

A National Security Agenda Revisited

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I. INTRODUCTION

In November 2008, one week after Barack Obama was elected as our forty-fifth President, I had the honor of delivering a Donahue Lecture at Suffolk University Law School.¹ “A National Security Agenda” offered thoughts on national security challenges, priorities and strategies for a new presidential administration. Now, more than one year later, this paper is a “scorecard” on the success of these earlier recommendations and the new administration’s actions. In the pages following, what has been accomplished and what remains is reviewed and judged against my earlier suggestions, in the hope of encouraging readers in their own analysis.

II. EARLIER RECOMMENDATIONS REVISITED

A. Policy Consistency

A principal recommendation focused on the importance of maintaining consistency in U.S foreign and national security policy during the change in presidential administrations. Abrupt changes in policy direction are not helpful and may not be possible at all.² They may signal weakness and present opportunities for our adversaries. Past administrations often experienced a “testing” early on as external forces sought to take advantage of the transition period between administrations, thought to be a time of weakness and vulnerability.³ Israel’s attacks on Gaza, which occurred even before the new

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1. Elizabeth Rindskopf Parker, Dean, University of the Pacific, McGeorge School of Law, Donahue Lecture at Suffolk University Law School: A National Security Agenda (Nov. 13, 2008).

2. An example is the Carter Administration’s unsuccessful effort to reform diplomatic language to make policy discussions more transparent and direct. This change resulted in upset and confusion.

3. In my original remarks I used as examples of this phenomenon: the 1993 World Trade Center bombing which occurred as President Clinton marked five weeks in office; the 2004 Madrid Train bombing which took place just three days before Spain’s national elections; and the 2007 car bomb attacks in London and Glasgow, which happened as a new prime minister took office.

administration took office, fall here. Correctly anticipating that the new Obama administration would be less inclined to tolerate “hard line” initiatives, but would not be well organized to react in their early days, the Israelis took aggressive action in Gaza during the waning days of the Bush administration. As a result, President Obama lost opportunities.

As a logical corollary, I also suggested the value of learning from preceding administrations during the transition period. One serious foreign policy error for any new administration is ignoring lessons learned by one’s predecessors, no matter how seriously flawed their judgments may seem. For example, both the Clinton and Bush administrations experienced this problem, ignoring the experience of their predecessors about changing national security threats until external events provided them with forceful lessons.

In 1992, then President-elect Clinton was notoriously disinterested in the intelligence briefings offered during his transition, apparently believing domestic concerns were more important.⁴ Moreover, his administration did not include an overabundance of individuals with national security experience, certainly where the emerging threat of terrorism was concerned. Attorney General Janet Reno brought substantial domestic law enforcement experience to her new position, but lacked a background or understanding of the evolving relationship between law and national security after the end of the Cold War. As a result, she sought to judge foreign policy choices against domestic criminal law standards. In one case, the Reno Department of Justice debated whether the “beyond a reasonable doubt” standard of proof in domestic criminal law should apply to the United States’ response to Saddam Hussein’s attempt to assassinate former President George Bush during a visit to Kuwait.⁵ Overall, the early Clinton administration had limited interest in the terrorist threat, thus slowing development and implementation of new policies.⁶

For its part, the leadership of the second Bush administration and its Department of Justice team was no more interested in or ready to handle a terrorist attack than the early Clinton administration. Importantly, as the 9/11

4. JOHN L. HELGERSON, GETTING TO KNOW THE PRESIDENT: CIA BRIEFINGS OF PRESIDENTIAL CANDIDATES 1952–1992 (1996), available at <https://www.cia.gov/library/center-for-the-study-of-intelligence/csi-publications/books-and-monographs/cia-briefings-of-presidential-candidates/index.htm>.

5. David Von Drehle & R. Jeffrey Smith, *U.S. Strikes Iraq for Plot to Kill Bush*, WASH. POST, June 27, 1993, at A01 (discussing missile strikes as response to Iraq’s attempt to assassinate former President Bush). As CIA General Counsel for the Clinton Administration in 1993, I recall then CIA Director James Woolsey and the Attorney General debating whether the “beyond a reasonable doubt” standard of criminal law had been satisfied to support a proposed cruise missile strike against Baghdad in response to a planned attack against former President Bush. Evidently, it had. *Id.*

6. I recall President Clinton’s initial lack of interest in the intelligence offerings at his daily briefings. This lack of concern on behalf of the White House became clear when Mir Amal Kanzi killed two CIA employees as they arrived at work in late January, days after President Clinton’s 1993 inauguration. The administration’s reaction seemed to be that it was “not our issue.” In the end, the First Lady agreed to represent the President at a memorial service for the CIA employees. Yet by April 1993, the administration’s reaction to such attacks had changed and cruise missiles were launched at Iraq when a plot to assassinate former President Bush on a visit to Kuwait was uncovered.

Commission Report later made clear, they failed to take advantage of what the Clinton administration had eventually learned after eight years in office.⁷ Indeed, pronouncements by national security officials in the first nine months of Bush's Presidency reflect a Cold War rhetoric that strongly suggests the new administration did not appreciate the shift in national security threats that the terrorist upsurge was creating.⁸ As a result, when the 9/11 attacks occurred, the United States and its leaders were unprepared, both practically and psychologically. In my view, the Bush administration overreacted, developing an extreme approach to achieving security with little regard for legal or policy considerations. A few obvious examples of these excessive methods include the enhanced interrogation techniques, the military tribunals as originally conceived, and the process employed in expanding the National Security Agency's surveillance capabilities.

The apparent "overreaction" of the Bush Administration to the terrorist threat produced a nation deeply divided regarding the best approaches to developing a foreign policy to insure our national security. This legacy now poses a special challenge for the Obama administration. The intensity of public reaction to the former administration's early choices in prosecuting the "war on terror" appears to justify the Obama administration's rejection of a wide range of policy choices adopted by the Bush administration: holding combatants in Guantanamo, using enhanced interrogation techniques, prosecuting alleged terrorists (or enemy combatants) before military tribunals instead of domestic courts, and increasing the reach of NSA's electronic surveillance capabilities. In fact, many of these policies had been moderated by the time the Obama administration took charge, and so charting a "middle-of-the-road" response to early Bush policies became a pragmatic necessity. This is, in fact, the course that the new president has elected to follow.⁹

The smooth transition between the Bush and Obama administrations suggests that President Obama understands the importance of careful transition preparation and taking advantage of a prior administration's experience. The sharing of information that occurred appears to have created an unusually effective transition process.¹⁰ President Obama's naturally pragmatic approach

7. See generally NAT'L COMM'N ON TERRORIST ATTACKS UPON THE U.S., THE 9/11 COMMISSION REPORT (2004) (suggesting Bush administration's lack of deference to intelligence developed in Clinton administration).

8. See generally Donald H. Rumsfeld, Sec'y of Def., Remarks at the Meeting of the North Atlantic Treaty Organization in Brussels, Belgium (June 7, 2001), available at <http://www.defenselink.mil/speeches/speech.aspx?speechid=368> (inferring United States defense agenda lacked substance regarding counterterrorism tactics).

9. To the frustration of many supporters of President Obama, it has been difficult to "roll back" many of the changes introduced by the Bush administration in light of the harsh realities of modern terrorism and their awkward fit in our domestic system of justice. See Robert Chesney, *A Detention Debate in Black and White*, WASH. POST, Sept. 10, 2009 (views of Professor Robert Chesney, a member of President Obama's Detainee Policy Task Force).

10. See Sheryl Gay Stolberg & Robert Pear, *Bush Warns of Vulnerability in a Transition*, N.Y. TIMES,

to governing has helped here. And so, as flawed as many consider some of the Bush administration's original choices to have been, after study, the new administration has recognized that these choices, moderated over time, have become a practical reality that cannot be magically "wished away." Moreover, many of the most controversial original choices, e.g. the structure of the Guantanamo Tribunal, have moderated over time, making them less problematic. The result is a certain inevitability of choice.

B. Bi-Partisanship

A related second recommendation offered by the Obama administration was the need to restore bipartisanship to our national security agenda and to maintain a steady course over time and across administrations. This was critical during the Cold War and remains so today. National political parties change according to a fixed timetable, but the national security threats our nation faces do not. Responses must be thoughtfully considered, developed and implemented over time, so that they span administrations.

Happily, the new administration's responses in its early months have been measured, reflecting its understanding that, when it comes to changes in direction, our national security policy is more akin to a battleship than a frigate: abrupt changes in direction are not possible.¹¹ Our national security policy is a careful structure, built over time, involving complicated relationships and choices. Changes must be carefully developed and initiated, not abruptly introduced as a reaction to the moment. Consistency is important and is best achieved by a bipartisan approach.

Frequently, the new President has demonstrated that he has learned this lesson well, perhaps the benefit of mentoring by Republican Senator Richard Lugar, the bipartisan dean of foreign policy. He has proceeded deliberately and cautiously, revisiting foreign policy choices of the Bush administration carefully. Ironically, the President's own party has been fretful at this consistency and bipartisanship that President Obama has consistently shown in his managing of the problems and initiatives inherited from the Bush administration. Clearly, doing the right thing has a political cost.¹²

The President's commitment to consistency and bipartisanship was discernable from the very beginning in his initial national security appointments. He forged an experienced national security team composed of

Nov. 7, 2008, at A23 (discussing collaborative efforts between Bush-Obama transition teams).

11. Admiral Joseph Prueher, a former carrier pilot, later U.S. Ambassador to China from 1999-2001, once described U.S. policy with China as akin to landing on an aircraft carrier: choose a fixed point on the horizon and stay with it, not adjusting course with every bob of the carrier deck on a stormy sea. Much of the Obama administration's national security policy follows this metaphor.

12. The consistency in legal choices about the Guantanamo detainees has been stressful. See Peter Baker, *Fate of White House Counsel Is in Doubt*, N.Y. TIMES, Oct. 22, 2009, at A21 (discussing White House Counsel Greg Craig's loss of influence).

both parties, retaining Robert Gates as Secretary of Defense and Robert Mueller as FBI Director.¹³ He also added practiced military leaders such as General James Jones, the new National Security Adviser, and Admiral Dennis Blair, the Director of National Intelligence, as well as experienced former Democratic leaders such as Leon Panetta as CIA Director and Hillary Clinton as Secretary of State. In other cases, President Obama selected new faces, such as former Governor Janet Napolitano as Secretary of Homeland Security, who brought highly relevant experience and excellent credentials with them. Appointing such experienced leadership reduced the “catch up” time needed for the new administration in national security and foreign policy matters, and may have facilitated later decisions to change policy.

For example, the Obama administration altered the United States policy on missile defense, moving to shorter-range sea-based systems from longer-range land-based missiles. This represents a fundamental change in U.S. defense policy. At the same time, this decision has removed a persistent irritant to the Russians who see long-range missiles as well as NATO expansion, as threatening to their traditional sphere of influence. In place of the former missile policy, the Obama administration adopted a more realistic approach to the threat of Iranian missiles. This new policy recognizes that Iran poses a greater threat to Europe and Israel than to the United States itself. The result is that short-range missiles have been substituted for long-range missiles—at least for now.

The new administration addressed the problems of the earlier policy boldly and confidently. Such a change might not have been possible without the practiced hand, expertise and credibility of Secretary of Defense Gates. Indeed, President Obama’s appointment of Secretary Gates may be the best evidence that the President intends to pursue a bipartisan national security and foreign policy. Certainly, the participation in policy changes by Secretary Gates, a highly regarded and long-term leader in national security matters for a series of Republican presidential administrations, lends a sense of credibility that benefits the new Obama administration.

C. The Role of Law Enforcement in National Security

My earlier advice regarding the transition of the Presidency urged special attention to personnel appointments at the Department of Justice because of the growing role of domestic criminal law enforcement in national security matters. One of the most important changes in national security policy over the last two decades is the increasingly central role that domestic law enforcement now plays in national security policy choices. This role remains challenging because it is still relatively new and, for most domestically trained lawyers,

13. Director Mueller’s appointment is, of course, for a fixed ten-year period. Crime Control Act of 1976, Pub. L. No. 94-503, § 203, 90 Stat. 2407, 2427 (1976).

comparatively unfamiliar, notwithstanding the enactment of numerous new laws.¹⁴ Indeed, with regard to national security law and practice, it remains the case that lawyers in the United States are not well prepared for national security choices because their education and practical experience has been limited to a domestic setting. For this reason, the selections of Eric Holder as Attorney General and Dean Harold Koh as the Legal Advisor of the Department of State are noteworthy. Both individuals bring substantial prior experience in national security law and policy.¹⁵ The contrast of their preparation for the positions to that of the Bush administration predecessors, such as John Ashcroft and Alberto Gonzales, or Janet Reno of the Clinton administration is significant.¹⁶

Of course, transition problems, where national security and law enforcement concerns overlap, are not unique to either political party. In such cases, as noted earlier, the Clinton administration exercised great caution, so that the more lenient standards applicable to intelligence collection would not dilute the traditional protections contained in the domestic law of criminal procedure. This tendency to handle national security threats according to domestic law enforcement standards, and to maintain strict barriers between intelligence and law enforcement information collection activities, was sharply criticized by the 9/11 Commission.¹⁷ In the Commission's view, overly strict controls diminished the ability of law enforcement and intelligence agencies to work together against the terrorist threat and significantly contributed to the U.S. failure to prevent the 9/11 attacks.¹⁸ The wall created between the two systems prevented effective coordination between law enforcement at home and defense and foreign intelligence collection abroad.¹⁹

In contrast, after 9/11, the Bush administration acted aggressively to manage the overlap of national security and law enforcement, asserting its legal authority with expanded interpretations that disregarded many commonly accepted constitutional limits. Such early missteps in the legal responses of the Bush Justice and Defense Departments have gradually moderated, thanks to the combined impact of litigation, congressional action, public pressure and

14. *See generally* Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. No. 108-458, 118 Stat. 3638 (2004); Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135 (2002); USA Patriot Act of 2001, Pub. L. No. 107-56, 115 Stat. 272 (2001) (setting forth national security laws embodying domestic enforcement implications).

15. Eric Holder previously served as a judge of the Superior Court of the District of Columbia, United States Attorney, and Deputy Attorney General of the United States. Dean Harold Koh previously worked as an attorney-adviser to the Office of Legal Counsel in the United States Department of Justice and served in the United States Department of State as Assistant Secretary of State for Democracy, Human Rights, and Labor. Dean Koh also authored the book regarding national security. *See generally* HAROLD HONGJU KOH, THE NATIONAL SECURITY CONSTITUTION: SHARING POWER AFTER THE IRAN-CONTRA AFFAIR (1990).

16. In contrast, it should be noted that the Bush administration's Department of State Legal Advisors, William Taft IV and John Bellinger, did bring significant expertise in national security matters with them.

17. *See supra* note 8, at 78-80 (2004).

18. *See Id.*

19. *See Id.* As the Christmas 2009 effort to attack a U.S. air carrier shows, the need to anticipate and confront suicide bombers remains.

gradual shifts in executive branch views.²⁰ Over time, a “course correction” occurred in the nation’s approach to fighting terrorism; but even so, many Obama supporters have urged additional changes. In their view, the excesses of the early Bush administration require bolder changes in a broad range of legal issues. They seek a “house cleaning” to emphasize a new approach to the problems posed of confronting international terrorism at home. Most contentious is the argument of some that investigations of Bush administration decisions on the use of “enhanced interrogation techniques,” and possible prosecutions of those responsible, are needed to insure that such excesses are never repeated. The carefully tempered response of Attorney General Eric Holder to these concerns has been to support a deeper inquiry into the investigation techniques employed by a small subset of officials who, at least arguably, seem to have applied the authority they received with too little regard for legal limits.²¹ Even so, there has been an outcry from those on both sides: some concerned that this step is too much, others that it is insufficient.

D. The Difficulty of Reversing Course

There is considerable inevitability about much of our foreign policy, which makes change difficult. Choices made by earlier administrations are difficult to reverse abruptly, if at all, and as a result new approaches evolve slowly. This explains the Obama administration’s reaction to Bush administration policies and legal positions on the “war on terror.” Thus, notwithstanding criticism of Bush administration choices during the presidential campaign, the Obama administration has been forced to move slowly to reverse some of the most controversial policy choices of the Bush administration. Renouncing the former administration’s use of “enhanced interrogation” techniques was relatively easy: wide-spread outrage at the practices uncovered and their evident inconsistency with legal norms, questionable efficacy and harm to international relations combined to support this change. Importantly, such a change in policy is prospective and thus less complicated than other changes, which require reversing earlier decisions. Even so, the Obama administration adopted a measured approach to reviewing the implementation of the

20. See, e.g., *Boumediene v. Bush*, 128 S. Ct. 2229, 2274 (2008) (5-4 decision) (holding Guantanamo detainees have a constitutional right to challenge their detention in civilian courts and rendering the congressional Military Commission Act unconstitutional); *Hamdan v. Rumsfeld*, 548 U.S. 557, 635 (2006) (5-3 decision) (holding President overstepped his authority in establishing military tribunals for Guantanamo detainees and that the tribunals violated U.S. laws and Geneva Conventions); *Hamdi v. Rumsfeld*, 542 U.S. 507, 533 (2004) (plurality opinion) (holding citizen detainee is entitled to challenge his classification as an enemy combatant before a neutral decision maker); *Rasul v. Bush*, 542 U.S. 466, 484 (2004) (6-3 opinion) (holding that the U.S. courts have jurisdiction to hear cases filed by foreign nationals held at Guantanamo Bay, Cuba).

21. See Eric Holden, Att’y Gen., Remarks Regarding a Preliminary Review into the Interrogation of Certain Detainees (Aug. 24, 2009), available at <http://www.usdoj.gov/ag/speeches/2009/ag-speech-0908241.html>.

“enhanced interrogation” policy. Its nuanced approach is evidence of a commitment to avoid the politicization of a legitimate review of the way even the most questionable policies of the former Bush administration were implemented.

Addressing the need to change approaches to prosecuting terrorists and approaches to their detention has been more difficult. Despite the criticism of the original decision to create the Guantanamo detention facility for alleged terrorists, practical and political considerations have made reversing this decision very complicated—the legal equivalent of unscrambling eggs. Similarly, the Obama administration’s decisions in response to ongoing litigation arising out of the war on terror have been a mixed picture, in many cases continuing Bush administration policies. None of this should be surprising, rather it offers examples of the administration’s sensible pragmatism in the realm of national security.²²

I also previously recommended that the best approach would be to commission a thorough study by a team of lawyers with bipartisan credentials to fashion appropriate responses to the most controversial excesses of the Bush administration. Here, again, the new administration’s actions have been consistent with my own thinking.²³ The result has been a mixed approach: increased use of domestic courts, while retaining the military tribunal structure for use when appropriate as well.

E. The Need for a New National Security Policy

Sooner or later, most Presidents recognize that national security and foreign policy challenges offer the best opportunity to create a lasting personal legacy and they begin a search for opportunities to place a personal stamp on history by becoming more deeply engaged in international affairs. The focus of Presidents Clinton and Bush sought to bring peace to the Middle East, but their efforts came too late in their terms to achieve much that was of lasting benefit.²⁴ Earlier I urged that the Obama Administration avoid this “last minute” approach and begin immediately reviewing existing national security and foreign policies. I argued that the time for rethinking our national security and foreign policy is long overdue; that we remain, at our peril, mired in “Cold

22. See, e.g., *Mohamed v. Jeppesen Dataplan, Inc.*, 579 F.3d 943 (9th Cir. 2009); *In re Nat'l Sec. Agency Telecomm. Records Litig.*, 633 F. Supp. 2d 949 (N.D. Cal. 2009); *Citizens for Responsibility and Ethics in Wash. v. Executive Office of President*, Nos. 07-1707, 07-1577(HHK/JMF), 2009 WL 102146 (D.D.C. Jan. 15, 2009).

23. See generally Sheryl Gay Stolberg, *Obama Won't Bar Inquiry, or Penalty, on Interrogations*, N.Y. TIMES, Apr. 22, 2009, at A17 (describing Obama’s considerations to create a bipartisan commission that would investigate Bush administration’s use of interrogation techniques).

24. Former Secretary of State Condoleezza Rice’s efforts to address the Middle East peace process in the final year of the eight-year Bush Administration is a recent example of this “too little, too late” approach. On the other hand, it might be argued that former President Bush’s military response to 9/11, just nine months into his first term, will be a powerful legacy, albeit “game changing” in a negative manner.

War thinking” twenty years after the fall of the Berlin Wall; and that it is urgent that we begin to rethink our approaches and implement new directions. In 2008, I worried that the Obama administration, like others before it, would succumb to the temptation of setting aside the long-term task of rethinking national security in favor of addressing the inevitable “crisis of the moment,” whether domestic or international.

To the contrary, President Obama’s early actions recognized a need for change in national security policy. Early trips to the Middle East, Europe, Africa and Russia, impressive numbers of personal appearances and press conferences, and executive orders to foster open government, all signaled new approaches to national security, as well as the willingness to engage ideas and a commitment to transparency. And so now, as the new administration gains in experience and maturity, it is the time to rethink our national security policies more fundamentally. This earlier recommendation continues and is considered again below.

III. DEVELOPING A NEW NATIONAL SECURITY POLICY

A. Process and Timing

The long-term strategic nature of our national security policy and the need for consistency and bipartisanship make designing and implementing a new national security policy a slow process, particularly in a time of relative stability and peace. In contrast, a crisis—like 9/11 or the attack on Pearl Harbor—will always produce an immediate and intense focus and reaction to the need for effective national security policies. Without such a crisis, however, the long-term work of national and foreign policy design is easily overtaken by more immediate domestic concerns and periodic international incidents. National security policy becomes reactive, rather than a strategic design for the nation’s long-term health and success with little attention given to forward planning. The danger, as the urgent becomes the enemy of the important, is that we will be well-equipped for the last conflict, but not for future strategic challenges.²⁵ A notable exception to this pattern appeared in the aftermath of World War II, where U.S. leadership through a series of initiatives, most importantly the Marshall Plan, created a strategic design for long-term support to insure European recovery.

The question is whether an analogous “Obama Doctrine” might be designed

25. Moreover, use of the military easily becomes the “default position” when no long-term diplomatic strategy or capacity exists. Well-prepared and superbly well-funded as compared to other national security and foreign policy tools notably the Department of State, the military represents an attractive “can-do” option in any crisis, foreign or domestic. Its participation extends from war fighting and crisis support to nation building, with too little regard for whether it is prepared and trained for the specific mission involved. The current situation in Afghanistan, where a counterterrorism mission has evolved into nation building, offers a powerful example.

to provide similar benefits in designing a strategic approach to the post-Cold War Era? Such an initiative would demand considerable commitment, energy and focus and, thus far, the Obama administration has taken relatively modest steps in this direction.²⁶ To be sure, President Obama inherited more than his share of urgent domestic crises—distractions which could easily prevent the redesign of a long-term national security strategy. Standing alone, the financial crisis has been a huge distraction. Added to this, the Obama administration has also launched a time-consuming domestic health care initiative, another significant distraction from national security concerns. Nonetheless, what in the early months of the new Administration appeared a virtue—caution, consistency, a search for bipartisan consensus—threatened to become a liability as the first year of the new administration progressed. The new administration seemed to lose the time needed to turn the nation’s attention to reforming current national security policies, too long dependent upon Cold War ideologies and their practical responses. Then the Obama administration, like the preceding two Bush administrations, appeared to succumb to the temptation of allowing its national security strategies to be dominated by the “war on terror” as efforts to manage terrorist activities in both Afghanistan and Pakistan took center stage in the summer and early fall of 2009. So, once again, U.S. national security policy seems to have been hijacked by a relatively small band of extremists.²⁷ Thus, my earlier recommendations which raised the critical need for a new national security strategy remain timely, but under threat in the new Obama administration, just as they were earlier in the Bush administration. I return to them again below.

B. The Context Requiring Change

Design of a new national security policy for the twenty-first century must begin by understanding the context in which such a policy will be adopted. In short, what has changed? In brief, for almost three quarters of a century, following World War II, the national security and foreign policy of the United States has rested on several assumptions that are now obsolete.

First, the world was divided into two great blocks: East and West. For a half-century, this division created a type of contrarian stability. An existential nuclear weapons standoff between the leaders of these two blocks, the United States and the Soviet Union, created a period of uneasy peace during much of the Cold War from 1945-1989. Each block kept its own territory largely under

26. In fairness, President Obama has begun an important effort with Russia to replace the Strategic Arms Reduction Treaty (START), which expired on December 5, 2009, in an effort to reduce the nuclear arsenal of both countries, and also put his credibility at risk in working to achieve modest climate change goals found in the December 18 Copenhagen Accord.

27. This was the subject of considerable criticism in the Bush administration; hopefully history will not repeat itself. See generally PHILIP B. HEYMAN, *TERRORISM, FREEDOM, AND SECURITY: WINNING WITHOUT WAR* (2003).

control and focused on deterring the aggressive tendencies of the opposite block only through surrogate conflicts, as in the case of Korea and Vietnam. Meanwhile smaller engagements occurred in the “non-aligned” areas of the world, supported by the U.S. or the U.S.S.R. Then in 1989, the fall of the Berlin Wall marked the end of the Soviet Union and its formal organizational structure. Gradually it became clear that, while the totalitarian Soviet governance structure might have been an anathema to the democratic West, it nonetheless provided stability and unprecedented domestic security for each of the blocks for over forty years.

As the centralized control of the U.S.S.R. ended, its member states sought independence and self-governance. This resulted in an increase in self-governance initiatives by the member states of the former Soviet Union, but also a loss of stability within the Eastern Block as sub-national elements struggled for control of emerging nations. Meanwhile, without the cohesion created by an existential external threat, U.S. leadership and dominance in the Western Block began to decline. Member nations concluded they were no longer as dependent on U.S. leadership for security as they had been during the Cold War and the U.S. grew tired of the costs associated with its worldwide policing and leadership role.²⁸ And throughout the world, new states and groups appeared with divergent interests and differing levels of capacity and maturity for self-governance. In some cases, inept self-governance produced a new phenomenon of “failed states,” creating dangerous gaps in the system of control among international states. The challenge to international diplomacy in dealing with such a wide array of actors, not to mention in designing effective national security policies, is real.²⁹ It may be self-evident that there is no more dangerous period than when great empires crumble. Certainly today’s world offers multiple examples of this problem, which the new Obama administration must address:

First, the United States confronts a far-reaching financial crisis which has undermined its financial strength, even as the U.S. confronts the limits of its military strength, a dramatic loss in world reputation from the Iraq War, and a relative decline in national economic competitiveness. Second, China is rapidly advancing as a leading economic power with unmatched ability to

28. Largely forgotten now are the calls for a “peace dividend” in the early 1990’s. It was widely assumed that expenses resulting from the U.S. national security apparatus, particularly its intelligence expenditures, could decline with the end of the Soviet Union. With considerable prescience, then Director of the Central Intelligence Agency R. James Woolsey predicted in 1992 that the challenges of the Cold War might be less demanding than the disordered world that followed. In a colorful metaphor he noted that while we might have “slain the dragon” by defeating the U.S.S.R., the innumerable snakes taking its place would be even more challenging to monitor. Testimony before the Senate Select Committee on Intelligence, 103d Cong. 1st Sess. (1993) (statement of R. James Woolsey).

29. See generally ROBERT COOPER, *THE BREAKING OF NATIONS: ORDER AND CHAOS IN THE TWENTY-FIRST CENTURY* (Grove Press 2003) (discussing challenges in dealing with states along the continuum of economic and political sophistication).

influence its western debtors, principal among them the United States. Still, to Western eyes, China remains politically unsophisticated domestically and has adopted an often unhelpful approach to international development, which threatens to undermine Western efforts at nation-building in third world developing nations. Third, the former Soviet Union, now Russia, remains an internally corrupt regime, but is now addressing its loss of world leadership as a military power by substituting new-found economic power based on oil wealth. It uses this both as a means of maintaining control of its former satellites and ensuring its position in the economic family of nations. Fourth, the Islamic world, principal among the world's great cultures and religions and situated in areas essential to world economic health, is undergoing profound change, something akin to a religious reformation is underway, as it struggles to integrate an ancient system of beliefs into the structures of a modern world amidst the challenge of extremist groups and corruptly governed nations. Fifth, concepts of sovereignty, long the foundation of world stability, are eroded by advances in information and communications technology and the advent of a global economy. Proliferation of nuclear technology, unbridled growth in developing economies and the loss of cyber security pose threats of unmeasured proportions. Finally, the world's nations seem fundamentally divided on solutions to climate change which may prove mutually catastrophic if not addressed.

To be sure, these are challenging times. Forty years of relative Cold War peace and stability, where our enemies and allies were clear, and the threats we faced were knowable, and our responses practiced, has been replaced by the instability of shifting alliances, a semi-constant state of low-intensity conflict, and previously unknown threats of possible epic proportion, if even some of the predicted consequences of climate change were to materialize or terrorist extremists were to gain and use weapons of mass destruction. Perhaps, judged by history, this state of affairs is simply a return to normal. For our national security policy, however, the dynamic qualities of today's world present a marked contrast from the recent past, which we have yet to engage.

The new ambiguity in international relations complicates the current situation. Former foes, like the Russians and Chinese, are often now necessary friends. Yet the alliances with them are less clear and the relationships more complicated—no longer black and white—particularly when considering the undercurrent of persistent cyber attacks. Even traditional allies can no longer be always relied upon for unquestioning support of U.S. national security policy choices. The economic balance of power has also changed. The U.S. and its Western allies no longer dominate the development of science and technology. Loss of a Western monopoly on technological advances makes the Cold War export control strategies to limit access to advanced Western technology counterproductive. Furthermore, those technologies not independently developed may be stolen by erstwhile friends through the

increasingly aggressive use of cyber attacks. The U.S. may still be a superpower, but it can no longer “go it alone.” Collaboration with both traditional allies and new friends to arrive at common solutions, not all of which the U.S. will dictate, is not only wise, but also necessary under the current conditions.

In sum, the U.S. goal should be to move from a policy of military containment to one of economic engagement with former foes. To do this effectively and guide a multi-polar world as the remaining superpower, many current national security policies must change. Twenty years after the end of the Cold War, it is time to review a broad range of national security and foreign policies, including military doctrine, export control, economic support for emerging nations, and international law enforcement cooperation, as well as priorities of domestic policy.

C. Early Indications of Policy Change

The welcome news is that the Obama administration, approaching the end of its first year in office, is showing considerable seriousness of purpose in its approach to foreign and national security policy. Already it has demonstrated a willingness to make significant changes after thoughtful review and consideration. There are examples across a broad spectrum of concerns, which continue to grow. Review of the implementation of the now discredited “enhanced interrogation” policy; a change in the missile defense policy in Europe; efforts at nuclear arms reduction with Russia; a change in the management and implementation of the “State Secrets” privilege in litigation; reconsideration of controls on biological research to reduce the threat of bioterrorism; a new policy of cautious engagement towards Myanmar (formerly Burma); a deeper engagement with Iran regarding its nuclear activities. These examples show that the Obama administration recognizes that the time for a new national security policy has come. They are indications that the administration will not allow pressing domestic concerns, such as the financial crisis and the revision of health care policy, to postpone serious consideration for the development of new approaches to national security policy.

The new administration also appears to have embraced the notion that a paradigm shift is needed in our national security because a new set of threats has replaced the former Soviet menace of a vast, traditionally equipped army. These new threats include terrorists potentially armed with weapons of mass destruction to failed states offering them safe-haven, and a hidden wave of cyber attacks.

Such positive indicators, indicating a new national security policy may at last be starting, stands in contrast to less reassuring developments in recent months with regard to the on-going war in Afghanistan. The Obama administration’s drift from counterterrorism to counterinsurgency in its

reconsideration of policy in Afghanistan is a troubling indication that it, too, may be following a self-destructive course not unlike that of President Kennedy in Vietnam over five decades ago. The U.S. can ill afford the cost in treasure and lives that will be required over decades to advance Afghanistan from its current structure of tribal governance to the point where it is capable of supporting a liberal democracy. And, in the meantime, there is reason to believe that our very presence provokes, sustains, and strengthens those we seek to oust. Hopefully this prediction will prove wrong and the Obama administration will limit its involvement in Afghanistan and return to the design of a more productive national security policy in the years to come. If so, what considerations should guide the Obama administration, if it seriously intends to re-conceive twenty-first century national security policy?

IV. PRELIMINARY CONSIDERATIONS

A. Confusion in the Distinctions between National Security Policy and Domestic Policy

There are many explanations for the confusion between domestic and international security policy. The overlap between national security policy overseas and domestic policy at home has been accelerated by globalization and a smaller world. There is also a natural tendency to replicate the United States' political and economic system which has made the United States the leader—and envy—of the world in other nations, particularly emerging democracies. Yet, there are important differences in our ability to achieve our domestic and international goals. Inside our borders we are able to offer a level of freedom and protection because of the strength of our government and the legal system that supports it. Beyond our borders, our ability to protect ourselves and insure our security changes. We lack control and may not be able to achieve cooperation of those in other countries on the terms and conditions we expect since many find our approaches, goals and views perplexing and inconsistent with their own goals and procedures. Sometimes they find our views admirable, but difficult to implement. On other occasions, those outside the U.S. may find our views offensive. The range of conditions and reactions outside the U.S. makes developing and implementing an effective national security policy, which is also consistent with our core domestic values, difficult and sometimes impossible. Understanding how domestic and foreign policies interact and influence one another is an important part of redesigning our national security policy for the twenty-first century so that it is both realistic for dealing with the nations with whom we must interact but not inconsistent with our own fundamental views and interests.

Moreover, there are only three tools to achieve our national security goals: military, financial, and diplomatic initiatives—informed and guided by foreign intelligence. At the end of the Cold War, a fourth operational component,

domestic and international law enforcement, was added to the means for achieving our national security strategy. This addition reflects a globalizing world, increasingly porous national borders, and the increasing transnational activity of non-state criminal actors, from terrorists to drug dealers. Such actors, often individuals, and the increased availability of weapons of mass destruction, creates a serious non-traditional law enforcement threat of national security propositions. Their activities trigger a mixture of law enforcement and national security responses, which work awkwardly together because they have been designed for different purposes. Our legal system has struggled to address this problem since 9/11, when the confusion in goals, procedures, training and mission of law enforcement and national security authorities first became tragically evident to the entire nation.³⁰

On the one hand, as traditional domestic law enforcement tools become relevant to national security, the law enforcement expertise of domestically trained lawyers is increasingly important for national security. On the other, national security officials who lack experience with domestic criminal law enforcement need assistance too. In the end, both groups need education. Lack of understanding and coordination between the two groups responsible for national security and law enforcement was a principal problem identified after the 9/11 attacks. The United States has spent considerable effort to solve this problem. Yet differences in roles, rules, approaches, and cultures among law enforcement and national security organizations remain unsolved, again demonstrated by the failure to identify and apprehend Umar Farouk Abdulmutallab, the “Christmas Bomber.”

In sum, effective integration, despite years of effort, remains a challenge. Progress has been made; new laws have been passed and there has been a significant effort to foster understanding and coordination among the many agencies engaged in domestic and international/national security. Yet, as a growing number of recent events demonstrate, coordinating foreign intelligence collection and domestic law enforcement investigation techniques resists solution.³¹ Perfection is not an achievable goal. Improvements are possible,

30. In fact, law enforcement had become a significant part of our national security defenses almost two decades earlier in response to congressional efforts to criminalize the overseas attacks of terrorists against American interests. See Comprehensive Crime Control Act of 1984, Pub. L. No. 98-473, 98 Stat. 1976 (1984) (creating criminal penalties for hostage taking); Omnibus Diplomatic Security and Antiterrorism Act of 1986, Pub. L. No. 99-399, 100 Stat. 853 (establishing extraterritorial jurisdiction in response to terrorist acts abroad against U.S. citizens and interests); Anti-Terrorism Act of 1987, Pub. L. No. 100-204, 101 Stat. 1406; Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214 (AEDPA) (creating comprehensive list of anti-terrorism crimes taking place outside the U.S.). Nonetheless, it was only at 9/11 that serious failures in coordination, long evident to those *inside* the government, became equally clear to those outside as well.

31. Much has been written about the problems created by the profoundly different cultures and approaches used by foreign intelligence and domestic law enforcement agencies in responding to security threats that cross the line between domestic and international, i.e. national security level concerns. In 1992, I co-chaired the first joint study of this problem. See JAMES MCGEE & BRIAN DUFFY, MAIN JUSTICE: THE MEN

but the U.S. public must understand that risk cannot be entirely eliminated in society where, by design, intelligence and law enforcement agencies operate according to different standards.³² The time has come for our senior leadership to make this truth known.

There are other areas where tension exists between national security and domestic policy goals beyond specific cases of poor coordination between domestic law enforcement and national security officials.

Domestic and foreign policy choices are often inconsistent. Tension results, as well as the appearance of hypocrisy, when the U.S., for its own national security needs, tolerates actions, conduct, and policy abroad which would be unacceptable at home. Yet, efforts to address such inconsistencies, such as the lack of democratic governance in allied nations, creates its own problems. The invasion of Iraq, and efforts at democracy building in numerous emerging economies, for example, the Balkans, Pakistan, and Afghanistan, provide examples. What does it say for the U.S. commitment to democracy and the rule of law if governments, which violate democratic norms and otherwise refuse to adhere to U.S. fundamental values, are tolerated? One example might be China's lack of support for human rights and freedom of expression. Another might be the corruption undermining Middle Eastern democracies such as Egypt, Saudi Arabia, Pakistan, and Afghanistan.

In an ideal world, policy choices would be identical in both domestic and foreign settings. However, the world is far from ideal and the vast differences in foreign and domestic settings make such expectations unrealistic. A foreign nation's culture and history, security conditions, economic well-being, and level of education combine to make exporting American style democracy problematic in many parts of the emerging world. Without a nuanced understanding of the context in which democratic policies are promoted, unintended consequences may result, causing more damage than good. An example is the response to the election in Palestine, which brought Hamas into power in what were widely considered as free and fair elections. The failure of the West to recognize the result of this election challenges our commitment to democratic processes in a way that may ultimately erode the value of underlying democratic values themselves.³³

AND WOMEN WHO ENFORCE THE NATION'S CRIMINAL LAW AND GUARD ITS LIBERTIES 344-45 (Touchstone 1997) (1996)(discussing the Richard-Rindskopf Report and its findings). Nonetheless, more than a decade later senior intelligence officials have told me that the problem of creating strategic analytic capacity and a domestic intelligence function addressing national security threats remains an unsolved problem for both the FBI and the Department of Homeland Security.

32. See Jim Dwyer, *In Praise of Help That Hurts*, N.Y. TIMES, Oct. 21, 2009, at A26 (describing investigation of New York bomb attack). The coordination between law enforcement and intelligence agencies caused the investigation to be cut short because an imam warned the suspect about the investigation. *Id.*

33. See Steven Erlanger, *U.S. and Israelis are Said to Talk of Hamas Ouster*, N.Y. TIMES INTERNATIONAL, Feb. 14, 2006 (describing plan to destabilize Hamas-led government to impose Western vision of democracy).

The aggressive democracy building policy of the Bush administration's eight years in office must be reassessed with such realities in mind. No doubt encouraging democracy has a place in U.S. foreign policy, but the goals for doing so must be realistic. A foreign policy goal should not be an evangelical cause. Nor should it be used to provide the basis for intervening in another nation with force. If nothing else is learned from the experience in Iraq, it should be that democracies are not created overnight. It takes many years to build the necessary societal fabric needed to support the sophisticated legal governance structures which are to support liberal democracies. Embarking on such democracy building projects will require years of support. Moreover, it should be obvious that Afghanistan and Iraq (a country only eighty-four years old) are not equally ready for the establishment of a liberal democracy as were Germany and Japan after World War II. Arguments to the contrary were made at the time of the second Iraq War, which demonstrates that those making them failed to adequately understand the complexity of our own system of government and the traditions and cultures of the nations whose systems we seek to change.

A related concern arises when we attempt to impose our own political values on other nations, even those values we hold most dear, such as the importance of equality and diversity. The success of the U.S. in molding its increasingly diverse population into a democratic structure where all enjoy the right to have an equal opportunity to "life, liberty and the pursuit of happiness" is a model for the world, and one for which we can be proud. Undoubtedly, such values are essential elements of our national strength. Among other things, the willingness of the U.S. to embrace diverse cultures, traditions and backgrounds provides the moral authority for world leadership. Yet the ability to support such diversity is not always easily transferable to nations on the threshold of beginning self-government, overcoming centuries of ethnic conflict or tribal governance. Combining diversity and democracy, just as a nation emerges from totalitarian controls, may prove disastrous, as exemplified by the former Yugoslavia and Iraq.

Obviously, the importance of democracy to U.S. foreign policy is not a new concept. It has been a fundamental goal of all U.S. presidential administrations since President Jimmy Carter. But, effective structures of democratic governance do not appear overnight if they are to be successful. They cannot be superimposed upon a population, but must take root from within. The means of achieving democratic governance is thus elusive because it depends so heavily on context and requires an understanding of local culture and values, which evolves slowly. Thus, democratic governance must be nurtured and supported over many years so that it gradually adapts to a specific context.³⁴ A national legal system is essential for success here. It is the vehicle by which

34. See *Toward a New Afghanistan*, N.Y. TIMES, Dec. 29, 2003, at A16.

culture and democracy are integrated and transferred into a political system which a local population can embrace and which is needed to provide the foundation for a robust democratic system. Not all emerging democracies will be able to embrace and support the values which are core to the U.S. vision. Diverse populations present a particular problem here. Until democratic legal structures are well established, support for a diverse and pluralistic society may be deeply problematic. In fact, emerging democracies are likely to be far from identical to the U.S. system. In some cases, the immediate national security interests of the United States may dictate acceptance of democratic systems which from a domestic perspective would be deeply flawed and unacceptable. These are some of the lessons to be drawn from recent efforts to support democracy building in a number of places such as the former Yugoslavia, Iraq, and Afghanistan.

In sum, this distinction between international and domestic policy requires careful attention across a broad political spectrum. If domestic values and concerns are allowed to cloud foreign policy choices, the risk is that U.S. national interests will suffer. Problems arise when domestic values are imposed on other nations, even values as important to us as our system of democratic governance or the value we place on diversity. Not all nations and peoples are prepared for, or willing to support, these values. Our approach is not always something that can be easily exported. In fact, in our democracy we have achieved something precious as a nation, which we must work to preserve. Such considerations should be at the heart of the Obama administration's current debate on the way forward in Afghanistan, a nation without the ability to ensure domestic security or a mature infrastructure capable of national governance. A democratic system of governance cannot simply be superimposed upon a population without the necessary pre-conditions.

*B. Unintended Domestic Policy Constraints on Foreign and
National Security Policy*

Domestic policy choices also impact foreign and national security policy by constraining our national security choices, making them more costly and less effective. Too often this happens because we have not realized the interrelatedness of what we do domestically and our national security health. One example is our domestic policy choice to continue relying on fossil fuels for domestic energy needs. The resulting petroleum dependency complicates national security and foreign policy choices in the Middle East. Our ability to act in our national interest is thus limited by our addiction to oil should, for example, Saudi Arabia adopt policies contrary to our national security interests.

There are other examples of this problematic interplay between domestic policy choices and national security goals: a domestic drug enforcement policy

that focuses on the foreign supply of drugs, rather than curbing domestic drug consumption; a domestic gun policy that facilitates arming foreign drug traffickers who bring drugs into the U.S.; domestic crop subsidies that undercut the developing world in the interest of propping up inefficient domestic agriculture; and weapons systems better designed to support the domestic economy than to ensure national security. And this list is only a beginning.

The size and power of the U.S. economy means that our domestic policy choices can be expected to impact the world around us, ultimately splashing back on our own shores. Such choices also impact our national security and foreign policy. This may have been of only modest significance during the last half-century, when U.S. financial strength was at its apex and our security concerns were less dynamic and more obvious. Until recently, the impact of domestic interests on national security might have been dismissed as a minor distraction from the primary strategic objective of the U.S.—containment of the USSR. Now, the luxury of having only one enemy and the substantial funding to respond to it has ended. The U.S. no longer enjoys the financial strength and clarity of purpose it enjoyed during the Cold War. In the past, national security choices may have revolved more around *what* to do, not *whether* an approach could be afforded. Today's financial crisis changes this, perhaps permanently, as the Federal Government's extraordinary expenditures to stabilize the economy create ever larger budget deficits.³⁵

Moreover, the domestic financial crisis will have a significant impact on world stability, and as our leadership role changes, our national security strategy will inevitably be impacted. The present domestic crisis has revealed the interdependent economic relationship between the U.S. and China. China's role as guarantor of the U.S. consumer economy is yet another example of how domestic choices can have national security consequences. The United States's ability to influence China on policies it disagrees with—China's trade policy in Africa—will be diminished. Should China take action to threaten the dollar as the leading world currency, this trend would be accelerated. The domestic financial crisis must be at the core of re-thinking our current national security strategy.³⁶

No matter what the ultimate impact the U.S. financial crisis has on foreign policy choices, one thing is certain. The United States must begin to consider the cost and effectiveness of our foreign policy decisions immediately. Costly initiatives, such as the Iraq War and long-term commitment to Afghanistan,

35. See generally U.S. GOV'T ACCOUNTABILITY OFFICE, GLOBAL WAR ON TERRORISM: REPORTED OBLIGATIONS FOR THE DEPARTMENT OF DEFENSE (2008). In the year since this talk was originally delivered, we have learned that \$187 billion has been spent in shoring up the domestic economy, a number significantly greater than the annual defense budget. *Id.*

36. See Dennis Blair, Director of Nat'l Intelligence, Statement before the Senate Select Committee on Intelligence, 111th Cong. 2d Sess. (2009) (describing the economic downturn as the most serious national security problem facing the young administration).

may no longer be sustainable. Such a cost-benefit approach to national security should be at the center of the Obama administration's calculations on future U.S. involvement in Afghanistan. Critical assessments will be needed on the costs required to stabilize that country for the decade-plus needed to allow for Afghanistan to build the viable domestic police force and military necessary to provide the security required for democratic reform and economic development.

*C. Intentional Domestic Political and Policy Constraints
on Foreign and National Security Policy*

The need to disentangle unintended domestic and foreign political realities has been a problem throughout U.S. history.³⁷ Yet as U.S. power has grown, it has also become more acute as efforts are made to use that power for purposes beyond our national interest. Problems can arise in two important contexts: first, when domestic political interests, aligned with foreign concerns, seek to dominate U.S. policy choice; and second, when the U.S. seeks to impose its own domestic policy abroad as a part of its foreign policy.

As a nation of immigrants, the first problem, imposing domestically driven political limits on foreign policy choices, arises. Citizens in our diverse population may align themselves too closely with the particular national, ethnic or religious heritage operating overseas, and seek control over the direction of U.S. foreign and national security policy as it may impact their former homelands or affinity communities. As voters domestically, these groups may gain leverage, which serves the nation poorly.

Examples of this phenomenon are numerous. One notorious recent example is that of Dr. Ahmed Abdel Hadi Chalabi, widely considered to have co-opted U.S. foreign policy as a second invasion of Iraq was considered in 2002. The result was a U.S. foreign policy, which benefited Dr. Chalabi, but disadvantaged broader U.S. national interests.³⁸

The role of Cuban Americans, who for many years dominated U.S. foreign policy with Cuba, is another example here.³⁹ A parallel case is presented by the

37. See generally THE FEDERALIST, No. 69 (Alexander Hamilton) (advising the avoidance of entanglements with foreign powers).

38. See Evan Thomas & Mark Hosenball, *The Rise and Fall of Mr. Chalabi: Bush's Mr. Wrong*, NEWSWEEK, May 31, 2004, available at <http://www.newsweek.com/id/105450/page/1>. Mr. Chalabi, an Iraqi exile, played a critical role in the U.S. decision to invade Iraq. As a confidant and close ally of the early second Bush administration, he provided questionable intelligence linking Saddam Hussein and his regime to weapons of mass destruction. While the information lacked independent corroboration, and Chalabi's credibility had for years been seriously questioned by American intelligence officials, he played a key role in the U.S. decision to invade Iraq. The views of these officials went unheeded by the Bush administration, much to their regret, when Chalabi was later investigated for fraud, corruption, and providing state secrets to Iran, even as no weapons of mass destruction were ever found.

39. With regard to U.S.-Cuban foreign policy, domestic factions have increasingly controlled U.S. national policy. Notwithstanding victory in the Cold War against the U.S.S.R., largely as a result of superior economic might, the United States has been reluctant to engage Cuba economically. A precondition of

American Israel Public Affairs Committee (AIPAC), whose influence in U.S. foreign policy with Israel has been similar.⁴⁰ Both examples demonstrate the problems, which can occur when special domestic interests seek control of elements of U.S. foreign policy, placing the personal goals of a single group ahead of those of the nation as a whole. The personal goals of citizens with a single interest and those of the broader U.S. nation can overlap, or even be identical, but this will not necessarily be the case. Avoiding the danger of foreign entanglements was an important concern of the Founding Fathers and should remain so today.

Developing and advancing a foreign policy which avoids local entanglements is a continuing challenge. All domestic elected officials, particularly the President, can face intense political pressure from domestically based groups when they seek to change directions in political “hot spots” like the Middle East or Cuba. Yet attempts to impose domestic views on others are not likely to be helpful in the long run. President Obama showed early that he understood the need to balance U.S. foreign policy between domestic considerations and foreign concerns. He sought boldly to reach out to others and to guide U.S. policy so that it was disentangled from the governance ineptitude of long-time allies.⁴¹ Additionally, he has worked to avoid co-option of U.S. foreign policy by domestic interest groups. For example, he has taken steps toward a more neutral and balanced position with regard to both Cuba and Israel, but he has also learned that implementing such policy changes is not easy.⁴² Long entrenched views change slowly, but without a new vision they may not change at all. The goal of the Obama administration should be to avoid outsourcing our foreign policy to those who seek to “hijack” our foreign policy for their own purposes. Partisan domestic concerns must not dominate our foreign policy.

There is an important corollary to the problem described above—allowing

democratic elections before doing so is likely too high a barrier for an agreement to begin discussions. A better approach would be to encourage a well-prepared economic and social structure capable of supporting democracy even as the Castro era comes to an end. President Obama’s April 2009 initiative to alter the U.S. policy towards Cuba is a major step in this direction. See Scott Wilson & Karen DeYoung, *Obama Urges ‘Equal’ Ties in Hemisphere*, WASH. POST, Apr. 18, 2009.

40. Israel is, of course, a highly valued ally, yet it is also a separate nation with its own goals and objectives in a highly complex situation. The Israelis know this and energetically debate the best course of action for their nation. The United States, on the other hand, too often seems captured by one viewpoint and lacks the broad range of Israeli views. Support of Israel should not mean limiting our foreign policy options to those offered by one faction with powerful domestic allies in the United States such as AIPAC. The emergence of a broader range of opinion within U.S. domestic policy circles is thus a particularly welcome development. See James Traub, *The New Israel Lobby*, N.Y. TIMES, Sept. 9, 2009, at MM36.

41. See Rod Nordland, *Obama’s Cairo Speech: Forceful Words and Fateful Realities*, N.Y. TIMES, June 7, 2009, at WK1; see also Wilson & DeYoung, *supra* note 39.

42. The failed nomination of Ambassador Charles W. Freeman, Jr. to the head of the National Intelligence Council offers a cautionary tale on the difficulties any administration will face when an appointee can be painted as unsympathetic to Israel. See Mark Mazzetti & Helene Cooper, *Israel Stance was Undoing of Nominee for Intelligence Post*, N.Y. TIMES, Mar. 12, 2009, at A1.

national security choices to be co-opted by domestically powerful interest groups. It occurs when important domestic policies are advanced abroad as part of U.S. foreign policy, but without regard for the foreign context in which such policies are to be applied. The temptation of the U.S. to impose its own domestic values abroad as a part of our foreign policy presents a serious dilemma, particularly when fundamental values like liberal democracy, diversity and equality are concerned. Despite being a nation of immigrants, the United States suffers from a seriously parochial outlook—a stunning naïveté which too often assumes that all nations can be rapidly converted into liberal democracies, without regard to their individual histories and cultural contexts. U.S. policy will inevitably run this risk unless a more robust capacity is created for understanding the world we live in. In short, inadequate attention to education has been correctly identified as a major national crisis.⁴³ Education focusing on the history and culture of other nations deserves special attention as we contemplate implementing current foreign and national security policies and designing new policies for a long-term foreign and national security strategy.

V. THE LONG TERM CHALLENGE

If the United States is to lead the world, its citizens must do much more to understand the complex post-Cold War world, which we have inherited. We must also better understand our national security and foreign policy institutions and structures, and treat their advice seriously. Education is thus the key to our long-term success as a nation. Lacking a foundation of knowledge about the nations and cultures of the world, we risk falling subject to demagogues.

Here again, the second invasion of Iraq offers lessons too costly to ignore. Political leaders ignored the advice of senior military commanders about what resources would be required for the 2002 invasion of Iraq, followed by a peace-keeping effort.⁴⁴ Some of the facts ignored were obvious, such as the need and cost of actually maintaining the peace once the invasion itself was concluded. Many of the relevant facts were publicly available, including information concerning the readiness of our military forces and their preparation for “nation building,” as well as the cost of the Iraqi engagement. Other facts, such as the impact of removing an autocratic leader such as Saddam Hussein were well understood by our intelligence analysts, and should also have been discernable

43. See generally COMM. ON PROSPERING IN THE 21ST CENTURY: AN AGENDA FOR AMERICAN SCI. AND TECH., NAT'L ACAD. OF SCIENCES, NAT'L ACAD. OF ENG'G, AND INST. OF MED., RISING ABOVE THE GATHERING STORM: ENERGIZING AND EMPLOYING AMERICA FOR A BRIGHTER ECONOMIC FUTURE (National Academies Press 2007) (discussing danger of inadequate educational preparation in sciences).

44. Prior to the invasion, some military leaders, including then Secretary of State Colin Powell, estimated far more troops would be required both to make and keep the peace in Iraq, beyond the numbers actually deployed. However, according to an extensive 2005 RAND study, these estimates were ignored. See Michael R. Gordon, *Occupation Plan for Iraq Faulted in Army History*, N.Y. TIMES, June 29, 2008, at A1 (summarizing findings of 2005 RAND report).

by anyone well-informed about Iraq and the Middle East.⁴⁵ After all, experience in the former Yugoslavia had only recently taught how ethnic strife can erupt when a powerful strongman loses control of a nation of “warring tribes.” In all of this our national leadership and others demonstrated a willful ignorance; neither the Congress nor the public seemed prepared to offer sound criticism.

The results of our miscalculations in Iraq have been grave, whether measured in loss of life, grave injury to our own troops and world leadership, or financial cost, in addition to the impact on the Iraqi people and others throughout the Middle East. The invasion of Iraq and the subsequent fallout demonstrated our ignorance of the conditions in other nations. This is not an isolated instance, but rather a recurring problem. Indeed, this situation may be replaying itself as the Obama administration expands U.S. involvement in Afghanistan.

The solution to this problem will not happen rapidly. It will require time to rebuild educational capacity in order to help us better understand the world. But without such knowledge, it will not be possible to adopt the policies we need to foster better understanding of how the U.S. and its policies are perceived and can be adapted to local circumstances. This will be the first step to designing foreign and national security strategy which will work to effectuate change.

Education, of course, takes many forms and need not be isolated within formal classroom settings. Citizen exchanges can contribute a great deal, as can enhanced Peace Corps programs and other efforts to expose U.S. citizens to other countries. There is little more powerful in building understanding than to hear the perspectives from those in other countries. Interactions with those in the Islamic world quickly demonstrate that we exist in different realities. In fact, to many in the Muslim world, the U.S. War on Terror makes little sense and is unjustified.⁴⁶ Judged against their own realities of societies under great stress, suffering from unimaginable varieties of casualty and loss, the 9/11 bombing seems of less significance. In their view, the U.S.’s obsessive focus on 9/11 can only be explained by a desire to use the incident to justify hostile actions against the Islamic world. In short, much of the world, not only

45. In 1992, at the conclusion of the First Iraq War, I was present as General Counsel of the CIA at briefings of intelligence analysts. These briefings made it clear that an invasion of Bagdad and removal of Saddam Hussein, would eliminate all control and destabilize Iraq. They feared that in the ensuing chaos, the Sunni Triangle would “erupt,” creating a power vacuum of which Iran might take advantage.

46. On a 2008 trip to Egypt I was shocked to hear well-educated lawyers—distinguished members of the Egyptian bar—describe a different factual reality as to the causes behind 9/11. They were convinced that it was not the terrorists who had bombed the World Trade Center, but U.S. governmental interests. By way of explanation, I learned of the widespread belief among Egyptians that their own government is corrupt and ineffective, fully capable of such cynical actions. Because the U.S. supports Egypt as a trusted ally, it therefore follows that the U.S. government must be capable of such manipulation as well. Press accounts confirm that this view is widespread in Egypt and throughout the Middle East.

Muslim but European nations as well, see our actions in response to 9/11 through a different lens. We need not agree with their conclusions, but understanding the reasons behind them is the foundation for engaging the world and dealing more effectively with it.

The simple truth is that we must do more to understand the world in its diversity and recognize that everyone is not like us, nor eager to be so. Our solutions will not necessarily work for others. To fashion useful responses to the issues we identify, we must first understand the underlying cultural and historical facts. The first step in crafting an effective foreign policy will be to broaden such understanding. The next step will be reinvigorating our foreign policy leadership.

Understanding should be the precursor to action. In building such understanding through enhanced education we have the opportunity to create a counterpoint to the vast military might we enjoy. Without a doubt, we enjoy the finest military in the history of the world—well-trained, disciplined, and professional. But the military itself recognizes that more is needed than force alone if we are to solve the problems we confront in the world. The time has come to vastly increase the capacity of our development and foreign aid budget, rebuilding infrastructures in foreign nations in ways that will last. In this regard, several long-standing policies and practices need review:

The lesson of the Bush administration's actions in Iraq is that our system of democracy is a complex and costly form of governance; it cannot be imposed by external force or created rapidly. Without the culture and institutions needed to support a liberal democracy, it is easily manipulated and can lead to cynical results. Consider the fact that it was democracy which unleashed the kleptocracy that is Russia today or which produced Hamas's success in the recent Palestinian elections. Years of education at every level of a society are required to achieve the democracy we want. Not all democracies are created equal and we must avoid initiatives that produce a superficial democratic structure which in the end is manipulated for the leadership's corrupt personal gain and will tarnish and discredit democracy in the eyes of the people served, making its true benefits of accountability, transparency and service to the population governed even more unattainable. We must also be careful that we do not allow ourselves to be drawn into internal disputes of other countries, allowing ourselves to be unwittingly used to stoke domestic hostilities. Responding to outrageous threats and behavior of foreign leaders designed for their own domestic purposes and audience is a familiar strategy. Currently, it is Iran's President Mahmoud Ahmadinejad who offers the best example of this "schoolyard bully" approach to foreign policy, designed more for his own domestic purposes than as a serious effort to engage foreign policy issues. His use of verbal attacks against the West and particularly the U.S. are designed as distractions from his own domestic political failures. Of course, he hopes that he will provoke a response from the sole superpower, which will make him

appear powerful and a threat. Thus, responding to his provocations enhances his apparent threat. Still the threat of enhanced nuclear weapons in the hands of Ahmadinejad is not a concern to be casually managed. The Obama administration should receive high marks for its efforts to proceed carefully here, using “back channel” communication and avoiding the appearance of meddling with growing domestic political unrest. The time has also come to re-examine our response to terrorism and 9/11. Certainly, terrorism is a domestic threat, and a serious national security concern. But the time has come to ask whether it represents a threat so grave that it should be almost the exclusive focus of our national security policy. Foreign policy must be more than 9/11 and the “War on Terror”. We must begin to place 9/11 in a broader context and to see it from others’ perspective. The loss of thousands is tragic and shocking, but seen from the perspective of many nations, where far greater losses of life have occurred, our single-mindedness is difficult to understand. Others do not share our fear, or our approach—terrorism is not their primary foreign policy concern. They wonder why it should be ours. This gap in perceptions is real and we must deal with it. For the world we want, rebuilding civil capacity around the world is the only sure path to peace and stability. Nation building should be an important part of our national security policy, but it will not happen if our foreign policy relies too heavily on the use of our military for want of alternative strategies. We must also learn that the military cannot do everything and should not be asked to do things for which they have not been prepared and trained, lest their capacity be eroded. The military knows themselves that we confront a weakened military through overuse. The time has come instead to invest in our “soft power” structures. We must build capacity in the State Department and our other foreign policy capabilities,⁴⁷ including supporting the need for greater area studies and understanding of the world in our institutions of higher education. To his credit, President Obama demonstrates clear understanding that diplomacy is not appeasement. The U.S. must use it more and take advantage of alternate means of communication, using both intelligence and the support of other nations to make its views known. Our economic strength is a key part of our national security strength and ability to lead the world. Efforts to right the financial debacle inherited from the Bush administration must continue, along with recognition of the impact that the economic crisis has on our foreign policy choices and leadership. We need a “nation building” policy here at home to insure that our own citizens are educated about the remarkable political and legal structure that supports our democracy, and are committed to supporting it. The Cold War is

47. Shortly before publication of this article, a new head was selected for USAID. Nonetheless, the slow pace of this selection is the principal source of criticism for the first year of the Obama administration. *See Obama Administration's Foreign Aid Job Left Open*, ABC NEWS, Oct. 23, 2009, available at <http://abcnews.go.com/politics/wirestory?id=89022418pate=3> (stating nine months into Obama Administration, top administrator position at USAID is still vacant and lengthy vetting process is partly to blame for delay).

over. Our role as superpower has changed, and so must our goals. Continuing a foreign policy based on fear and containment of our enemies is not likely to be a successful strategy in the long term. The time has come to “engage” the multi-polar global world by returning to the core values that have made us a leader among nations and adjust accordingly our Cold War policies such as export control policies, information classification systems and immigration policies.

VI. CONCLUSION

Judged against my personal measure, the Obama administration has made a remarkably good start in addressing the myriad of national security concerns, in ways long overdue and refreshing, by taking initial steps to redesign fundamental assumptions on which our national security rests. These efforts could well signal the beginning of a new national security policy. Yet we stand at an important crossroad as the administration begins the implementation of its new policy in Afghanistan. It will be important that the administration continue on its current course and not drift into a deepening engagement in Afghanistan. If it does, the U.S. may yet once again lead change that will benefit our nation and the world and be worthy of the Nobel Peace Prize awarded President Obama in his first year as President.