REGULATION OF SOCIAL MEDIA PLATFORMS TO CURB ISIS INCITEMENT AND RECRUITMENT: THE NEED FOR AN "INTERNATIONAL FRAMEWORK" AND ITS FREE SPEECH IMPLICATIONS

Janice Yu[†]

INTRODUCTION

On May 11, 2016, the United Nations Security Council ("UNSC") requested that the Counter-Terrorism Committee propose an "international framework" to curb "Islamic State in Iraq and the Levant ("ISIS")" incitement and recruitment.[1] The UN's urgent request comes at a time when terrorist groups, such as ISIS, have been increasingly using social media platforms as a tool to recruit followers and to incite their followers to commit violent acts.[2] ISIS has been notorious for taking advantage of Twitter as a propaganda megaphone through which it blares its extremist narratives to the world.[3] Moreover, the way in which social media platforms have enabled ISIS to instantaneously share its narratives with the world with just a click of the mouse has led ISIS to gain a global base of supporters.[4] In fact, it would not be an understatement to claim that social media platforms have transformed terrorism by "facilitating both ubiquitous and real-time communication between like-minded radicals with would-be recruits and potential benefactors, thus fueling and expanding the fighting and bloodshed to a hitherto almost unprecedented extent."[5]

Consequently, there is a pressing need for an international framework of internet governance on social media platforms to regulate ISIS narratives and to specifically curb ISIS incitement and recruitment

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[†] Janice Yu received her J.D. (Equivalent) from the Handong International Law School in 2017. She also received her B.S. from the University of California, Irvine in 2013.

[1] Press Release, Security Council, Security Council Presidential Statement Seeks Counter-Terrorism Committee Proposal for 'International Framework' to Curb Incitement, Recruitment, U.N. Press Release SC/12355 (May 11, 2016) [hereinafter Press Release 2016] https://www.un.org/press/en/2016/sc12355.doc.htm.

[2] *See* Gabriel Weimann, New Terrorism and New Media, WILSON CTR. COMMONS LAB 1, 3 (2014), https://www.wilsoncenter.org/sites/default/files/STIP_140501_new_terrorism_F.pdf.

[3] *See id.* at 1–2.

[4] *See id.* at 3.

[5] Bruce Hoffman, *Foreword* to GABRIEL WEIMANN, TERRORISM IN CYBERSPACE: THE NEXT GENERATION at xi, xii (Woodrow Wilson Ctr. Press 2015).

through the regulation.[6] The proposed international framework, however, must not infringe upon "human rights and fundamental freedoms and [must be] in compliance with obligations under international law."[7] Despite the UN's recognition of the need to preserve "human rights and fundamental freedoms," a proposed international framework on internet governance of social media platforms will inevitably implicate free speech rights. In addition, the lack of a universally accepted definition of terrorism raises potential issues with a government's abuse of discretion. Without a universal definition of terrorism, a government would be able to arbitrarily decide what constitutes terrorist narratives at the cost of regulating merely objectionable yet legitimate content.

In an attempt to propose an international framework for internet governance of social media platforms, this Note will first examine the advantages of social media platforms and how ISIS has adopted these advantages for its own purposes of spreading propaganda, inciting, and recruiting. Then, this Note will present the challenges of regulating social media platforms due to free speech implications and the lack of a universally working definition of terrorism, especially with regard to the United States ("U.S.") and France, countries that have traditionally placed a high value on the freedom of speech, then Russia and Turkey, countries that have traditionally placed a low value on the freedom of speech. This Note elaborates on these four countries because all are in the fight against terrorism on multiple fronts, including the regulation of ISIS narratives on social media platforms. Then, this Note will explore each country's regulations in light of its respective value for the freedom of speech. After examining each country's respective definition of terrorism and attempts to regulate online terrorist content, this Note will propose that the international framework should adopt the U.S.'s multistakeholder approach on internet governance and France's definition of terrorism to minimize infringing on citizens' free speech rights. As for specifically curbing ISIS incitement and recruitment, this Note suggests that internet governance of social media platforms through a multistakeholder approach must be accompanied by nuanced approaches in the form of both hard and soft law, that is, broadly speaking, both governmental measures and non-governmental measures.

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[6] *See* Press Release 2016, *supra* note 1.
[7] S.C. Res. 2253, ¶ 22 (Dec. 17, 2015).

I.   TERRORISM AND SOCIAL MEDIA

"Unlike traditional media . . . in which only a [select group] of established institutions disseminates information[,] . . . social media [platforms] enable[] anyone to publish or access information [instantaneously]."[8] This enabling power of social media platforms can give voice to those who traditionally had no platform on which to voice their opinions. However, this same enabling power can also be misused and give voice to those whose opinions, or specifically, extremist narratives, can do more harm than good.[9]

A.   Social Media and Its Appeal

It is undeniable that social media has become a major platform on the Internet that allows users to view and share information in "real time."[10] Specifically, social media platforms in the form of social networks, such as Facebook, Twitter, and YouTube, enable its users to view any content they are interested in, and likewise, to share any content they are interested in with not only a limited audience of their choosing, but also with a global audience.[11] Furthermore, social media platforms are appealing to users because of the ease with which users can share content, including, but not limited to, images, videos, or messages.[12] This ease of sharing such content is facilitated by various factors such as the "accessibility" and "interactivity" of social media platforms and the little to no restrictions imposed on users when creating accounts or posting content.[13]

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[8] Weimann, *supra* note 2, at 2.

[9] *See* Shannon Green, *Changing the Narrative: Countering Violent Extremist Propaganda,* CTR. FOR STRATEGIC & INT'L STUD. (Sept. 25, 2015), https://www.csis.org/analysis/changing-narrative-countering-violent-extremist-propaganda; Shaukat Warraich, *Tackling Online Hate Requires a Collaborative Approach*, HUFFPOST: THE BLOG (U.K.) (Apr. 5, 2017),   http://www.huffingtonpost.co.uk/shaukat-warraich/tackling-online-hate-requ_b_16392310.html.

[10] *See* SOC. MEDIA GUYS, THE COMPLETE GUIDE TO SOCIAL MEDIA 14 (2010), https://rucreativebloggingfa13.files.wordpress.com/2013/09/completeguidetosocialmedia.pdf

[11] Manasa Boggaram, *4 Ways to Reach a Global YouTube Audience*, Promolta Blog, http://blog.promolta.com/4-ways-to-reach-global-youtube-audience/.

[12] Catriona Pollard, *Why Visual Content Is a Social Media Secret Weapon*, HUFFPOST: THE BLOG (May 12, 2015, 6:08 PM), http://www.huffingtonpost.com/catriona-pollard/why-visual-content-is-a-s_b_7261876.html.

[13] Farzana Parveen Tajudeen et al., *Role of Social Media on Information Accessibility*, 8 PAC. ASIA J. ASS'N FOR INFO. SYS. 33, 34–35 (2016) (discussing the "impact of social media on information accessibility" and how interactivity positively influences usage of social media in organizations).

In addition to these advantages of social media platforms, there are also psychological aspects as to why users are drawn to social media platforms.[14] By granting users nearly absolute discretion in posting about a subject matter of their own choosing, social media platforms encourage self-expression, which consequently promotes the user's sense of self-affirmation.[15] Also, social media platforms emphasize users' "social connections"[16] with seemingly like-minded people around the world when users are able to interact with other users by viewing status updates, tweets, or images and then "liking" or "commenting" on other users' content.[17] In other words, users are able to belong to niche communities that they might not have otherwise found outside of social media.[18] Lastly, users may feel empowered on social media platforms because, unlike in traditional forms of media, where only a select group of people such as journalists or reporters have a voice, social media platforms allow anyone, from an ambitious teenager to a retired teacher, to have a say on the current affairs of the world.[19]

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[14] *See* Catalina L. Toma & Jeffrey T. Hancock, *Self-Affirmation Underlies Facebook Use*, 39 PERSONALITY SOC. PSYCHOL. BULL. 321, 327–28 (2013), https://blogs.cornell.edu/socialmedialab/files/2014/01/2013-Toma-Hancock-Self-affirmation-underlies-Facebook-use.pdf (discussing self-affirmation theory, how self-affirmation functions work in everyday environments, and the revealing psychological factors underlying Facebook use).

[15] *See id.* at 322.

[16] *Id.* at 328.

[17] *See Social Media Best Practices*, TUFTS UNIV. OFF. OF COMMC'NS & MKTG., http://communications.tufts.edu/marketing-and-branding/social-media-overview/social-media-best-practices/ (last visited Sept. 23, 2017).

[18] *See* Larry Alton, *Niche Social Networks Rise as Alternatives to Mainstream Platforms*, SOC. MEDIA WK. (June 6, 2014), https://socialmediaweek.org/blog/2014/06/niche-social-networks-rise-alternatives-mainstream-platforms/.

[19] Since the advent of social media platforms in 2002, social media has been increasingly successful in attracting users from all around the world. *See The History of Social Networking*, DIG. TRENDS (May 14, 2016, 6:00 AM), https://www.digitaltrends.com/features/the-history-of-social-networking/. In the U.S. alone, there has been a nearly tenfold jump, from 7 percent in 2005 to 65 percent in 2015, in the number of adults who use social media platforms (76 percent of Americans in total use the Internet). Andrew Perrin, *Social Media Usage: 2005-2015*, PEW RES. CTR. 2 (Oct. 8, 2015), http://assets.pewresearch.org/wp-content/uploads/sites/14/2015/10/PI_2015-10-08_Social-Networking-Usage-2005-2015_FINAL.pdf. Research from 2016 shows that nearly 79 percent of online Americans use Facebook, 24 percent use Twitter, and 32 percent use Instagram. Shannon Greenwood et al., *Social Media Update 2016,* PEW RES. CTR. 3, 4 (Nov. 11, 2016), http://assets.pewresearch.org/wp-content/uploads/sites/14/2016/11/10132827/PI_2016.11.11_Social-Media-Update_FINAL.pdf. The number of social media users is expected to rise, not only in the U.S., but across the globe.

B. Social Media as a Platform for Terrorism

The "growth and communicative power"[20] of social media platforms have not gone unnoticed by terrorist groups.[21] Rather, terrorist groups have fully adopted the advantages of using social media platforms since these platforms "are by far the most popular with their intended audience, which allows [previously hidden] terrorist organizations to be part of the mainstream."[22] A chilling example of when terrorists began to realize how social media platforms can help disseminate their ideologies into the mainstream "was outlined in a jihadi online forum[, which] call[ed] for [a] 'Facebook Invasion'":

> Facebook is a great idea, and better than the forums. Instead of waiting for people to [come to you so you can] inform them, you go to them and teach them! . . . [I] mean, if you have a group of 5,000 people, with the press of a button you [can] send them a standardized message . . . . This post is a seed and a beginning, to be followed by serious efforts to optimize our Facebook usage. Let's start distributing Islamic jihadi publications, posts, articles, and pictures . . . .[23]

Since then, terrorist groups, most notably ISIS, have successfully exploited social media platforms to achieve their threefold online purposes of mass-disseminating propaganda, inciting radicalization, and attracting potential recruits ("threefold purpose").[24] Specifically, Twitter has become the most notorious social media platform on which ISIS "send[s] its propaganda and messaging out to the world and . . . draw[s] in people vulnerable to radicalization."[25]

In 2014, ISIS launched and promoted its online campaign on Twitter in the same way that all free-flowing content on Twitter is initiated,

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[20] Hoffman, *supra* note 5, at xii.

[21] *See* Weimann, *supra* note 2, at 2.

[22] *Id.* at 3.

[23] *Id.* at 4–5.

[24] *Id.* at 3.

[25] J.M. Berger & Jonathon Morgan, *The ISIS Twitter Census: Defining and Describing the Population of ISIS Supporters on Twitter* 1, 2 (Brookings Inst., Analysis Paper No. 20, 2015), https://www.brookings.edu/wp-content/uploads/2016/06/isis_twitter_census_berger_morgan.pdf.

with a hashtag.[26] On June 4, 2014, ISIS announced its invasion of northern Iraq with #AllEyesOnISIS (the "hashtag campaign"), and within just six days of launching its hashtag campaign, ISIS had seized the city of Mosul.[27] ISIS's military operation was unlike anything seen before.[28] Despite the fact that the Iraqi garrison defending Mosul outnumbered the ISIS jihadists by more than 15-to-1, the Iraqi garrison disintegrated and fled Mosul.[29] Just how did an outnumbered ISIS "seize a city of 1.8 million"?[30]

First, ISIS exploited "a recent trend in news coverage," which "often sacrifices validation and in-depth analysis for the sake of almost real-time coverage."[31] ISIS thoroughly exploited this new trend during its hashtag campaign by inundating Twitter with nearly "40,000 tweets" in a single day, throughout the days that led to its capture of Mosul.[32] At this rate, "[t]here was no time" for news consumers or even traditional media sources "to distinguish false stories from real ones."[33] Moreover, by the time traditional media sources had validated and reported on the real stories, the real stories were old news since ISIS had already "reported" it on Twitter.[34] Thus, ISIS "reports" on Twitter began to gain credibility among news consumers and Twitter users, regardless of the truth or accuracy of the tweets.[35]

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[26] Emerson T. Brooking & P.W. Singer, *War Goes Viral: How Social Media Is Being Weaponized Across the World*, ATLANTIC (Nov. 2016), http://www.theatlantic.com/magazine/archive/2016/11/war-goes-viral/501125/.

[27] *See id.*; James Verini, *Surviving the Fall of ISIS*, NAT'L GEOGRAPHIC (Oct. 16, 2016), http://news.nationalgeographic.com/2016/10/islamic-state-isis-iraq-mosul-syria-offensive/.

[28] *See* Verini, *supra* note 27.

[29] *The Capture of Mosul: Terror's New Headquarters*, ECONOMIST (June 14, 2014), http://www.economist.com/news/leaders/21604160-iraqs-second-city-has-fallen-group-wants-create-state-which-wage-jihad.

[30] Brooking & Singer, *supra* note 26.

[31] Weimann, *supra* note 2, at 8.

[32] J.M. Berger, *How ISIS Games Twitter*, ATLANTIC (June 16, 2014), http://www.theatlantic.com/international/archive/2014/06/isis-iraq-twitter-social-media-strategy/372856/.

[33] Brooking & Singer, *supra* note 26.

[34] *See id.* (stating that "Peter Bray, a social-media analyst, has found that the average tweet reaches the zenith of its popularity just 18 minutes after it's sent.").

[35] Over time, news consumers increasingly have considered social media platforms to be legitimate sources of news. As of May 2016, more than 6-in-10 adults in the U.S., as a whole, get news on social media platforms, and 59 percent of U.S. Twitter users, specifically, only get their news on Twitter. Jeffrey Gottfried & Elisa Shearer, *News Use Across Social Media Platforms 2016*, PEW RES. CTR. (May 26, 2016), http://www.journalism.org/2016/05/26/news-use-across-social-media-platforms-2016/.

Second, with its growing credibility, ISIS instilled fear and caused widespread panic far beyond the front lines, not only in Iraq but throughout the world, by "spamm[ing] Twitter with triumphal announcements of freshly conquered towns and horrific images of what had happened to those who fought back." [36] ISIS's tweets of triumph, in the form of "[i]mmaculately staged photos" and filmed videos,[37] had arguably led to ISIS's physical victory of seizing Mosul and digital victory of establishing its social media presence and credibility as a legitimate terrorist group.[38]

The credibility ISIS has developed through its use of Twitter by exploiting the recent trend in news coverage and instilling fear in the public has enabled ISIS to have a tremendous influence on the global public's perception of terrorism.[39] The fact that there are roughly "90,000 Twitter accounts worldwide [that reportedly belong to] ISIS militants and their supporters"[40] attests to just how much global influence ISIS can have. However, the amount of influence ISIS has, and may continue to have, should alarm governments around the world[41] because their influence on the public extends far beyond the screen.[42] Although people generally recognize the extremist narratives that ISIS spreads on Twitter,[43] there are also those who fall prey to, or are even empowered by, ISIS propaganda.[44]

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[36] Brooking & Singer, *supra* note 26.

[37] *Id.*

[38] Jared Cohen, *Digital Counterinsurgency: How to Marginalize the Islamic State Online*, FOREIGN AFF. (Nov./Dec. 2015), https://www.foreignaffairs.com/articles/middle-east/digital-counterinsurgency.

[39] *See e.g.*, John Cassidy, *Terrorism in the Age of Twitter*, NEW YORKER (Nov. 23, 2015), https://www.newyorker.com/news/john-cassidy/terrorism-in-the-age-of-twitter; Harleen Gambhir, *Why ISIS Is So Successful*, CIPHER BRIEF (Mar. 9, 2016), http://www.understandingwar.org/sites/default/files/Harleen%20in%20Cipher%20Brief%20--%20March%209%202016.pdf.

[40] *Id.*

[41] *See* Les Picker, *Where Are ISIS's Foreign Fighters Coming From*?, NAT'L BUREAU OF ECON. RESEARCH [NBER] DIG. (June 2016), http://www.nber.org/digest/jun16/jun16.pdf.

[42] *See* Jack Moore & Danielle Palumbo, *ISIS Global: Where Next for the Jihadi Group as its Caliphate Crumbles?*, NEWSWEEK (Aug. 31, 2017), http://www.newsweek.com/isis-global-where-next-jihadi-group-its-caliphate-crumbles-639068.

[43] *See generally* Joseph Karam, *Twitter, ISIS and Social Media Whack-a Mole*, FOREIGN POLICY BLOGS (Feb. 9, 2016), https://foreignpolicyblogs.com/2016/02/09/twitter-isis-social-media-whack-mole/ (stating that twitter accounts have been suspended due to suspected terrorist activities).

[44] *See, e.g.*, Desiree Huitt, *This Is Why Young People Are Drawn to ISIS*, BUS. INSIDER (Mar. 14, 2016, 8:41 AM), http://www.businessinsider.com/this-is-why-young-people-are-drawn-to-isis-2016-1; *see also* Hassan Hassan, *Three Sisters, Nine Children, One Dangerous Journey to the Heart of ISIS. What Is the Lure of the Caliphate?,* THE GUARDIAN (June 21, 2015, 3:00 AM), https://www.theguardian.com/world/2015/jun/21/three-sisters-nine-children-what-is-the-lure-of-the-isis-caliphate.

These are the people ISIS incites to commit acts of terrorism and recruits to join their self-proclaimed caliphate.[45]

Surprisingly, those who are swayed by ISIS propaganda are not just Muslims nor are they from regions that openly support ISIS.[46] In fact, the number of ISIS supporters on Twitter has been rising.[47] In 2015, the U.S. ranked fourth worldwide in the number of Twitter users that support ISIS.[48] The U.S. was the only western nation ranked among "the top 20 countries correlated to regions where ISIS enjoys substantial support, such as Egypt, Tunisia, Libya, Yemen, and Gaza."[49] Similarly, countries with the highest number of actual recruits — those who have joined ISIS as fighters — are also not limited to countries that openly support ISIS.[50] For example, in 2015, "Belgium ha[d] the highest number of [ISIS] fighters per capita [than any other] Western nation," while France gained the "uncomfortable distinction of being Europe's leading exporter of jihadis."[51]

II.   THE NEED FOR AN INTERNATIONAL FRAMEWORK ON INTERNET GOVERNANCE OF SOCIAL MEDIA PLATFORMS

In light of the fact that social media platforms have inarguably become the very tools that aid in ISIS incitement and recruitment, it has become necessary to consider proposing and implementing an international framework for internet governance of social media platforms.[52]

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[45] Huitt, *supra* note 44; Hassan, *supra* note 44.

[46] *See* Shawn Langlois, *The Countries Where ISIS Recruiting Is Most Effective Might Surprise You*, MARKETWATCH (Apr. 29, 2016, 7:49 PM), http://www.marketwatch.com/story/the-countries-where-isis-recruiting-is-most-effective-might-surprise-you-2016-04-28 (depicting map of countries where ISIS recruitment of fighters is most effective).

[47] Berger & Morgan, *supra* note 25, at 17.

[48] Mike Opelka, *Where Are Pro-Islamic State Tweets Coming From? Read the Top 10 List – and Prepare to Be Shocked by No. 4 and No. 10*, BLAZE (Mar. 22, 2015, 2:05 PM), http://www.theblaze.com/news/2015/03/22/where-are-pro-islamic-state-tweets-coming-from-read-the-top-10-list-and-prepare-to-be-shocked-by-no-4-and-no-10/; Berger & Morgan, *supra* note 25 at 12.

[49] Berger & Morgan, *supra* note 25, at 13.

[50] *See* Jessica Marmor Shaw, *The Countries Where ISIS Finds Support, in Two Charts*, MARKETWATCH, (Nov. 18, 2015), http://www.marketwatch.com/story/the-countries-where-isis-finds-support-in-two-charts-2015-11-18/print (depicting graph of top countries supporting ISIS in 2015 and chart showing number of ISIS fighters per capita by country).

[51] *Id.*; Lori Hinnant & Raf Casert, *Over 1,200 Europeans Who Joined Islamic Extremists Have Returned to Europe*, BUS. INSIDER (Nov. 17, 2015, 6:42 PM), http://www.businessinsider.com/ap-over-1200-european-jihadis-have-returned-in-past-2-years-2015-11.

[52] Press Release 2016, *supra* note 1.

However, internet governance of social media platforms, let alone, internet governance in general, is a highly contentious proposal.[53] Nevertheless, there has been a growing consensus that internet governance of social media platforms may be necessary to prevent ISIS from furthering their threefold purpose online.[54]

For example, in December 2015, the UN Security Council adopted Resolution 2253, which urged "Member States to act cooperatively to prevent terrorists from recruiting, to counter their violent extremist propaganda and incitement to violence on the Internet and social media."[55] Furthermore, on May 11, 2016, the UN Security Council held an open debate on "counter[ing] terrorist narratives."[56] There, the Security Council issued a presidential statement, which included the following request to the UN Counter-Terrorism Committee:

> [P]resent a proposal to the Security Council by 30 April 2017 for a 'comprehensive international framework' . . . to effectively counter, in compliance with international law, the ways that ISIL (Da'esh) . . . and associated individuals, groups . . . and entities use their narratives to encourage, motivate, and recruit others to commit terrorist acts.[57]

The Security Council specifically expressed that it was concerned with the "distorted narratives" ISIS crafts "to recruit supporters . . . in particular by exploiting . . . the internet and social media."[58] Most member states present at the debate expressed support for the Security Council's proposal, while highlighting that "no single country could succeed on its own, given the scale and nature of the threat."[59]

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[53] *See e.g.*, LAURA DENARDIS, THE GLOBAL WAR FOR INTERNET GOVERNANCE 1 (2014) (stressing the responsibility of the public to actively engage in debates about open global controversies regarding free-speech issues and cybersecurity concerns); *see also* Smarika Kumar, *An Introduction to the Issues in Internet Governance*, CTR. FOR INTERNET & SOC'Y (Sept. 26, 2012), https://cis-india.org/internet-governance/issues-in-internet-governance (discussing "the controversies in the arena of internet governance" based upon "widespread fear of 'UN overtake of the internet.'").

[54] *See* S.C. Res. 2253, ¶ 22 (Dec. 17, 2015).

[55] *Id.*

[56] Press Release 2016, *supra* note 1.

[57] *Id.*

[58] *Id.*

[59] *Id.*

A. The Challenges of Establishing an International Framework

Although the international community must come together to establish an international framework for internet governance of social media platforms to prevent ISIS from achieving its threefold purpose, any attempt to do so inevitably implicates the right to freedom of expression, which is a fundamental freedom that is universally protected.[60] This preliminary issue of infringing on the individual's right to freedom of expression is further complicated by the fact that some countries value freedom of speech more than others.[61] This makes it difficult to establish a bright-line rule of universal application. Another challenge to establishing an international framework is that there is no universal definition of terrorism by which social media platforms can selectively regulate terrorist content without affecting content that promotes legitimate public debate and discourse.[62] Lastly, countries are not equally affected by online terrorist content.[63] Consequently, those that have been affected already have their own internet regulations in place[64] while those that have not been significantly affected may not want to be subject to an international framework,

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[60] *See generally Freedom of Expression on the Internet*, U.N. EDUC., SCI. & CULTURAL ORG. [UNESCO], [hereinafter *Freedom of Expression*] http://en.unesco.org/themes/freedom-expression-internet (last visited Sept. 23, 2017); *Freedom of Expression: A Fundamental Human Right Underpinning All Civil Liberties*, UNESCO, [hereinafter *Fundamental Human Right*] http://en.unesco.org/70years/freedom_of_expression (last visited Sept. 23, 2017).

[61] *See e.g.*, Alex Gray, *Freedom of Speech: Which Country Has the Most?*, WORLD ECON. FORUM (Nov. 8, 2016), https://www.weforum.org/agenda/2016/11/freedom-of-speech-country-comparison/.

[62] U.S. DEP'T OF STATE, OFFICE OF THE COORDINATOR FOR COUNTERTERRORISM, PATTERNS OF GLOBAL TERRORISM 2002, at xiii (Apr. 2003), https://www.state.gov/documents/organization/20105.pdf [hereinafter GLOBAL TERRORISM 2002]; *see* Paulina Wu, Comment, *Impossible to Regulate: Social Media, Terrorists, and the Role for the U.N.*, 16 CHI. J. INT'L L. 281, 285, 292, 294 (2015) (discussing role of United Nations in "regulation of terrorist content in social media").

[63] *See* Javier Lesaca, *Fight Against ISIS Reveals Power of Social* Media, BROOKINGS INST.: TECH TANK (Nov. 19, 2015), https://www.brookings.edu/blog/techtank/2015/11/19/fight-against-isis-reveals-power-of-social-media/; William Booth, *The 5 Countries Where People Click Most on ISIS Propaganda (and the U.S. is No. 2)*, WASH. POST: WORLD VIEWS, https://www.washingtonpost.com/news/worldviews/wp/2017/09/19/the-5-countries-where-people-click-most-on-isis-propaganda-and-the-u-s-is-no-2/?utm_term=.5be72ac29236 (last visited Sept. 24, 2017).

[64] *See Internet Censorship Listed: How Does Each Country Compare?*, GUARDIAN: DATA BLOG, https://www.theguardian.com/technology/datablog/2012/apr/16/internet-censorship-country-list (last visited Oct. 19, 2017); *See generally Country Profiles*, OPENNET INITIATIVE, https://opennet.net/research/profiles (last visited Sept. 24, 2017) (offering summary of research into "factors influencing specific countries' decisions to filter or abstain from filtering the Internet").

which impedes the free speech rights of its own citizens.[65] These preliminary issues illustrate the difficulties of establishing an international framework. Yet, despite these difficulties, this Note will attempt to propose an international framework by looking at four countries that are affected by ISIS's social media activity, two of which place a high value on the freedom of speech, United States and France, and two that do not highly value free speech, Russia and Turkey. In addition to considering each country's value on the freedom of speech, this Note will examine each country's definition of terrorism and current internet regulations of social media platforms. Then, this Note will assess which country's definition of terrorism may be the most adequate definition for the purposes of establishing an international framework.

1. The U.S.

The U.S. has one of the most liberal standards on the freedom of speech,[66] which has traditionally been, and still is, a deeply cherished fundamental right.[67] The First Amendment of the U.S. Constitution guarantees that "Congress shall make no law . . . abridging the freedom of speech" of its citizens.[68] The Constitution generally offers broad protection to its citizens to exercise their right to free speech.[69] Moreover, as early as 1997, the Supreme Court reaffirmed that online speech is also afforded the highest level of constitutional protection.[70] However, the right to free speech is not an absolute right.[71] For example, in *Brandenburg v. Ohio*, the Supreme Court held that speech is unprotected when it expressly advocates the violation of a law, the "advocacy is directed to inciting or producing imminent lawless action," and the advocacy "is likely to incite or produce such action."[72] Moreover, "in *Holder v. Humanitarian Law Project*, which addressed [free speech regulation] 'for the first time in the context of the war on terror'" since the September 11, 2001 terrorist attacks, the Supreme Court further limited the broad protection of free speech by holding

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[65] *See* Wu, *supra* note 62, at 290, 295–96.

[66] *See e.g.*, Adam Liptak, *Unlike Others, U.S. Defends Freedom to Offend in Speech*, N.Y. TIMES (June 12, 2008), http://www.nytimes.com/2008/06/12/us/12hate.html.

[67] *See e.g.*, *Your Right to Free Expression*, AM. CIV. LIBERTIES UNION [ACLU], https://www.aclu.org/other/your-right-free-expression (last visited Oct. 19, 2017); *see also* Steven Pinker, *Why Free Speech Is Fundamental*, BOS. GLOBE (Jan. 27, 2015), https://www.bostonglobe.com/opinion/2015/01/26/why-free-speech-fundamental/aaAWVYF-scrhFCC4ye9FVjN/story.html.

[68] U.S. CONST. amend. I.

[69] Martin v. City of Struthers, 319 U.S. 141, 143 (1943).

[70] Reno v. ACLU, 521 U.S. 844, 863 (1997).

[71] Bill Frank, *The 1st Amendment Is Not Absolute*, BLAZE (Oct. 4, 2013, 9:00 AM), http://www.theblaze.com/contributions/the-1st-amendment-is-not-absolute/.

[72] Brandenburg v. Ohio, 395 U.S. 444, 447 (1969).

that providing "material support" to foreign terrorist organizations in the form of speech is a federal crime.[73]

In light of these two Supreme Court cases, it is clear that ISIS narratives — in and of themselves — are most likely unprotected speech and that those who post such narratives on social media platforms may be convicted of violating a federal statute.[74] However, "[a] blanket policy of banning anything that incites violence could be seen as censorship. The case of Isis propaganda may seem clear-cut, but if the precedent is set," the concern is that such regulation would "ultimately lead to other kinds of legitimate political discussions being banned[.]"[75] Thus, notwithstanding the additional difficulty of proving that ISIS narratives did in fact "incite or produce" terrorist acts, there must be a working definition of "terrorism" and of what exactly constitutes "terrorist content" in order to *selectively* regulate such content on social media platforms without infringing on the free speech rights of those engaging in legitimate political discussions.

There are multiple U.S. statutes that define terrorism.[76] One statute defines terrorism as a "premeditated, politically motivated violence

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[73] *See* Holder v. Humanitarian Law Project, 561 U.S. 1, 39–40 (2010); Emma Sutherland, Comment, *The Material Support Statute: Strangling Free Speech Domestically?*, 23 GEO. MASON U. C.R. L.J. 229, 230 (2013) (quoting Amanda Shanor, *Beyond Humanitarian Law Project: Promoting Human Rights in a Post-9/11 World*, 34 SUFFOLK TRANSNAT'L L. REV. 519, 520 (2011)). "[*Holder*] has been an important tool for prosecutors: [s]ince 2001, the government says, it has charged about 150 defendants for violating the material-support provision, obtaining about 75 convictions." Adam Liptak, *Court Affirms Ban on Aiding Groups Tied to Terror*, N.Y. TIMES (June 21, 2010), http://www.nytimes.com/2010/06/22/us/politics/22scotus.html.

[74] Although there are currently no cases in which private plaintiffs were sued for posting "terrorist" content, there are several cases where social media companies were sued for allowing terrorist content on its platforms. *See e.g.*, Force v. Facebook, Inc., No. 1:16-CV-05490, 2016 WL 3681030 (S.D.N.Y. July 10, 2016). Generally, courts have held that the Communications Decency Act protects social media companies from being liable for content published by third parties (i.e. its users). *See* Fields v. Twitter, Inc., 200 F. Supp. 3d 964, 968–69 (N.D. Cal. 2016). Moreover, courts will not consider social media companies to have provided "material support" to terrorists in violation of Section 2339 of the Anti-Terrorism Act by allowing terrorists to open social media accounts. *Id.* at 971–72.

[75] Samira Shackle, *We Can't Blame Twitter for Isis Propaganda*, INT'L BUS. TIMES (Jan. 15, 2016, 17:32 GMT), http://www.ibtimes.co.uk/we-cant-blame-twitter-isis-propaganda-1538193.

[76] *See e.g.*, U.S. GEN. ACCT. OFF., GAO/NSIAD-97-254, COMBATING TERRORISM: FEDERAL AGENCIES' EFFORTS TO IMPLEMENT NATIONAL POLICY AND STRATEGY 16 (1997); *See* Nicholas J. Perry, *The Numerous Federal Legal Definitions of Terrorism: The Problem of Too*

perpetrated against noncombatant targets by subnational groups or clandestine agents."[77] Another statute sets out a three-prong definition of "international terrorism" as activities that:

> (A) involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or of any State; (B) appear to be intended—(i) to intimidate or coerce a civilian population; (ii) to influence the policy of a government by intimidation or coercion; or (iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping; *and* (C) occur primarily outside the territorial jurisdiction of the United States, or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to intimidate or coerce, or the locale in which their perpetrators operate or seek asylum[.][78]

These multiple definitions of terrorism, however, do not come together to provide a comprehensive definition of terrorism nor offer broader protection against terrorism. Rather, the multiple definitions create a fragmented web of definitions, which creates ambiguity as to "which definition is proper [under] different circumstances."[79] Furthermore, requiring terrorist activities to satisfy three prongs in order to constitute "international terrorism" may "risk[] being under-inclusive of terrorist behavior,"[80] specifically, ISIS narratives on social media platforms.

Despite the inconsistencies of applying the multiple definitions, both the government and social media platforms have attempted to regulate terrorist content.[81] A strictly governmental approach to internet governance of social media platforms would raise strong objections by the

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Many Grails, 30 J. LEGIS. 249, 255 n. 48 (2004) (listing sources for different definitions of terrorism in federal law).

[77] 22 U.S.C. § 2656f(d)(2) (2006).

[78] 18 U.S.C. § 2331 (2012) (emphasis added).

[79] Wu, *supra* note 62, at 305.

[80] *Id.*

[81] *See e.g.*, Brian Mastroianni, *Could Policing Social Media Help Prevent Terrorist Attacks?* CBS NEWS (Dec. 15, 2015, 7:15 AM), https://www.cbsnews.com/news/could-policing-social-media-prevent-terrorist-attacks/; *see also* Amar Toor, *France and UK Consider Fining Social Media Companies over Terrorist Content*, VERGE (June 13, 2017, 7:26 AM), https://www.theverge.com/2017/6/13/15790034/france-uk-social-media-fine-terrorism-may-macron.

public, especially after Edward Snowden's revelations about the government's extensive surveillance of online activities and communications in 2013.[82] Thus, there is a strong public policy incentive for social media platforms themselves, the "Internet intermediaries,"[83] to make a joint effort with the government to regulate ISIS narratives. However, social media platforms currently impose no significant logistical hurdles to prevent ISIS and its supporters from immediately creating new social media accounts when their accounts are suspended or shut down.[84] Although social media platforms such as Twitter and Facebook updated their respective anti-terror policies in response to the public's pressing requests for "social media compan[ies] . . . to crack down on online propaganda linked to terrorism," they are still hesitant about actively monitoring and removing users' posts due to free speech implications.[85] Instead, social media platforms generally "rely on users to flag" content that potentially violate anti-terror policies and review only such flagged content.[86] However, in December 2015, the Senate Intelligence Committee introduced a bill called the "Requiring Reporting of Online Terrorist Activity Act," which, if enacted, would impose on social media companies the duty to report suspected terrorist content to federal authorities.[87] This is troubling because "[i]f it becomes law, [social media platforms'] natural tendency will be to err on the side of reporting *anything* that might be characterized as 'terrorist activ-

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[82] *See* FREEDOM ON THE NET 2016: UNITED STATES, FREEDOM HOUSE, https://freedomhouse.org/sites/default/files/FOTN%202016%20United%20States.pdf.

[83] "Internet intermediaries are key drivers in the development of the Internet as well as in distributing creative content. They host, locate and search for content and facilitate its distribution." WORLD INTELLECTUAL PROP. ORG. [WIPO], *Internet Intermediaries and Creative Content*, http://www.wipo.int/copyright/en/internet_intermediaries/ (last visited Sept 27, 2017).

[84] *See Hashtag Terror: How ISIS Manipulates Social Media*, ANTI-DEFAMATION LEAGUE, http://www.adl.org/combating-hate/international-extremism-terrorism/c/isis-is-lamic-state-social-media.html?referrer=https://www.google.com/#.WDVMhaJ95E4 (last updated Aug. 21, 2014).

[85] *See* Jonathan Stempel & Alison Frankel, *Twitter Sued by U.S. Widow for Giving Voice to Islamic State*, REUTERS (Jan. 14, 2016, 2:31 PM), http://www.reuters.com/article/us-twitter-isis-lawsuit/twitter-sued-by-u-s-widow-for-giving-voice-to-islamic-state-idUSKCN0US1TA20160114.

[86] *See* Ellen Nakashima, *Lawmakers Want Internet Sites to Flag "Terrorist Activity" to Law Enforcement*, WASH. POST (July 4, 2015), https://www.washingtonpost.com/world/national-security/lawmakers-want-internet-sites-to-flag-terrorist-activity-to-law-enforcement/2015/07/04/534a0bca-20e9-11e5-84d5-eb37ee8eaa61_story.html.

[87] Requiring Reporting of Online Terrorist Activity Act, S. 2372, 114th Cong. §§ 1–2(a) (1st Sess. 2015).

ity' even if it is not. And their duty to report will chill speech on the Internet that relates to terrorism."[88] Essentially, social media platforms will have to switch their roles of traditionally promoting free speech to policing speech.

Regardless of whether the government and social media platforms jointly regulate terrorist content, the implication of free speech rights remains. In an attempt to address this dilemma, and more so, to present a solution of global application, it may be helpful to consider the multistakeholder approach on internet governance. The multistakeholder approach, which was proposed by the Internet Corporation for Assigned Names and Numbers,[89] provides a transparent and inclusive structure of internet governance in general.[90] There are many advocates for this approach because it does not empower one sole entity — whether it be the government or the social media platforms — to have absolute discretion in governing the Internet.[91] Rather, the power to govern the Internet is granted to ordinary citizens, the "stakeholders," as well. Thus, the very people whose speech may be regulated are given a direct say in how their online speech should be governed; this may make it less likely that any such internet regulation will implicate the infringement of free speech rights. As U.S. Secretary of Commerce, Penny Pritzker remarked:

> All of us are stakeholders in a strong and vibrant, global Internet. The Internet has thrived precisely because *citizens around the world have a voice in how the Internet is governed*. That is why we — the United States government — support multistakeholder processes. This is our bedrock principle for Internet governance. Let me be clear about this. *The United States will not allow the global Internet to be coopted by any person, entity, or nation* seeking to substitute their parochial worldview for the collective wisdom of this community – you, the community of stakeholders represented so well here today.[92]

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[88] Nakashima, *supra* note 86 (emphasis added).

[89] *See* Steve Crocker, *Cheers to the Multistakeholder Community*, INTERNET CORP. FOR ASSIGNED NAMES & NOS. [ICANN]: BLOG (Sept. 30, 2016), https://www.icann.org/news/blog/cheers-to-the-multistakeholder-community.

[90] *See id.*

[91] *See id.*

[92] Penny Pritzker, U.S. Sec'y of Com., Remarks at the Internet Corporation for Assigned Names and Numbers Meeting in Los Angeles (Oct. 13, 2014), https://www.commerce.gov/print/719 (emphasis added).

Lawrence E. Strickling, the U.S. Assistant Secretary of Commerce for Communications and Informations, also lauded this approach for involving "a broad foundation of interested parties . . . including businesses, technical experts, civil society, and governments – [to] arriv[e] at [a] consensus through a bottom-up process regarding policies affecting the underlying functioning of the Internet domain . . . system."[93]

The multistakeholder approach recognizes that internet governance is a multi-faceted issue requiring an equally, if not more, multi-faceted response. Likewise, the stakeholders of the Internet, who are effectively also the stakeholders of social media platforms, should "participat[e] alongside each other to share ideas or develop consensus policy" regarding the regulation of ISIS narratives on social media platforms.[94]

2. France

Similar to the U.S., France also has a keen interest in regulating ISIS narratives on social media platforms.[95] As previously mentioned, France is notorious for exporting the highest number of ISIS recruits and fighters.[96] This is especially disconcerting in light of the massacre that occurred on November of 2015 in Paris, where ISIS gunmen and suicide bombers killed 130 people and injured hundreds more on their way to the offices of *Charlie Hebdo*, the French satirical magazine.[97] In response to this tragic massacre, the French government declared a national state of emergency and appealed to "U.N. member states to work together on an international legal framework that would make social network providers share responsibility for the use of their platforms [by terrorists] to spread messages promoting violence."[98] Harlem Desir, the French State Secretary for European Affairs, emphasized, "We must limit the dissemination of these [terrorist] messages . . . We must . . . establish a legal framework

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[93] *Persevering the Multistakeholder Model of Internet Governance: Hearing Before the S. Comm. on Commerce, Sci. & Transp.*, 114th Cong. (2015) (testimony of Lawrence E. Strickling, Assist. Sec'y, Commc'ns & Info., Nat'l Telecomms. & Info. Admin.), https://www.ntia.doc.gov/speechtestimony/2015/testimony-assistant-secretary-strickling-senate-committee-commerce-science-and-.

[94] *Internet Governance – Why the Multistakeholder Approach Works*, INTERNET SOC'Y (Apr. 26, 2016), https://www.internetsociety.org/resources/doc/2016/internet-governance-why-the-multistakeholder-approach-works/.

[95] *See* Louis Charbonneau, *Social Networks Must Help Stamp Out Promotion of Violence - France*, REUTERS: MKT. NEWS (Jan. 22, 2015, 2:25 PM), https://www.reuters.com/article/france-security-internet/social-networks-must-help-stamp-out-promotion-of-violence-france-idUSL1N0V120O20150122.

[96] *See* Hinnant & Casert, *supra* note 51.

[97] *See Paris Attacks: What Happened on the Night*, BBC NEWS (Dec. 9, 2015), http://www.bbc.com/news/world-europe-34818994.

[98] Charbonneau, *supra* note 95.

so the Internet platforms, the large companies managing social network-ing, . . . [are] called upon to act responsibly [sic]."[99] Desir went so far as to state that ISIS's "racist remarks [and] anti-Semitic remarks, spread through the Internet today or in other media, *do not fall in the category of expressing an opinion* . . . . Rather there should be law that allows for us to suppress a rejection of others and a call for violence and a call for death."[100]

Desir's claim that ISIS remarks "do not fall in the category of ex-pressing an opinion" may be a far-fetched statement considering that France has traditionally placed a high value on the freedom of speech.[101] Article 11 of France's Declaration of the Rights of Man and of the Citizen states: "The free communication of ideas and of opinions is one of the most precious rights of man. Any citizen [thus] may . . . speak, write, and pub-lish freely, except [for] what is tantamount to the abuse of this liberty in the cases determined by Law."[102] In fact, France is only four ranks behind the U.S. on the 2016 World Press Freedom Index.[103]

However, following the *Charlie Hebdo* attack, the French govern-ment amended and expanded the 1955 state of emergency laws, which allows the Interior Minister to take "*any measure* to ensure the interrup-tion of any online public communication service that *incites* the commis-sion of *terrorist acts or glorifies them*" during the state of emergency.[104] Measures undertaken by the government include: the "mass surveillance of personal communications with little judicial oversight," and the arrest-ing of fifty-four people for "allegedly defending terrorism."[105] Additionally, in March 2015, a few months after the first declared state of emergency, the French government issued a decree that allowed for the removal of

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[99] *Id.*

[100] *Id.* (emphasis added).

[101] *Id.*; Déclaration des Droits de l'Homme et du Citoyen de 1789 [CONSTITUTION] Oct. 4, 1958, art. 11 (Fr.) (translation on file with J. Global Just. & Pub. Pol'y).

[102] Déclaration des Droits de l'Homme et du Citoyen de 1789 [CONSTITUTION] Oct. 4, 1958, art. 11 (Fr.) (translation on file with J. Global Just. & Pub. Pol'y).

[103] *2016 World Press Freedom Index*, REPORTERS WITHOUT BORDERS, https://rsf.org/en/ranking (last visited Sept. 29, 2017).

[104] *France: New Emergency Powers Threaten Rights*, HUMAN RIGHTS WATCH (Nov. 24, 2015, 11:17 AM), https://www.hrw.org/news/2015/11/24/france-new-emergency-powers-threaten-rights (emphasis added).

[105] FREEDOM OF THE PRESS 2016: FRANCE, FREEDOM HOUSE, https://freedomhouse.org/report/freedom-press/2016/france.

sites and online content that "incite terrorism or apologize for terrorism."[106] Free speech advocates harshly criticized the French government for the state of emergency laws and the decree because both are strictly administrative measures that can be performed without judicial oversight.[107] Nevertheless, President Francois Hollande of France firmly expressed that the law should "hold web companies," which includes social media platforms, "accountable for any extremist messages they may host" to the point of holding them as "'accomplices' [to terrorism] if [social media] users post content the government deems extremist"[108] but the companies fail to comply with the government in removing the extremist content.[109]

Although France's state of emergency was set to expire within three months of the *Charlie Hebdo* attack, France extended its state of emergency five times, the latest extension lasting until July 15, 2017, due to another ISIS-affiliated attack that occurred in Nice in July 2016.[110] Furthermore, France's Prime Minister Manuel Valls vowed that "France's current state of emergency would continue until a 'total and global war' against ISIS [is] over."[111] The possibility of having to regulate ISIS narratives on social media platforms during France's unending state of emergency calls for an evaluation of France's definition of terrorism in order to weigh the potential risks of implicating, not only the French citizens' right to free speech, but also the social media platforms' potential liabilities as "accomplices" of terrorism.[112]

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[106] FREEDOM ON THE NET 2015, FREEDOM HOUSE, FRANCE 7, https://freedomhouse.org/sites/default/files/resources/FOTN%202015_France.pdf [hereinafter FREEDOM ON THE NET 2015].

[107] *See id.*

[108] Lizzie Plaugic, *France Wants to Make Google and Facebook Accountable for Hate Speech*, VERGE (Jan. 27, 2015, 12:38 PM), http://www.theverge.com/2015/1/27/7921463/google-facebook-accountable-for-hate-speech-france.

[109] *See* FREEDOM ON THE NET 2015, *supra* note106.

[110] *France: State of Emergency Extended to July 2017*, GLOB. LEGAL MONITOR, LIBRARY OF CONG. (Dec. 29, 2016), http://www.loc.gov/law/foreign-news/article/france-state-of-emergency-extended-to-july-2017/; *see also* Peter Wilkinson et al., *Attacker in Nice 'Radicalized Very Quickly,' French Interior Minister Says*, CNN (July 17, 2016), http://www.cnn.com/2016/07/16/europe/france-attack-on-nice-isis/index.html.

[111] Darren Boyle, *France Extends State of Emergency 'Until ISIS is Defeated' as Government Reveals They Have Foiled Six Terror Plots Since November Paris Attacks*, DAILY MAIL (Jan. 22, 2016, 3:57 AM), http://www.dailymail.co.uk/news/article-3411547/France-extends-state-emergency-ISIS-defeated-government-reveals-foiled-six-terror-plots-November-Paris-attacks.html.

[112] *See generally* Plaugic, *supra* note 108 (explainig that companies can be held liable as "accomplices" for terroist activitis).

Currently, the French Criminal Code broadly "defines terrorism as acts 'intentionally committed by an individual entity or by a collective entity in order to seriously disturb law and order by intimidation or by terror.'"[113] The broad definition is followed by a list of "specific acts that can be prosecuted" defined as "terrorist acts, such as '[a]ttempted murder, assault, kidnapping, hostage-taking on . . . all means of transport, theft, extortion, destructions . . . [and] the production, sale, import and export of explosives . . .'"[114] By first defining terrorism broadly, then limiting the scope of terrorist acts with a specific list of "acts that can be prosecuted," the definition is careful not to be over-inclusive of online content that may be objectionable yet is non-terroristic.[115] This would give less discretion to either the government or social media platforms to remove ISIS narratives based on a broad definition of terrorism because ISIS narratives would have to be followed by specific acts as set out in the Criminal Code. For instance, social media users could post a threatening tweet or video "but not take any substantial steps toward acting on the threat."[116] Therefore, despite the government's sweeping powers under France's current state of emergency to regulate social media platforms for ISIS narratives, the application of France's definition of terrorism may be helpful in balancing the need for regulation to disrupt ISIS narratives with the need to protect French citizens' right to free speech.

3. Russia

Ever since the rise of ISIS in 2014, Russia recognized that online ISIS "materials are aimed at recruiting new members from Russia."[117] Russia immediately responded by censoring online terrorist content through regulation of social media sites.[118] Russia was able to begin censorship almost immediately because there were already laws in place that generally allowed government censorship of online content.[119] For example, the Lugovoi Law, which was passed in February 2014, authorizes "the prosecutor general's office to order . . . authorities to block online sources

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[113] Wu, *supra* note 62, at 306.

[114] *Id.*

[115] *Id.*

[116] *Id.*

[117] Karena Avedissian, *Russia Step Ups Censorship of ISIS Social Media Content*, GLOB. VOICES (Oct. 27, 2014, 4:16 PM), https://globalvoices.org/2014/10/27/russia-step-ups-censorship-of-isis-social-media-content/.

[118] *See id.*

[119] *See Russia: Halt Orders to Block Online Media*, HUMAN RIGHTS WATCH (Mar. 23, 2014, 11:45 PM), https://www.hrw.org/news/2014/03/23/russia-halt-orders-block-online-media [hereinafter *Russia Block's Online Media*].

within 24 hours without any court approval."[120] Since 2014, the government specifically began imposing more severe consequences for the posting of online terrorist content.[121] For instance, in July 2016, Russia passed the Yarovaya Law, which is an anti-terrorism law that increased the maximum sentence for "incit[ing]" or "justify[ing] terrorism" online "from five to seven years."[122] There are, however, two problems with Russia's crackdown on censorship of terrorist content on social media sites.

First, Russia's regulations on online terrorist content are exacerbated by Russia's overly broad definition of terrorism.[123] The Federal Law of the Russian Federation defines terrorism as "the *ideology* of violence and the *practice* of influencing the adoption of a decision by [public authorities], local self-government bodies or international organizations connected with [frightening the] population and (or) other forms of unlawful violent actions."[124] This current definition, which includes the ideology of terrorism, is an expansion of a previous definition that, though broad, was nevertheless limited to the practice of terrorism.[125] Russia's overly broad definition of terrorism gives the government broad discretion to convict its citizens for speech that may merely be political rather than terroristic.[126] Moreover, the fact that the Roskomdanzor, a federal agency that monitors the Internet and social media activities, has authority to remove content it deems extremist makes the possibility of the Russian government's abuse of discretion all the more likely.[127]

The second problem is that Russia's broad regulations have begun to extend far beyond strictly "terrorist" content.[128] In contrast to the U.S.

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[120] *Id.*

[121] *See id.*; *see also* Tetyana Lokot, *Russia Activists and Industry Speak Out Against New Draconian 'Anti-Terrorist' Laws*, GLOB. VOICES (June 23, 2016, 3:52PM), https://advox.globalvoices.org/2016/06/23/russian-activists-and-industry-speak-out-against-new-draconian-anti-terrorist-laws/ (discussing "increase[d] penalties" and "[f]urther limits on Internet freedom").

[122] *New Draconian 'Anti-Terrorist' Laws*, *supra* note 121.

[123] *See* Federal'nyi Zakon Reakci na Terorismus [Federal Law of the Russian Federation on Counteraction Against Terrorism] 2006, No. 35-FZ, art. 3 [hereinafter Federal Law No. 35-FZ] (defining terrorism as the "ideology of violence . . . or other form of unlawful violent actions).

[124] *Id.* (emphasis added).

[125] *Id.*; *see* Seth T. Bridge, *Russia's New Counteracting Terrorism Law: The Legal Implications of Pursuing Terrorists beyond the Borders of the Russian Federation*, 3 Colum. J.E. Eur. L. 1, 13–16, 18–24, 26–27 (2009); *see also* Federal'nyi Zakon Po Bor'bes terrorizmom [Federal Law of the Russian Federation on the Struggle Against Terrorism] 2004, No. 130-FZ, art. 3 (citing the previous definition of terrorism).

[126] *See* Federal Law No. 35-FZ, *supra* note 123.

[127] *See Russia Block's Online Media*, *supra* note 119.

[128] *See id.*

and France, Russia, as an authoritarian state, has traditionally placed a low value on the freedom of speech.[129] Accordingly, Russia has been justifying its extensive censorship of online speech with little hesitation about violating its citizens' free speech rights, particularly with respect to speech that criticizes the government.[130] For example, a personal data protection law, that has been in effect since September 2016, allows "the Kremlin . . . to block any social media [sites that] circulate[] content that is not to [its] liking."[131] The Russian government's authority to block social media sites based on an arbitrary standard, such as preference,[132] enables the government to restrict speech, and even convict, social media users for content that not only meets its overly broad definition of terrorism, but also merely criticizes the government.[133]

  These two problems make it clear that if Russia's definition of terrorism and censorship of online speech were applied at the international level, there would most likely be strong objections by the international community. Therefore, Russia's definition of terrorism would most likely be an unpopular definition for the purposes of establishing an international framework.

4. Turkey

  Among the four countries described in this Note, Turkey may be the most directly affected by ISIS due to its physical proximity to Syria and Iraq and its ongoing state of conflict with ISIS.[134] Consequently, Tur-

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  [129] *See* Katherine Ognyanova, *Careful What You Say: Media Control in Putin's Russia – Implications for Online Content*, INT'L J. E-POL. 1, 4 (June 2014) (discussing the "deep-rooted authoritarian traditions" that permeate the Kremlin's censorship and control over freedom of expression).

  [130] *See* Tatyana Beschastna, *Freedom of Expression in Russia as it Relates to Criticism of the Government,* 27 EMORY INT'L L. REV. 1105, 1133–34 (2013) (discussing Russian laws effectively limiting the freedom of speech).

  [131] Remi Piet, *Russia: RIP Freedom of Speech?*, AL JAZEERA (July 31, 2014, 12:22 PM), http://www.aljazeera.com/indepth/opinion/2014/07/russia-rip-freedom-speech-2014731823530549.html.

  [132] *See* FREEDOM ON THE NET 2016: RUSSIA FREEDOM HOUSE, https://freedomhouse.org/sites/default/files/FOTN%202016%20Russia.pdf.

  [133] *Id.*

  [134] *See Turkey Will Not Be Europe's Firefighter*, DAILY SABAH (Aug. 21, 2016), https://www.dailysabah.com/editorial/2016/08/21/turkey-will-not-be-europes-firefighter; Rebecca Collard, *Why Turkey Has Finally Declared War on ISIS*, TIME (July 24, 2015), http://time.com/3971161/turkey-isis-war/.

key is particularly sensitive to ISIS-related issues, including ISIS recruitment.[135]ISIS recruitment in Turkey, however, is unique in that online ISIS recruitment via social media platforms is a supplement to on-site recruitment [136] rather than the main means of recruitment. [137] ISIS has taken advantage of its relative ease of movement from Syria and Iraq to Turkey to establish recruitment sites in small, confined sub-sets of communities. [138] ISIS's physical presence in Turkish communities allowed ISIS recruiters to first meet in person, develop a personal relationship of trust and commonality, and then continue to communicate through social media sites.[139]

Understandably, the Turkish government takes seriously the regulation of ISIS propaganda to prevent its citizens from being further incited by and recruited to ISIS.[140] Furthermore, there has been a greater urgency for the government to regulate online ISIS narratives after a faction of the Turkish military attempted to overthrow the government in July 2016.[141] After the failed coup d'état, Turkey declared a state of emergency and has since placed strict restrictions on online speech that supports terrorist organizations or disseminates terrorist propaganda.[142] On multiple occasions, the Turkish government has even completely restricted access to social media websites to prevent the dissemination of graphic images that promote ISIS.[143] A recent and notable instance is when the government shut down social media sites after ISIS gunmen released a video showing two Turkish soldiers being burned alive.[144] Given the gravity of Turkey's conflict with ISIS, Turkey claims its draconian measures are necessary precautions to combat terrorism.[145] However, the

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[135] Aaron Stein, *Islamic State Networks in Turkey: Recruitment for the Caliphate*, ATL. COUNCIL 1, 4, 9 (Oct. 2016), http://www.publications.atlanticcouncil.org/islamic-state-networks-in-turkey/.

[136] *Id.*

[137] *Id.*

[138] *Id.*at 3–4.

[139] *Id.* at 4.

[140] *See Turkey Arrests 1,656 Social Media Users Since Summer*, ASSOC. PRESS NEWS (Dec. 24, 2016), http://bigstory.ap.org/article/ed3e585528e144f2b8fceab5b450eb97/turkey-arrests-1656-social-media-users-summer [hereinafter *Turkey Arrests* 2016].

[141] *See* Efe Kerem Sozeri, *Why Turkey issued a social media ban during a coup attempt—and promptly lifted it*, DAILY DOT (July 17, 2016, 10:28 AM), https://www.dailydot.com/layer8/turkey-coup-social-media-ban-lift/.

[142] *Turkey Arrests* 2016, *supra* note 140. Since July 2016, Turkish authorities have formally arrested about 2,000 social media users for supporting terrorist organizations while at least 10,000 are being investigated. *Id.*

[143] *Id.*

[144] *Id.*

[145] *Id.*

extent of Turkey's regulation of social media has sparked concern in the international community.[146] Accordingly, it is appropriate to examine Turkey's regulations in light of its value on the freedom of expression and its definition of terrorism.

Turkey has traditionally placed a low value on its citizens' right to free speech[147] despite being an allegedly democratic state.[148] Although the Turkish constitution offers protections for the freedom of expression, stating in pertinent part, "everyone has the right to express and disseminate his thought and opinion by speech, in writing or in pictures or through other media, individually or collectively."[149] The protection may only be nominal.[150] The fact that Turkey offers nominal protection for free speech is supported by Turkey's broad definition of terrorism under its Anti-Terror Law.[151] Article 1(1) of Turkey's Anti-Terror Law defines terrorism as:

> *any kind of act* done by one or more persons belonging to an organization with the aim of changing the characteristics of the Republic as specified in the Constitution, its political, legal, social, secular and economic system, damaging the indivisible unity of the State with its territory and nation, endangering the existence of the Turkish State and Republic, weakening or destroying or seizing the authority of the State, eliminating fundamental rights and freedoms, or damaging the internal and external security of the State, public order or general health by means of pressure, force and violence, terror, intimidation, oppression or threat.[152]

By defining terrorism as "any kind of act" that affects a variety of societal and governmental sectors then providing a non-exclusive list of the methods by which terrorism can be committed, the government has nearly unhindered discretion to prosecute its citizens for posting content

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[146] *Id.*

[147]   *Turkey*,   FREEDOM   HOUSE,   https://freedomhouse.org/sites/default/files/FOTN%202016%20Turkey.pdf (last visited Oct. 3, 2017).

[148] *See generally* Ahmet S Yayla, *Turkish Referendum: When Democracy Falls Short Of A Majority*, HUFFINGTON POST (Apr. 15, 2017, 11:25 AM), http://www.huffingtonpost.com/entry/turkish-referendum-when-democracy-falls-short-of-a_us_58f23649e4b048372700d8a9.

[149] TURKEY [CONSTITUTION], Nov. 7, 1982, art. 26.

[150] *See* Mehdi Hasan, *In Turkey the right to free speech is being lost*, THE GUARDIAN (June 10, 2012, 12:00 PM), https://www.theguardian.com/commentisfree/2012/jun/10/turkey-free-speech-erdogan-crackdown.

[151] *See* Law To Fight Terrorism of 1991, [Act No. 3713] art. 1(1) (Turk.).

[152] *Id.* (emphasis added).

that may not actually rise to the level of terroristic. In fact, Article 7(2) of the Anti-Terror Law precisely allows for such measures by allowing the Turkish government to imprison "[t]hose who assist members of [terrorist] organizations . . . or make propaganda in connection with such organizations" for a term of one to five years.[153] Moreover, the Anti-Terror Law's applicability to both online and offline activity allows the government to prosecute journalists, academics, social media users alike with no affiliation to terrorism for simply criticizing the government.[154]

Although Turkey is among the top countries that deserve counterterrorism support due to its vulnerability to terrorism, its very unique vulnerability makes its definition of terrorism too country-specific to be applied at the international level. Moreover, Turkey's regulations are similarly extensive as, if not, more extensive than Russia's regulations, which may raise further objections at the international level.

III.   COMPLEMENTARY MEASURES TO THE "INTERNATIONAL FRAME-
WORK"

An established international framework for internet governance of social media platforms is necessary to regulate ISIS narratives on social media platforms. However, in order to regulate ISIS narratives to specifically curb ISIS's incitement and recruitment, a hard law approach alone would not suffice. Hard law "refers to legally binding obligations that are precise (or can be made precise through adjudication or the issuance of detailed regulations) and that delegate authority for interpreting and implementing the law."[155] The legally binding obligations the U.S., France, Russia, and Turkey has implemented and imposed on social media platforms would be considered hard law approaches to regulation. However, "[i]n the area of social media regulation, which is relatively new and uncertain and where nations have contrasting views towards the best way to proceed, non-binding regulation is much more likely to succeed than binding law."[156] This is where a soft law approach can be taken. "The realm of 'soft law' begins once legal arrangements are weakened along one or more of the dimensions of obligation, precision, and delegation."[157]

These soft law approaches can take the form of counter-extremist

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[153] *Id.* art. 7(2).

[154] Patrick Hertzog, *Why Turkey's terror law is the 'Achilles heel' of the EU-Turkey visa deal*, FR. 24 (Mar. 11, 2016), http://www.france24.com/en/20160513-why-turkeys-terror-law-achilles-heel-eu-turkey-migrant-deal.

[155] Kenneth W. Abbott & Duncan Snidal, *Hard and Soft Law in International Governance*, 54 INT'L ORG. 421, 421 (2000).

[156] Wu, *supra* note 62, at 304 n. 123.

[157] Abbott & Snidal, *supra* note 155, at 422.

narratives campaigns, which the UN has proposed in its May 2015 meeting.[158] The rationale of the counter-narratives is to fight ISIS propaganda with anti-ISIS propaganda.[159] For example, narratives that actively denounce terrorism will be encouraged and amplified on social media platforms not only to raise public awareness[160] of counter-extremist narratives but to compete for reaching audiences who otherwise might have been incited to terrorist acts or recruited to ISIS. In order for counter-narratives to be effective, it must be developed after "obtaining an in-depth understanding of the various tenets of . . . Islamist narrative and . . . [Jihadi]-ideology."[161] Furthermore, in order to ensure a more effective counter-narratives campaign, a "robust target audience analysis"[162] must be conducted:

> to ascertain the most appropriate message, and the most effective language, messenger, tone, and format to achieve the behavioural change desired. These aspects may be different depending on age group, gender, grievance expressed, and level of pre-existing commitment to the Islamist narrative, whether that is someone in the process of radicalisation (ranging from vulnerable, family member, empathiser, sympathiser, supporter, activist, member, violent member to dangerous member) or in the de-radicalisation process (ranging from disengaged member, disenfranchised member, disturbed member, through to deradicalised former).[163]

A measure which may help identify the "target audience" is to conduct research on the patterns of ISIS incitement and recruitment. A recent study shows that "the number of foreign [ISIS] fighters rises in countries that are more ethnically and linguistically homogeneous, and where

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[158] *See* Meetings Coverage, Security Council, Action against Threat of Foreign Terrorist Fighters Must Be Ramped Up, Security Council Urges in High-Level Meeting, U.N. Meetings Coverage SC/11912 (May 29, 2015).

[159] JONATHAN RUSSELL & HARAS RAFIQ, COUNTERING ISLAMIST EXTREMIST NARRATIVES: A STRATEGIC BRIEFING ¶¶ 7, 9–10 (Quilliam 2016).

[160] *See id.* ¶¶ 11–12.

[161] *Id.* ¶ 10.

[162] *Id.* ¶ 11.

[163] *Id.*

Middle Eastern and Muslim immigrants in particular face greater difficulties assimilating into society."[164] Moreover, the isolation they feel from the homogeneity of their host country often "induces some of them to become [more easily] radicalized"[165] by ISIS narratives on social media platforms.[166] ISIS incitement and recruitment, however, is not limited to just Muslims in a foreign country.[167] Even nationals of their own home country have fallen prey to ISIS incitement and recruitment. For example, in almost all cases where foreign fighters emerged from their home country, the suspects were generally young and they "[felt] excluded from society or [thought] they have failed to live up to [their country's] expectations," whether it be economically or socially.[168]

Although those who are incited by and are recruited to ISIS are not limited to just Muslims or native citizens struggling in their home country, all who are at the least enticed by ISIS narratives may be turned away by hearing directly from ISIS refugees or ex-ISIS supporters.[169] Currently, however, those who return to their home countries from attempting to join ISIS are treated as "irredeemable villian[s]."[170] For instance, in the U.S., a man from Houston is facing 30 years in prison for "simply . . . going to Turkey, where he decided to abandon his plan to enter the caliphate and return[] home."[171] Although determining which ISIS returnees are no longer threats is another problem to tackle, ISIS refugees or ISIS supporters who abandoned their terrorist plans and returned to their home countries should be given the opportunity to openly "share their unfiltered tales of disillusionment."[172] Neither the government, the social media platforms, nor any one particular industry will be more powerful in dissuading ISIS followers than the voices of those who have decided for themselves to turn away from ISIS.

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[164] Richard Florida, *The Geography of Foreign ISIS Fighters*, CITYLAB (Aug. 10, 2016), https://www.citylab.com/equity/2016/08/foreign-fighters-isis/493622/.

[165] Leonid Bershidsky, *To Defeat Islamic State, Treat Muslims Better*, BLOOMBERG (Apr. 25, 2016, 10:23 AM), https://origin-www.bloombergview.com/articles/2016-04-25/to-defeat-islamic-state-treat-muslims-better.

[166] *See generally* Brendan I. Koerner, *Why ISIS is Winning the Social Media War*, WIRED (Mar. 2016), https://www.wired.com/2016/03/isis-winning-social-media-war-heres-beat/#slide-x.

[167] *See* Alicia Lu, *How Does ISIS Recruit, Exactly? Its Techniques Are Ruthless, Terrifying, And Efficient*, BUSTLE (Sept. 18, 2014), https://www.bustle.com/articles/40535-how-does-isis-recruit-exactly-its-techniques-are-ruthless-terrifying-and-efficient.

[168] Bershidsky, *supra* note 165; *see also* Lu, *supra* note 167.

[169] *See* Koerner, *supra* note 166.

[170] *See id.*

[171] *Id.*

[172] *Id.*

Another soft law approach, which is perhaps the most fundamental level of approach, to effectively prevent ISIS recruitment and incitement would be to educate. According to Maajid Nawaz, a former jihadi, the world is already "way behind. [ISIS is] far superior and advanced than we are when it comes to new media technologies."[173] If so, the best, the most fundamental way, to counter ISIS narratives would be to fight it on multiple fronts: "every school, every university, every college, every community [needs] to recognize [that] they have a role to play, we all have a role to play in stopping people from having their minds poisoned by [ISIS narratives]."[174] Moreover, if there are multiple institutions that are actively involved in educating and reinforcing the counter-narratives against the ISIS narratives, then the very individuals who are most vulnerable to ISIS incitement and recruitment, such as the Muslims who struggle with assimilating or the young natives who feel they have failed to live up to the expectations of their home country, may have more likely encountered the counter-narratives.

Unlike hard-law regulations of online speech, which are legally imposed by the government, soft-law approaches to regulation through counter-narratives and education may best be implemented by the U.S.'s multistakeholder approach.

CONCLUSION

It is readily apparent that an international response to ISIS narratives cannot begin and end at only the governmental level. Moreover, in order to counter not only ISIS's narratives but, specifically, the incitement to commit terrorist acts and the recruitment to ISIS, a proposed international framework must consist of nuanced approaches. "[W]ith short- and long-term initiatives, hard and soft approaches . . . law enforcement, prosecutors, information technology companies, social media administrations and human rights actors," all of whom are essentially stakeholders, "need[] to come to an understanding" on how to most effectively regulate ISIS narratives on social media platforms.[175] Accordingly, the U.S.'s multistakeholder approach may be the most appropriate method by which ISIS's narratives can be regulated. Research institutes that conduct "target audience analys[e]s" should also be a stakeholder in the multistakeholder community because it would be able to provide data of ISIS followers that other stakeholders can take into account when cooperatively establishing an international framework on internet governance of social media platforms.

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[173] Lauren Isaac, *Isis Recruitment in the Cyber World*, SOC. JUST. SOLUTIONS (May 4, 2016), http://www.socialjusticesolutions.org/2016/05/04/isis-recruitment-cyber-world/.

[174] *Id.*

[175] Press Release 2016, *supra* note 1.

Currently, the Global Network Initiative, which consists of "a multi-stakeholder group of companies, civil society organizations (including human rights and press freedom groups), investors and academics," may serve as a starting point for the international community to establish and implement an international framework on internet governance of social media platforms.[176] The multistakeholder approach, however, may have problems with inconsistent application from state to state. This inconsistency may be inevitable due to the fact that there is no universal definition of terrorism.[177] Thus, it is essential for the international community to agree on and adopt a working definition of terrorism, taking into account that not all states value the freedom of speech nor are equally affected by terrorism.

Upon assessing the definitions of terrorism in the U.S., France, Russia, and Turkey, this Note suggests that the U.S. definitions of terrorism may not be suitable for the international community because there is no agreed upon definition of terrorism within the U.S. itself. Even if there were one U.S. definition of terrorism, most states may be unwilling to adopt the U.S. definition because it will most likely too narrow given that the U.S.'s value for its citizens' right to free speech is markedly higher than that of others. Furthermore, the Russian and Turkish definitions of terrorism may be an even more unpopular option because they are both too broad and leave much room for the government to abuse its discretion. Therefore, among the four countries discussed in this Note, this Note proposes that France's definition of terrorism may be acceptable to most states,[178] especially to those who respect and sufficiently value the freedom of speech but are nevertheless pressed to regulate terrorist content on social media platforms.

In addition to adopting a universal definition of terrorism and implementing a multistakeholder approach, an international framework to curb ISIS incitement and recruitment should implement both hard law and soft law approaches to regulation of terrorist content on social media platforms. Implementing soft law approaches as complementary measures to hard law approaches may help neutralize the free speech implications that inevitably arise from such regulations. Additionally, soft law approaches may help regulate ISIS narratives at a more fundamental level — the level of the target audience of ISIS narratives — through counter-narratives and education.

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[176] GLOBAL NETWORK INITIATIVE, https://www.globalnetworkinitiative.org/ (last visited Sept. 20, 2017).

[177] Wu, *supra* note 62, at 293–94.

[178] *Id.* at 308.

Fittingly, during the May 2016 UN meeting, various member states expressed the need to include education as part of the international framework.[179] Mohi El-Din Afifi of Al Azhar Islamic Research Academy stated that efforts to educate on counter-extremist ideologies should be put into effect.[180] Member states also noted that the purpose of educating on counter-narratives would be to protect those who are vulnerable to ISIS incitement and recruitment, the target audience, against damaging ISIS ideologies. Moreover, education may be the most effective way to approach the widest target audience because everyone can participate in educating and helping to create a country, an environment, a classroom, and a home for the target audience. Indeed, "[t]here [is] no one better than a peer, a friend or a family member to help foster a sense of belonging, generate mutual respect and offer a home" to those who may need it most.[181]

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[179] Press Release 2016, *supra* note 1.

[180] *Id.*

[181] *Id.*