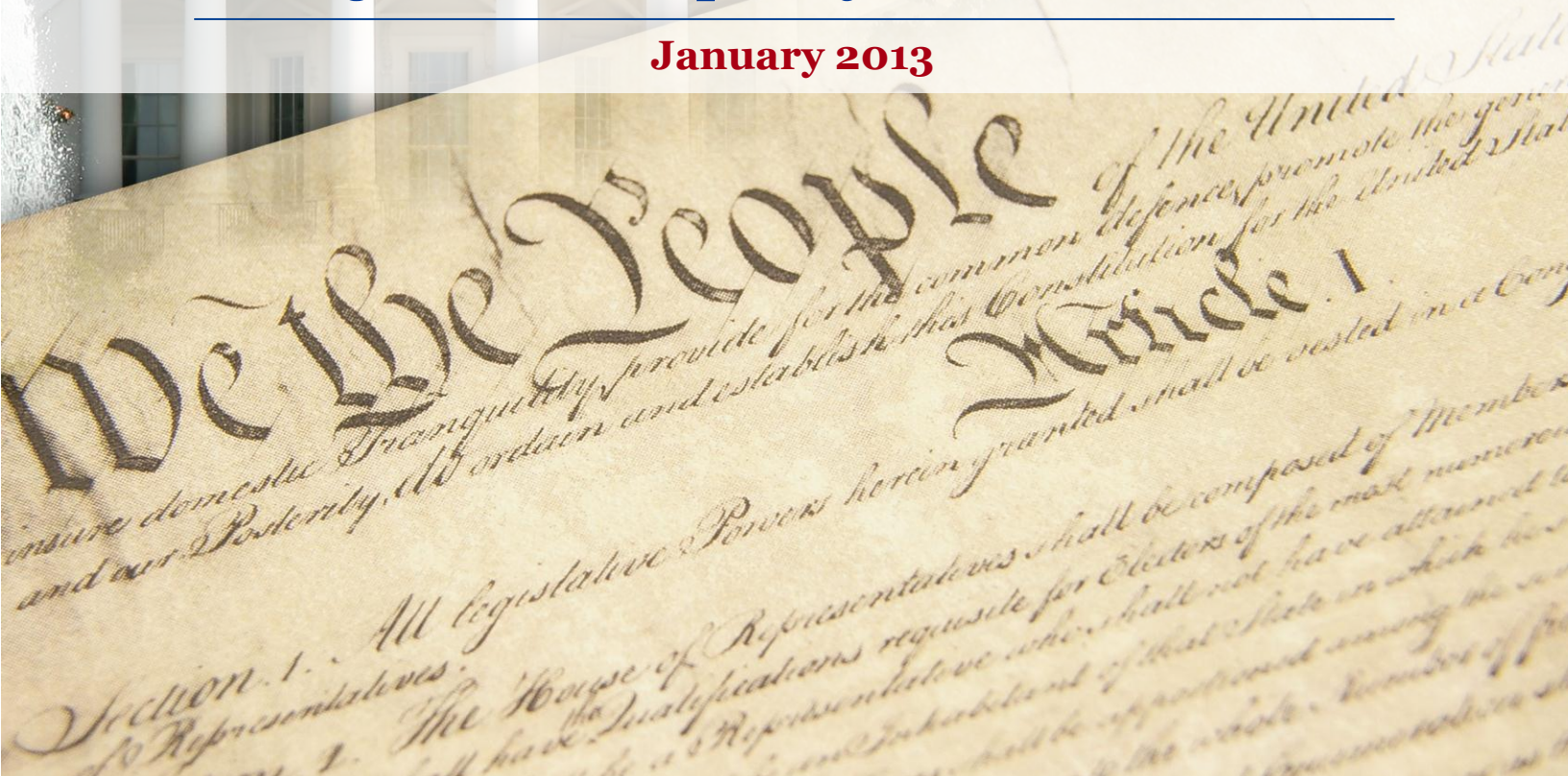




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Toward a More Perfect Union: *A Progressive Blueprint for the Second Term*

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“Homeland Security and the Post-9/11 Era”

by P.J. Crowley

Toward a More Perfect Union: *A Progressive Blueprint for the Second Term*

“Toward a More Perfect Union: A Progressive Blueprint for the Second Term” is a series of ACS Issue Briefs offering ideas and proposals that we hope the administration will consider in its second term to advance a vision consistent with the progressive themes President Obama raised in his second Inaugural Address. The series should also be useful for those in and outside the ACS network – to help inform and spark discussion and debate on an array of pressing public policy concerns. The series covers a wide range of issue areas, including immigration reform, campaign finance, climate change, criminal justice reform, and judicial nominations.

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Homeland Security and the Post-9/11 Era

*P.J. Crowley**

Some time in 2014, in a formal ceremony in Kabul, Afghanistan, President Obama or his designated representative will declare an end to the war in Afghanistan, the longest in U.S. history. Through a relentless 13-year campaign employing a wide range of military, intelligence, law enforcement, diplomatic and economic tools, it may be safe to say at that moment that the United States has been able “to disrupt, dismantle and defeat al Qaeda in Pakistan and Afghanistan,” the goal the President established when he entered office in 2009.¹ Subject to the negotiation of a new status of forces agreement, the United States will retain a small counterterrorism force in Afghanistan beyond 2014 to achieve the second part of the President’s objective, to prevent Afghanistan or Pakistan from being used as a safe haven from which to launch attacks against the United States in the future.²

The ceremony will mark the end of the 9/11 era, where the United States deployed significant numbers of military forces to directly engage those directly responsible for those attacks, or associated with them. Although not certain, it is likely the United States will no longer be in a formal state of war. Jeh Johnson, the Department of Defense General Counsel, predicted in a recent speech that there would be a “tipping point” sometime in the near future where this challenge will no longer constitute an “armed conflict.”³

But whatever it is called, the “war against al Qaeda”⁴ or the struggle against a “syndicate of terrorism,”⁵ the threat, while reduced, has not been eliminated. Violent

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¹ The White House, Remarks by the President on a New Strategy for Afghanistan and Pakistan (Mar. 27, 2009), *available at* http://www.whitehouse.gov/the_press_office/Remarks-by-the-President-on-a-New-Strategy-for-Afghanistan-and-Pakistan.

² Michael R. Gordon, *Time Slipping, U.S. Ponders Afghan Role After 2014*, N.Y. TIMES, Nov. 25, 2012, <http://www.nytimes.com/2012/11/26/world/asia/us-planning-a-force-to-stay-in-afghanistan.html>.

³ Jeh Charles Johnson, Speech at the Oxford Union, Oxford University: The Conflict Against al Qaeda and Its Affiliates: How Will It End? (Nov. 30, 2012) (transcript available at <http://www.documentcloud.org/documents/526903-speech-to-oxford-union-final.html>).

⁴ The White House, Remarks by the President on Strengthening Intelligence and Aviation Security (Jan. 7, 2010), *available at* <http://www.whitehouse.gov/the-press-office/remarks-president-strengthening-intelligence-and-aviation-security>.

⁵ Secretary of State Hillary Clinton, Remarks on Meet the Press (Dec. 6, 2009) (transcript available at http://www.msnbc.msn.com/id/34280265/ns/meet_the_press/t/meet-press-transcript-dec/#.UMDqzoU-dEQ).

political extremism has evolved dramatically over the past decade and continues to represent a direct threat to the U.S. homeland and its interests around the world. Going forward, the on-going struggle will be waged differently. There will be less emphasis on offense – the strategy of preventive war outlined by President Bush in 2002⁶ – and greater emphasis on defense. Homeland security, law enforcement, diplomacy and the intelligence community will take on greater significance, with the military playing a support role. This will necessitate some significant strategic adjustments, particularly at a time of declining resources and the existence of other challenges, such as international criminal cartels, cyber espionage and the theft of intellectual property and more frequent super storms that impact American society every bit as much as terrorism. If so, how has homeland security evolved over the past four years? What are the capabilities required to meet these challenges going forward? What are the capabilities and resources required to effectively secure the country, its people, interests, borders and critical capabilities from a range of threats? And what are the right expectations about this post-9/11 era? These are complex and critical questions and answers raised in this Issue Brief.

I. The Current Security Landscape

A. Evolving Threat and Risk

There has not been a major terrorist attack on the United States since 9/11. This is not for a lack of effort by al Qaeda and its sympathizers, with a string of attempts originating from both outside and inside the United States.

Major incidents over the past four years tend to reinforce an existing understanding of the threat. The aviation system remains a favorite target as we saw with a December 2009 attempt by Umar Farouk Abdulmutallab, the so-called “Underbomber,” to bring down a commercial airliner over Detroit. There was also the interception in October 2010 of two packages, each containing explosives hidden in the ink cartridges of printers shipped from Yemen to the United States using both cargo and commercial aircraft. Both plots were linked to al Qaeda in the Arabian Peninsula (AQAP) and demonstrated active efforts to adjust tactics to security improvements instituted since 9/11.⁷ Attacks also were focused against targets in major urban centers, particularly New York. Najibullah Zazi was arrested in September 2009 while plotting an attack on the New York City subway system.⁸ Faisal Shahzad attempted to ignite a bomb in Times

⁶ The White House, President Bush Delivers Graduation Speech at West Point (June 1, 2002), *available at* <http://georgewbush-whitehouse.archives.gov/news/releases/2002/06/20020601-3.html>.

⁷ OFFICE OF THE COORDINATOR FOR COUNTERTERRORISM, DEP’T OF STATE, 2010 COUNTRY REPORTS ON TERRORISM, Chapter 1 (2011), *available at* <http://www.state.gov/j/ct/rls/crt/2010/170253.htm> [hereinafter 2010 COUNTRY REPORTS].

⁸ OFFICE OF THE COORDINATOR FOR COUNTERTERRORISM, DEP’T OF STATE, 2009 COUNTRY REPORTS ON TERRORISM, Chapter 1 (2010), *available at* <http://www.state.gov/j/ct/rls/crt/2009/140882.htm>.

Square in May 2010, ostensibly in response to the ongoing American drone campaign in Pakistan.⁹

Other events were less grandiose and targets of opportunity. Army Major Nidal Hasan, an example of the emerging trend of “active shooters,” is currently on trial for allegedly killing 13 people at Fort Hood, Texas, in November 2009 after receiving spiritual guidance from American-born cleric Anwar al-Awlaki.¹⁰ There was also the September 2012 assault on a diplomatic outpost in Benghazi, Libya, by a group allegedly sympathetic to al Qaeda that resulted in the death of four Americans including U.S. Ambassador J. Christopher Stevens.¹¹ Given improvements in security at high-profile buildings or installations around the world, extremists may opt for more frequent attacks against smaller but more accessible targets in the future.

These and other episodes over the past four years reveal three significant factors that will shape the nature of the threat going forward.

First, given the relentless pressure on its sanctuary in Pakistan both before and after the raid that killed Osama bin Laden in 2011, much of al Qaeda’s operational impetus has evolved away from the core to its affiliates in the Arabian Peninsula, Iraq, the Islamic Maghreb and Somalia.¹² Extremist groups in Nigeria and Mali, where a separatist movement now holds significant territory, are also a growing concern.¹³ Al Qaeda is struggling for popular support. Its position within the Muslim world has been declining for several years. A significant majority of Muslims in several Islamic countries surveyed expressed negative views towards al Qaeda in polling done by the Pew Research Center.¹⁴ They came to recognize that, despite pledges to strike at the “far enemy,” the reality was that the vast majority of victims of al Qaeda’s campaign were Muslims.¹⁵

These gains notwithstanding, the on-going Arab Awakening has provided a myriad of groups associated with or inspired by al Qaeda an opportunity to reassert their

⁹ 2010 COUNTRY REPORTS, *supra* note 7.

¹⁰ Eric Schmitt & Eric Lipton, *Focus on Internet Imams as Al Qaeda Recruiters*, N.Y. TIMES, Dec. 31, 2009, <http://www.nytimes.com/2010/01/01/us/01imam.html?ref=nidalmalikhasan>.

¹¹ John McLaughlin, *The New Battlefield: 5 Ways Terrorism Has Changed Since 9/11*, FOREIGN POLICY (Nov. 13, 2012), http://www.foreignpolicy.com/articles/2012/11/13/the_new_battlefield.

¹² John Brennan, Speech at the Woodrow Wilson International Center for Scholars: The Efficacy and Ethics of U.S. Counterterrorism Strategy (Apr. 30, 2012) (available at <http://www.wilsoncenter.org/event/the-efficacy-and-ethics-us-counterterrorism-strategy>).

¹³ OFFICE OF THE COORDINATOR FOR COUNTERTERRORISM, DEP’T OF STATE, 2011 COUNTRY REPORTS ON TERRORISM, Chapter 1 (2012), available at <http://www.state.gov/j/ct/rls/crt/2011/195540.htm>.

¹⁴ Pew Research Ctr., *On Anniversary of bin Laden’s Death, Little Backing of al Qaeda* (Apr. 30, 2012), <http://www.pewglobal.org/2012/04/30/on-anniversary-of-bin-ladens-death-little-backing-of-al-qaeda/>.

¹⁵ David Ignatius, *The bin Laden Plot to Kill President Obama*, WASH. POST, Mar. 16, 2012, http://articles.washingtonpost.com/2012-03-16/opinions/35446521_1_obama-and-petraeus-bin-laden-plot-osama.

relevance. Al Qaeda was largely a spectator during the early stages of these historic and difficult transitions, but it has now become more assertive, taking advantage of the political vacuum that has followed the overthrow of autocratic regimes in Tunisia, Egypt, Libya and Yemen.

Additionally, Syria has seen a significant influx of Islamic fighters, many associated with al Qaeda in Iraq.¹⁶ For example, the al Nusra Front is believed to be a front for al Qaeda in Iraq, and the United States recently designated the group as a foreign terrorist organization in an attempt to limit its future role in the country should the Bashar al-Assad regime fall.¹⁷ While the United States has chosen not to send weapons to rebel groups in Syria, others have.¹⁸ The influx of weapons could have spillover effects similar to what occurred in Libya in 2011. In addition, the loss of control of Syria's stockpile of chemical weapons and shoulder-fired anti-aircraft missiles would have potentially dire consequences across the region and beyond.

The Arab Awakening and the push for greater political, economic and social opportunity across the Middle East is itself a repudiation of the vision of a caliphate promoted by bin Laden. These transitions towards civilian rule will be beneficial in the long run, but governments preoccupied with establishing legitimacy with empowered local populations may be less focused on international counterterrorism cooperation that has been significantly strengthened over the past decade.¹⁹ Whereas bin Laden rejected politics in favor of jihad, this changed environment in the Middle East is likely to see the emergence of more hybrid movements like Hezbollah and Hamas, extremist organizations that will aggressively pursue political power and use violence to burnish their legitimacy and further their political goals.²⁰

Finally, the resolution of Iran's nuclear ambitions in the coming years presents another potential complication. While the United States would prefer to resolve the thorny issue through diplomacy, it may be forced to employ military force. The United States' posture in the world has stabilized in recent years, but a military confrontation in the region is likely to generate unrest and a spike in anti-Americanism that extremist

¹⁶ Tim Arango, Anne Barnard & Hwaida Saad, *Syrian Rebels Tied to Al Qaeda Play Key Role in War*, N.Y. TIMES, Dec. 9, 2012, at A1, <http://www.nytimes.com/2012/12/09/world/middleeast/syrian-rebels-tied-to-al-qaeda-play-key-role-in-war.html>.

¹⁷ Michael R. Gordon & Anne Barnard, *U.S. Places Militant Syrian Rebel Group on List of Terrorist Organizations*, N.Y. TIMES, Dec. 11, 2012, at A8, <http://www.nytimes.com/2012/12/11/world/middleeast/us-designates-syrian-al-nusra-front-as-terrorist-group.html>.

¹⁸ Karen DeYoung & Liz Sly, *Syrian Rebels Get Influx of Arms with Gulf Neighbors' Money*, US COORDINATION, WASH. POST, May 15, 2012, http://articles.washingtonpost.com/2012-05-15/world/35454790_1_baba-amr-neighborhood-syrian-rebels-homs.

¹⁹ McLaughlin, *supra* note 11.

²⁰ Discussion via email with Ambassador Alberto M. Fernandez, Coordinator of the Center for Strategic Counterterrorism Communications, Department of State (Dec. 5, 2012).

groups will undoubtedly try to exploit.²¹ Further, should Iran perfect a weapons capability, it is possible that the region could see the emergence of a nuclear arms race, increasing the potential (although still low) that nuclear material could fall into the wrong hands.²²

B. Beyond Terrorism: A World of Complex Challenges

Terrorism and the ramifications of state-based conflict are not the only concerns when analyzing the complex and unpredictable security environment. According to the 2010 Quadrennial Homeland Security Review, significant long-range issues involve criminal elements that seek to exploit global supply chains to traffic in illegal substances, weapons, money or other contraband; cyber attacks, intrusions, disruptions and the exploitation of information networks to gain access to government, business and personal information; migrant and refugee flows generated by political, social and economic instability; viruses that can traverse the world quickly, whether due to natural or man-made circumstances, and overwhelm available public health capabilities; and the consequences of climate change.²³

1. Climate Change

Natural disasters seem to be increasing, not only in frequency, but also in the economic damage they inflict. Hurricane Sandy is just the latest example, generating an estimated \$82 billion in damages just in the states of New York, New Jersey and Connecticut. The proposed \$60 billion Federal reimbursement to pay for the damage exceeds by itself the entire budget of the Department of Homeland Security (DHS).²⁴

Extreme weather patterns have become the “new normal.” Twenty of the 30 most expensive catastrophes in history have occurred since 2001, with only one of them – 9/11 – being man-made. The rest were natural disasters, 13 of them in the United States.²⁵ Recent scientific studies suggest that, regardless of steps taken to reduce greenhouse gases, given the current warming trend, seas are almost certain to rise at least five feet in the coming decades. Roughly six million Americans today live on land less than five feet

²¹ THE IRAN PROJECT, WEIGHING BENEFITS AND COSTS OF MILITARY ACTION AGAINST IRAN 39 (2012), available at <http://theiranproject.org/reports/>.

²² The White House, Remarks by the President to the UN General Assembly (Sep. 25, 2012), available at <http://www.whitehouse.gov/the-press-office/2012/09/25/remarks-president-un-general-assembly>.

²³ DEP’T OF HOMELAND SEC., QUADRENNIAL HOMELAND SECURITY REVIEW 9 (2010), available at <http://www.dhs.gov/quadrennial-homeland-security-review-qhsr> [hereinafter QUADRENNIAL REVIEW].

²⁴ Raymond Hernandez & Peter Baker, *Obama Asking Congress for \$60.4 Billion to Help States Recover from Storm*, N.Y. TIMES, Dec. 8, 2012, at A16, <http://www.nytimes.com/2012/12/08/nyregion/obama-proposes-hurricane-recovery-bill.html>.

²⁵ Erwann Michel-Kerjan & Howard Kunreuther, *Paying for Future Catastrophes*, N.Y. TIMES, Nov. 25, 2012, at SR-7, <http://www.nytimes.com/2012/11/25/opinion/sunday/paying-for-future-catastrophes.html>.

above sea level at high tide.²⁶ We already have witnessed the destruction a devastating storm like Hurricane Katrina can inflict on these low-lying areas when their existing defenses fail.

The Federal Emergency Management Agency (FEMA), a component of DHS, received widespread praise for its response to Hurricane Sandy, demonstrating the importance of advance planning and professional leadership.²⁷ DHS has to assume that the interrelated tasks of preparing for major natural disasters, responding effectively, helping communities recover and developing mitigation strategies and making critical systems and networks more resilient will tax existing capabilities more significantly in the years ahead. Climate change only will become a more important and critical issue with respect to this nation's security priorities.

2. Cybersecurity

Meanwhile, the 2009 Cyberspace Policy Review captured the essence of the challenge of defending computer networks that are vital to America, its economy and its security: "The digital infrastructure's architecture was driven more by considerations of interoperability and efficiency than of security. Consequently, a growing array of state and non-state actors is compromising, stealing, changing, or destroying information and could cause critical disruptions to U.S. systems."²⁸ As of this writing, the National Intelligence Council is preparing an intelligence estimate of the impact of cyber attacks, intrusions, disruptions and exploitations on government, business and personal information systems, and the theft of intellectual property on the U.S. national and economic security. The damage runs well into the billions of dollars and results in the loss of millions of jobs.²⁹ The release of this report could provide impetus for further action.

While the United States government is placing increased emphasis on cyber issues, there is still an internal struggle to actually define what cybersecurity means, set appropriate national standards, and clarify overlapping responsibilities.³⁰ Additionally,

²⁶ Benjamin Strauss & Robert Kopp, *Rising Seas, Vanishing Coastlines*, N.Y. TIMES, Nov. 25, 2012, p. SR-6, available at <http://www.nytimes.com/2012/11/25/opinion/sunday/rising-seas-vanishing-coastlines.html>.

²⁷ Jennifer Steinhauer & Michael S. Schmidt, *Man Behind FEMA's Makeover Built Philosophy on Preparation*, N.Y. TIMES, Nov. 3, 2012, <http://www.nytimes.com/2012/11/04/us/the-man-behind-femas-post-katrina-makeover.html>.

²⁸ CYBERSPACE POLICY REVIEW: ASSURING A TRUSTED AND RESILIENT INFORMATION AND COMMUNICATIONS INFRASTRUCTURE iii (2009), http://www.whitehouse.gov/assets/documents/Cyberspace_Policy_Review_final.pdf.

²⁹ Ken Dilanian, *U.S. Spy Agencies to Detail Cyber-attacks From Abroad*, L.A. TIMES, Dec. 6, 2012, <http://articles.latimes.com/2012/dec/06/nation/la-na-cyber-intel-20121207>.

³⁰ CTR. FOR STRATEGIC AND INT'L STUDIES, CYBERSECURITY TWO YEARS LATER: A REPORT OF THE CSIS COMMISSION ON CYBERSECURITY FOR THE 44TH PRESIDENCY 3 (2011), available at http://csis.org/files/publication/110128_Lewis_CybersecurityTwoYearsLater_Web.pdf.

questions exist as to whether the government has the necessary capabilities to match its growing responsibilities in this field. Recently, for example, DHS has increased its cyber force from 40 to 400.³¹ In 2009, it established a new National Cybersecurity and Communications Integration Center. But more expertise and resources may still be needed.

Given the increased importance of networks to national security, there are difficult questions that need to be answered regarding how responsibility for securing these networks should be distributed among government, its contractors and the private sector.³² When it comes to cybersecurity, there is a relatively thin line between offense and defense. Given the difficulty with attribution, determining which of the many daily assaults on U.S. government and private networks are the work of government hackers, hired guns, activists and individuals, calculations regarding how to respond, who is responsible and what actions are considered appropriate and proportionate are complex.

Many critical operations such as energy, chemical, water and electricity plants and transportation networks use computer control systems that are vulnerable to attack. For example, Saudi Arabia's national oil company, Aramco, experienced a cyber attack in August 2012 through a virus known as Shamoon. Had this attack been successful, it would have shut down the country's oil and gas production, which likely would have had a global economic impact.³³ Moreover, most of what is considered critical infrastructure is owned by the private sector. Hacker groups like Anonymous look at corporations in the same way al Qaeda views civilians – as fair game. A popular one-liner among security experts is that there are two kinds of corporations: those who have been attacked and those who will be.³⁴ But the concept of a “new terrain of warfare” doesn't sit well with executives used to worrying about market share.³⁵

The government has struggled to articulate clear industrial sector standards in such a dynamic operating environment. There is no single “face” for the private sector to approach within government, since responsibility is shared across multiple agencies. DHS, given its day-to-day interactions with many segments of the U.S. and global economy, can be that go-to agency and should take the lead in fostering broader dialogue

³¹ Ellen Nakashima, *Fierce Fight for Expert Workers*, WASH. POST, Nov. 13, 2012, at AA5, http://articles.washingtonpost.com/2012-11-13/world/35503584_1_cyber-threats-new-cyber-alan-paller.

³² Ellen Nakashima, *Cyberwar Poses Dilemma for Defense Contractors*, WASH. POST, Nov. 23, 2012, at A1, http://articles.washingtonpost.com/2012-11-22/world/35510891_1_qatar-cyberattack-mcconnell.

³³ See Reuters, *Aramco Says Cyberattack Was Aimed at Production*, N.Y. TIMES, Dec. 10, 2012, at B2, available at <http://www.nytimes.com/2012/12/10/business/global/saudi-aramco-says-hackers-took-aim-at-its-production.html>.

³⁴ Somini Sengupta & Nicole Perloth, *The Bright Side of Being Hacked*, N.Y. TIMES, Mar. 4, 2012, <http://www.nytimes.com/2012/03/05/technology/the-bright-side-of-being-hacked.html>.

³⁵ Leon Panetta, U.S. Sec'y of Defense, Remarks on Cybersecurity to the Business Executives for National Security, New York City (Oct. 11, 2012) (transcript available at <http://www.defense.gov/transcripts/transcript.aspx?transcriptid=5136>).

and improved information sharing between government and the private sector. But to be effective, DHS must bring greater capability and perspective to the table. DHS is improving, but its resources lag far behind those of the Department of Defense. However, cooperation between the two agencies is expanding.³⁶

There is still a need to create the right set of incentives, including liability protection, to get the private sector to take the needed action to defend the “.com world” to the degree that is both possible and necessary. The Cybersecurity Act of 2012 that sought to promote better information sharing between government and the private sector regarding intrusions and vulnerabilities was widely viewed as a step in the right direction. It would have established voluntary cybersecurity standards for operators of critical infrastructure, but stalled due to opposition to government-imposed requirements on businesses as well as privacy concerns. The Senate failed to muster the necessary 60 votes to bring the legislation to a vote.³⁷

II. Challenges Facing Homeland Security

A. Understanding the Homeland Security Enterprise

Today, homeland security is conceptualized as an “enterprise.”³⁸ While DHS, which started in 2003 as the merger of 22 separate agencies, plays a leading role, defending the country and its people, borders, critical infrastructure, networks and economy is a distributed whole of government challenges. It involves a national effort involving governments at all levels – Federal, state, local, tribal and territorial – as well as the private sector, communities and individuals.³⁹ While this enterprise is much more capable than when it began ten years ago, homeland security is very much a work in progress. In DHS’s second decade, major priorities must be to continue to look for synergies within its many components, to build a more integrated culture, and to eliminate structural redundancies such as the overlapping regional structures that existed when DHS came into being.

One major accomplishment over the past four years involves agreement on the enduring missions of the homeland security enterprise. When the Obama administration came into office, there was still a residual debate about what DHS was expected to do. Some argued that combatting terrorism was but a first priority, but others insisted that it

³⁶ Jonathan Masters, *Confronting the Cyber Threat*, COUNCIL ON FOREIGN RELATIONS BACKGROUNDER (May 23, 2011), <http://www.cfr.org/technology-and-foreign-policy/confronting-cyber-threat/p15577>.

³⁷ Joseph I. Lieberman & Susan Collins, *At Dawn We Sleep*, N.Y. TIMES, Dec. 6, 2012, <http://www.nytimes.com/2012/12/07/opinion/will-congress-act-to-protect-against-a-catastrophic-cyberattack.html>.

³⁸ DEP’T OF HOMELAND SEC., IMPLEMENTING 9/11 COMMISSION RECOMMENDATIONS: PROGRESS REPORT 2011, at 11 (2011), available at <http://www.dhs.gov/implementing-911-commission-recommendations>.

³⁹ QUADRENNIAL REVIEW, *supra* note 23, at 12.

should be its sole mission.⁴⁰ Through its first Quadrennial Homeland Security Review, the Department's core missions reflect not just what the homeland security enterprise is trying to prevent, but also what it is trying to preserve. They include:

- Preventing Terrorism and Enhancing Security
- Securing and Managing Our Borders
- Enforcing and Administering Our Immigration Laws
- Safeguarding and Securing Cyberspace
- Ensuring Resilience to Disasters⁴¹

To its credit, DHS has embraced its multi-mission challenge. While these missions do involve different priorities, what binds them together is their relationship to American economic security. Bin Laden's stated objective was not to defeat the far enemy, but to inflict sufficient economic cost to force the United States to adapt its policies, particularly in the Middle East.⁴² In defending borders and cyberspace, determining who should and should not gain entry into the United States, and preventing man-made disasters while mitigating the impact of natural ones, government has to strike a balance: Keep America safe, without inhibiting commerce or compromising fundamental rights.

The challenge is how to provide security at a cost to the economy and society that is acceptable and sustainable. Improved risk-assessment tools have been developed that help, particularly improved processes and information-sharing that have strengthened the ability to verify the identity of an airline passenger, a cargo shipper or a visa applicant and differentiate them from someone with malign intent.

Where these two imperatives collide most significantly is at the nation's 450 airports through which almost two million passengers travel every day.⁴³ Initiatives like the Secure Flight pre-screening process enable the Transportation Security Administration (TSA) to better verify identities and to assess risk before passengers even

⁴⁰ SHAWN REESE, CONG. RES. SERV., *DEFINING HOMELAND SECURITY: ANALYSIS AND CONGRESSIONAL CONSIDERATIONS* 4 (Apr. 3, 2012), available at <http://www.fas.org/sgp/crs/homesecc/R42462.pdf>.

⁴¹ QUADRENNIAL REVIEW, *supra* note 23, at 19.

⁴² Daveed Gartenstein-Ross, *Bin Laden's 'War of a Thousand Cuts' Will Live On*, THE ATLANTIC (May 3, 2011), <http://www.theatlantic.com/international/archive/2011/05/bin-ladens-war-of-a-thousand-cuts-will-live-on/238228/>.

⁴³ DEP'T OF HOMELAND SEC., *BOTTOM UP REVIEW REPORT* (2010), Annex B, available at http://www.dhs.gov/xlibrary/assets/bur_bottom_up_review.pdf.

arrive at the airport.⁴⁴ While the latest generation of video imaging scanners is viewed by many as overly intrusive, the sweet spot going forward is to significantly expand trusted traveler programs that expedite the flow of passengers who pose low risk through airport screening lines. TSA is testing multiple programs at present and should aggressively validate them and expand their use.⁴⁵ Trusted shipper and supply chains are also at the heart of cargo security.⁴⁶ Security improvements, including innovative technologies, are needed to be able to provide acceptable levels of security while reducing screening time and manpower. This will be important as budget pressures increase.

A significant asset to the homeland security enterprise is the breadth of its interaction with the private sector. Effective homeland security requires meaningful action within the private sector, not just government. But government has not yet found the most effective means to leverage this ongoing interaction into effective action.⁴⁷ The relationship still does not yet generate sufficient data that enables a clear understanding of what is happening within the private sector, the vulnerabilities that exist and how to yield effective action based on bottom up initiative rather than top down mandates.

A. Securing Global America

Homeland security is a global challenge. DHS, working in conjunction with the Department of State and other agencies across the government, should continue to expand its presence overseas. Security requires international partners and global standards. A key factor in the decrease of the al Qaeda threat has been the increase in counterterrorism cooperation around the world. In addition, working within a number of international organizations as well as informal coalitions, security standards have steadily improved, from commercial air transportation and the verification of passenger identities to greater visibility over global supply chains and the scanning of freight containers that constitute the blood stream of global commerce. Homeland security-related issues, from the integrity of passports and other travel documents to the security of intellectual property, have become a more prominent aspect of the day-to-day engagement that the United States has with governments, corporations and people around the world.

As the United States reformed and expanded its homeland security enterprise in the aftermath of 9/11, it placed significant demands on other countries and also on multinational corporations. Looking from an American vantage point, the United States

⁴⁴ TRANSP. SEC. ADMIN., SECURE FLIGHT PROGRAM FACT SHEET, *available at* <http://www.tsa.gov/stakeholders/secure-flight-program>.

⁴⁵ DEP'T OF HOMELAND SEC., DEPARTMENT OF HOMELAND SECURITY STRATEGIC PLAN 2012-2016, at 36 (2012), *available at* <http://www.dhs.gov/xlibrary/assets/dhs-strategic-plan-fy-2012-2016.pdf>.

⁴⁶ CUSTOMS AND BORDER PROTECTION, C-TPAT FACT SHEET (2008), *available at* http://www.cbp.gov/xp/cgov/newsroom/fact_sheets/port_security/ctpat_sheet.xml.

⁴⁷ DARRELL M. WEST, THE BROOKINGS INST., A VISION FOR HOMELAND SECURITY IN THE YEAR 2025, at 1 (2012), *available at* http://www.brookings.edu/~media/Research/Files/Papers/2012/6/26%20security%20homeland%20west/26_homeland_security_west.pdf.

sought to “push out its borders” to ensure that, to the extent possible, people and goods would be screened not upon arrival in the United States, but prior to departure from another country.⁴⁸ To that end, the United States has worked closely with a range of international organizations, including the World Customs Organization, International Maritime Organization, International Civil Aviation Organization and others to achieve higher security standards for global transportation systems.⁴⁹ For example, the vast majority of shipping containers coming to the United States are screened, and if necessary, inspected prior to being placed on board ships bound for the United States.⁵⁰ Such steps have made transportation considerations more complex for both violent extremists and international criminal cartels.

Last year, DHS led a renewed negotiation with the European Union regarding passenger name recognition (PNR) records that are used to confirm the identities of individuals planning to travel to the United States and assess the risk travelers might pose prior to boarding an airplane or ship or crossing a border. DHS was able to overcome European privacy concerns about the potential misuse of personal data provided to the United States. An agreement was reached in late 2011 and ratified by the European Union in April 2012.⁵¹

At the same time, a major factor in sustaining United States global influence is open borders, successfully encouraging people around the world to visit, study, work and live here. Improved security has come at a high cost, with a significant number of international students choosing to study elsewhere and workers with critical high-end skills forced to wait for lengthy periods to obtain a visa. More effort is needed to establish the right balance. Regarding global supply chains, DHS has worked effectively to mesh the country’s need for better security with the private sector’s push for improved efficiency and reliability. Business success and security are not zero-sum, but bottom line pressures are going to continue to challenge this cooperation.

B. Hemispheric Security

Over the past decade, as the United States has focused its attention most significantly on the wars in Afghanistan and Iraq, different kinds of conflicts have been waged in this hemisphere that have challenged state sovereignty and effective governance in several countries, but most notably in Colombia and Mexico. The United States has

⁴⁸ LISA M. SEGHEITTI, JENNIFER E. LAKE, & WILLIAM H. ROBINSON, CONG. RES. SERV., BORDER AND TRANSPORTATION SECURITY: SELECTED PROGRAMS AND POLICIES, at CRS-5 (Mar. 29, 2005), *available at* <http://www.fas.org/sgp/crs/homsec/RL32840.pdf>.

⁴⁹ Discussion with David Heyman, Assistant Secretary for Policy, Department of Homeland Security.

⁵⁰ CUSTOMS AND BORDER PROTECTION, CONTAINER SECURITY INITIATIVE FACT SHEET (2011), *available at* http://www.cbp.gov/linkhandler/cgov/trade/cargo_security/csi/csi_factsheet_2011.ctt/csi_factsheet_2011.pdf.

⁵¹ Press Release, Council of the European Union, Council Meeting on Justice and Home Affairs (Apr. 26, 2012), http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/129870.pdf.

had significant involvement in these conflicts through programs like Plan Colombia⁵² and the Merida Initiative.⁵³ Elsewhere, criminal cartels have corrupted and undermined weak governments in Guatemala and Honduras and they now potentially qualify as failed states.⁵⁴ While significant political attention has been devoted to building a fence along the U.S. border with Mexico, in reality, effective border security is a shared hemispheric challenge.

1. The Mexican Drug War

Mexico has recently inaugurated a new government and the United States must continue its close cooperation with the incoming Pena Nieto administration to enhance human security and the rule of law in Mexico. As the U.S. seeks to interdict the illegal flow of narcotics and people coming from the south, it must devote more attention to the parallel flow of weapons and money going to the south. The direct challenge posed by drug cartels to the sovereignty and authority of Mexico and neighboring states is the most significant security challenge the hemisphere confronts in the coming decade. This is not just Mexico's problem, nor just a Mexico problem. More needs to be done on both sides of the border.

The Merida Initiative (Merida), a security cooperation agreement between the United States, Mexico, and the countries of Central America, with the declared aim of combating the threats of drug trafficking, transnational organized crime, and money laundering, has been a successful platform that has transformed security and intelligence cooperation between the United States and Mexico since 9/11. While aimed at disrupting the ability of international cartels to operate, improving border security, as well as strengthening Mexico's justice system, government institutions and communities, the Merida Initiative has broadened U.S.-Mexican engagement on regional and global issues as progress has reshaped the nature of international drug smuggling. Today, more drugs are being smuggled via maritime routes and via other Central American countries into the United States, as well as to West Africa and Europe. Merida's scope needs to expand to reverse declines in governance across Central America.⁵⁵

For its part, the United States has been looking at this challenge as an external threat, and it has not consistently addressed the contributing factors that exist internally. Beyond just the American drug demand, the flow of weapons and money south contribute significantly to the violence and corruption. Secretary of State Hillary Clinton has

⁵² Uri Friedman, *A Brief History of Plan Colombia*, FOREIGN POLICY MAG., Oct. 28, 2011, http://www.foreignpolicy.com/articles/2011/10/27/plan_colombia_a_brief_history.

⁵³ DEP'T OF STATE, FACT SHEET: EXPANDING THE U.S./MEXICO PARTNERSHIP (2012), *available at* <http://www.state.gov/p/wha/rls/fs/2012/187119.htm>.

⁵⁴ Elizabeth Dickinson, *Watch List: Four Countries in Big Trouble*, FOREIGN POLICY (July/Aug. 2010), http://www.foreignpolicy.com/articles/2010/06/21/watch_list.

⁵⁵ Background Discussion with Senior Official of the Government of Mexico (Dec. 11, 2012).

acknowledged our shared responsibility. The United States needs to more significantly address the flow of money and weapons flowing south into Mexico and other countries that contribute to violence, corruption and instability.⁵⁶ In a joint study soon to be published, an estimated 68 percent of the weapons seized in Mexico came from the United States.⁵⁷ One solution is for authorities to investigate and map cartel interconnections and business associations that span the U.S.-Mexican border to better understand and interrupt the networks that enable illegal activity to flourish.

2. Immigration Reform

A confluence of factors both in Mexico and the United States offer a crucial opportunity to achieve comprehensive immigration reform over the next year. Both parties see benefits to advancing legislation given voting patterns from the 2012 election.⁵⁸ The Mexican economy is growing while the U.S. economy slowly recovers. Border enforcement has improved, while cartels force their way into the human trafficking business, creating increased danger for illegal border crossings. As a result, recent years have witnessed negative rates of immigration from Mexico into the United States, which may mitigate a key political obstacle to immigration reform.⁵⁹ In order to promote more effective border security and encourage legal immigration between the two countries, reform legislation needs to include provisions for a guest worker program that restores “circular mobility” and that enables workers to contribute to the U.S. economy and return home to Mexico, which the existing strategy on fencing and enforcement only interrupted.⁶⁰

The lens through which the United States examines immigration needs to widen. The National Intelligence Council suggests that over the next 20 years, an unprecedented aging of populations will be a “megatrend” that impacts global security and stability.⁶¹ With the retirement of the Baby Boomer generation, the United States will need to get younger. An effective immigration system that matches international skills with economic and entrepreneurial needs will be crucial to economic competitiveness.

⁵⁶ Department of State, Remarks by Hillary Rodham Clinton with Mexican Foreign Secretary Patricia Espinosa, Mar. 23, 2010, *available at* <http://www.state.gov/secretary/rm/2010/03/138963.htm>.

⁵⁷ Background Discussion, *supra* note 55.

⁵⁸ Lauren Fox, *Republicans on Capitol Hill Eye Immigration Reform to Win Back Latino Voters*, US NEWS & WORLD REPORT (Nov. 21, 2012), <http://www.usnews.com/news/articles/2012/11/21/republicans-on-capitol-hill-eye-immigration-reform-to-win-back-latino-voters>.

⁵⁹ Jeffrey Passel, D’Vera Cohn & Anna Gonzales Barerra, Pew Research Ctr., *Net Migration from Mexico Falls to Zero – and Perhaps Less* (May 3, 2012), <http://www.pewhispanic.org/2012/04/23/net-migration-from-mexico-falls-to-zero-and-perhaps-less/>.

⁶⁰ KATHLEEN NEWLAND, CIRCULAR MIGRATION AND HUMAN DEVELOPMENT, UNITED NATIONS DEVELOPMENT PROGRAM RESEARCH PAPER (2009), *available at* http://www.migrationpolicy.org/pubs/newland_HDRP_2009.pdf.

⁶¹ NAT’L INTELLIGENCE COUNCIL, GLOBAL TRENDS 2030: ALTERNATIVE WORLDS, NOVEMBER 2012, at iv, *available at* <http://globaltrends2030.files.wordpress.com/2012/11/global-trends-2030-november2012.pdf>.

A 21st Century immigration policy will have to be enforced. DHS needs to improve its ability to track workers, students and visitors both arriving and departing the United States. It must include a nationwide employment verification system, but also a fair path to permanent status for those already in the United States, including a generous process to unite family members of citizens who wish to emigrate to the United States.

III. Forward-Looking Strategies and Expectations

A. Integrated Strategy and Resource Allocation

The National Intelligence Council recently released its analysis of critical global trends that will or could shape the security environment over the next two decades. It speaks of a diffusion of power among states and greater individual empowerment; changing population demographics and increased global migration; increased demand for critical resources and economic volatility as various regions cope with differing effects of climate change; and the emergence of new technologies that can solve many problems but create new dangers as well.⁶²

Each of these trends adds complexity to the stated homeland security missions: confronting terrorism, protecting borders while promoting commerce, managing immigration, securing cyberspace and preparing for and recovering from disasters. While responsibility for these areas is shared, all of them require meaningful action by governments and in particular the Federal government.

Looking ahead, the requirements needed to meet these responsibilities are likely to rise, while available resources at all levels of government are very likely to level off or decline.⁶³ There is a risk that the on-going national debate over the economy and deficit reduction will overtake considerations of national security strategy across all of its dimensions, including homeland security. It remains to be seen whether in the face of budget pressures at all levels of government the homeland security enterprise will sustain capabilities and structures created in the aftermath of 9/11. Fewer intelligence analysts, fewer cops on the beat and less training will have an impact. At the same time, budget constraints can create a constructive dynamic and leverage innovations made at all levels of the enterprise. Going forward a number of prudent steps should be considered.

First, given the mounting pressure on budgets across the homeland security enterprise, there needs to be greater clarity regarding security-related budget and overhead decisions being made across the Federal government, at state and local levels and in the private sector. In other words, if homeland security is a shared responsibility, prudent strategic calculations are impossible without knowing if the resources will be

⁶² *Id.* at ii.

⁶³ DEP'T OF HOMELAND SEC., FY 2013 BUDGET IN BRIEF (2012), *available at* <http://www.dhs.gov/xlibrary/assets/mgmt/dhs-budget-in-brief-fy2013.pdf>.

available across the enterprise to actually do what is needed. Before homeland security suffers a thousands cuts, there must be an understanding of what each cut means to the overall health of the patient.

Second, homeland security needs a joint requirements process. In a time of resource constraint, agencies at all levels need to understand the tactical and strategic implications of individual funding decisions and make smart tradeoffs. What is the right mix of personnel and technology needed to fulfill the stated missions? For example, based on the security environment we will likely face over the next decade, do we need more Federal agents on the border or local cops on the street? If immigration reform passes, how will that impact the workload of Immigration and Customs Enforcement (ICE) as well as Citizenship and Immigration Services (CIS)? Given the prospect of more frequent and significant storms, what new capabilities are required within FEMA and the Coast Guard? If cartels are shifting transit routes from land to sea, what is the impact between Customs and Border Protection (CBP) and the Coast Guard? Can existing joint operations be expanded?

There are structural steps DHS can take as well that can reduce overhead. It inherited multiple regional headquarters from its legacy agencies. They should be consolidated into an integrated national homeland security command structure, building a stronger culture of jointness. Likewise, state and local fusion centers should be reformed and integrated.⁶⁴ In the next year, the Coast Guard will move into a new DHS leadership complex in Washington. Congress has slowed funding for the project, which is projected to consolidate all major DHS components on one campus. DHS should receive support from the administration and Congress to complete the project. DHS is taking useful steps in this direction with the establishment of a new office focused on strategic planning, analysis and risk and how to better invest in needed capabilities.⁶⁵

Finally, there needs to be more long-range strategic planning and budgeting across all national security agencies to understand the shifting interplay among defense, diplomacy, homeland security, law enforcement, public health, the environment and intelligence. In a world of drones and bio-weapons, do we need fewer pilots and more public health specialists? With Arctic transit routes opening and the prospect of international disputes over resources, do we need more ships in the Navy or Coast Guard or both? When soldiers withdraw from global trouble spots, do we need more diplomats and development experts to stay behind? If so, as became tragically evident in Libya, the State Department may require a greater number of dedicated security personnel (as opposed to contractors) to secure them.

⁶⁴ SENATE HOMELAND SEC. AND GOVERNMENTAL AFFAIRS COMM., FEDERAL SUPPORT FOR AND INVOLVEMENT IN STATE AND LOCAL FUSION CENTERS MAJORITY AND MINORITY STAFF REPORT 106 (Oct. 3, 2012), *available at* <http://www.hsgac.senate.gov/subcommittees/investigations/media/investigative-report-criticizes-counterterrorism-reporting-waste-at-state-and-local-intelligence-fusion-centers>.

⁶⁵ Heyman, *supra* note 49.

Rather than setting separate budget top-lines for the Departments of Defense, State, Homeland Security, Justice and other national security agencies, the executive branch should propose and Congress should approve an integrated top-line national security that would align resource decisions and operations.⁶⁶ Within the national security realm, the United States takes a whole of government approach to operations. It should plan and budget the same way.

B. Beyond Kinetics

In its 2006 National Security Strategy, the Bush administration characterized the war on terror as “both a battle of arms and a battle of ideas.”⁶⁷ The Obama administration likewise recognized both the right to use force unilaterally if necessary to defend the nation and its interests and the need to engage both governments and people to resolve common challenges, including the threat of terrorism.⁶⁸

The Obama administration has aggressively pursued both dimensions of this struggle in pursuit of an end state where “the al Qaeda core is no longer relevant.”⁶⁹ In addition to the raid that killed bin Laden, the Obama administration has greatly expanded the use of drones, more than 300 strikes since 2009, to decimate al Qaeda’s leadership.⁷⁰ At the same time, it launched an innovative outreach to Muslim communities, including the creation of the Center for Strategic Counterterrorism Communication (CSCC) at the State Department, which engages in a vigorous debate within on-line chat rooms about extremism and distributes simple but effective video products in strategic languages using social media, including YouTube, that promote an alternative to political violence.⁷¹

Notwithstanding the significant success of U.S. counterterrorism efforts over the past four years, a recent Pew poll revealed a clear lack of international support for the preferred weapon in the ongoing “war on terror,” the use of drones.⁷²

⁶⁶ CTR FOR AM.PROGRESS, REBALANCING OUR NATIONAL SECURITY: THE BENEFITS OF IMPLEMENTING A UNIFIED SECURITY BUDGET (2012), available at <http://www.americanprogress.org/issues/security/report/2012/10/31/43074/rebalancing-our-national-security/>.

⁶⁷ THE WHITE HOUSE, THE NATIONAL SECURITY STRATEGY OF THE UNITED STATES OF AMERICA 9 (2006), available at <http://georgewbush-whitehouse.archives.gov/nsc/nss/2006/>.

⁶⁸ THE WHITE HOUSE, NATIONAL SECURITY STRATEGY (2010), available at http://www.whitehouse.gov/sites/default/files/rss_viewer/national_security_strategy.pdf.

⁶⁹ Brennan, *supra* note 12.

⁷⁰ Scott Shane, *Election Spurred a Move to Codify U.S. Drone Policy*, N.Y. TIMES, Nov. 25, 2012, at A1, <http://www.nytimes.com/2012/11/25/world/white-house-presses-for-drone-rule-book.html>.

⁷¹ Fernandez, *supra* note 20.

⁷² Pew Research Ctr., *Global Opinion of Obama Slips, International Policies Faulted* (June 13, 2012), <http://www.pewglobal.org/2012/06/13/global-opinion-of-obama-slips-international-policies-faulted/>.

The administration has made a strong public case that the use of drones is legally defensible under both domestic and international law and strategically sound.⁷³ Drones have less impact on the broader civilian population than the deployments of a large number of conventional military forces. But the current approach is reaching what Pakistani Ambassador to the United States Sherry Rehman describes as a point of “diminishing returns.” As she suggested at the 2012 Aspen Security Forum, the expanded use of drones in Pakistan “adds to the pool of recruits we’re fighting against.”⁷⁴

The comments echo a well-known memo circulated in October 2003 in which former Secretary of Defense Donald Rumsfeld posed a question of whether on-going operations in Iraq were potentially creating more extremists than were being eliminated or dissuaded. Mr. Rumsfeld encouraged greater long-range planning that incorporated an improved cost-benefit analysis on current operations.⁷⁵

Over the past four years, there is strong evidence that drones have advanced beyond a kind of silver bullet – employed only against high value targets where no other options exist – to a force protection weapon – used less against those who credibly represent a threat against the United States and more against those who threaten U.S. and the International Security Assistance Force (ISAF) forces on the battlefield in Afghanistan.⁷⁶ In other words, tactics have trumped strategy. While force protection is an essential element of any military campaign, it should not come at the expense of the long-range goal of a strategic partnership between Pakistan and the United States, considered a pillar of the existing strategy to defeat al Qaeda.⁷⁷

Drone operations are a major impediment to a genuine alliance between Washington and Islamabad and continue to roil Pakistani public opinion. A recent Pew poll suggests that 74 percent of the Pakistani population considers the United States an “enemy.”⁷⁸ A large number of Pakistanis view drone operations as a violation of the country’s sovereignty. The Pakistani Parliament demanded in April 2012 that drone operations within Pakistan cease. But the United States has cleared its drone campaign with Pakistan’s military, not its civilian government, a situation that undercuts the

⁷³ JACK GOLDSMITH, *POWER AND CONSTRAINT* 21 (2012).

⁷⁴ Eric Schmitt, *Tense Talk in Conference between U.S. and Pakistan*, N.Y. TIMES, July 27, 2012, <http://www.nytimes.com/2012/07/28/world/asia/at-security-conference-tense-talk-between-us-and-pakistan.html>.

⁷⁵ USA TODAY, *Rumsfeld’s War-on-Terror Memo*, May 20, 2005, <http://usatoday30.usatoday.com/news/washington/executive/rumsfeld-memo.htm>.

⁷⁶ Shane, *supra* note 70.

⁷⁷ THE WHITE HOUSE, *NATIONAL SECURITY STRATEGY* 21 (2010), http://www.whitehouse.gov/sites/default/files/rss_viewer/national_security_strategy.pdf.

⁷⁸ Pew Research Ctr., *Pakistani Public Opinion Ever More Critical of U.S.* (June 27, 2012), <http://www.pewglobal.org/2012/06/27/pakistani-public-opinion-ever-more-critical-of-u-s/>.

development of civilian democratic institutions within Pakistan, which remains another long-term strategic objective.⁷⁹

The excessive secrecy surrounding drone operations, particularly in the context of Pakistan, is counterproductive. There is a significant nexus between Pakistan and terrorist threats to the United States, not just in the case of the 9/11 perpetrators, like bin Laden and Khaled Sheikh Mohammed, but also in more recent plots including Faisal Shahzad, Najibullah Zazi and David Headley.⁸⁰

In contrast to Pakistan, in Yemen, the new government of President Abdu Rabbu Mansour Hadi has publicly acknowledged its direct involvement in the U.S. drone campaign, although there are indications the Yemeni government is misleading its people regarding the nature and responsibility of specific strikes.⁸¹ President Hadi has likely taken this public stance to preempt al Qaeda in the Arabian Peninsula from exploiting the issue within Yemeni public opinion.⁸²

Domestic and international public support has always been critical to success in traditional conflicts. Greater public engagement and transparency are necessary to keep the American people invested in the long-term struggle against violent political extremism.

In 2001, Congress passed an Authorization for the Use of Military Force (AUMF) in response to the attacks of September 11.⁸³ While a range of operations have been included under the umbrella of defeating core al Qaeda, the group directly responsible for 9/11, it also covered operations directed at its affiliates and sympathizers that have only loose connections but no direct link to 9/11. An indefinite extension of the existing AUMF advances the prospect that the United States will be engaged in a state of indefinite war, with significant powers permanently in the hands of the executive branch. Even President Obama, in remarks during the recently concluded campaign, expressed the need to ensure that his powers and those of his successors be appropriately checked.⁸⁴

⁷⁹ DAVID E. SANGER, *CONFRONT AND CONCEAL: OBAMA'S SECRET WARS AND SURPRISING USE OF AMERICAN POWER* 136-7 (2012).

⁸⁰ Jayshree Bajoria & Jonathan Masters, *Pakistan's New Generation of Terrorists*, COUNCIL ON FOREIGN RELATIONS BACKGROUNDER (Sep. 26, 2012), <http://www.cfr.org/pakistan/pakistans-new-generation-terrorists/p15422>.

⁸¹ Sudarsan Raghavan, *Yemen Tries to Cover Up Drone Hits*, WASH. POST, Dec. 25, 2012, at 1, http://www.washingtonpost.com/world/middle_east/when-us-drones-kill-civilians-yemens-government-tries-to-conceal-it/2012/12/24/bd4d7ac2-486d-11e2-8af9-9b50cb4605a7_story.html.

⁸² Scott Shane, *Yemen's Leader Praises U.S. Drone Strikes*, N.Y. TIMES, Sep. 29, 2012, <http://www.nytimes.com/2012/09/29/world/middleeast/yemens-leader-president-hadi-praises-us-drone-strikes.html>.

⁸³ GOLDSMITH, *supra* note 73, at 5.

⁸⁴ Editorial, *Rules for Targeted Killing*, N.Y. TIMES, Nov. 30, 2012, at A26, <http://www.nytimes.com/2012/11/30/opinion/rules-for-targeted-killing.html>.

Before the end of 2014, the existing AUMF should be retired and new authorities put in place that defines the ongoing nature of the threat from al Qaeda and its offshoots that will continue beyond 2014, the strategy, and the authorities and resources required to defend the country, its allies and interests. It should also resolve conflicting existing authorities between the military (under Title 10) and intelligence community (under Title 50) that interfere with the ability to conduct joint operations. Much like the PATRIOT Act, it should require renewal periodically.

If we are a nation still at war, the American people need to be reengaged and understand the nature of the threat and what is still required to disrupt, dismantle and defeat it. The President should plan a major speech early in the next term that redefines the nature of the threat and how we plan to combat it.

IV. Concluding Thoughts: Political Resilience and Sustainable Expectations

In recent years, there has been increased emphasis within the homeland security enterprise on the concept of risk management as an important strategic tool. In the context of natural disasters, risk management can set appropriate expectations regarding preparedness against a range of threats. For example, the insurance industry bases its underwriting in specific localities on a range of storm frequency and severity such as the damage that an average annual hurricane would inflict rather than a one-in-a-generation storm. But the presumption is that, based on history, both the best- and worst-case scenarios will occur sooner or later.

This should be the approach the American people and their leaders take with regard to the threat of terrorism as well. DHS views resilience as an essential element of homeland security. What the United States requires going forward is political resilience as well. At some point in the future, it will be put to the test.

A dozen years after 9/11, we need a realistic assessment of the long-term threat and develop sustainable policies for the long-term. For example, what is the appropriate objective, to prevent all attacks? Can we do that without fundamentally changing the nature of the United States and incurring economic and social costs that are unacceptable? Alternatively, is terrorism a 10-year or 20-year event? If another attack is inevitable, what do we need to do to keep its economic and social costs below what we incurred in the aftermath of 9/11?

The United States is more capable and better prepared to defend the American homeland today than it was in 2001. But just as the United States and its allies have achieved common cause and significantly deepened international cooperation, extremists continue to adapt their tactics. Risk management assumes that by adapting to this constantly changing environment, strengthening security, improving defenses, and being better prepared, society can mitigate the impact of disasters that may strike at any time.

But the risk cannot be totally eliminated. Every once in a while, the opposing team wins one.

“You have to live with that,” cautions Senator Joseph Lieberman, the recently retired chairman of the Senate Homeland Security and Government Affairs Committee. “We’ve tried very hard to improve our homeland security without compromising personal liberty, and when you do that, at some point, somebody’s going to break through.”⁸⁵

The United States should not live in fear, but it also cannot afford to become overly complacent. The best course is to expect the unexpected, learn from every disaster but respond effectively and respond as one.

The country cannot afford to experience a wrenching partisan political response every time there is a setback, whether at home or abroad. The most recent tragedy in Benghazi is a case in point. To be sure, mistakes and misjudgments were made. As the State Department Accountability Review Board determined, security at the temporary political compound was not adequate. Lessons learned should be vigorously pursued to improve security for diplomats in post-conflict societies in the future. Soldiers must leave their bases in order to take and hold territory on a distant battlefield. In doing so, they put themselves at considerable risk. So do diplomats, who cannot serve the national interest behind high-walled fortresses. Security can always be improved, but it can never be perfect.

The United States will remain a target for the foreseeable future and will experience periodic attacks. When that happens, there will be lessons learned that should be implemented to make us as safe as we can be. Thinking back to 9/11, the most important lesson we can apply going forward is not to overreact.

⁸⁵ Ed O’Keefe, *Senate to Lose Its Star Contrarian: Lieberman*, WASH. POST, Dec. 6, 2012, at A5, http://www.washingtonpost.com/politics/joe-lieberman-has-few-regrets/2012/12/05/bbd27db4-3cb0-11e2-ae43-cf491b837f7b_story.html.