held that the assets were subject to execution under TRIA.

and the perpetrators of genocide and other crimes. American tort law also allows for suits against countries, who are typically immune from suit in foreign courts for official actions. The most notable cases are *Kilburn v. Socialist People's Libyan Arab Jamahiriya*,<sup>34</sup> *Licci v. Lebanese Canadian Bank*,<sup>35</sup> and *Leibovitch v. Islamic Republic of Iran*<sup>36</sup>.

We emphasize that we do not argue here that it is (or should be) the place of the U.S. government to spearhead civil litigation, but it can be an effective weapon against aiders and abettors in circumstances when the government is confident that disclosures during the discovery process will not compromise sources and methods. In these circumstances, the disclosure of information relevant to civil claims by the victims of terrorism and genocide will open another means by which aiders and abettors (financiers and facilitators) can be held accountable in a setting that can both advance vital national security and provide at least some recovery of damages.

### **National Security, Genocide, Terrorism: Executive Orders and Proposed Revisions**

President Obama's August, 2015 Presidential Study Directive on Mass Atrocities states that "Preventing mass atrocities and genocide is a core national security interest and a core moral responsibility of the United States of America."<sup>37</sup> This and subsequent directives outlined prescriptive policy and proposed interagency coordination. Because the effort lacked resources and leadership, it has been ineffective. The Atrocity Prevention Board, for example, is not a government entity and thus has no authority to focus coordinated government action. The Trump White House should therefore modify guidance from previous executive orders (perhaps amending or rescinding those orders) or simply grant authority through the NSC to oversee decisive action to identify actors, aiders, and abettors of terrorism and genocide, starting with the recognized genocide by ISIS. This may be done through the creation of the NSCTF.

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<sup>34</sup> In *Kilburn v. Socialist People's Libyan Arab Jamahiriya*, 376 F.3d 1123 (D.C. Cir. 2004), the D.C. Circuit held that the "terrorism exception" to the Foreign Sovereign Immunities Act (FSIA) stripped Libya of its sovereign immunity. The plaintiff was the brother of an American citizen who was kidnapped and murdered while working as an instructor at the American University in Beirut. The complaint sought recovery through multiple causes of action, including the Flatow Amendment 28 U.S.C. § 1605, which allows for money damages against foreign states for personal injury or death due to terrorism. Significantly, the amendment includes liability for "the provision of material support or resources ... by an official, employee, or agent of such foreign state."

<sup>35</sup> In *Licci et. al. v. Lebanese Canadian Bank et. al.*, 732 F.3d 161 (2d Cir. 2013), the Second Circuit reinstated a case under 18 U.S.C. § 2333 against a bank that the plaintiffs alleged wired millions of dollars on behalf of the Shahid Foundation, Hezbollah's financial arm.

<sup>36</sup> In *Leibovitch v. Islamic Republic of Iran*, 697 F.3d 561 (7th Cir. 2012), the Seventh Circuit allowed a suit against the government of Iran brought by American citizens when their child was killed by the Palestinian Islamic Jihad. Significantly, the Seventh Circuit also allowed surviving family members to sue for emotional distress that they suffered as a result of the attack. A jury awarded the family \$53 million dollars in damages.

<sup>37</sup> Presidential Study Directive on Mass Atrocities, August 04, 2011

**Conclusion:**

**A Comprehensive, Coordinated Approach to Destroying the ISIS Support Network**

If every member of ISIS were located and killed today, we would still face the problem of a global support network to finance and otherwise advance the aims of genocidal terrorists for the foreseeable future. Until this global network of supporters is rooted out, ISIS and its accessories will continue to threaten America and its allies. The U.S. government should use every means available to destroy the terrorist threat to American national security and humanitarian interests. This will require a concerted effort of focusing the national security community toward this end. It may also mean facilitating, where prudent and feasible, one of the Republic's greatest assets, its civil legal system. No stone should be left unturned to keep America safe.

The approach outlined here proposes a significant strategic shift toward a more aggressive, unambiguous, coherent national security policy with respect to the networks that support ISIS and related genocidal terrorism. A punishment and deterrence approach to destroying the global extremist-terrorist network requires significant coordination at the highest levels of government. That this approach will not be received well in some parts of the Middle East, particularly by states that have thus far undertaken anemic efforts to curb terrorism and extremism while tacitly supporting it, is precisely the reason that it should be implemented.

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