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This article surveys 2019 international legal developments relevant to national security law.

## I. U.S.–China Tensions

During the past year, the relations between the United States and China were tumultuous. As discussed below, the U.S. government enacted a wide range of measures to address perceived threats that certain Chinese actions and policies posed to U.S. economic and national security interests, and to protect and promote democracy in Hong Kong.

### A. DEVELOPMENTS IN U.S.–CHINA TRADE RELATIONS

Trade relations between the United States and China were quite volatile during the past year due to continuing and escalating tensions over the investigation by the U.S. Trade Representative (USTR) concerning certain Chinese "laws, policies, practices, or actions related to technology transfer, intellectual property, and innovation" pursuant to Section 301 of the Trade Act of 1974, as amended (Section 301).[1] As a result of the Section 301 investigation, the USTR found that U.S. commerce was burdened or restricted by the following unreasonable or discriminatory aspects of China's technology transfer and intellectual property (IP) regimes:

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1. Memorandum on Actions by the United States Related to the Section 301 Investigation of China's Laws, Policies, Practices, or Actions Related to Technology Transfer, Intellectual Property, and Innovation, 2018 DAILY COMP. PRES. DOC. 180 (Mar. 22, 2018).

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(1) the government's use of opaque administrative approval processes, joint venture (JV) requirements, foreign equity limitations, procurements, and other mechanisms to require or pressure the transfer of valuable U.S. technology and IP to China;

(2) government acts, policies, and practices that deprive U.S. companies of the ability to set market-based terms in technology-related negotiations;

(3) governmental direction and unfair facilitation of outbound Chinese investment targeting U.S. companies and assets in key industry sectors; and

(4) the government's support of unauthorized intrusions into U.S. commercial computer networks or cyber-enabled theft of trade secrets and other proprietary information.[2]

As a result of these findings, President Trump instructed the USTR to impose tariffs on imports of certain Chinese products and to seek relief at the World Trade Organization (WTO) from China's unfair trade practices.[3]

Shortly thereafter, the USTR imposed Section 301 tariffs at a level of twenty-five percent on two different lists of Chinese products that collectively had an estimated annual value of $50 billion.[4] These tariffs entered into effect for imports made on or after July 6, 2018 (List One Products),[5] and on or after August 23, 2018 (List Two Products).[6] Following retaliation by the Chinese government against the imposition of Section 301 tariffs on List One Products and List Two Products, the USTR determined to impose Section 301 tariffs on a third list of Chinese products that collectively had an estimated annual value of $200 billion (List Three Products).[7] The initial Section 301 tariff level for List Three Products was set at ten percent and was to apply to imports made on or after September 24, 2018; subsequently, the Section 301 tariff level for List Three Products would be increased to twenty-five percent for imports made on or after January 1, 2019.[8]

But as a result of progress being made in the U.S.-China negotiations regarding the key issues in the Section 301 investigation, President Trump directed the USTR to delay the increase to twenty-five percent for List

2. *Id.*

3. *Id.*

4. *See* Notice of Action and Request for Public Comment Concerning Proposed Determination of Action Pursuant to Section 301: China's Acts, Policies, and Practices Related to Tech. Transfer, Intellectual Prop., and Innovation, 83 Fed. Reg. 28,710, 28,711 (June 20, 2018).

5. Id.

6. *See* Notice of Action Pursuant to Section 301: China's Acts, Policies, and Practices Related to Tech. Transfer, Intellectual Prop., and Innovation, 83 Fed. Reg. 40,823, 40,824 (Aug. 16, 2018).

7. Notice of Modification of Section 301 Action: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation, 83 Fed. Reg. 47,974 (Sept. 21, 2018).

8. *Id.*

Three Products until March 2, 2019.[9] Subsequently, as a result of continued progress in the negotiations, the USTR announced on March 5, 2019 that the Section 301 tariff level for List Three Products would remain at ten percent "until further notice."[10]

Nevertheless, the negotiations suffered a setback in late April 2019, and consequently, at the direction of President Trump, the USTR announced that the Section 301 tariff level for List Three Products would be raised to twenty-five percent for imports made on or after May 10, 2019 (unless the products were exported before May 10, 2019, and imported into the U.S. before June 1, 2019).[11] Shortly after, the USTR published a proposed fourth list of additional Chinese products that collectively had an estimated annual value of $300 billion on which Section 301 tariffs would be imposed (List Four Products); ultimately, the USTR decided to break this list into List 4-A Products and List 4-B Products. Initially, the USTR stated that a Section 301 tariff rate of fifteen percent would be imposed on List 4-A Products imported on or after September 1, 2019 and that the same Section 301 tariff rate would be imposed on List 4-B Products that were imported on or after December 15, 2019.[12] Subsequently, however, in connection with positive developments in trade negotiations between the two countries that took place in late 2019 and early 2020, the U.S. Government held off on imposing Section 301 tariffs on List 4-B Products indefinitely and reduced the Section 301 tariff rate on List 4-A Products to 7.5 percent on imports made on or after February 14, 2020.[13]

In addition to the issues raised by the findings of the Section 301 investigation, the U.S. government also took actions to counter negative aspects of other policies being pursued by China, including its Belt and Road Initiative and its Made in China 2025 program.[14] Towards this end, President Trump issued an Executive Order on Securing the Information and Communications Technology Supply Chain on May 15, 2019 (EO

9. Notice of Modification of Section 301 Action: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation, 83 Fed. Reg. 65,198 (Dec. 19, 2018).

10. Notice of Modification of Section 301 Action: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation, 84 Fed. Reg. 7,966 (Mar. 5, 2019).

11. Implementing Modification to Section 301 Action: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation, 84 Fed. Reg. 21,892 (May 15, 2019).

12. Notice of Modification of Section 301 Action: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation, 84 Fed. Reg. 43,304 (Aug. 20, 2019).

13. Notice of Modification of Section 301 Action: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation, 85 Fed. Reg. 3,741 (Jan. 22, 2020).

14. *See generally* Emily Crawford, *Made in China 2025: The Industrial Plan that China Doesn't Want Anyone Talking About*, PBS (May 7, 2019), https://www.pbs.org/wgbh/frontline/article/made-in-china-2025-the-industrial-plan-that-china-doesnt-want-anyone-talking-about/.

13873).[15] In accordance with EO 13873, the U.S. Department of Commerce (DOC) imposed heightened export controls on certain Chinese entities, including Huawei and many of its international affiliates.[16] The DOC also issued a proposed rule to implement EO 13873, effectively creating a CFIUS-like mechanism[17] to empower the DOC to block certain technology transactions involving information and communications technology and services developed by a foreign adversary (e.g., China).[18]

### B. U.S. Actions in Support of Democracy and Human Rights in Hong Kong

In November 2019, Congress passed two bills to express support for the protesters in Hong Kong: S. 1838[19] and S. 2710.[20] Given that veto-proof majorities voted in favor of both of these bills, President Trump signed them into law on November 27, 2019.[21] While S. 1838 would require the President to provide an annual report regarding Hong Kong's compliance with U.S. export controls, and S. 2710 would ban the U.S. export of crowd control munitions and equipment to Hong Kong, significant questions remain as to how vigorously President Trump will implement and follow these laws given that he issued signing statements relating to these laws in which he stated that "certain provisions . . . would interfere with the exercise of the President's constitutional authority to state the foreign policy of the United States."[22]

As the discussion above illustrates, U.S. relations with China during the past year were fast moving, challenging, and worthy of detailed analysis. Consequently, the Section's National Security Committee frequently sponsored programs on developments in U.S.–China relations. For example, the Committee sponsored a program on "Understanding the BUILD Act of 2018 and Other U.S. Responses to China's Belt and Road Initiative" at the Section's 2019 Annual Meeting, during which the panelists

15. *See* Exec. Order No. 13873, 84 Fed. Reg. 22,689 (May 17, 2019).

16. *See* Addition of Certain Entities to the Entity List, 84 Fed. Reg. 22,961 (May 23, 2019) (to be codified at 15 C.F.R. pt. 744); *see also* Addition of Certain Entities to the Entity List and Revision of Entries on the Entity List, 84 Fed. Reg. 43,493 (Aug. 21, 2019) (to be codified at 15 C.F.R. pt. 744).

17. *See generally The Committee on Foreign Investment in the United States (CFIUS)*, U.S. Dep't of Treas., https://home.treasury.gov/policy-issues/international/the-committee-on-foreign-investment-in-the-united-states-cfius (last visited Dec. 23, 2019) (explaining generally CFIUS's jurisdiction and processes).

18. *See* Securing the Information and Communications Technology Supply Chain, 84 Fed. Reg. 65,316 (Nov. 27, 2019) (to be codified 15 C.F.R. pt. 7).

19. S. 1838 was signed into law on November 27, 2019. *See* Hong Kong Human Rights and Democracy Act of 2019, Pub. L. No. 116-76, 133 Stat. 1161.

20. S. 2710 was signed into law on November 27, 2019. *See* Act of Nov. 27, 2019, Pub. L. No. 116-77, 133 Stat. 1173.

21. *See id.*

22. *See Statement by the President*, The White House, https://www.whitehouse.gov/briefings-statements/statement-by-the-president-30/ (Nov. 27, 2019).

discussed non-traditional forms of power projection, how such non-traditional forms of power projection are being utilized to expand Chinese power globally, and how the United States is responding to such non-traditional forms of power projection.[23]

## II. Continued Expansion of CFIUS' Jurisdiction Via Proposed Regulations Implementing FIRRMA

### A. SUMMARY

On September 17, 2019, the U.S. Department of the Treasury (Treasury), as chair of the Committee on Foreign Investment in the United States (CFIUS), published proposed regulations (the Proposed Regulations) implementing most provisions of the Foreign Investment Risk Review Modernization Act (FIRRMA).[24] The Proposed Regulations broaden CFIUS's jurisdiction to cover non-controlling, non-passive foreign investments in U.S. companies involved in critical technology, critical infrastructure, or sensitive personal data (TID businesses), as well as many real estate transactions.[25] While the Proposed Regulations remain subject to revision, they represent a significant milestone in the evolution of CFIUS and will have a significant impact on cross-border deal-making.

### B. BACKGROUND

"The Proposed Regulations reflect a broad and longstanding bipartisan policy consensus that the historical and voluntary CFIUS process has not been adequate to identify, review, and mitigate risks arising from new and different types of foreign investment in many U.S. businesses."[26] "These changes will transform CFIUS's jurisdictional reach and will immediately [affect] transaction considerations, even if the [Proposed Regulations] are not finalized until early 2020."[27] Except for a method to "implement a filing fee and the decision to retain, modify, or terminate the . . . CFIUS critical

23. *See generally* SHAYERAH ILIAS AKHTAR ET AL., CONG. RESEARCH SER., R45461, BUILD ACT: FREQUENTLY ASKED QUESTIONS ABOUT THE NEW U.S. INTERNATIONAL DEVELOPMENT FINANCE CORPORATION (2019) (discussing the Chinese actions that sparked the desire to pass the act).

24. Provisions Pertaining to Certain Investments in the United States by Foreign Persons, 84 Fed. Reg. 50,174 (Sept. 24, 2019) (to be codified at 31 C.F.R. pt. 800) [hereinafter Proposed Regulations]; *see also* Foreign Investment Risk Review Modernization Act of 2018, § 1701, 132 Stat. 2174 (2018) (codified as amended at 50 U.S.C. § 4501) [hereinafter FIRRMA].

25. *See* Proposed Regulations, 84 Fed. Reg. at 50,174, 50,176.

26. Mario Mancuso et al., *CFIUS Reform Becomes Reality: U.S. Treasury Department Issues Proposed Regulations Implementing FIRRMA*, KIRKLAND & ELLIS (Sept. 19, 2019), https://www.kirkland.com/-/media/publications/alert/2019/09/cfius-reform-becomes-reality-us-treasury-departmen.pdf.

27. *Id.*

technology Pilot Program, the Proposed Regulations are intended to fully implement all provisions of FIRRMA."[28]

## C. Key Takeaways Regarding The Proposed Regulations

### 1. *The CFIUS review process will remain largely voluntary.*

The Proposed Regulations require a CFIUS filing for investments that will result in a foreign government holding a substantial interest in a U.S. business.[29] A substantial interest exists when the foreign person with the closest relationship to the U.S. business holds a twenty-five percent or greater direct or indirect voting interest in such business and the foreign government holds a forty-nine percent or greater direct or indirect voting interest in such foreign person.[30] This substantial interest standard sets a high bar for mandatory filings for foreign government investors and does not appear to capture, for example, many transactions involving foreign government anchor limited partners in U.S.-controlled investment funds.[31] Moreover, CFIUS's indication in the Proposed Regulations that it may not continue the critical technology Pilot Program suggests that a CFIUS filing may again become voluntary for all transactions not satisfying the substantial interest test.[32]

### 2. *Data-Intensive businesses will be subject to increased CFIUS scrutiny.*

The Proposed Regulations grant CFIUS jurisdiction to review non-controlling investments in companies maintaining sensitive personal data.[33] The Proposed Regulations define sensitive personal data as identifiable data within specified categories (e.g., biometric identifiers, geolocation data, or information contained in consumer reports or insurance applications) that is maintained by a U.S. business that maintains or collects (or intends to maintain or collect) data on more than one million people, targets or tailors products or services to sensitive U.S. government personnel, or collects genetic data.[34] CFIUS's broad jurisdiction over non-controlling investments in U.S. businesses maintaining or collecting sensitive personal data will likely extend to diverse sectors of the economy that have not been traditionally considered sensitive and reflects a recognition that data is a vector of national security risk that can be exploited in novel and often unexpected ways.

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28. *Id.*

29. Proposed Regulations, 84 Fed. Reg. at 50,179.

30. *Id.* at 50,180.

31. Mancuso et al., *supra* note 26.

32. Proposed Regulations, 84 Fed. Reg. at 50,179.

33. *Id.* at 50,185-86.

34. *Id.* at 50,189.

3. *Non-controlling foreign investments in certain "critical infrastructure" companies will be subject to CFIUS jurisdiction.*

Foreign investment in a U.S. business that "owns, operates, manufactures, supplies, or services" identified critical infrastructure will be subject to CFIUS review, even if the investor will not obtain control over the U.S. business.[35] The types of critical infrastructure and the related functions that will trigger CFIUS jurisdiction include infrastructure from the telecommunications, defense industrial base, energy, financial services, transportation, and water and wastewater systems sectors.[36] The proposed definition of critical infrastructure for non-controlling foreign investments is narrower than many expected, and excludes the government facilities, nuclear, health care, food and agriculture, and emergency services sectors.[37] But a broader definition of "critical infrastructure" that includes these sectors still applies to controlling foreign investments.[38]

4. *Some investments by foreign investors from certain U.S. allies will be exempt from CFIUS jurisdiction.*

"The Proposed Regulations provide that certain non-controlling investments in U.S. businesses by foreign persons" with a record of compliance with specified U.S. laws and regulations "from specified foreign countries (excepted countries) will be exempt from review by CFIUS."[39] "Treasury will publish a list of excepted countries to whom this provision will apply."[40] Inclusion on the list will be partly based on the robustness of a foreign country's investment screening regime and publication of the list may incentivize foreign countries to implement or enhance their screening regimes.[41]

5. *The purchase, lease, or concession to a foreign person of certain real estate located in proximity to sensitive U.S. military or government facilities, as well as the purchase of vacant land, will be subject to CFIUS review.*

The Proposed Regulations permit CFIUS to review certain real estate transactions that give a foreign person identified property rights with respect to maritime ports, airports, or real estate located within a specified distance from sensitive military or government facilities.[42] The Proposed

35. *Id.* at 50,177.
36. *Id.* at 50,208-11, app. A.
37. *Id.*
38. Proposed Regulations, 84 Fed. Reg. at 50,176.
39. Mancuso et al., *supra* note 26.
40. *Id.*
41. *Id.*
42. *Id.*; *see also* Provisions Pertaining to Certain Transactions by Foreign Persons Involving Real Estate in the United States, 84 Fed. Reg. 50,214, 50,218 (Sept. 24, 2019) (to be codified at 31 C.F.R. pt. 802).

Regulations also grant CFIUS new jurisdiction over acquisitions of vacant land.[43] "These regulations are highly technical and contain a number of exceptions."[44] "Absent other relevant facts, the sales or leases of most residential property are excluded from CFIUS' jurisdiction."[45]

## III. Brexit and National Security

The potential departure of the United Kingdom (UK) from the European Union (EU),[46] known as "Brexit," will have national security implications for the UK, EU member states, and globally. While the EU relationship is primarily an economic one, and key aspects of the joint defense and security apparatus will remain in place,[47] certain defense and security components of the relationship will be impacted. In anticipation of Brexit, the countries at issue have been undertaking strategic initiatives to cover potential gaps in security, with further additions to come if Brexit goes into effect.[48]

### A. NATO AND OTHER SECURITY FRAMEWORKS

The enactment of Brexit will have limited direct effect on security frameworks in Europe. The relationship of the UK and the North Atlantic Treaty Organization (NATO) will remain intact.[49] Similarly, the UK's departure from the EU will not affect the UK's role as a permanent member of the United Nations Security Council.[50] Additionally, the UK will maintain the Five Eyes,[51] and certain EU member states will retain their

43. *See* Provisions Pertaining to Certain Transactions by Foreign Persons, 84 Fed. Reg. at 50,227.

44. Mancuso et al., *supra* note 26.

45. *Id.*

46. The expected, but not certain departure, of the UK from the EU is scheduled to occur January 31, 2020, and elections in the UK, which may affect the outcome, are scheduled for December 12, 2019. *See generally*, Peter Barnes, *Brexit: What Happens Now?*, BBC NEWS (Oct. 31, 2019), https://www.bbc.com/news/uk-politics-46393399.

47. Under the terms of the EU treaty, each nation is responsible for its own security. *See* Consolidated Version of the Treaty on European Union, art. 4, June 7, 2016, 2016 O.J. (C 202) para. 2.

48. *See generally*, *Brexit: Defence, Security and Immigration*, UK PARLIAMENT, https://www.parliament.uk/business/publications/research/eu-referendum/defence-security-and-immigration/ (last visited June 1, 2020).

49. Christopher Hope, *Brexit Could Threaten the NATO Alliance, Says Top US General*, THE TELEGRAPH (Mar. 15, 2016), https://www.telegraph.co.uk/news/newstopics/eureferendum/12194226/Brexit-could-threaten-the-Nato-alliance-says-top-US-general.html (Also asserts that Brexit may have less-tangible impacts on NATO. For instance, the departure of the UK could result in the dissolution of the EU, making Europe much more vulnerable, including to Russian attacks).

50. Jess Gifkins, Jason Ralph, & Samuel Jarvis, *How Will Britain's Role Change in the UN as Brexit Brews*, PASSBLUE (Feb. 26, 2019), https://www.passblue.com/2019/02/26/how-will-britains-role-change-in-the-un-as-brexit-brews/.

51. The Five Eyes is a sharing arrangement between the intelligence agencies of the UK, the United States, Canada, Australia, and New Zealand.

security relationship equivalents.[52] Compared to trade and labor issues, defense issues may be initially less impacted by Brexit, as a large portion of global defense and security operations occur through NATO or bilaterally.[53] The implementation of Brexit, however, may result in structural gaps around which member states have been attempting in certain instances to organize initiatives.

### B. Deeper Defense Relationships with Europe and the European Intervention Initiative

UK Ministers have indicated commitment post-Brexit to pursue deeper defense relationships with Europe than any other country.[54] Plans include contributing military assets to EU operations and joint positions on foreign policy as part of a "deep security partnership" to address common areas of concern, e.g., illegal migration, terrorism, cybercrime, and other threats.[55] Defense ministers point to the UK's "successful" military cooperation with the EU on tackling piracy off the African coast and joint defense projects, such as the Eurofighter Typhoon aircraft.[56] Certain European Foreign Ministers, however, dismiss these pledges as negotiation tactics.[57]

In September 2017, French president Emmanuel Macron initiated the European Intervention Initiative,[58] a French-led, post-Brexit defense plan outside the rubric of NATO or the EU, with thirteen nation participants, including the UK.[59]

### C. Law Enforcement

Brexit would affect law enforcement activities. Europol, the EU's law enforcement agency engaged in tracking international crime and terrorism and information sharing in which all EU member states participate, may be

52. *Id.* (There is also the Nine Eyes Alliance, the original five countries, plus Denmark, France, Netherland, and Norway, and the 14 Eyes Alliance, which also include Germany, Belgium, Italy Sweden, and Spain.).

53. *See generally* James Black, et al., *Defence and Security after Brexit (Overview Report)*, RAND Corp. (2017), at 3 (discussing generally the relationship between the UK and NATO) [hereinafter Overview Report].

54. *What's Behind UK's Pledge to 'Deeper' Defense Ties with the EU*, Sputnik News (Dec. 8, 2017), https://sputniknews.com/military/201709121057314105-brexit-defense-ploy-eu.

55. *Id.*

56. *Id.*

57. *Id.*

58. *See* Claire Mills, *The European Intervention Initiative (EII/EI2)*, House of Commons Library (Sept. 23, 2019), https://commonslibrary.parliament.uk/research-briefings/cbp-8432/#:~:text=The%20European%20Intervention%20Initiative%20(EII%2FEI2)%20is%20a%20French,%2C%20united%20and%20democratic%20Europe%E2%80%9D.

59. Olivier-Rémy Bel, *Can Macron's European Intervention Initiative Make the Europeans Battle-Ready?*, War on the Rocks (Oct. 2, 2019), https://warontherocks.com/2019/10/can-macrons-european-intervention-initiative-make-the-europeans-battle-ready/ (member nations include Belgium, Denmark, Estonia, Finland, France, Germany, Netherlands, Norway, Spain, the UK, Sweden, Italy, and Portugal).

structured to retain UK involvement.[60] Additionally, attempts may be made to retain the UK in the EU Arrest Warrant process.[61] Extraditions across European borders may become more burdensome, as would be the exchange of DNA, fingerprints, and vehicle registrations.[62] A £2.4 million safety net unit is to be temporarily established to address such situations.[63]

## D. Northern Ireland and Scotland

The UK relationship with Northern Ireland and Scotland is at issue as well. A core unresolved issue in Brexit negotiations is the border situation between the UK and Northern Ireland.[64] There are concerns on both sides, and globally, about a return to the hard border, with the risk of upending the current peaceful coexistence, trade, and interconnectedness that many believe the soft border reinforces.[65]

While Scotland at present is likely to remain part of the UK, the Brexit situation has reignited the Scottish independence debate.[66] One issue is that Britain's Trident submarine force, its nuclear deterrent, is based in Scotland.[67] Scottish officials have indicated that if Brexit ensues, and Scotland were to leave the UK, the base would have to be resituated at considerable cost and dislocation.[68] Britain's two newly-commissioned, state-of-the-art aircraft carriers were built at facilities in Scotland.[69]

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60. *See generally* Camino Mortera-Martinez, *An Ugly Truth: Brexit and EU Justice and Home Affairs*, Atl. Community (Feb. 8, 2019), https://atlantic-community.org/brexit-and-justice-and-home-affairs/ (discussing EU alternatives to the issue).

61. Chad Heimrich, *The European Arrest Warrant After Brexit – The UK's Wishful Thinking of a Future EU-UK Security Partnership?*, Queen Mary Univ. of London (Dec. 8, 2018), https://www.qmul.ac.uk/law/research/centres/cjc/criminal-law-blog/items/the-european-arrest-warrant-after-brexit—the-uks-wishful-thinking-of-a-future-eu-uk-security-partnership.html.

62. Alexander Brotman, *Brexit Effect on Security in the UK*, Global Risk Insights (Feb. 7, 2019), https://globalriskinsights.com/2019/02/brexit-effects-uk-security.

63. *Id.*

64. *See, e.g.*, *Brexit: The Irish Border Issue That Could See the UK Crash*, Austl. Broad. Corp. (Sept. 18, 2019), https://www.abc.net.au/news/2018-10-19/explainer-brexit-and-the-irish-border-issue/10393818.

65. *Id.*; *see also* David Frum, *Belfast Shows the Price of Brexit*, The Atl. (Mar. 7, 2019), https://www.theatlantic.com/ideas/archive/2019/03/brexit-could-reawaken-northern-irelands-troubles/584338/.

66. *See, e.g.*, *Weizhen Tan, 'There is no good Brexit for Scotland:' Scottish National Party MP says Johnson's deal is 'terrible'*, CNBC, Oct. 22, 2019, https://www.cnbc.com/2019/10/22/snp-on-brexit-impact-on-scotland-economy-and-second-brexit-vote.html.

67. Richard Sisk, *Fate of Nuclear Sub Base in Scotland Unclear After Brexit*, Military.com (July 2, 2019), https://www.military.com/daily-news/2016/07/02/fate-of-nuclear-sub-base-in-scotland.

68. *Id.*

69. Jonathan Beale, *The UK's Giant Aircraft Carriers*, BBC News (Aug. 24, 2018), https://www.bbc.co.uk/news/resources/idt-sh/UK_aircraft_carriers.

### E. Other Security-Related Impacts of Brexit

Brexit may have other security-related impacts. For instance, Brexit could facilitate enhanced EU defense integration, which the UK would not necessarily support given its own strong independent defense capabilities.[70] Also, losing the UK as a member is likely to result in an estimated twenty-five percent reduction of EU defense capability.[71] Another effect of Brexit may be reduction in effectiveness of the international sanctions regime, because the UK is a prominent EU member and leader in the implementation of sanctions against rogue governments.[72] If the UK moves outside the EU, this may weaken global effectiveness and cooperation in connection with such actions. The UK also will likely experience large reductions in EU funds for research and development and reduced ability to set research agendas, although other structures may be created.[73]

At issue for the United States is dealing with the impact of its strong, prominent ally leaving the EU. It will be essential for the United States to develop stronger relationships with other EU members to replace its interconnectedness through its long-time ally. Nonetheless, what is often termed the "special relationship" between the United States and the UK may result in enhanced bilateral initiatives.

Although this remains a fluid situation, the December 12, 2019 election resulted in a victory for the UK's Conservative Party, thus clearing a path to the January 31, 2020 Brexit deadline.[74]

## IV. Intelligence and Surveillance Law

### A. U.S. Foreign Intelligence Surveillance Court Determines Federal Bureau of Investigation Query Procedures Unconstitutional

A recently declassified October 2018 Foreign Intelligence Surveillance Court (FISC) opinion determined that certain Federal Bureau of Investigation (FBI) query procedures were inconsistent with the Foreign Intelligence Surveillance Act (FISA) and the Fourth Amendment of the U.S.

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70. *See* Overview Report, *supra* note 51 (A consensus around a European Army remains ambiguous); *See e.g.*, Jordan Stevens, *Brexit Won't Necessarily Lead to an EU Army*, CNBC (Feb. 18, 2019), https://www.cnbc.com/2019/02/18/brexit-wont-necessarily-lead-to-an-eu-army.html.

71. James Black et al., *Defence and Security After Brexit (Compendium Report)*, RAND Europe (2017), at 36 [hereinafter Compendium Report].

72. Overview Report, *supra* note 53 at 12.

73. *Id.* at 10.

74. William Booth, Karla Adam, & James McAuley, *U.K. Election: Boris Johnson Wins Majority, While Jeremy Corbin Says He Won't Lead Another General Election Campaign*, Wash. Post (Dec. 12, 2019), https://www.washingtonpost.com/world/europe/uk-general-election-2019/2019/12/12/cc5ecb98-17ae-11ea-80d6-d0ca7007273f_story.html?arc404=true.

Constitution.[75] While the FISC opinion approved most aspects of the FBI's targeting, minimization, and query procedures, it concluded that the FBI's practice of "keeping records of all query terms in a manner that does not differentiate U.S.-person terms from other terms" did not meet the requirements of Section 702(f)(1)(B) of FISA.[76] This provision, which was enacted as part of the FISA Amendment Reauthorization Act of 2017, requires the FBI to develop technical procedures to document when it uses a U.S.-person query.[77]

Furthermore, the FISC determined that the FBI's query procedures were inconsistent with the Fourth Amendment because the queries lacked a sufficient basis and were not reasonably related to foreign intelligence needs when balanced against the intrusion into the privacy of U.S. persons.[78] Under a totality of circumstances analysis, the FISC found that the FBI procedures were unreasonable and could be cured by amici's proposed requirement that the FBI document the basis for its queries.[79] Affirming that "[t]he government is not at liberty to do whatever it wishes with those U.S.-person communications," the court found that amici's request for additional documentation would not adversely affect the FBI's ability to address national security threats.[80]

In July 2019, the Foreign Intelligence Surveillance Court of Review (FISC-R) upheld the October 2018 FISC decision, prompting the FBI to submit updated query procedures that the FISC subsequently approved.[81] Provisions such as query of data systems have become a lynchpin in the reauthorization of the USA Freedom Act.[82] The balance between national security and surveillance continues to center on the measures in place to ensure the protection of privacy.[83] The "roving wiretap" and "business record" provisions in FISA, which Congress authorized in 2001 and reauthorized in 2015, enable court-approved surveillance of national security targets and allow for collection of documents relevant to national security

75. In re DNI/AG 702(h) Certifications 2018, FISA Ct. (2018) *available at* https://www.intelligence.gov/assets/documents/702%20Documents/declassified/2018_Cert_FISC_Opin_18Oct18.pdf [hereinafter Oct. 2018 FISC decision], aff'd, In re DNI/AG 702(h) Certifications 2018, FISA Ct. Rev. (2019) *available at* https://www.intelligence.gov/assets/documents/702%20Documents/declassified/2018_Cert_FISCR_Opinion_12Jul19.pdf [hereinafter July 2019 FISC-R. decision].

76. July 2019 FISC-R decision at 4.

77. Release of Documents Related to the 2018 FISA Section 702 Certifications, OFF. OF THE DIR. OF NAT'L INTELLIGENCE (Oct. 8, 2019), https://icontherecord.tumblr.com/post/188217887058/release-of-documents-related-to-the-2018-fisa.

78. Oct. 2018 FISC decision at 92.

79. *Id.* at 88.

80. *Id.* at 89, 96.

81. July 2019 FISC-R decision, *supra* note 75 at 4–5.

82. William Ford, *The House Judiciary Committee's FISA Oversight Hearing: An Overview*, LAWFARE (Sept. 20, 2019), https://www.lawfareblog.com/house-judiciary-committees-fisa-oversight-hearing-overview.

83. *Id.*

investigations.[84] The safeguards articulated by the FISC seem to assure judicial oversight while balancing the constitutionality of important surveillance legislation.[85]

## B. The South African Supreme Court Rules Bulk Surveillance Is Unlawful

On September 16, 2019, the South African High Court declared the bulk interception of telecommunication by the South African National Communications Centre unlawful.[86] The challenge centered on the constitutionality of certain provisions of the Regulation of Interception of Communications and Provision of Communication-Related Information Act 70 of 2002 (RICA), which generally permitted the interception of communications of any person when authorized by state officials.[87] The South African High Court rejected the notion that communication interceptions *per se* can be justified.[88] The Court constructed the notice requirement under the surveillance legislation to reflect the norm in places like the United States and Canada, where notification is given absent a compelling reason as determined by an independent authority.[89]

Prior to this ruling, RICA prohibited disclosure of surveillance to the target.[90] The South African High Court cited Article 8 of the European Convention on Human Rights as a basis for requiring post-surveillance notification, noting that Germany requires such notification after it is safe to provide.[91] The Court also imposed certain restrictions, including a 180-day renewable period for judicial review.[92] The Court further determined that RICA is "inconsistent with the Constitution and accordingly invalid to the extent that it fails to provide for a system for a public advocate or other appropriate safeguards to deal with the fact that the orders in question are granted ex parte," using the USA Freedom Act as a model for proper procedure.[93]

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84. Michael J. Orlando, *Reauthorizing the USA Freedom Act of 2015*, F.B.I. (Nov. 6, 2019), https://www.fbi.gov/news/testimony/reauthorizing-the-usa-freedom-act-of-2015-110619.

85. July 2019 FISC-R decision, *supra* note 75 at 4–5.

86. *Amabhungane Centre for Investigative Journalism v. Minister of Justice and Correctional Services* 2020 (1) SA 90 (GP) at 68 (S. Afr.) *available at* https://privacyinternational.org/sites/default/files/2019-09/Judgment%20AMABHUNGANE%20v%20MIN%20JUSTICE%20%26%20OTH.pdf.

87. *Id.* at 3.

88. *Id.* at 17.

89. *Id.* at 19–20.

90. Regulation of Interception of Communications and Provision of Communication-Related Information Act 70 of 2002, § 16(7)(a) (S. Afr.).

91. *Amabhungane*, at 68.

92. *Id.* at 22.

93. *Id.* at 33–34.

This decision highlights the importance of governmental compliance with international norms of surveillance to withstand judicial scrutiny while also ensuring an adequate ability to collect and share national security data.

## V. U.S.–Turkey Relations Continue to Deteriorate

### A. Humanitarian Crisis in Northern Syria

By arming and supporting Kurdish forces in Syria to combat the Islamic State in Iraq and Syria (ISIS), the United States set itself on a collision course with Turkey.[94] Turkey maintains that these Kurdish forces are linked to the Kurdistan Workers' Party (PKK) and therefore threaten Turkey's security.[95] After U.S. President Trump withdrew U.S. forces from northern Syria, Turkey sent military forces into Syria to push Kurdish forces out of areas adjacent to the Turkish border[96] and to follow through with its plan to create a safe zone in which to return Syrian refugees currently residing in Turkey.[97]

Dubbed Operation Spring Peace, Turkey's military action displaced thousands of civilians and worsened Syria's existing humanitarian crisis.[98] Turkey has also forcibly deported Syrian refugees from Turkey.[99] According to international law, it is impermissible to deport people to areas where there are substantial grounds to believe that they would be at risk of serious human rights violations.[100]

Turkey wants to repatriate all captured ISIS fighters.[101] Like other countries, the United States has been reluctant to allow its citizens who left

94. Colin Kahl, *The United States and Turkey are on a Collision Course in Syria*, Foreign Pol'y (May 12, 2017), https://foreignpolicy.com/2017/05/12/the-united-states-and-turkey-are-on-a-collision-course-in-syria-trump/.

95. Amanda Sloat, *The U.S Played Down Turkey's Concerns About Syrian Kurdish Forces. That Couldn't Last*, Wash. Post (Oct. 9, 2019), https://www.washingtonpost.com/outlook/2019/10/09/us-downplayed-turkeys-concerns-about-syrian-kurdish-fighters-that-couldnt-last.

96. Ben Hubbard & Carlotta Gall, *Turkey Launches Offensive Against U.S-Backed Syrian Militia*, N.Y. Times, (Oct. 9, 2019), https://www.nytimes.com/2019/10/09/world/middleeast/turkey-attacks-syria.html.

97. Siobhán O'Grady, *Turkey Plans a Syrian 'Safe Zone.' Advocates Fear a 'Death Trap.'*, Wash. Post (Oct. 9, 2019), https://www.washingtonpost.com/world/2019/10/09/turkey-plans-syrian-safe-zone-advocates-fear-death-trap/.

98. Press Release, Security Council, Turkey's Military Operation Has Displaced Thousands of Civilians, Worsened Syria's Dire Humanitarian Crisis, Top Official Warns Security Council, UN Press Release SC/13994 (Oct. 24, 2019).

99. *Sent to a War Zone: Turkey's Illegal Deportations of Syrian Refugees*, Amnesty Int'l (2019), https://www.amnesty.org/download/Documents/EUR4411022019ENGLISH.pdf.

100. *See* Mike Sanderson, *The Syrian Crisis and the Principle of Non-Refoulement*, 89 Int'l L. Stud, 776, 781 (2013).

101. Norimitsu Onishi & Elian Peltier, *Turkey's Deportations Force Europe to Face Its ISIS Militants*, N.Y. Times, (Nov. 17, 2019), https://www.nytimes.com/2019/11/17/world/europe/turkey-isis-fighters-europe.html.

to join ISIS to return.[102] Stripping U.S. citizenship to prevent repatriation is problematic under both international and U.S. domestic law.[103] Among the charges filed against returning U.S. citizens has been providing material support for a designated terrorist organization.[104]

## B. U.S. Sanctions Against Turkey

When Turkey decided to purchase the Russian-made S-400 air defense system, the United States informed Turkey that this purchase would have negative consequences, including possible sanctions under the Countering America's Adversaries Through Sanctions Act (CAATSA).[105] Congress threatened to ban the transfer of the F-35 stealth fighter to Turkey if Turkey continued with the purchase of the S-400.[106] After the first delivery of the system in July 2019, the United States ejected Turkey from the F-35 program.[107]

More sanctions were in store for Turkey after its military incursion into northern Syria.[108] The U.S. Congress strongly condemned Turkey's military actions.[109] The U.S. Senate introduced the Countering Turkish Aggression Act to impose sanctions on Turkey, including sanctions against senior Turkish officials and a prohibition of U.S. military assistance.[110] The U.S. House of Representatives overwhelmingly passed a resolution recognizing as genocide the killing of an estimated 1.5 million Armenians under Ottoman authority, which Congress had not done in the past, for fear of offending Turkey.[111] In the Turkey Human Rights Promotion Act of 2019, the Senate criticized Turkey's detention of journalists, its censorship of the internet, and its use of counterterrorist authorities to imprison domestic political

102. Kim Hjelmgaard, *American ISIS fighter stranded in no-man's to be repatriated to U.S., Turkey says*, USA Today, (Nov. 14, 2019), https://www.usatoday.com/story/news/world/2019/11/14/american-isis-fighter-stranded-in-turkey-greece-no-mans-land-to-be-sent-to-u-s/4188814002/.

103. Megan Specia, *ISIS Cases Raise a Question: What Does It Mean to Be Stateless*, N.Y. Times, (Feb. 22, 2019), https://www.nytimes.com/2019/02/22/world/middleeast/isis-shamima-begum-citizenship-stateless.html.

104. Press Release, U.S. Dep't of Justice, American Citizen Who Became an ISIS Sniper and Trained Other ISIS Members in the Use of Weapons Charged with Providing Material Support to Isis (Jul. 19, 2019), https://www.justice.gov/opa/pr/american-citizen-who-became-isis-sniper-and-trained-other-isis-members-use-weapons-charged.

105. U.S. Dep't of Def., Status of the U.S. Relationship with the Republic of Turkey, Unclassified Executive Summary (Nov. 26, 2018), https://fas.org/man/eprint/dod-turkey.pdf.

106. Protecting NATO Skies Act of 2019, S. 922, 116th Cong., § 2(a)(1) (2019).

107. Idrees Ali & Phil Stewart, *U.S. Removing Turkey From F-35 Program After its Russian Missile Defense Purchase*, Reuters (Jul. 17, 2019), https://www.reuters.com/article/us-turkey-security-usa/u-s-removing-turkey-from-f-35-program-after-its-russian-missile-defense-purchase-idUSKCN1UC2DD.

108. *See* H.R. Res. 296, 116th Cong. (2019); Countering Turkish Aggression Act of 2019, S. 2644, 116th Cong. § 4 (2019); H.R.J. Res. 77, 116th Cong. (2019).

109. H.R.J. Res. 77, 116th Cong. (2019).

110. Countering Turkish Aggression Act of 2019, S. 2644, 116th Cong. § 4 (2019).

111. H.R. Res. 296, 116th Cong. (2019).

opponents of the Turkish President *Recep Tayyip Erdogan*.[112] The United States-Turkey Relations Review Act of 2019 stipulated that the United States needed to evaluate the possible relocation of U.S. military forces and assets from Turkey.[113]

### C. Turkey Pressures United States to Extradite Fethullah Gülen

The Turkish government continues to pressure the United States to extradite Fethullah Gülen, a permanent resident of the United States.[114] President Erdogan has accused Gülen of masterminding the failed 2016 coup attempt.[115] To date, U.S. authorities have considered the evidence proffered by Turkey to be insufficient to satisfy the requirements for extradition as detailed in the treaty between the two governments signed in 1979.[116]

### D. U.S. Indictment of Halk Bankasi

In October 2019, U.S. prosecutors in New York City indicted Halk Bankasi, a Turkish state-owned bank, for bank fraud, money laundering, and conspiracy to defraud the United States.[117] The charges stem from an alleged scheme from 2012 to 2016 to evade U.S. sanctions on Iran, involving the transfer of approximately $20 billion to Iran.[118] Prior to this indictment, the Department of Justice had already charged nine individuals in the scheme, including the former Turkish Minister of the Economy.[119] One of these individuals previously testified that the then Turkish Prime Minister

112. S. 2832, 116th Cong. (2019).

113. H.R. Res. 4694, 116th Cong. § 4(b)(1)(E) (2019).

114. Associated Press, *U.S. officials Discuss Turkey's Request for Return of Cleric Fethullah Gulen from Pennsylvania*, Phila. Inquirer (Jan. 3, 2019), https://www.inquirer.com/news/nation-world/us-officials-discuss-turkeys-request-return-cleric-fethullah-gulen-pennsylvania-20190103.html.

115. *Id.*

116. Erin Dunne, *Fethullah Gulen's Extradition Would Signal a Human Sacrifice-Based Foreign Policy*, Wash. Examiner (Dec. 17, 2018), https://www.washingtonexaminer.com/opinion/fethullah-gulens-extradition-would-signal-a-human-sacrifice-based-foreign-policy. (This conclusion was based on the following treaty: Extradition and Mutual Assistance in Criminal Matters, U.S.-Turk., June 7, 1979, 32 U.S.T. 3111 (entered into force Jan. 1, 1981).).

117. Rebecca Davis O'Brien & Aruna Viswanatha, *Prosecutors Charges Turkey's Halkbank in Sanctions Evasion Scheme*, Wall St. J., (Oct. 15, 2019), https://www.wsj.com/articles/prosecutors-charge-turkey-s-halkbank-in-sanctions-evasion-scheme-11571178896.

118. Press Release, U.S. Dep't of Justice, Turkish Bank Charged in Manhattan Federal Court for Its Participation in a Multibillion-dollar Iranian Sanctions Evasion Scheme (Oct. 15, 2019), https://www.justice.gov/opa/pr/turkish-bank-charged-manhattan-federal-court-its-participation-multibillion-dollar-iranian.

119. *Id.*

*Recep Tayyip Erdogan* had approved the scheme.[120] Turkey claims that U.S. courts have no jurisdiction over Halk Bankasi.[121] The U.S. government countered that it has jurisdiction because $1 billion of the illicit transactions were in U.S. dollars and had been handled by banks in New York.[122]

## VI. Nuclear Arms Control

On February 2, 2019, the United States announced its intention to withdraw from the Intermediate Nuclear Forces (INF) Treaty.[123] The Treaty prohibited the development or possession of both ground-launched missiles with a range of 500 km to 5,500 km and launchers for such missiles.[124] For several years the United States alleged that Russia was developing a missile forbidden by these limits, while simultaneously denying a Russian allegation that the United States is violating the Treaty with its use of a particular type of launcher in its missile defense program.[125] Most U.S. allies expressed concern about the proposed withdrawal and urged reconsideration, but the withdrawal took effect in August 2019.[126] A few weeks later, the United States successfully tested a ground-launched version of the Tomahawk missile by using a version of the disputed launcher.[127]

After termination of the INF Treaty, the New START Treaty[128] is the last remaining nuclear arms control agreement between the United States and

120. Benjamin Weiser, *Turkish Banker in Iran Sanctions-Busting Case Sentenced to 32 Months*, N.Y. TIMES, (May 16, 2018), https://www.nytimes.com/2018/05/16/world/turkish-iran-sanctions-trial.html.

121. Ebru Tuncay, *Turkey's Halkbank Dismisses U.S. Charges, Erdogan Calls Them 'Ugly'*, REUTERS, (Oct. 16, 2019), https://www.reuters.com/article/us-usa-turkey-halkbank/turkeys-halkbank-dismisses-u-s-charges-erdogan-calls-them-ugly-idUSKBN1WV0R4.

122. Greg Farrell & Christian Berthelsen, *Turkey's Halkbank Faces U.S. Charges as Tensions Mount*, BLOOMBERG, (Oct. 15, 2019), https://www.bloomberg.com/news/articles/2019-10-15/halkbank-charged-in-six-count-indictment-with-fraud-laundering.

123. Press Statement, Michael R. Pompeo, *U.S. Intent To Withdraw from the INF Treaty February 2, 2019*, U.S. DEP'T OF STATE (Feb. 2, 2019) *available at* https://www.state.gov/u-s-intent-to-withdraw-from-the-inf-treaty-february-2-2019; *see also* Treaty between the United States and the Union of Soviet Socialist Republics on the Elimination of Their Intermediate Range and Shorter-Range Missiles, U.S.-U.S.S.R., Dec. 8, 1987, 1657 U.N.T.S. 387.

124. Treaty between the United States and the Union of Soviet Socialist Republics on the Elimination of Their Intermediate Range and Shorter-Range Missiles, U.S.-U.S.S.R., Dec. 8, 1987, 1657 U.N.T.S. 387.

125. Press Statement, Michael R. Pompeo, *U.S. Intent to Withdraw from the INF Treaty February 2, 2019*, U.S. DEP'T OF STATE (Feb. 2, 2019) *available at* https://www.state.gov/u-s-intent-to-withdraw-from-the-inf-treaty-february-2-2019.

126. *Id.*

127. Scott Neuman, *U.S. Tests Missile with a Range Prohibited by Now-Abandoned Treaty*, NPR, (Aug. 20, 2019), https://www.npr.org/2019/08/20/752657167/u-s-tests-missile-with-a-range-prohibited-by-now-abandoned-treaty.

128. Treaty between the United States of America and the Russian Federation on Measures for the Further Reduction and Limitation of Strategic Offensive Arms, U.S.-Russ., April 8, 2010, T.I.A.S. 11-205 [hereinafter New START Treaty].

Russia.[129] It limits the United States and Russia to 1,550 deployed strategic warheads and 700 delivery vehicles.[130] The treaty expires in February 2021 but can be renewed by agreement of the presidents of the two countries.[131] Russia has made several requests to begin negotiations for renewal,[132] but, as this article went to press, no such negotiations had been scheduled.[133]

In 2018, all of the world's nuclear powers continued to modernize their nuclear arsenals.[134] As of November 2019, no nuclear arms control negotiations were scheduled among the five permanent members of the United Nations Security Council.[135] India and Pakistan continued to enlarge and enhance their stockpiles of nuclear weapons, while armed clashes between them occurred over the disputed state of Kashmir.[136]

In 2018, the U.S. Senate passed a version of the 2020 National Defense Authorization Act (NDAA), authorizing funding for new "low-yield" nuclear weapons requested by the administration, while the House version specifically prohibited such funding.[137] The Senate-House conference on the NDAA continued to debate the issue through November 2019,[138] with the House ultimately receding on its proposed prohibition on funding these

129. Kingston Reif, *As INF Treaty Falls, New START Teeters*, ARMS CONTROL TODAY, (Mar. 2019), https://www.armscontrol.org/act/2019-03/news/inf-treaty-falls-new-start-teeters.

130. New START Treaty, *supra* note 128 at art. II § 1.

131. *Id.* at art. XIV § 2.

132. Shervin Taheran & Daryl G. Kimball, *Bolton Declares New START Extension "Unlikely"*, ARMS CONTROL TODAY (July/Aug. 2019), https://www.armscontrol.org/act/2019-07/news/bolton-declares-new-start-extension-unlikely (quoting statement by President Putin that "Russia has already said a hundred times that we are ready [to negotiate New START renewal], but no one is willing to talk about it with us.").

133. *Id.*

134. *Modernization of World Nuclear Forces Continues Despite Overall Decrease in Number of Warheads*, SIPRI (June 17, 2019), https://www.sipri.org/media/press-release/2019/modernization-world-nuclear-forces-continues-despite-overall-decrease-number-warheads-new-sipri.

135. United States, Russia, China, United Kingdom and France are the permanent members of the United Nations Security Council. The "P5" are also the Nuclear Weapons States recognized under the Treaty on the Non-Proliferation of Nuclear Weapons (NPT). *Fact Sheet: Nuclear Non-Proliferation Treaty (NPT)*, CTR. FOR ARMS CONTROL AND NON-PROLIFERATION (Apr. 14, 2017), https://armscontrolcenter.org/fact-sheet-nuclear-non-proliferation-treaty-npt.; *see also*, Treaty on the Non-Proliferation of Nuclear Weapons, *opened for signature* July 1, 1968, 21 U.S.T. 483, 729 U.N.T.S. 161. https://www.un.org/disarmament/wmd/nuclear/npt/text.

136. Julia Masterson, *India Boosts Range of Brahmos Cruise Missile*, ARMS CONTROL TODAY, https://www.armscontrol.org/act/2019-10/news-briefs/india-boosts-range-brahmos-cruise-missile (last visited May 29, 2020); Julia Masterson, *Pakistan Maintains Missile Tests*," ARMS CONTROL TODAY, https://www.armscontrol.org/act/2019-10/news-briefs/pakistan-maintains-missile-tests (last visited May 29, 2020).

137. *See generally* National Defense Authorization Act for Fiscal Year 2018, S. 1519 115th Cong. (2018).

138. Joe Gould, *Clock Ticks Down on Defense Policy Bill*, DEF. NEWS, (Nov. 4, 2019), https://www.defensenews.com/congress/2019/11/04/clock-ticks-down-on-defense-policy-bill.

weapons.[139] On December 20, 2019, President Trump signed the 2020 NDAA into law.[140]

The February 2019 summit meeting between President Trump and Chairman Kim Jong Un of the Democratic People's Republic of Korea (DPRK)[141] ended without reaching an agreement.[142] Efforts to achieve the denuclearization of the DPRK continued, but as of December 2019, no further meetings between the two heads of state had been scheduled.[143]

After the United States withdrew from the Iran denuclearization agreement (the Joint Coordinated Plan of Action or JCPOA) and re-imposed sanctions on Iran, Iran continued for some time to comply with its terms while other parties sought to preserve the JCPOA by finding mechanisms for sanctions relief.[144] Subsequently, however, Iran announced a series of steps to reduce compliance with various provisions of the JCPOA.[145] On November 4, 2019, Iran announced that it had begun using advanced centrifuges which would substantially increase its capacity for uranium enrichment.[146]

Non-nuclear weapons states continued to express frustration over inaction by the nuclear weapons states on their disarmament obligations under Article VI of the Non-Proliferation Treaty (NPT).[147] The First Committee of the United Nations General Assembly[148] passed a resolution[149] calling on the nuclear weapons states to reduce nuclear risk by, *inter alia*, lowering the

139. H.R. REP. NO. 116-333, at 1463 (2019) (Conf. Rep.).

140. National Defense Authorization for Fiscal Year 2020, S. 1790, 116th Cong. (2019) (enacted).

141. Also known as North Korea.

142. Kelsey Davenport, *Trump-Kim Summit Ends with No Deal*, ARMS CONTROL TODAY (Mar. 2019), https://www.armscontrol.org/act/2019-03/news/trump-kim-summit-ends-deal.

143. *Id.*

144. Kelsey Davenport, *IAEA Says Iran Abiding by Nuclear Deal*, ARMS CONTROL ASSOCIATION, (Apr. 2019), https://www.armscontrol.org/act/2019-04/news/iaea-says-iran-abiding-nuclear-deal.

145. *Iran to Further Reduce Compliance with Nuclear Deal*, THE GUARDIAN (Aug. 3, 2019), https://www.theguardian.com/world/2019/aug/03/iran-to-further-reduce-compliance-with-nuclear-deal.

146. David E Sanger & Richard Perez-Pena, *Iran Adds Advanced Centrifuges, Further Weakening Nuclear Deal*, N.Y. TIMES (Nov. 4, 2019), https://www.nytimes.com/2019/11/04/world/middleeast/iran-nuclear-centrifuges-uranium.html.

147. *See Disarmament and International Security*, U.N., http://www.un.org/en/ga/first (last visited June 1, 2020); First Committee, Towards a Nuclear-Weapon-Free World: Accelerating the Implementation of Nuclear Disarmament Commitments, U.N. Doc. A/C.1/74/L.20 (Oct. 21, 2019).

148. *Id.* (The First Committee, consisting of all UN member states, "considers all disarmament and national security matters within the scope of the UN] Charter." First Committee resolutions are normally adopted as a matter of course by the General Assembly when it meets in plenary session.).

149. First Committee, Towards a Nuclear-Weapon-Free World: Accelerating the Implementation of Nuclear Disarmament Commitments, U.N. Doc. A/C.1/74/L.20 (Oct. 21, 2019).

alert status of nuclear weapons and diminishing their role in national security policy.[150]

As of December 2019, the Treaty on the Prohibition of Nuclear Weapons (TPNW) had not achieved the fifty ratifications required to enter into force.[151] All nuclear weapon states boycotted the negotiation of the TPNW and have continued to state that they will not observe it.[152]

The White House declined comment on numerous unconfirmed reports,[153] including that the United States plans to withdraw from the Open Skies Treaty,[154] which seeks to build confidence by permitting the thirty-four member states (including the United States and Russia) to conduct unarmed observation flights over the territory of other members.[155] No such announcement had been made when this article went to press.[156]

150. *Id.*

151. *Treaty on the Prohibition of Nuclear Weapons*, U.N. OFF. FOR DISARMAMENT AFF., http://disarmament.un.org/treaties/t/tpnw (last visited June 1, 2020).

152. *Id.*

153. Kingston Reif & Shannon Bugos, *U.S. Considers Open Skies Treaty Withdrawal*, ARMS CONTROL TODAY (Nov. 15, 2019), https://www.armscontrol.org/act/2019-11/news/us-considers-open-skies-treaty-withdrawal.

154. Treaty on Open Skies, *opened for signature* Mar. 22, 1992 (entered into force Jan. 1, 2002), https://www.osce.org/library/14127?doownload=true.

155. *Id.*

156. *See* Reif, *supra* note 153.