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POLICY BRIEF

EUROPE'S NEW COUNTER-TERROR WARS

Anthony Dworkin

SUMMARY

- In recent years, several EU member states have launched military operations against terrorist groups overseas, but have given little apparent thought to the risks that these operations involve.
- Military action is only likely to succeed against terrorist groups when it is matched by a political solution on the ground. Otherwise it will be ineffective in reducing the threat of terrorism and may even be counterproductive.
- European countries are at risk of setting damaging legal precedents for the expansive use of force if they do not articulate clearer standards for when attacking terrorists overseas is permissible, both outside and within armed conflict.
- There has been an unnoticed convergence in the military practice of European countries and the US. Both are conducting operations that mix attempts to recapture ground from armed groups with direct counter-terrorist strikes.
- Even though ISIS is now on the defensive, the threat of jihadist groups in regions surrounding Europe will persist. EU member states should develop tighter guidelines for deciding when military force should be used against them.

On 14 July 2016, a Tunisian citizen living in France drove a truck into a crowd celebrating Bastille Day in Nice and killed 86 people. In response, among other measures, France's President François Hollande announced he would intensify airstrikes in Syria and Iraq and send the aircraft carrier *Charles de Gaulle* back to the eastern Mediterranean. By ordering military action in the Middle East to counter a mass killing carried out in France by a French resident, Hollande perfectly illustrated a remarkable turn in the European response to terrorism. In the face of new terrorist groups that have emerged in Europe's wider periphery, EU member states have launched a wave of counter-terror wars.

In the years after the September 11 attacks, most European officials and politicians were strongly critical of the United States' "global war on terror". Although reluctant to openly rebuke their close ally, many officials made it clear that they thought the US campaign against al-Qaeda fighters and affiliates across several countries over-emphasised the role of military force in responding to terrorism and sometimes violated international law. However, in the face of the rise of ISIS and the persistent strength of other jihadist groups, European countries have themselves undertaken military action against terrorists in Iraq, Syria, the Sahel, and elsewhere. The role of European airstrikes in preparing the way for the recently launched coalition offensive against Mosul provides only the latest example.

European military campaigns against terrorist groups have not duplicated the established US model, and form only a part of the European counter-terror effort. Nevertheless, these operations mark a departure from the previous practice of EU

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member states, and European governments appear to have paid little attention to the risks they entail.

The new European counter-terror wars are hybrid in nature. European countries are pursuing different approaches to the threat posed by jihadist groups across a range of countries in the Middle East and North Africa, and it is hard to disentangle the objectives that lie behind them. European actions range from efforts to strengthen the capacity of states and non-state forces, direct support for their military ground operations, including through the deployment of Special Operations forces, airstrikes designed to weaken armed groups, and more targeted strikes aimed at killing group leaders or fighters allegedly involved in planning attacks. In essence, European efforts represent a confluence of two distinct kinds of operation: European forces are simultaneously conducting relatively conventional counter-insurgency campaigns against non-state groups, as well as direct military counter-terrorism of the sort that the United States has pioneered over the last decade and a half.

The EU has often been divided about the use of military force, but these operations enjoy broad European support. France, the UK, Germany, Belgium, the Netherlands, Denmark, Italy, Spain, and Poland have all been directly involved in conducting or assisting military action against jihadist groups in the regions surrounding Europe. Several other EU member states are involved in missions to train local security forces or assist countries in the region to strengthen their counter-terror capacity. The evolution of European military counter-terrorism operations has involved close coordination between EU member states and the United States, and there has been a notable and largely unremarked convergence between European and US approaches to military action against terrorists, after many years when they differed widely.

Most European strategists would agree that ISIS and other groups pose a threat to the EU and that there is some role for military action in countering them. But Europe's foray into military counter-terrorism has been driven not only by strategic calculation but also by political considerations – above all, the determination to show that governments are taking forceful action against groups that fill their citizens with fear. In pursuing this objective, European governments are at risk of taking military action that is ineffective in achieving its stated goals and may even be counterproductive. They are also in danger of following the United States in setting dangerously expansive legal precedents for the use of force against non-state groups overseas. This paper argues that EU member states should adopt a more restrained and considered approach to military counter-terrorism to promote European security and help reinforce an international order in line with the EU's interests and values.

The background to Europe's counter-terror wars

The European move into counter-terrorist war has been driven by the emergence of jihadist groups in Europe's wider periphery that operate as insurgents or state-like military forces as well as practising conventional terrorism against overseas targets. In the words of the French Defence Minister Jean-Yves Le Drian, "the militarisation of terrorism demands a military response".[1] ISIS in particular represents a mix of terrorist and military approaches. As a German defence official put it, "a classic terrorist group should not be a target of military operations, but if the group is creating military forces, then it becomes a target for military operations".[2] Drawn into armed campaigns against jihadist groups with the objective of denying them safe havens, European countries have also moved towards direct military counter-terrorism strikes with the proclaimed aim of weakening organisations and heading off attacks in Europe.

Since September 2001, the United States has, by its own account, been engaged in an armed conflict with "al-Qaeda, the Taliban and associated forces". In fact, almost from the start, it was conducting two largely distinct military campaigns. In Afghanistan, the US armed forces helped the Northern Alliance topple the Taliban regime in Kabul and then spent many years trying to defeat the insurgent movement that the Taliban became – an effort that led President Barack Obama to extend the mission of US forces in Afghanistan in 2015. Many European countries were closely involved in this effort: NATO committed a large security assistance force to Afghanistan between 2003 and 2014, succeeded by a smaller follow-on mission that continues to the present.[3]

Alongside this, however, the US was conducting a campaign against the central core and various sub-groups of al-Qaeda that stretched across different countries and looked nothing like a conventional armed conflict. Even in Afghanistan, Osama bin Laden and his followers made no effort to fight the United States; their only concern was to escape the reach of US forces, defend themselves when necessary, and slip away when they could.[4] Al-Qaeda's operations stretched across the world, but its affiliates were more successful in mounting terror attacks than in controlling territory. In part this reflected bin Laden's view that the organisation was not yet ready to govern territory (indeed, he criticised al-Shabaab in Somalia for its efforts to do so).[5] In response, US military operations against al-Qaeda aimed above all to kill or capture its members, especially those who were believed to be involved in plotting attacks in the West or against US interests. These efforts took place in isolation from any conventional military engagement, and increasingly came to use drones as their primary weapons platform.

1 "Jean-Yves Le Drian: 'La militarisation du terrorisme exige une réponse militaire'", *leJDD*, 28 December 2014, available at http://www.lejdd.fr/International/Jean-Yves-Le-Drian-La-militarisation-du-terrorisme-exige-une-reponse-militaire-708900.

2 ECFR interview with German officials, 24 February 2016.

3 "Resolute Support Mission in Afghanistan", NATO, 13 June 2016 (last update), available at http://www.nato.int/cps/en/natohq/topics_113694.htm.

4 Peter Bergen, *The Longest War* (New York: Simon & Schuster, 2011), pp. 68–85.

5 William McCants, *The ISIS Apocalypse* (New York: Picador, 2016), pp. 64–9 (hereafter, McCants, *ISIS Apocalypse*).

A number of European countries turned out to have collaborated in different ways with US targeted killings, above all through providing intelligence that was used to identify targets, according to numerous reports and investigations. Nevertheless, this assistance was not publicly admitted and was often the focus of domestic controversy or legal challenge after it came to light. Moreover, most European officials rejected the legal claims of a global armed conflict underlying the US strikes against al-Qaeda, and EU member states were careful not to endorse US actions.[6]

Even for European countries such as Spain and the UK that were hit by al-Qaeda-linked attacks, direct military action against al-Qaeda members overseas was seen either as unjustifiable and counterproductive, or, where practised covertly, as a distinctly secondary contribution to the defence of European territory against terrorist crimes. Unlike the men who carried out the attacks of September 11 in the United States, the perpetrators of terrorist incidents in Europe were mainly citizens or residents of the countries where the attacks took place. The primary focus of European counter-terrorist efforts remained on domestic law enforcement, intelligence work, and counter-radicalisation programmes.

In the last few years, the terrorist threat, as perceived in Europe, has changed dramatically, as terrorist groups succeeded in gaining control of large swathes of territory in Europe's wider periphery. The evolution of these armed groups led to the European move into military counter-terrorism; in effect, the two strands of the US response to September 11 were brought together.

The fight against jihadists in Mali

These developments were rooted, among other factors, in the fundamental changes produced across the Middle East and North Africa by the after-effects of the Arab revolutions of 2011.[7] A turning point came in 2012, when a Tuareg-led rebellion in northern Mali opened the way for a collection of jihadist groups including Ansar al-Din and al-Qaeda in the Islamic Maghreb (AQIM) to seize control of large parts of northern Mali. In January 2013, these groups launched a renewed offensive in central Mali, raising fears that they might capture the country's capital, Bamako. In the estimation of France's then foreign minister, Laurent Fabius, the jihadists' goal was "to control the whole of Mali in order to establish a terrorist state… threatening the whole of Africa and Europe itself".[8]

It remains unclear how much of a threat AQIM and its various spin-offs and affiliated groups would have posed to European countries, even had they succeeded in gaining control of a large part of Malian territory.[9] Despite the consistently anti-French and anti-Spanish rhetoric of its leaders, AQIM has not carried out an attack in Europe; unlike the central core of al-Qaeda, it was focused (and has remained focused) on the "near enemy" of Sahelian and North African regimes.[10] However, jihadist groups in North Africa had already singled out European citizens and other foreigners for kidnap, and attacked targets in North Africa in which European interests were at stake.

The prospect that AQIM and other groups could gain control of Mali clearly risked the destabilisation of the region. Even without a further advance, the jihadists had established a safe haven in northern Mali where immediate threats to their control had been marginalised.[11] Moreover, France has historically seen itself and acted as a protector of the countries of Francophone Africa.[12] For these reasons, and because efforts to mobilise forces under the regional grouping ECOWAS were progressing only slowly, France sent its own forces into Mali in January 2013 to turn back the jihadist advance.

France's intervention in Mali at first took the form of a fast-moving counter-insurgency campaign, an expeditionary operation that relied in large part on light infantry forces and ground operations to recapture territory seized by jihadist-led insurgent forces.[13] Operation Serval, as this phase of the French campaign was named, succeeded rapidly in its initial goal: by early April 2013, French forces had re-established control over most of Mali's territory. Following the completion of this part of its mission, France turned over responsibility for stabilising Mali to the United Nations and to an EU mission to train the Malian army.

However, while Operation Serval had scattered the jihadists from their bases in northern Mali, they showed a persistent capacity to mount attacks in Mali and neighbouring countries, particularly Niger. According to French officials, there was a continuing need to act against a possible resurgence of terrorist activity and head off the danger that jihadists might be able to re-establish a safe haven, whether in Mali or elsewhere. France therefore adjusted its military posture to one based on a new and different strategic concept.

The military operation, renamed Operation Barkhane, was now focused on attacking a shifting set of ultra-mobile armed groups that were spread across several countries. France obtained the consent of Niger, Chad, Burkina Faso, and Mauritania, as well as Mali, for its troops to operate on their territory. French forces were directed to track and kill jihadists across a vast territory extending over around five million square kilometres. In the words of Le Drian, France

6 Anthony Dworkin, "Drones and Targeted Killing: Defining a European Position", European Council on Foreign Relations, June 2013, available at http://www.ecfr.eu/publications/summary/drones_and_targeted_killing_defining_a_european_position211.

7 "Exploiting Disorder: al-Qaeda and the Islamic State", International Crisis Group, March 2016, pp. 6–9, available at https://www.crisisgroup.org/global/exploiting-disorder-al-qaeda-and-islamic-state (hereafter, "Exploiting Disorder").

8 Press conference given by Laurent Fabius, Paris, 11 January 2013, excerpts available at http://www.ambafrance-uk.org/France-supporting-Mali-against.

9 For an argument that the importance of safe havens has been greatly exaggerated, see Micah Zenko and Amelia Mae Wolf, "The Myth of the Terrorist Safe Haven", *Foreign Policy*, 26 January 2015, available at http://foreignpolicy.com/2015/01/26/al-qaeda-islamic-state-myth-of-the-terrorist-safe-haven/.

10 Christopher S. Chivvis and Andrew Liepman, "North Africa's Menace", RAND, 2013, p. 5, available at http://www.rand.org/content/dam/rand/pubs/research_reports/RR400/RR415/RAND_RR415.pdf.

11 Christopher S. Chivvis, *The French War on Al Qa'ida in Africa* (New York: Cambridge University Press, 2016), p. 160 (hereafter, Chivvis, *French War*).

12 Chivvis, *French War*, pp. 41–44.

13 Michael Shurkin, "France's War in Mali: Lessons for an Expeditionary Army", RAND, 2014, pp. 9–12, available at http://www.rand.org/content/dam/rand/pubs/research_reports/RR700/RR770/RAND_RR770.pdf.

was now "pursuing counter-terrorism across the whole of the Sahel-Saharan strip".[14]

The rise of ISIS in the Levant

At the same time as France was moving into military counter-terrorism in the Sahel, a new and seemingly even more menacing terrorist safe haven was emerging in the Levant. The Islamic State of Iraq and al-Sham (ISIS) surged to international notoriety in early 2014 when, building on a territorial presence that it had established in Syria amid the civil war, it advanced swiftly through north-eastern Iraq and seized the city of Mosul in June 2014.

ISIS's rapid progress in the face of the collapsing Iraqi army raised fears that it might attempt to move on the capital, Baghdad. The resources, money, and weaponry that ISIS captured during its seizure of cities and military bases in both Syria and Iraq, and the large number of recruits that it was drawing into its ranks, made it seem more akin to the military force of a state than an insurgent movement or traditional terrorist group.[15] This impression was only strengthened after ISIS's leader Abu Bakr al-Baghdadi proclaimed the re-establishment of the caliphate on the territory it controlled.

Following further advances by ISIS against Iraqi Kurdish territory in the summer – leading in particular to the threatened massacre of thousands of members of the Yazidi religious minority – and in response to an explicit request for assistance from the Iraqi government, the United States began airstrikes against ISIS in Iraq in August 2014.

In addition to the territory over which ISIS had gained control, there was another reason why the group seemed to represent a different kind of threat to Europe than that posed by al-Qaeda and other groups. Among the foreign fighters who had been drawn to join ISIS's ranks in Iraq and Syria, a large number were European: already by April 2014, the EU's Counter-Terrorism Coordinator Gilles de Kerchove estimated that over 2,000 fighters had travelled to Syria from EU member states.[16]

An attack carried out by a returned fighter at the Jewish Museum in Brussels in May 2014 showed the direct danger these fighters could pose in European countries. At the same time, ISIS was stepping up its propaganda directed at Western audiences. In June 2014 it released its first English-language video, entitled "There is no Life without Jihad", featuring a number of British and Australian fighters.[17] Following the US airstrikes, ISIS released a series of videos revealing the beheading of Western hostages, with fighters directly addressing foreign leaders and threatening further executions. Against a background of massive public concern in Europe and the United States, European countries quickly joined the coalition carrying out military action against ISIS in Iraq.

As justification for military action, European leaders and officials cited the danger of letting ISIS consolidate its territorial control. France launched military strikes against ISIS in Iraq in September 2014, with President Hollande describing the action as "aerial protection operations" in support of Iraqi authorities.[18] Ten days later, the UK began strikes in Iraq aimed at "halting the advance of ISIL and helping the Iraqi government turn it back".[19] David Cameron, then prime minister, told Parliament that the operation was necessary to prevent the emergence of "a terrorist caliphate on the shores of the Mediterranean and bordering a NATO member, with a declared and proven determination to attack our country and our people".[20] Belgium, Denmark, and the Netherlands also joined the US-led military campaign against ISIS in Iraq, with other EU member states providing support.

While European countries framed their action as helping Iraqi authorities roll back ISIS's advance, the United States, following the execution of US hostages by ISIS, quickly escalated its engagement to a more direct counter-terrorist mission. In September 2014, President Obama announced that the United States was undertaking a "comprehensive and sustained counterterrorism strategy" against ISIS that included targeting ISIS fighters "wherever they are", including in Syria.[21] But European countries held back from launching strikes against ISIS in Syria because of the complexity of the Syrian civil war, as well as concerns about the legality of taking action in Syria without its government's consent.

Airstrikes against ISIS in Iraq formed only one part of Europe's efforts to counter the threat posed by the group. During this period, EU member states also stepped up other measures designed to limit ISIS's rise. They pursued diplomatic efforts to promote a more inclusive political approach by the Iraqi government, restrict the movement of foreign fighters across the Turkish-Syrian border, and reduce or end the conflict in Syria. On the domestic front, they strengthened programmes to counter radicalisation among their own populations, attempted to limit financial flows and arms transfers to the group through the use of sanctions, and put in place legal provisions, intelligence measures, and other steps to deal with returning fighters.

Nevertheless, despite the extra measures that states were taking against ISIS, the threat the group posed to Europe seemed to escalate. Shortly after the US and France began

14 David Revault d'Allones, *Les Guerres du Président* (Paris: Éditions du Seuil, 2015), pp. 149–150 (hereafter, Revault d'Allones, *Guerres du Président*).

15 Audrey Kurth Cronin, "ISIS Is Not a Terrorist Group", *Foreign Affairs*, March/April 2015, available at https://www.foreignaffairs.com/articles/middle-east/isis-not-terrorist-group.

16 Richard Barrett, "Foreign Fighters in Syria", the Soufan Group, June 2014, p. 14, available at http://soufangroup.com/wp-content/uploads/2014/06/TSG-Foreign-Fighters-in-Syria.pdf.

17 Charles R. Lister, *The Syrian Jihad* (London: Hurst, 2015), p. 235 (hereafter, Lister, *Syrian Jihad*).

18 Press conference of François Hollande, 18 September 2014, transcript of opening statement available at http://www.elysee.fr/conferences-de-presse/article/propos-liminaire-du-president-de-la-republique-lors-la-conference-de-presse-du-18-septembre-201/.

19 Defence Secretary Michael Fallon, quoted in "RAF conducts first air strikes of Iraq mission", Ministry of Defence, 30 September 2014, available at https://www.gov.uk/government/news/raf-conducts-first-air-strikes-of-iraq-mission--2.

20 David Cameron, Statement to the House of Commons, 26 September 2014, transcript available at http://www.publications.parliament.uk/pa/cm201415/cmhansrd/cm140926/debtext/140926-0001.htm#1409266000001 (hereafter, Cameron, Statement on Iraq).

21 "Statement by the President on ISIL", the White House, 10 September 2014, available at https://www.whitehouse.gov/the-press-office/2014/09/10/statement-president-isil-1.

conducting strikes against ISIS positions, the group's spokesman, Abu Mohammed al-Adnani (later killed in a military strike for which the United States and Russia both claimed responsibility), issued a lengthy call to its followers to carry out direct attacks against coalition members.

"If you can kill a disbelieving American or European – especially the spiteful and filthy French – or an Australian or a Canadian or any other disbeliever from the disbelievers waging war… then rely upon Allah, and kill him in any manner or way however it may be", his statement said.[22]

The declaration of support for ISIS by one of the men involved in the coordinated attacks in Paris in January 2015 against the satirical newspaper *Charlie Hebdo* and a kosher grocery store showed the potential threat of such "amateur" or "low-tech" terrorism.[23] There was little evidence in this period that the ISIS hierarchy was directly involved in organising attacks, but it is now clear that from mid-2014 it was at least establishing a network of agents in European countries to lay the groundwork for future attacks.[24]

At the same time, the numbers of European citizens travelling to Syria to join ISIS reached a new height after the group's declaration of a caliphate and the beginning of Western attacks. According to one estimate, the total of Western European fighters in Syria more than doubled to over 5,000 between June 2014 and December 2015.[25] During this period, too, ISIS expanded its presence across the wider Middle East, accepting pledges of allegiance from several other groups and declaring *wilayat* (provinces) in Sinai, Libya, Saudi Arabia, and other countries.

The increasing flow of foreign fighters into ISIS's ranks and the perceived threat of attacks in Europe by returned fighters, as well as the group's continued strengthening of its position in Syria, led to the next escalation of European action.

Increasingly, the defence of European countries against terrorism was at the centre of the justification for military engagement. In September 2015, France extended its campaign against ISIS into Syria. President Hollande said this was necessary because attacks were being organised from ISIS's base in Syria against several countries, including France.[26] Even before that, the UK had carried out a drone strike in Syria in August 2015 that Cameron described as an act of self-defence.[27] The French and (albeit limited) British move into Syria came at a time of renewed attention to the Syrian conflict, driven above all by the wave of refugees fleeing the conflict and crossing into Europe, and appeared motivated in part by a desire to become more active and influential in the international response.[28]

These military strikes did not, however, lead to any noticeable reduction in the threat ISIS posed. Instead, the following months saw the first high-casualty attacks directly organised by ISIS in Europe, with the coordinated assault on Paris in November 2015 that killed 130 people and the Brussels bombings of March 2016 that killed 32 people. Following the Paris attacks, France invoked the mutual defence provision of the Lisbon Treaty (Article 42(7)) to request assistance in military action against ISIS from other EU member states; in response, the UK, Germany, Denmark and the Netherlands announced they would either join in airstrikes in Syria or provide direct assistance to French military efforts.

An audit of European military counter-terrorism

The counter-terror wars have brought together a significant group of the most militarily active EU member states. Differences in national political culture continue to shape the policy and rhetoric of EU member states: for example, while President Hollande has repeatedly echoed the language of US leaders in saying his country is at war with ISIS, other European officials admit that such language makes them uneasy.[29]

Nevertheless, there is wide involvement in and support for Europe's military measures against Islamist armed groups. Officials say there is now "a much greater European threat perception" than existed previously and a greater effort to seek common approaches to common problems.[30] A wide number of European countries are thus contributing to military operations and the wider armed struggle against jihadist groups.

22 Lister, *Syrian Jihad*, p. 291.

23 Corri Zoli, "Lone-Wolf or Low-Tech Terrorism? Emergent Patterns of Global Terrorism in Recent French and European Attacks", *Lawfare*, 17 August 2016, available at https://www.lawfareblog.com/lone-wolf-or-low-tech-terrorism-emergent-patterns-global-terrorism-recent-french-and-european.

24 Thomas Hegghammer and Petter Nesser, "Assessing the Islamic State's Commitment to Attacking the West", *Perspectives on Terrorism*, Vol. 9, No. 4 (2015), available at http://www.terrorismanalysts.com/pt/index.php/pot/article/view/440/html; Rukmini Callimachi, "How ISIS Built the Machinery of Terror Under Europe's Gaze", the *New York Times*, 29 March 2016, available at http://www.nytimes.com/2016/03/29/world/europe/isis-attacks-paris-brussels.html; see also Rukmini Callimachi, "How a Secretive Branch of ISIS Built a Global Network of Killers", the *New York Times*, 3 August 2016, available at http://www.nytimes.com/2016/08/04/world/middleeast/isis-german-recruit-interview.html.

25 "Foreign Fighters: An Updated Assessment of the Flow of Foreign Fighters into Syria and Iraq", the Soufan Group, December 2015, available at http://soufangroup.com/wp-content/uploads/2015/12/TSG_ForeignFightersUpdate3.pdf. For a slightly lower estimate of 3,922–4,294, see "The Foreign Fighters Phenomenon in the European Union: Profiles, Threats & Policies", International Centre for Counter-Terrorism – The Hague, April 2016, available at http://icct.nl/publication/report-the-foreign-fighters-phenomenon-in-the-eu-profiles-threats-policies/.

26 "François Hollande ouvre la voie à des bombardements en Syrie contre l'Etat islamique", *Le Monde*, 7 September 2015, available at http://www.lemonde.fr/politique/article/2015/09/07/la-france-decide-une-intervention-militaire-aerienne-en-syrie-contre-l-ei_4748129_823448.html#pzIl5IG6Jv7EXaWO.99; see also Nathalie Guibert, "La France a mené ses premières frappes en Syrie", *Le Monde*, 27 September 2015, available at http://www.lemonde.fr/proche-orient/article/2015/09/27/la-france-a-mene-ses-premieres-frappes-en-syrie_4773677_3218.html#ZqriwMdrQh7bhEYl.99.

27 David Cameron, "Syria: refugees and counter-terrorism", Statement to the House of Commons, 7 September 2015, available at https://www.gov.uk/government/speeches/syria-refugees-and-counter-terrorism-prime-ministers-statement (hereafter, Cameron, Statement on Syria).

28 John Irish and Dominique Vidalon, "France launches air strikes against Islamic State in Syria", *Reuters*, 27 September 2015, available at http://www.reuters.com/article/us-mideast-crisis-france-syria-idUSKCN0RR07Y20150927 (hereafter Irish and Vidalon, "Air strikes").

29 François Hollande, Statement after meeting of the Council of Defence, 14 November 2015, available at http://www.elysee.fr/declarations/article/declaration-a-l-issue-du-conseil-de-defense-2/, and François Hollande, Statement at Saint-Etienne-du-Rouvray, 26 July 2016, available at http://www.elysee.fr/declarations/article/attentat-a-saint-etienne-du-rouvray/; ECFR interview with Ministry of Foreign Affairs official, Germany, date tbc.

30 ECFR interview with British officials, 3 May 2016.

France

France has been the strongest advocate among European countries of an armed response to terrorist groups and has also emerged as a leading partner of the United States in military counter-terrorism, particularly in Africa. In the Sahel, France has deployed 3,500 troops in Operation Barkhane, along with 17 helicopters, four Mirage attack aircraft based in Chad, and five medium-altitude, long-endurance drones (three Reaper and two French-made Harfang) based at Niamey in Niger. France does not currently possess armed drones, but it makes extensive use of surveillance drones to identify individual targets or mobile groups of fighters in the Sahelian desert. Denis Mercier, the former chief of staff of the French Air Force, described them as "the key to operations in Africa".[31] By July 2016, the five drones involved in Barkhane had together logged over 11,000 hours of flight time.[32]

Operation Barkhane combines attacks on mobile cells and on "high-value targets", normally senior members of jihadist armed groups. Altogether, France had conducted 221 operations as part of Operation Barkhane by July 2016 and, according to the French Ministry of Defence, had killed or captured over 200 terrorist fighters and captured or destroyed 16 tons of weaponry.[33]

In the Levant, France was the first European country to launch attacks against ISIS in Iraq and the first to begin regular operations against the group in Syria. Named Operation Chammal, France's action against ISIS has involved the regular use of 14 fighter jets, reduced to 12 following a rationalisation of French air deployments, with six Rafale planes based in the United Arab Emirates and six further Rafale aircraft based in Jordan. France has also deployed a number of support aircraft, though no drones. Following the Paris attacks of November 2015, France deployed the aircraft carrier *Charles de Gaulle* to the eastern Mediterranean between November 2015 and March 2016, providing an additional 26 fighter planes. In July 2016, President Hollande announced that the *Charles de Gaulle* would return to the region following the Nice truck attack.

Altogether, by mid-October 2016, French planes had carried out 844 strikes against ISIS objectives in Iraq and 32 in Syria.[34] These involved both close air support for local forces fighting ISIS in Iraq and attacks against so-called "deliberate" targets away from the front line. France's first strike in Syria in September 2015 targeted a training camp that President Hollande said "threatened the security of our country".[35] Subsequent airstrikes also attacked training camps believed to be used by foreign fighters, and news reports suggested that an individual French jihadist, Salim Benghalem, had been a particular target of attack.[36]

While France says it does not have ground troops involved in operations against ISIS, it has admitted that it has Special Forces troops in both Iraq and Syria working as advisers and trainers to local forces.[37] Beyond this, 100 French soldiers are involved in training Iraqi forces in Baghdad. In addition, French officials have made clear that intelligence officers from the French foreign intelligence agency, the Direction General de Securité Exterieure (DGSE), are active in operations against terrorist groups in Africa outside the five countries covered by Barkhane. The presence of French operatives in Libya, already reported in the press, became impossible to conceal after three of them were killed in a helicopter crash in July 2016.[38]

United Kingdom

Judged simply by the number of airstrikes, the United Kingdom has been the most active European partner to the United States in the air campaign against ISIS in Iraq and subsequently in Syria, to which it formally extended its operations in December 2015. Operation Shader (as the British campaign is named) currently deploys 14 combat planes (eight Tornado aircraft and six Typhoon aircraft) and an unspecified number of armed Reaper drones out of the ten the British armed forces have in service, as well as several support aircraft.

By October 2016 the UK had carried out 999 strikes in Iraq and 67 strikes in Syria. The total number of drone missions flown in support of Shader through June 2016 stood at 1,427, of which 451 had entered Syrian territory; 418 weapons had been fired from British drones in Iraq and 30 in Syria. British officials say their military contribution has included providing close air support, targeting ISIS's communications, command and control, and infrastructure, and also providing intelligence and surveillance for coalition partners.

Standing apart from Operation Shader (and therefore excluded from the figures above) is the drone strike that Britain carried out in Syria in August 2015. The target of the attack was the British jihadist Reyaad Khan, who was killed along with two other fighters. This was not counted as part of Britain's regular operations against ISIS because at that time Parliament had not voted to authorise military action in Syria, required under a political convention that the prime minister had pledged to observe. Instead, Cameron described the attack to the House of Commons as a one-off, "a targeted strike to deal with a clear, credible and specific terrorist threat to our country at home". He said it was "the first time in modern times that a British asset has been used to conduct

31 Frédéric Pons, "Guerre au Sahel: les drones, 'arme fatale'", *Valeurs actuelles*, 16 June 2015, available at http://www.valeursactuelles.com/les-drones-arme-fatale-53592.

32 "Dossier de presse: Opération Barkhane", Ministry of Defence, France, July 2016, p. 9, available at http://www.defense.gouv.fr/content/download/386536/5731508/file/20160713%20DP%20Barkhane%20VF.pdf (hereafter, "Barkhane", Ministry of Defence).

33 "Barkhane", Ministry of Defence, p. 12.

34 All figures for European states' airstrikes in Iraq and Syria are from data compiled by Airwars, and are complete through 16 October 2016 unless otherwise stated.

35 Irish and Vidalon, "Air strikes".

36 Jacques Follorou, "Syrie: Salim Benghalem, la cible des frappes françaises à Rakka", *Le Monde*, 17 October 2015, available at http://www.lemonde.fr/societe/article/2015/10/17/syrie-salim-benghalem-la-cible-des-frappes-francaises-a-rakka_4791547_3224.html.

37 "Des conseillers militaires français actuellement en Syrie", *Reuters*, 9 June 2016, available at http://fr.reuters.com/article/topNews/idFRKCNoYV1D3.

38 Cyril Bensimon, Frédéric Bobin and Madjid Zerrouky, "Trois membres de la DGSE tués en Libye, le gouvernement libyen proteste", *Le Monde*, 20 July 2016, available at http://www.lemonde.fr/international/article/2016/07/20/trois-militaires-francais-tues-en-libye_4972142_3210.html.

Counter-terror activities of main European actors across all theatres

Member state	Airstrikes	Direct support*	Training	Weapons provision	Peacekeeping
Belgium	✈	🔭	🥾		UN
Denmark	✈	🔭	🥾	🔫	UN
France	✈	🔭	🥾	🔫	UN
Germany		🔭	🥾	🔫	UN
Italy		🔭	🥾	🔫	UN
Netherlands	✈	🔭	🥾		UN
Poland		🔭	🥾		
Spain		🔭	🥾	🔫	
United Kingdom	✈	🔭	🥾	🔫	UN

* Direct support includes measures such as reconaissance, refueling and transport assistance.

a strike in a country where we are not involved in a war".[39] British officials say Khan was attempting both to inspire and direct terrorist actions within the UK.[40]

The British government also affirmed that it would take the same action again: in the words of the defence secretary, "If there is a direct and imminent threat to the United Kingdom and there is no other way of dealing with it – it is not possible to interdict that threat or to arrest or detain the people involved in that threat – then of course as a last resort we have to use force."[41]

The UK has also made clear that it cooperated closely with the United States in tracking two other British jihadists who were targeted in US drone strikes: the computer hacker Junaid Hussain, killed in August 2015, and Mohammed Emwazi, more popularly known as "Jihadi John", killed in November 2015, after apparently beheading Western hostages on video.[42]

On top of its air operations, the UK has around 300 troops on the ground in Iraq providing training and advice to Iraqi and Kurdish forces. In August 2016 the BBC published photos that appeared to show British Special Forces on the ground in Syria, helping to defend a group of rebel forces

39 Cameron, Statement on Syria.

40 ECFR interview with British officials, 3 May 2016.

41 Michael Fallon, quoted in "The Government's policy on the use of drones for targeted killing", Joint Committee on Human Rights, May 2016, p. 36, available at http://www.publications.parliament.uk/pa/jt201516/jtselect/jtrights/574/574.pdf (hereafter, Drones Report, Joint Committee on Human Rights).

42 Cameron statement; Gordon Rayner, "How the US and UK tracked down and killed Jihadi John", the *Telegraph*, 13 November 2015, available at http://www.telegraph.co.uk/news/worldnews/islamic-state/11993569/How-the-US-and-UK-tracked-down-and-killed-Jihadi-John.html.

of the New Syrian Army against an ISIS attack. Special Forces have also been reported to be present in Iraq.[43] It has also been revealed that British Special Forces have been working alongside militia troops confronting ISIS in Libya. A commander from Misrata told *The Times* that British forces had fired missiles against would-be suicide bombers who were targeting militia forces.[44]

Germany

Since 2014 Germany has provided weapons and training to Kurdish Peshmerga forces in northern Iraq. There are currently 150 German troops deployed, while arms shipments, which were suspended in January 2016 after some of the weapons were found on the black market, were resumed in August 2016.

Beyond this, Germany's strong post-war pacifist tradition and public scepticism about military force prevented its involvement in offensive military action against ISIS. However when France appealed for the support of its fellow EU member states following the Paris attacks in November 2015, Germany took the significant step of approving logistical and reconnaissance support to coalition forces attacking ISIS in Iraq and Syria.

Germany has deployed six Tornado aircraft for aerial reconnaissance and an Airbus air-to-air refuelling aircraft, based at Incirlik airbase in Turkey, and also provided a frigate for the group escorting the French aircraft carrier *Charles de Gaulle*. In the words of a German defence official, this was "a way for Germany to be engaged in the military campaign against ISIS, but not engaged too much".[45]

Nevertheless German officials believe their country is likely to become gradually more accepting of the need for military operations against non-state armed groups in coming years, especially if a major terrorist attacks occurs on German soil. At the same time, the defence minister, Ursula von der Leyen, has called for the German armed forces to be equipped with armed drones, and earlier this year announced plans to lease a new generation of Israeli drones that are capable of carrying missiles.

Officials and analysts foresee that drones will be used primarily for force protection and close air support, but that they could eventually be used to target individual high-level members of opposing forces during armed conflict. There is broad consensus that Germany will not use drones for targeted strikes on terrorists outside the context of a wider military campaign in the foreseeable future.[46]

In its recent Defence White Paper, the German government described terrorism as the most immediate challenge to German security and said there was a role for military resources in confronting it, alongside political, legal, intelligence, and police measures, and wider counter-radicalisation efforts.[47] The White Paper also called for considering a possible reform to the constitutional framework governing overseas military missions, which now requires that they be conducted as part of a system of mutual collective security.[48] The paper suggested that the need to support partners at short notice in stabilisation operations, among other circumstances, might require Germany to deploy its forces outside a mutual collective security system.

Belgium, Denmark, and the Netherlands

Belgium, Denmark, and the Netherlands joined the military coalition conducting attacks against ISIS in Iraq in September 2014. Initially, Belgium and the Netherlands each deployed six F-16 fighters, based in Jordan, while Denmark sent seven F-16s, based in Kuwait. In July 2015, Belgium and the Netherlands moved to an arrangement whereby they would alternate deployments on an annual basis, with the country that did not have aircraft deployed providing ground security for the other's mission.

The Netherlands took the first shift, though its deployment was reduced to four F-16s with two in reserve. In February 2016, the Dutch parliament agreed to extend the mission to cover areas controlled by ISIS in eastern Syria. Three months later, the Belgian government announced plans to extend its strikes into Syria after it took over the mission at the beginning of July. Meanwhile, Denmark withdrew its fighters in October 2015 for maintenance. However, the Danish parliament approved the deployment of a mobile ground-based radar to the coalition in November 2015, and in May 2016 the Danish government announced the redeployment of its seven F-16s, with a new mandate to operate in Syria as well as Iraq.

In the two years following September 2014, the Netherlands has conducted an estimated 492 strikes in Iraq and at least one in Syria; Belgium has conducted around 116 strikes in Iraq; and Denmark has carried out around 229 strikes in Iraq and two in Syria.

Spain

In recent years, Spain has become increasingly focused on the threats emanating from the Sahel, which officials describe as Spain's real security border.[49] As a result, Spain has taken some preliminary steps into bilateral security cooperation, despite its traditional commitment to a multilateral and

43 Quentin Sommerville, "UK special forces pictured on the ground in Syria", BBC News, 8 August 2016, available at http://www.bbc.co.uk/news/uk-37015915.

44 Anthony Loyd, "British special forces destroy suicide truck", Times, 26 May 2016, available at http://www.thetimes.co.uk/edition/news/british-special-forces-destroy-suicide-truck-8dxp3r3qt; see also Frederic Wehrey, "The grinding fight to root out ISIS in a battered Libya", the *New Yorker*, 10 August 2016, available at http://www.newyorker.com/news/news-desk/the-grinding-fight-to-root-out-isis-in-a-battered-libya.

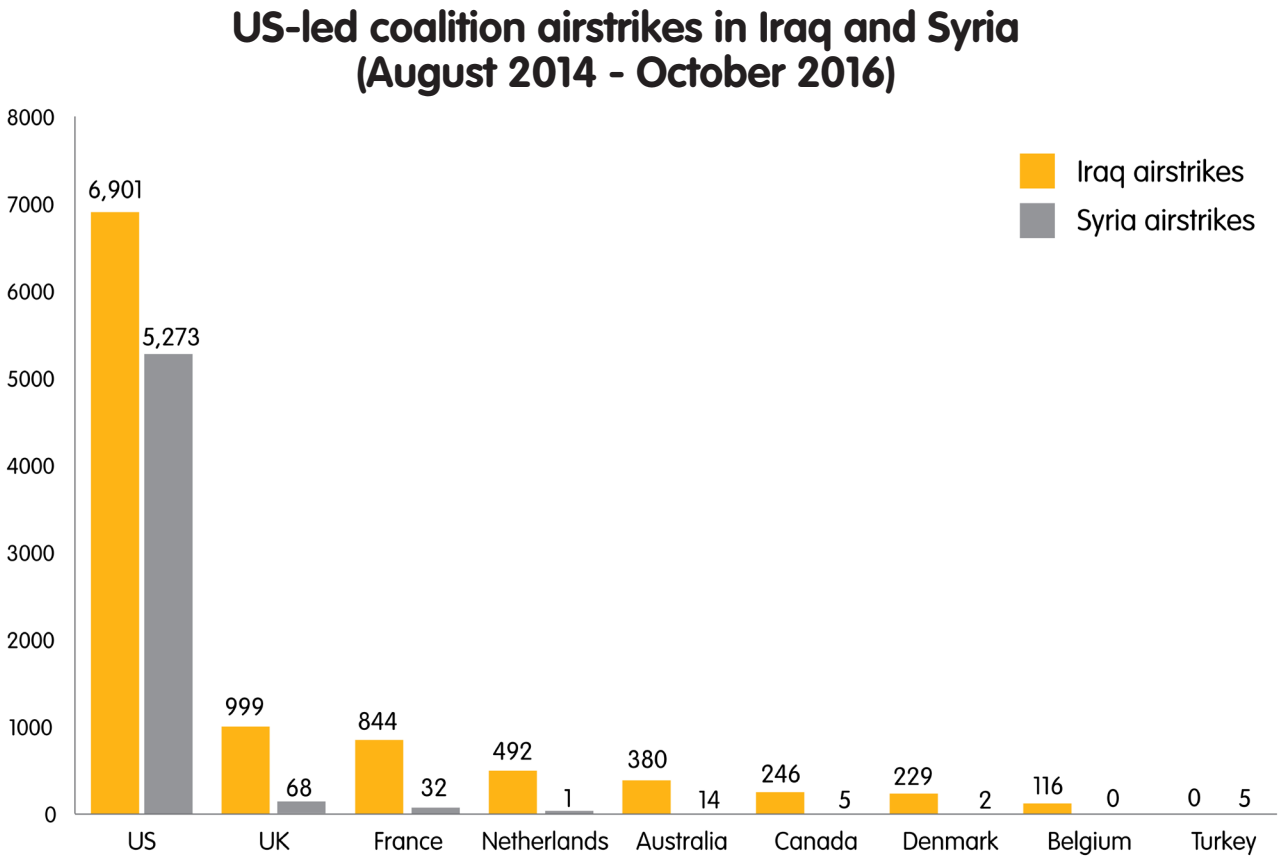
45 ECFR interview with German official, 23 February 2016.

46 Ulrike Esther Franke, "Proliferated Drones: a Perspective on Germany", Center for a New American Security, June 2016, available at http://drones.cnas.org/reports/a-perspective-on-germany/.

47 "White Paper on German Security Policy and the Future of the Bundeswehr", German Federal Government, July 2016, p. 34, available at http://bit.ly/2dMgsoD (hereafter, German Defence White Paper)

48 German Defence White Paper, pp. 108–9.

49 I am grateful to my colleague Francisco de Borja Lasheras for his analysis of Spanish security policy in the region, including this description of how defence officials regard the Sahel.



Source: Airwars

transatlantic security model.[50] Most significantly, Spain has provided the use of a C-130 Hercules military transport aircraft for French use in Operation Serval and Operation Barkhane. The aircraft is also used in connection with the UN peacekeeping mission MINUSMA (see below). Spanish forces also participate in significant numbers in the EU mission in Mali.

Madrid has been more reluctant to engage in Iraq and Syria, but it has sent a contingent of 300 soldiers to train Iraqi forces in Iraq.

Italy

The Italian public retains a strong aversion to the use of military force, and Italy has not undertaken any overt military action that directly targets terrorist groups. Nevertheless, Italy contributed four Tornado reconnaissance aircraft and two Predator surveillance drones to the coalition campaign against ISIS in Iraq, along with a Boeing KC-767 aerial refuelling tanker. Italy also has a training mission of around 300 soldiers working with Kurdish Peshmerga and Iraqi forces. More recently, Italian policy has been strongly focused on Libya. Earlier this year, Italy changed its policy on US drones based at Sigonella in Sicily, permitting the US to fly armed drones from the base as long as they were only used for the defensive purpose of protecting forces on the ground.

In August 2016, when the US began a campaign of regular air strikes to support Libyan government and militia forces in an offensive against ISIS around Sirte, Italy offered to allow US drones based at Sigonella to support the mission; Italian Defence Minister Roberta Pinotti said her government believed that "success in the fight to eliminate the terrorist centres in Libya is essential for the security of Libya, and also of Europe and Italy".[51]

Poland

In June 2016, the Polish government announced that four F-16 aircraft would be sent to conduct reconnaissance missions in support of coalition action against ISIS in Iraq and Syria, flying out of Kuwait. In addition, 60 Polish Special Forces troops have been deployed to Iraq to train local forces. Polish officials have admitted that the deployment is a gesture of solidarity with fellow EU member states in recognition of the support that they have given to strengthening NATO's posture against possible threats from Russia.[52]

Bilateral training support

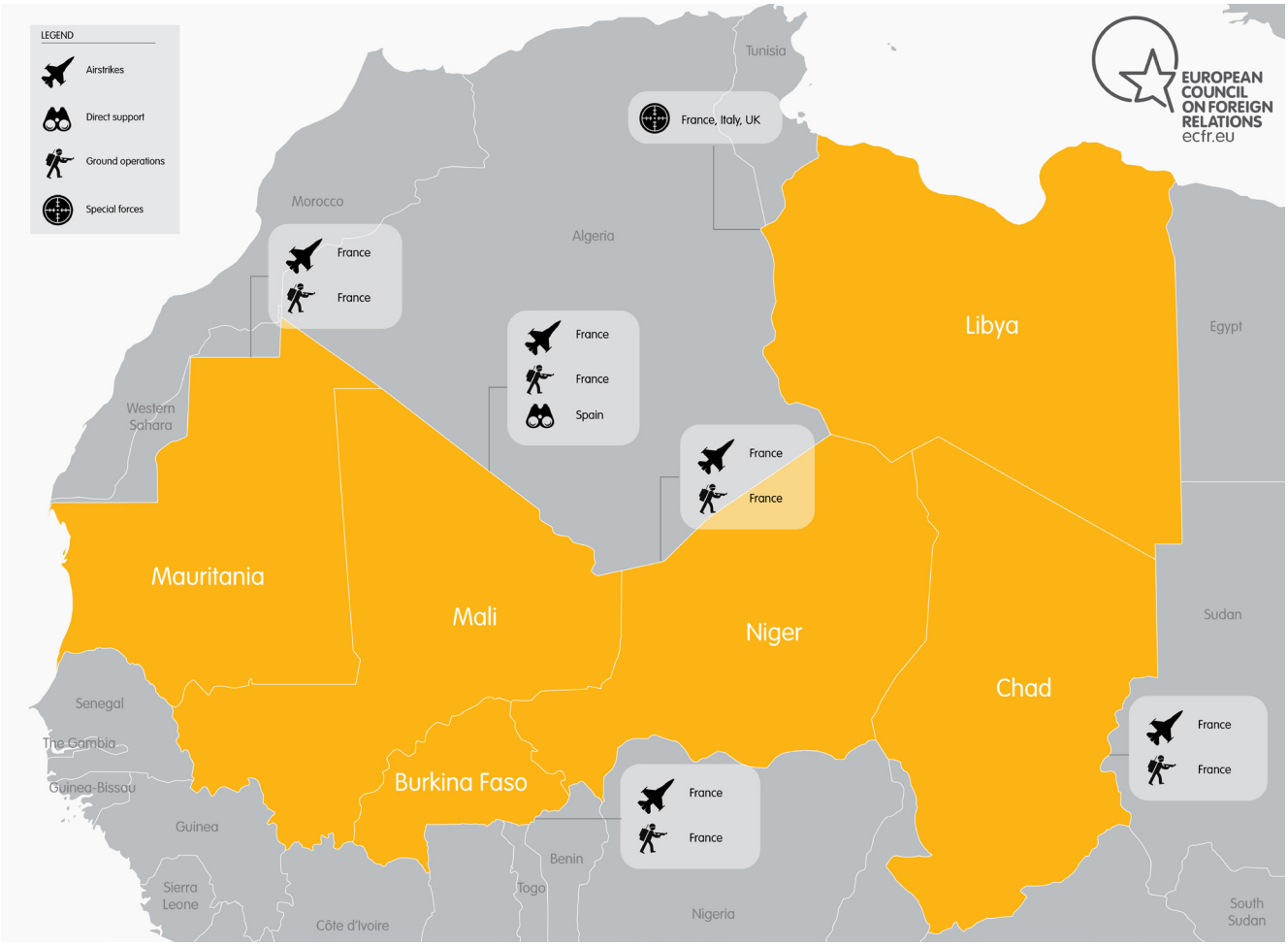
In addition to the countries listed above, the Czech Republic, Finland, Hungary, Latvia, Lithuania, Norway,

50 Félix Arteaga, "The coming Defence: criteria for the restructuring of Defence in Spain", Elcano Royal Institute, October 2013, available at http://www.realinstitutoelcano.org/wps/wcm/connect/45ff6500428e54d8bda3bf88c4292b51/Elcano-Policy-Paper-Criteria-Restructuring-Defence-Spain.pdf?MOD=AJPERES&CACHEID=45ff6500428e54d8bda3bf88c4292b51.

51 Gerardo Pelosi, "Defence Minister Pinotti confirms Italy will let the US use its military bases against ISIS in Libya", *ItalyEurope24*, 4 August 2016, available at http://www.italy24.ilsole24ore.com/print/ADBEIX1/0?refresh_ce=1.

52 "Polish Defence Minister Macierewicz: Russia the biggest threat to world peace", Radio Poland, 6 July 2016, available at http://www.thenews.pl/1/10/Artykul/260472,Polish-Defence-Minister-Macierewicz-Russia-the-biggest-threat-to-world-peace.

Main counter-terror operations in Central and North Africa



Portugal, Romania, Slovenia, and Sweden have sent military contingents to train anti-ISIS forces in Iraq, including both Kurdish forces and the Iraqi armed forces.

EU and multilateral missions

While security policy within the EU remains primarily a member state competence, the EU has conducted a military training mission in Mali since 2013 as part of its Common Security and Defence Policy (CSDP). The training mission (EUTM Mali) aims to offer training support to the Malian armed forces in order to help them restore the country's territorial integrity and reduce the threat posed by armed groups. In May 2016, there were 22 EU member states and four non-EU European countries participating in the mission.

The United Nations has also deployed a peacekeeping mission in Mali (MINUSMA) since April 2013. MINUSMA's mandate currently includes security, stabilisation, and the protection of civilians. It has frequently been the target of attack by armed groups, leading to the death of 100 soldiers and police serving under it. Fifteen EU member states currently have forces deployed as part of MINUSMA, as well as Norway and Switzerland.

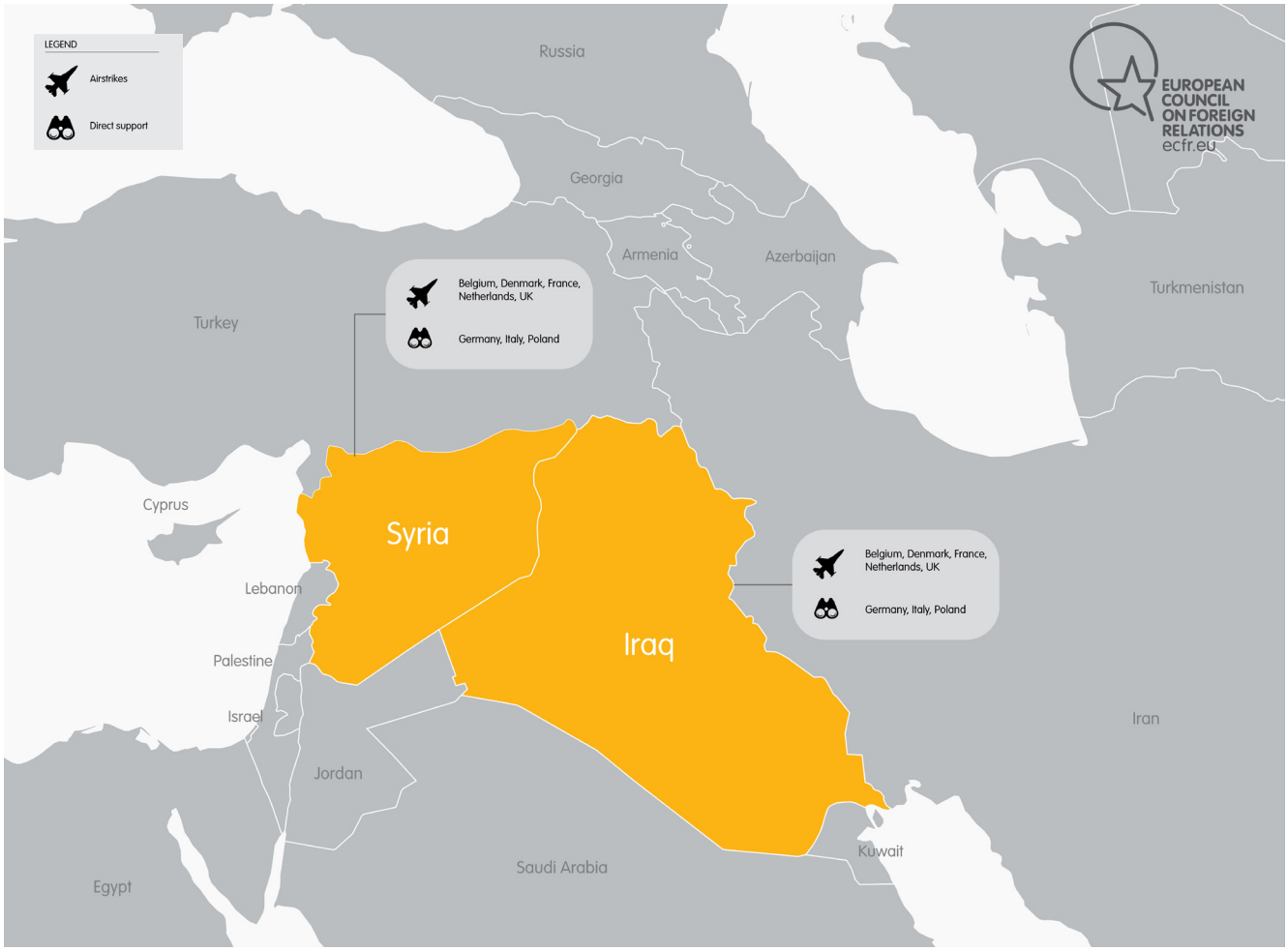
In July 2016, NATO leaders decided at the Warsaw Summit that the organisation would send AWACS surveillance planes to provide information for the coalition fighting ISIS as well as beginning the training of Iraqi forces in Iraq. At the same time, it was announced that NATO was stepping up its patrols in the Mediterranean, as part of the new Operation Sea Guardian, with a mandate that includes counter-terrorism.

The legal framework for European action

European governments have presented varying rationales for their military action against terrorist groups and have appealed for justification to a number of different legal frameworks. There has at times been a disjunction between states' apparent goals and political rhetoric, focused on self-defence, and their legal reasoning, emphasising the defence of regional partners. The result has been an ambiguous record that risks setting an overly permissive precedent for the use of force against terrorists overseas that other states will be able to exploit.

In undertaking military action against terrorist groups spread across national borders, European governments recognise that they are breaking new ground and confronting some complex legal questions. Their emerging policy reflects a

Main counter-terror operations in the Middle East



conscious effort by the most militarily active member states to coordinate their actions and positions with each other, based on regular communication between their legal and security officials. This is evident both from conversations with legal officials in several EU member state governments and from an analysis of the letters that they have sent to the UN Security Council explaining the basis for their action in Syria, in which a number of similar phrases recur. There is a strong degree of consensus among these countries about the basic international law framework that applies, even if some countries are prepared to go further than others in the ways they interpret or act on that framework.

In one important respect, however, European governments involved in counter-terror wars have stopped short of the expansive legal position adopted by the United States. EU member states (including France, despite the rhetoric used by government officials) are united in rejecting the notion of a single transnational armed conflict with the ISIS or al-Qaeda network. In the words of one British official, they continue to treat these terrorist groups as presenting a series of "specific threats in specific locations".[53]

This approach reflects both a strategic view about the most effective approach to fighting terrorist organisations and a legal analysis that rejects the notion of a geographically unbounded armed conflict against a non-state group. No European government has asked its country's legislature for authorisation for a multi-front campaign against ISIS or any other terrorist group, in the way that the US White House did against al-Qaeda in September 2001. Nevertheless this traditionalist approach conceals a number of new departures and unresolved questions in European policy.

Self-defence and the UN Charter

A central focus of debate in Europe has been on the justification needed under the UN Charter for launching military operations in self-defence on the territory of another state. Despite the fact that ISIS is "a counter-state movement that explicitly aims to destroy nation-state boundaries" and the Sahelian armed groups move effortlessly across national borders in the desert, the framework of international law ensures that European military responses are still structured in terms of the nation states within whose borders force is deployed.[54]

53 ECFR interview with British officials, 3 May 2016.

54 Lister, *Syrian Jihad*, p. 388.

Where EU member states have launched military campaigns with the consent of the government of the country where the operation is to take place, no question of the possible infringement of state sovereignty arises. France's initial military intervention in Mali was launched at the invitation of the Malian government to push back the Islamist insurgency, and was confined within Mali's borders. When France expanded its mission to encompass a counter-terrorist campaign across the entire Sahel region, it relied on the consent of the governments involved.

Nevertheless, Operation Barkhane is still framed as a mission to defend the territorial integrity of Mali. French rules of engagement only allow French forces to engage armed groups that pose a danger to Mali, not those that threaten other Sahel countries (although it is hard to know how much force this distinction has had in practice).[55] Similarly, European military action against ISIS in Iraq presented few legal complications, because it was carried out at the request of Iraqi authorities and was intended to support the effort of Iraqi forces to protect the country's territorial integrity.

Airstrikes against ISIS in Syria were a different matter, as the Syrian government had not requested the use of force by European countries on its territory, and EU member states did not want to seek President Assad's permission or coordinate their actions with his regime.

Based on the jurisprudence of the International Court of Justice (ICJ), the mainstream European view was, until recently, that the use of force is only permissible in such cases when a group responsible for an armed attack across national borders has a direct connection to the government of the country where it is located, such that the attack is attributable to the state concerned. Since 2001, that position has been challenged: the United States has for some time taken the position that the right of self-defence (including "collective self-defence", where third countries assist an attacked country to defend itself) allows the use of force against an armed group without the consent of the territorial state if that state is merely unable or unwilling to prevent attacks from its territory.[56] The United Kingdom has also supported this position.[57]

Other European countries have until recently been reluctant to adopt this "unable or unwilling" principle, reflecting a concern about making it too easy for states to intervene in other states' territory without UN Security Council authorisation. In justifying action against ISIS in Syria, some EU member states have emphasised the exceptional character of ISIS as a group whose territorial control and resources resemble those of a state, in what seems like an attempt to minimise the apparent shift in their position.[58] French officials admit that their decision to launch attacks against ISIS in Syria represented a change in their country's stance, but they stress that ISIS is effectively a "proto-state" – it not only controls territory but also possesses many of the capacities of a state, such as a police force and intelligence service.[59]

In a similar way, both Germany and Belgium justified their involvement in counter-ISIS action in Syria in public letters to the UN Security Council by stressing that the Syrian government does not exercise effective control over the areas ISIS occupies.[60] Although a Dutch official had said in 2014 that there was "currently no international agreement on an internationally legal mandate" for military action in Syria, the Dutch government had changed its view by early 2016, when it announced it would begin conducting strikes against ISIS there. A Dutch official said the country had been initially reluctant to follow the US approach, but had come to the conclusion that there was a genuine necessity to take action in this case.[61]

Despite the remaining ambiguity in some of their statements, there has clearly been a significant change in the stance of European governments over the last year. Both their practice and the justifications provided in letters to the Security Council and other statements show that they have come to accept that military action against terrorist groups can be lawful in at least some cases where the territorial state does not consent and, at the same time, cannot be deemed responsible for the activities of the group targeted.

Another serious question concerns the interpretation of the provision in the UN Charter that limits the lawful use of force on the territory of another state in self-defence to situations of an "armed attack". In the case of ISIS, there was no dispute that the group, based in Syria, had attacked Iraq and was continuing to fight there. However, the strike that the UK carried out in August 2015 in Syria added a complicating factor: David Cameron, then prime minister, presented the action to the House of Commons not as the start of a continuing UK military campaign in Syria to defend Iraqi territory, but as a one-off response to an immediate threat to the UK. In doing so, he raised the question of whether the threat posed by Reyaad Khan to the UK rose to the level of an armed attack. This was a debatable proposition, given that there appeared to be no evidence that linked Khan to any successful act of terrorism in the UK, or to any specific planned attack at the time the drone strike was carried out.

55 ECFR interview with French officials, 17 November 2015; see also Bruno Tertrais, "Operation Barkhane", in *Our Military Forces' Struggle Against Lawless, Media Savvy Terrorist Adversaries*, High Level Military Group, 2nd ed., February 2016, pp. 80–81, available at http://www.high-level-military-group.org/pdf/hlmg-lawless-media-savvy-terrorist-adversaries.pdf.

56 Letter from the Permanent Representative of the United States of America to the United Nations addressed to the Secretary-General, 23 September 2014, available at http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2014_695.pdf.

57 For a lucid statement on the subject of self-defence by a group of influential British legal experts, see "Principles of International Law on the Use of Force by States in Self-Defence", Chatham House, 1 October 2005, available at https://www.chathamhouse.org/publications/papers/view/108106.

58 For an in-depth discussion of this issue, see the initial post and responses in Marko Milanovic, "Belgium's Article 51 Letter to the Security Council", *EJIL: Talk!*, 17 June 2016, available at http://www.ejiltalk.org/belgiums-article-51-letter-to-the-security-council/.

59 ECFR interview with French officials, 17 November 2015. See also the comments of the Director of Legal Affairs at the French Foreign Ministry, describing how France's invocation of self-defence takes account of the "exceptional character of this terrorist organisation", in François Alabrune, Speech to the Académie des Sciences Morales et Politiques, Paris, 4 July 2016, available at http://www.asmp.fr/travaux/communications/2016_07_04_ALABRUNE.htm.

60 Letter from the Chargé d'Affaires of the Permanent Mission of Germany to the United Nations to the President of the Security Council, 10 December 2015, available at http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2015_946.pdf (hereafter, German Letter to the Security Council); Letter from the Permanent Representative of Belgium to the United Nations to the President of the Security Council, 7 June 2016, available at http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/S_2016_523.pdf.

61 ECFR interview with Dutch official, 20 April 2016.

In writing to the UN Security Council to explain its use of force on Syrian territory, the UK offered parallel justifications, citing both the defence of Iraq and the prevention of an attack against Britain as providing a legal basis for the violation of Syrian sovereignty.[62] Nevertheless, the letter clearly asserted that the strike was a necessary and proportionate exercise of the UK's right of individual self-defence. Following the Paris attacks of November 2015, it became easier for European ministries to make the case that ISIS had now launched an armed attack in Europe, as Germany explicitly stated.[63]

Nevertheless, conversations with European government officials conducted for this paper show broad support for the idea that a state is entitled to take action in pre-emptive self-defence even before an attack occurs, when it has evidence that a terrorist group overseas is preparing to launch an attack. One official distinguished between an imminent attack, which justified action in self-defence, and "people merely saying nasty things", which did not.

However, there is clearly a substantial grey area between these two poles, including cases in which there is evidence that a group is plotting attacks in a continuing way, but no indication of a particular target or date on which one will be carried out. It remains unclear how EU member states are positioning themselves on the use of force in such cases.

There is a danger that current concerns about the threat of terrorist attacks in Europe may lead EU member states to adopt a view of self-defence that sets newly permissive standards for the circumstances when states can lawfully attack non-state groups across national boundaries. In particular, the acceptance of the lawfulness of acting in self-defence against a group that is said to be plotting attacks, without any indication of the degree of knowledge and the scale and likelihood of possible attack, would set a troubling precedent. The evolving practice and statements of European governments will be influential in developing international standards in this area, and they should be careful to ensure that they act in accordance with a long-term vision of how the international rule of law can best be upheld.

The law of armed conflict and human rights

European operations also raise concerns about the conduct of hostilities, and particularly about the circumstances under which individuals can be targeted. While many European airstrikes against terrorist groups have been directed at military facilities or resources, the UK and France have also carried out targeted attacks against individual fighters and provided information that the United States has used in targeted killings. The development of precision surveillance and attack platforms, especially drones, and the emergence of military operations designed to degrade armed groups rather than capture territory, have together given new focus to the question of when such targeted attacks are lawful.

During armed conflict, international humanitarian law is generally understood to permit the targeting of anyone who fulfils the role of a fighter for the enemy. Therefore, according to European officials, there is no problem with using drones either to strike terrorist fighters or to identify them for targeting with other weapons, as long as the action takes place within an armed conflict. The UK used drones with little controversy in Afghanistan and Libya, and it does so now in Iraq and Syria. France conducts targeted strikes in connection with what it regards as an armed conflict against jihadist groups in the Sahel.

It seems likely that other EU member states that acquire armed drones in the future will use them during armed conflict both for close air support of European or allied forces and for the targeting of individual members of opposing armed groups who are seen as "high-value targets". There is broad agreement among the governments of militarily active EU member states that such operations are lawful, but at the same time the legal reasoning on which this assessment is based leaves a couple of problems unresolved.

First, with its attack against Reyaad Khan, Britain became the first European country to carry out a targeted strike outside any theatre of operations where its forces were engaged in an armed conflict. Although no other EU member state has followed the British example, officials from some other European countries appear sympathetic to the view that strikes against individual terrorists who are preparing attacks overseas are, in some limited circumstances, permissible under international law. Under the US "global conflict" approach, all attacks against al-Qaeda or ISIS-linked fighters are governed by the targeting rules of armed conflict, no matter where they take place. European officials reject this position; instead they tend to believe that strikes outside a region of armed conflict are governed by a more restrictive legal framework, derived from human rights law, that permits the use of lethal force only when it is strictly necessary and proportionate to prevent a threat to life.

The Reyaad Khan case showed how difficult it can be to evaluate the application of this framework. The British government provided little specific information about the nature of the threat Khan posed. Moreover, as with the rules on self-defence and territorial sovereignty, discussed above, there is little clarity about how the relevant concepts should be interpreted in the context of a threat from an external terrorist group. Human rights jurisprudence has traditionally permitted the use of lethal force only in response to an imminent threat to life. While British officials say that Khan presented a specific and imminent threat, this appears to stretch the meaning of these terms far beyond their conventional usage. To prevent the risk of weakening legal protections, European officials should do much more to elaborate and articulate their views on when human rights law permits the taking of life, what standard of proof is required before the taking of life is permitted, and what kind of review is mandated after non-battlefield strikes are carried out.[64]

62 Letter from the Permanent Representative of the United Kingdom to the United Nations to the President of the Security Council, 7 September 2015, available at http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2015_688.pdf.

63 German Letter to the Security Council.

64 For a similar recommendation with respect to the UK, see Drones Report, Joint Committee on Human Rights, p. 84.

More fundamentally, the evolution of counter-terror wars raises the question of whether the traditional distinction between actions taken in an armed conflict and those taken away from conflict provides an adequate framework for assessing the legitimacy of killing terrorist fighters.

As this paper has shown, European countries have in some cases combined different forms of targeting within a single campaign. Even before the Paris attacks of November 2015, some French airstrikes in Syria were undertaken with the aim of weakening ISIS's capacity to strike in Europe and killing fighters involved in training, even though they were framed in law as part of a campaign to defend Iraq. In that respect, they are perhaps more similar than might first appear to military activity such as the strikes that the United States has carried out in Yemen against al-Qaeda in the Arabian Peninsula (AQAP).

France's military operation in Mali began as a conventional campaign to recapture territory that had been seized by an armed group. However, it has evolved into a manhunt in which French troops seek to kill or capture jihadist fighters and destroy their equipment.[65] Meanwhile, Britain's cooperation with the US drone strikes on Junaid Hussain and Mohammed Emwazi also presents a puzzle. Given that these took place at a time when the United States was engaged in regular combat operations in Syria, should the UK's role in facilitating the killings be judged by a different standard than its own strike against Reyaad Khan?

One way to resolve these complexities would be to recognise a legal distinction in the conduct of hostilities against non-state armed groups between the use of force to gain control of territory and the use of force purely to prevent an organisation from conducting terrorist attacks.

A possible basis for developing such a distinction might lie in the idea that in in armed conflict against non-state groups, the permissible level of force should be linked to the goals that it is intended to achieve: when there is no territorial contest involved, counter-terror campaigns might be limited to the degree of force necessary to prevent terrorist attacks causing loss of life, in a comparable way to individual strikes.[66] Under such a rule, armed forces would not be allowed to kill enemy fighters when it was possible to capture them, or when their death would not have a significant impact on the immediate threat of attack posed by the group.

While such a rule would go beyond the current mainstream understanding of international law, it would be similar to the rules of engagement that the Obama administration has adopted as a matter of policy for strikes that take place outside "areas of active hostilities".[67] (This is not to suggest that European countries should adopt the US notion of a global armed conflict, but rather that they might follow the approach described above in the specific situations that they regard as armed conflicts). The level of force that would be permitted under such a rule would need to be determined, but simply by acting on the basis that this was the appropriate framework, European countries would contribute to setting a more restrictive normative standard, including a lower permissible threshold for civilian casualties. For this reason, EU governments should consider adopting and articulating a set of rules of engagement for their counter-terror wars that limits the use of lethal force in actions divorced from the capture or denial of territory to that strictly necessary for the defence of life.

A convergence of European and US practice

At the same time as European countries have moved to embrace counter-terrorist strikes within the context of larger conflicts against non-state armed groups, the United States has moved in the opposite direction. Increasingly, as the groups it confronts have succeeded in capturing territory in the period since 2011, the United States' counter-terrorist military operations have come to incorporate a greater counter-insurgent element than they did before. These developments have brought the United States and EU member states closer in their practice of using military force against terrorist groups than at any time since al-Qaeda attacked the United States in September 2001.

In Iraq and Syria, Washington and European capitals have coordinated closely as fellow members of a military coalition against ISIS. Not only have US forces provided air support for anti-ISIS forces and conducted strikes to weaken ISIS as an organisation, but also they have killed individuals who were allegedly involved in plotting attacks in Europe, such as the British jihadists Junaid Hussain and Mohammed Emwazi. Moreover, the US also used its intervention against ISIS in Syria as partial cover for simultaneous strikes against a cell within the al-Qaeda affiliate Jabhat al-Nusra known as the "Khorasan group" that was believed to be plotting against US targets.[68]

A similar pattern of convergence is visible in other theatres where the US conducts counter-terror operations, such as Yemen, which descended into war after the Houthi movement seized power in Sana'a in early 2015, prompting Saudi Arabia to launch a military intervention against the rebels. The conflict allowed AQAP to gain ground in Yemen, culminating in its capture of the southern city of Mukalla in April 2016.

The Pentagon now presents its counter-terror operations in Yemen as part of a campaign to deny AQAP control of territory, rather than merely foil attacks on the United States.

65 For a similar point, see Laurent Bigot, "L'opération 'Barkhane', un 'permis de tuer au Sahel'", *Le Monde Afrique*, 2 November 2015, available at http://www.lemonde.fr/afrique/article/2015/11/02/permis-de-tuer-au-sahel_4801279_3212.html.

66 For a related suggestion, distinguishing between what the author describes as "hot battlefields" and other sites of military operations, see Jennifer C. Daskal, "The Geography of the Battlefield: A Framework for Detention and Targeting outside the 'Hot' Conflict Zone", *University of Pennsylvania Law Review*, April 2013, available at http://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1386&context=penn_law_review.

67 "U.S. Policy Standards and Procedures for the Use of Force in Counterterrorism Operations Outside the United States and Areas of Active Hostilities", White House Fact Sheet, 23 May 2013, available at https://www.whitehouse.gov/sites/default/files/uploads/2013.05.23_fact_sheet_on_ppg.pdf.

68 "US Military, Partner Nations Conduct Airstrikes in Syria" US Department of Defense, 23 September 2014, available at http://www.defense.gov/News/Article/Article/603301.

"Al-Qaeda's presence has a destabilizing effect on Yemen, and it is using the unrest in Yemen to provide a haven from which to plan future attacks against our allies as well as the US and its interests," said a Department of Defense statement in June 2016, using its standard form of words to acknowledge its airstrikes.[69]

Among recent strikes was one in March 2016 that targeted a training camp, which the Pentagon said had killed dozens of militants. The United States has also recently targeted training camps in Somalia and Libya, suggesting a broader trend towards attacking the foot soldiers of armed groups rather than leaders or those most involved in international terrorism.[70] The attack in Somalia was particularly deadly, killing around 150 al-Shabaab fighters who had just completed a training course. The Pentagon framed the attack as in part an action in defence of the United States' partner forces from the African Union Mission in Somalia (AMISOM), again emphasising the contribution of US action to the stabilisation of the country concerned, as much as to the security of the United States. A Pentagon spokesman said the attack had degraded "al-Shabaab's ability to meet the group's objectives in Somalia, including recruiting new members, establishing bases and planning attacks on US and AMISOM forces".[71] Subsequent statements have emphasised that US strikes are coordinated with the government of Somalia and at times protect Somali-led counter-terrorism operations.[72]

Even as this shift in approach was developing, there has been evidence of more overt French support for US action in Somalia: the French government has made little secret of the fact that it supplied the intelligence used in the targeted killing of al-Shabaab leader Ahmed Abdi Godane by the US in September 2014.[73]

Meanwhile, in Libya the United States has moved from an initial pattern of isolated strikes against individual "high-value targets" from ISIS and other jihadist groups, to an attack against an ISIS training camp conducted with the consent of the Libyan government, and to providing close air support for Libyan forces during their campaign to expel ISIS fighters from Sirte. The compatibility of these latter actions with the approach of EU member states is shown by the fact that the UK granted approval for the US to launch its attack on the ISIS training camp in Sabratha in February 2016, and that Italy offered Sigonella as a base for drone operations to support the US campaign in Libya in August 2016, reportedly for reconnaissance purposes.[74]

The fact that European countries and the United States are now cooperating in counter-terror wars that combine military strikes aimed at degrading terrorist organisations with efforts to assist local partners to recapture territory represents a significant convergence between their respective practices. This reduces the prospect that EU member states might act as a counterweight to the US in promoting an opposing vision of the way that international law applies across the spectrum of armed counter-terror operations. In turn, it is all the more important that European countries work to define standards for the kinds of operations states are now undertaking, in a way that reduces the danger of setting an expansive precedent for the use of force against overseas terrorist groups.

The strategic value of counter-terrorist warfare

The rationales that European officials offer for military operations against external terrorist groups can be broken down into three related categories: closing down safe havens, degrading the capacity of terrorist groups, and heading off imminent attacks. Although these objectives necessarily overlap, it may be helpful to separate them as way of clarifying the record of what counter-terrorist military action by EU member states has been able to achieve, and the conditions under which it has been successful.

Closing down safe havens

Military action has been successful in stripping away the territorial control of armed groups where – and only where – airstrikes have been combined with operations conducted by ground troops. Recapturing territory from armed groups necessarily requires forces on the ground, but aerial support can provide a decisive advantage against terrorist groups who often have little, if any, effective defence against attack or surveillance aircraft.

France's Operation Serval in Mali relied on a combination of fast-moving infantry, a sophisticated supply chain, and air assault and close air support for its swift recapture of central and northern Mali from jihadist groups.[75] Coalition air attacks in Iraq have played an important part in allowing the Iraqi army and associated Sunni and Shia militia groups to reduce significantly the area under ISIS control. According to Brett McGurk, the US envoy to the counter-ISIS coalition, by June 2016 the group had lost 47 percent of the territory in Iraq held at its peak.[76]

Coalition military action has also contributed to significant setbacks for ISIS in Syria, including the loss of the strategic

69 See e.g. "Centcom Announces Yemen Counterterrorism Strikes", US Department of Defense, 3 June 2016, available at http://www.defense.gov/News/Article/Article/790791/centcom-announces-yemen-counterterrorism-strikes.

70 Helene Cooper, "US Strikes in Somalia Kill 150 Shabab Fighters", the *New York Times*, 7 March 2016, available at http://www.nytimes.com/2016/03/08/world/africa/us-airstrikes-somalia.html.

71 "U.S. Conducts Airstrike Against Terrorist Camp in Somalia", US Department of Defense, 7 March 2016, available at http://www.defense.gov/News/Article/Article/687353/us-conducts-airstrike-against-terrorist-camp-in-somalia.

72 "US Self-Defense Strike in Somalia", US Department of Defense, 7 September 2016, available at http://www.africom.mil/NewsByCategory/pressrelease/28386/u-s-self-defense-strike-in-somalia; see also Mark Mazzetti, Jeffrey Gettleman and Eric Schmitt, "In Somalia, US Escalates a Shadow War", the *New York Times*, 16 October 2016, available at http://www.nytimes.com/2016/10/16/world/africa/obama-somalia-secret-war.html.

73 Jean Guisnel, "Exclusif: François Hollande a ordonné l'exécution du chef djihadiste somalien Ahmed Godane", *Le Point*, 13 September 2014, available at http://www.lepoint.fr/editos-du-point/jean-guisnel/exclusif-francois-hollande-a-ordonne-l-execution-du-chef-djihadiste-somalien-ahmed-godane-12-09-2014-1862586_53.php; ECFR interview with French government official, 27 April 2016.

74 Aidan Lewis, "US strikes easing advance against Islamic State in Sirte, says commander", *Reuters*, 4 August 2016, available at http://www.reuters.com/article/us-libya-security-sirte-idUSKCN10E2LA.

75 Lt. Gen. Olivier Tramond and Lt. Col. Philippe Seigneur, "Operation Serval: Another Beau Geste of France in Sub-Saharan Africa?", *Military Review*, Nov–Dec 2014, available at http://usacac.army.mil/CAC2/MilitaryReview/Archives/English/MilitaryReview_20141231_art014.pdf.

76 Brett McGurk, Testimony before the US Senate Foreign Relations Committee, 28 June 2016, available at http://www.foreign.senate.gov/imo/media/doc/062816_McGurk_Testimony.pdf.

border-region towns of Kobane in January 2015 and Manbij in August 2016. In Libya, US airstrikes (and, reportedly, support from European special operations forces) played an essential role in allowing Libyan forces to wrest control of Sirte from ISIS's Libyan branch through the summer of 2016.

European officials claim multiple advantages for suppressing terrorist groups' control of territory. Not only does it deprive armed groups of a staging ground to train and plan attacks and the resources to finance them, but it can also undermine the aura of inexorable expansion that has been a principal propaganda and recruitment tool of ISIS in particular. ISIS's self-proclamation as the reborn caliphate in 2014 was dependent on its exercise of governmental authority over a state-like area and led in turn to an exponential increase in its international profile and drawing power.[77]

Some European officials recognise the danger that airstrikes by EU member states against Muslim countries such as Syria and Iraq could help radicalise their own citizens or residents. But they maintain that any such effect would be outweighed by the impact of undercutting ISIS's image of invincibility and success. To counter ISIS's appeal, potential recruits "need to see them bleeding", as one official pungently argued.[78] Recent analysis has highlighted the decline in ISIS's social media activity as its territory has come under attack.[79]

Nevertheless, as European officials readily acknowledge, there are a number of significant caveats about the conditions under which military action to shrink terrorist safe havens is likely to succeed. First, beyond the obvious necessity to use airstrikes in association with ground troops, it is essential that military action be combined with a realistic plan for the reintegration and governance of the territory that is reclaimed from terrorist or insurgent control. ISIS's precursor group in Iraq, the Islamic State of Iraq (ISI), lost virtually all the territory it had controlled in Anbar province in the period following 2008 after local Sunni tribes and leaders turned against it. However, the failure of the Baghdad government to offer the Sunni population an adequate role in national affairs, combined with corruption and the impact of the war in Syria, allowed the group to return in a stronger form only a few years later.[80]

In circumstances such as Syria today, where the background conflict is responsible for creating the conditions that have allowed jihadi groups to emerge and flourish, it is impossible to foresee a comprehensive solution to Islamist violence without a broader political solution and significant subsequent commitment and external investment in rebuilding the country.[81] European security officials are conscious that in both Syria and Iraq, political efforts are lagging behind military action.[82]

Moreover, ending terrorist groups' control of territory should not be confused with destroying the groups themselves – or even reducing their capacity and incentive to conduct terrorist attacks in Europe. As the example of ISIS demonstrates, terrorist groups are often flexible enough to go to ground and preserve their capacity to mount opportunistic attacks. ISIS in turn has shown itself to be a hybrid entity that is capable of "switching between being a terrorist group without territorial control and an insurgent group with territorial control".[83]

The same is true of the jihadist groups in the Sahel. In response to Operation Serval, there was a reconfiguration of armed groups in northern Mali, with many fighters taking refuge in remote regions or neighbouring countries. The continuation of terrorist attacks led France to launch the larger counter-terrorist Operation Barkhane. Three years after the re-conquest of the north, attempts to establish a new political settlement continue to struggle amid a complex array of shifting economic, political, and security relationships.[84]

While recognising the importance of reversing ISIS's foothold in Libya, European officials also speak of the risk that this could scatter the group's fighters into more inaccessible parts of Libya and the wider region. In the words of one official, recapturing territory held by contemporary jihadist groups is "like hitting mercury with a hammer" in that it relocates individual fighters and weakens their organisation, but not their commitment to their cause.[85]

Degrading terrorist organisations

European and US officials argue that military action against terrorist groups can have a big impact on weakening their internal structures and ability to function, either as a complement to prising away their territorial control or where groups operate in a more fluid way without a safe haven.[86]

In Iraq and Syria, the majority of coalition strikes have been against military positions, but an estimated ten percent have been directed at "deliberate targets" away from the front line, including ISIS's oil production and distribution network and its financial warehouses.[87] The Pentagon has said that coalition strikes have cut ISIS's oil revenues by half, to around $150 million per year, while attacks on oil facilities and financial storage depots, together with reduced border access to Turkey, are causing a significant financial strain for

77 McCants, *ISIS Apocalypse*, pp. 121–144.

78 ECFR interview with Dutch officials, 20 April 2016.

79 Daniel Milton, "Communication Breakdown: Unravelling the Islamic State's Media Efforts", Combating Terrorism Centre at West Point, October 2016, p. 21, available at https://www.ctc.usma.edu/v2/wp-content/uploads/2016/10/ISMedia_Online.pdf.

80 Sajad Jiyad, "Iraq's response to the challenge of the Islamic State", European Council on Foreign Relations, 2 October 2014, available at http://www.ecfr.eu/article/commentary_iraqs_response_to_the_challenge_of_the_islamic_state321; Truls Hallberg Tønnessen, "Destroying the Islamic State Hydra: Lessons Learned from the Fall of its Predecessor", *CTC Sentinel*, August 2016, pp. 4–5 (hereafter Tønnessen, "Islamic State Hydra").

81 Julien Barnes-Dacey and Daniel Levy, "Syrian diplomacy renewed: from Vienna to Raqqa", European Council on Foreign Relations, November 2015, pp. 11–12, available at http://www.ecfr.eu/page/-/Syria_memo_1127_1550.pdf.

82 ECFR interview with British officials, 3 May 2016.

83 Tønnessen, "Islamic State Hydra", p. 5.

84 Andrew Lebovich, "The risks of deeper engagement in Mali", European Council on Foreign Relations, 3 August 2016, available at http://www.ecfr.eu/article/commentary_the_risks_of_deeper_engagement_in_mali_7089; "Exploiting Disorder", p. 40.

85 ECFR interview with French official, 18 February 2016.

86 ECFR interviews with European officials; see also the comments of Brett McGurk in Robin Wright, "Is the Islamic State hurting? The President's point man on ISIS speaks out", the *New Yorker*, 3 March 2016, available at http://www.newyorker.com/news/news-desk/is-the-islamic-state-hurting-the-presidents-point-man-on-isis-speaks-out.

87 Eric Schmitt, "US Says Its Strikes Are Hitting More Significant ISIS Targets", the *New York Times*, 25 May 2016, available at http://www.nytimes.com/2016/05/26/us/politics/us-strikes-isis-targets.html.

ISIS that appears to be affecting its ability to pay its fighters.[88]

These measures may have weakened ISIS, but their impact remains largely dependent on local circumstances. Where conditions for a durable political settlement are not in place, weakening one armed group has sometimes had the effect of strengthening jihadist rivals, such as Jabhat al-Nusra (now renamed Jabhat Fateh al-Sham) in Syria. The regional rivalry between networks associated with ISIS and al-Qaeda has produced a competitive market for jihadist affiliation, in which al-Qaeda's orientation towards greater integration with local partners may offer it an ultimate advantage.[89] The resurgence of terrorist activity in Afghanistan after 15 years of US strikes against "core al-Qaeda" in the region, and the gains that al-Qaeda's branch in Yemen has made during the recent conflict in that country show that jihadist groups can withstand sustained military campaigns when local conditions favour their growth.[90]

Better control of the Turkish border and the removal of some of ISIS's lustre through battlefield setbacks appear to have led to a significant decline in the number of new recruits travelling to Syria. However ISIS responded to this development by encouraging prospective fighters to stay at home and pursue attacks in their own countries. So in the short term at least the risk of terrorism in Europe may have risen. ISIS spokesman Abu Muhammad al-Adnani told potential fighters from Europe and the United States in a message in May 2016, "The smallest action you do in their heartland is better and more enduring to us than what you would if you were with us."[91]

A clear pattern is visible in recent Western military action against jihadist groups: attacks that are initially premised on the state-like or insurgent nature of the group targeted have the effect of driving it back towards more conventional terrorist activity, which is much more difficult for military operations to inhibit.

ISIS's use of suicide bombing has increased significantly in 2016 as its military position in Iraq and Syria has weakened.[92] France's military campaign against jihadist groups in the Sahel has succeeded in throwing them onto the defensive.[93] Yet these groups retain the capacity to stage terrorist attacks not only in their former zone of control but in the Malian capital Bamako and other regional cities.[94] Operation Barkhane has been able only to deny jihadist groups a territorial base that they could use as a pole of attraction, rather than defeating them. In the words of one French official, it is likely to remain an open-ended containment exercise that aims "to keep a lid on the problem", given that far-reaching changes in the legitimacy and capacity of the state in Mali and other Sahelian countries are currently a distant prospect.[95] It is often difficult to bring counter-terror military campaigns to an end, because their stated goal of eliminating the threat posed by terrorist groups can remain perpetually out of reach.

Moreover, an assessment of the impact of non-battlefield military strikes (and indeed of close air support strikes in urban areas) must also take account of the civilian casualties they inevitably cause. While the coalition has emphasised the care it takes to minimise civilian deaths, one estimate from the independent monitoring group Airwars puts civilian casualties from coalition strikes in Iraq and Syria at over 1,600.[96]

Preventing international attacks

The prevention of attacks in European countries has been both a long-term rationale for military action and an immediate goal of some individual strikes. In the aftermath of the terror attacks in Paris in November 2015 and again after the truck assault in Nice in July 2016, President Hollande vowed to step up attacks against ISIS in Iraq and Syria, as if this were an effective measure to prevent further such atrocities.

Yet the record of recent history suggests that military action against ISIS has not been effective at preventing attacks. If anything, Western strikes against the group have been followed by an escalation of terrorist attacks. ISIS's major terror attacks in Europe came after European countries had launched airstrikes against the organisation in Iraq (and in France's case, Syria). ISIS also claimed after its Sinai affiliate bombed a Russian passenger jet in October 2015 that the group had originally planned to attack a Western plane but changed its plan after Russia's military intervention against rebel groups including ISIS in Syria.[97] This does not necessarily mean in all cases that Western action led directly to ISIS reprisals, or that EU member states were wrong to launch strikes against ISIS when there were compelling reasons under local political conditions to do so. However, it does indicate the limitations of military action as a way of heading off the threat of terrorist attacks in the short term.

In fact, as some candid officials are willing to admit, airstrikes that hit back in the aftermath of terrorist attacks are "mainly a domestic response to show we are doing something,

88 Aymenn Al-Tamimi, "A caliphate under strain: the documentary evidence", *CTC Sentinel*, 22 April 2016, available at https://www.ctc.usma.edu/posts/a-caliphate-under-strain-the-documentary-evidence.

89 Charles Lister, "The dawn of mass jihad: success in Syria fuels al-Qa'ida's evolution", *CTC Sentinel*, 7 September 2016, available at https://www.ctc.usma.edu/posts/the-dawn-of-mass-jihad-success-in-syria-fuels-al-qaidas-evolution.

90 Bill Roggio, "Afghan intelligence service destroys al Qaeda base in Zabul", *Long War Journal*, 19 September 2016, available at http://www.longwarjournal.org/archives/2016/09/afghan-intelligence-service-destroys-al-qaeda-base-in-zabul.php.

91 "Islamic State calls for attacks on the West during Ramadan in audio message", *Reuters*, 22 May 2016, available at http://www.reuters.com/article/us-mideast-crisis-islamicstate-idUSKCN0YC0OG.

92 Hassan Hassan, "Is the Islamic State Unstoppable?", the *New York Times*, 9 July 2016, available at http://www.nytimes.com/2016/07/10/opinion/is-the-islamic-state-unstoppable.html?smid=tw-share&_r=1.

93 ECFR interview with French officials, 9 December 2015; see also Baba Ahmed, "Gal Patrick Bréthous (Barkhane): au Mali, 'les terroristes fuient les forces internationals'", *Jeune Afrique*, 29 July 2016, available at http://www.jeuneafrique.com/345701/politique/gal-patrick-brethous-barkhane-mali-terroristes-fuient-forces-internationales/.

94 Dionne Searcey, Eric Schmitt, and Rukmini Callimachi, "Al-Qaeda's Branch in Africa Makes a Lethal Comeback", the *New York Times*, 15 March 2016, available at http://www.nytimes.com/2016/03/16/world/africa/al-qaedas-african-offshoot-makes-a-lethal-comeback.html?_r=1.

95 One French official said the achievement of Barkhane was "to keep a lid on the problem": ECFR interview with French officials, 16 November 2015.

96 Jonathan Beale, "Have RAF air strikes against IS killed no civilians?", *BBC News*, 12 September 2016, available at http://www.bbc.co.uk/news/world-middle-east-37339184; Airwars estimate from https://airwars.org.

97 McCants, *ISIS Apocalypse*, p. xi.

though we all know it is not the most efficient response to foreign terrorist groups".[98] At most, intelligence services can on occasion identify and track individuals who are regularly engaged in efforts to recruit and inspire terrorist attacks at home. However, the longer-term strategic value of killing such individuals seems comparatively low, as the roles they occupy do not rely on any technical expertise and can often be easily filled by other recruits.

As al-Adnani's calls for improvised attacks indicate, ISIS is an opportunistic and fluid organisation that frequently devolves authority to local networks or supporters in foreign countries to design their own methods. Even where attacks are supported from Syria, there is little sign that senior members of the organisation are playing an irreplaceable role.

Against this background, targeted strikes against ISIS members in Syria or Iraq often seem more like a blow struck in the battle of perception and propaganda than a security measure, especially since individuals like Reyaad Khan or Mohammed Emwazi have a profile in videos or on social media that is disproportionate to their larger strategic role in the terrorist organisation, however shocking their words or actions may be. Furthermore, when security services have information about the specific time or place of an attack within Europe, they can most effectively respond with domestic law enforcement measures rather than military action overseas.

While a military response to terrorist acts orchestrated from abroad presents an image of resolution and determination, its practical effectiveness in preventing attacks appears to be minimal. Military offensives by local forces backed by Western airstrikes have made access to ISIS's territory harder for would-be foreign fighters, by closing off transit corridors. Attacks on training camps have killed a few out of the large pool of international recruits who might otherwise have returned home to join underground cells. But too often military campaigns that claim to reduce the threat of terrorism are no more than a palliative for domestic politics that have little bearing on the real fight against terrorist groups.

Conclusion

While ISIS appears to be on the retreat in Iraq and Syria, its full defeat is not in sight – and jihadist groups retain an active presence across numerous countries in the Middle East and northern and eastern Africa. Within European societies, significant numbers of mostly young people have fallen under the influence of jihadist ideology and have either travelled abroad to fight for the cause or may be contemplating acts of violence at home.

Given the impossibility of preventing all terrorist incidents in European countries and the role of foreign organisations in inspiring, facilitating, or directing attacks, the temptation for governments to employ military responses is likely to persist. Nevertheless, it is important to try to disaggregate the different goals of military action. The only effective solution to these groups will come through an integrated approach on the ground. There is a place for military action against insurgent groups but only alongside political measures to address the conditions that allow such groups to flourish.

Outside that framework, military action is likely to be both ineffective and self-perpetuating. In some cases it may even be counterproductive, adversely affecting the balance of local forces or causing a political backlash that increases support for armed groups.

Moreover, there is a danger that European countries will find themselves alongside the United States opening the way to increased military action against armed groups in regions of disorder. This action could take place in a grey area between war and peace, continuing over extended periods and involving military strikes against loosely defined threats to national security. This would provide an unfortunate international precedent and could weaken the international rule of law.

To avoid these risks, European countries should be careful to draw up a clearly defined policy for military action against non-state groups overseas. They should ensure that force is used only when there is a clear vision of the impact that it is likely to achieve in reducing a genuine and pressing security threat, not when it is a politically convenient way of responding to public concerns. They should be especially sceptical about any counter-terrorist intervention that is divorced from a plausible strategy to restore legitimate authority and effective governance to the area where the targeted group is based. And they should remember that in almost all cases, military action overseas is a poor method of preventing domestic terror attacks in the short term.

Moreover, EU member states should remember that a rules-based international order that restricts the resort to force as far as possible is in keeping with Europe's interests and values. They should act with a view to minimising any precedent of the use of force in a state's territory without its consent and without the approval of the UN Security Council. They should define and articulate a set of restrictive standards under human rights law to govern strikes outside theatres of armed conflict that would prevent a slide towards acceptance of action based on a loose definition of threat. Finally, they should consider framing a standard of necessity as the basis for all use of lethal force against non-state armed groups where there is no effort to recapture territory. These steps would be the best contribution European countries could make to restricting both targeted killing and wider military action in an era of persistent disorder and transnational threats.

98 ECFR interview with French security official, 18 February 2016.

About the author

Anthony Dworkin is a senior policy fellow at the European Council on Foreign Relations, working particularly on human rights, democracy and justice. He has closely followed the development of EU and US policies on international terrorism, and is the author of the ECFR policy brief "Drones and targeted killing: defining a European position" (2013). He has also written papers on European policy towards North Africa, international justice, and EU human rights policy, among other subjects. He is a visiting lecturer at the Paris School of International Affairs. He was formerly executive director of the Crimes of War Project and is co-editor of the book *Crimes of War: What the Public Should Know* (2nd ed., 2007).

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