

2010

Foreign Public Opinion and National Security

Dakota S. Rudesill

Follow this and additional works at: <http://open.mitchellhamline.edu/wmlr>

 Part of the [Military, War, and Peace Commons](#), and the [National Security Law Commons](#)

Recommended Citation

Rudesill, Dakota S. (2010) "Foreign Public Opinion and National Security," *William Mitchell Law Review*: Vol. 36: Iss. 5, Article 15.
Available at: <http://open.mitchellhamline.edu/wmlr/vol36/iss5/15>

This Article is brought to you for free and open access by the Law Reviews and Journals at Mitchell Hamline Open Access. It has been accepted for inclusion in William Mitchell Law Review by an authorized administrator of Mitchell Hamline Open Access. For more information, please contact sean.felhofer@mitchellhamline.edu.

© Mitchell Hamline School of Law

FOREIGN PUBLIC OPINION AND NATIONAL SECURITY

Dakota S. Rudesill[†]

I. INTRODUCTION.....	5223
II. NATIONAL SECURITY AND FOREIGN OPINION.....	5225
III. NATIONAL SECURITY AND FOREIGN <i>PUBLIC</i> OPINION.....	5227
IV. BUSH: A “FORWARD STRATEGY OF FREEDOM”	5230
V. OBAMA: “LIVING OUR VALUES”	5236
VI. ASSESSMENT AND CONCLUSION.....	5243

I. INTRODUCTION

An important but insufficiently analyzed theme has run through discussion of a number of the Obama administration’s decisions at the intersection of law and the effort to secure our nation against the threat from al Qaeda and other violent extremists. The administration and others have argued that a variety of initiatives—such as banning “enhanced interrogation techniques,” closing the Guantanamo Bay detention facility, trying Khalid Sheikh Mohammed (KSM) and other accused 9/11 plotters and al Qaeda members in federal civilian courts, and the President’s major address to the Muslim world from Cairo in the summer of 2009 in which he underscored Ameri-

[†] Visiting Assistant Professor of Law, Georgetown University Law Center. Disclosure: I served on the Obama-Biden Presidential Transition Team, and thereafter in the Office of Director of National Intelligence (ODNI) and as ODNI representative to the interagency Detention Policy Task Force established under Executive Order 13493 (January 22, 2009), which analyzed prospective detainee policy issues. The opinions expressed here are solely my own and should not be understood to reflect those of the Transition or the U.S. government. I thank Professor John Radsan of William Mitchell College of Law for his suggestion that I submit this article, Scott Kranz of the *Journal of the National Security Forum* for his patient and excellent work during the editing process, and Rock Cheung, Justin Schardin, and Jon Rosenwasser for their thoughtful comments on drafts. As he has before, James Cailao provided terrific research assistance. Finally, I thank the JNSF editors for stipulating that permission to reproduce this article reflected in the Law Review’s copyright statement includes any academic purpose (whether or not for classroom use) and any public education or policy-related purpose.

ca's commitment to the rule of law¹—will help restore our nation's reputation abroad.² The target audience has never been only the leadership of other countries, however. Administration officials,³ supporters,⁴ and critics⁵ have acknowledged that the opinion of the world, broadly conceived, matters.

Does it? Should it? Is it wimpy and naïve, or is it smart, to regard improving foreign public opinion as a key factor in decisionmaking

1. President Barack Obama, Remarks on a New Beginning, Cairo University, Cairo, Egypt (June 4, 2009) (transcript available at http://www.whitehouse.gov/the_press_office/Remarks-by-the-President-at-Cairo-University-6-04-09/) (“So America will defend itself, respectful of the sovereignty of nations and the rule of law.”).

2. See, e.g., Mark Mazzetti & William Glaberson, *Obama Issues Directive to Shut Down Guantanamo*, N.Y. TIMES, Jan. 21, 2009, <http://www.nytimes.com/2009/01/22/us/politics/22gitmo.html> (quoting Dennis C. Blair, Director of National Intelligence, who said Guantanamo has become “a damaging symbol to the world” and “is a rallying cry for terrorist recruitment”); U.S. Att’y Gen. Eric Holder, Remarks on the Closing of Guantanamo Bay, Berlin, Germany (Apr. 29, 2009) (transcript available at <http://www.justice.gov/ag/speeches/2009/ag-speech-090429.html>) (stating that Guantanamo reflected Bush administration policies that “alienated our allies [and] incited our adversaries,” and use of the enemy combatant term “had become needlessly inflammatory to our allies around the world”).

3. At the one-year mark of her tenure as Secretary of State, Hillary Rodham Clinton noted in remarks to State Department employees that “[w]e’ve broadened our definition of diplomacy to extend beyond government-to-government engagement, to include NGOs, the private sector, and citizens and media in nations across the world.” Chris Scott, *Smart Power – 1 Year Later*, ONE.ORG, Jan. 27, 2010, <http://www.one.org/blog/2010/01/27/smart-power-1-year-later>.

4. See, e.g., Billy Corriher, *Attorney General Is Correct to Insist on Civilian Trial for Abdulmutallab*, JURIST, Feb. 9, 2010, http://jurist.law.pitt.edu/hodline/2010/02/attorney-general-is-correct-to-insist_09.php (“Working within our criminal justice system to try terrorist suspects ensures an American advantage in the struggle for hearts and minds.”); Josh Gerstein, *No Good Options for President Obama in Khalid Sheikh Mohammed Trial*, POLITICO, Mar. 28, 2010, <http://www.politico.com/news/stories/0310/35101.html> (quoting a leading human rights lawyer who noted that “[c]losing Guantanamo while giving up on all the substantive issues that it symbolizes really risks dissipating the goodwill,” and that “[y]ou don’t want a sense to set in around the world that Gitmo simply moved from one location to another”).

5. See, e.g., Richard Cohen, *Obama Administration is Tone-Deaf to Concerns About Terrorism*, WASH. POST, Feb. 2, 2010, <http://www.washingtonpost.com/wp-dyn/content/article/2010/02/01/AR2010020102854.html> (“[W]hat is missing [from the Obama administration’s statements] is a firm recognition that what comes first is not the message sent to America’s critics but the message sent to Americans themselves. . . . But more is at stake here than America’s image abroad—namely the security and peace of mind of Americans in America. . . . The Obama administration . . . seems to have bent over backward to prove to the world it is not the Bush administration and will, almost no matter what, ensure that everyone gets the benefit of American civil liberties.”).

about national security or even a key policy purpose, including where national security intersects with legal policy? What is the record to date?

The idea of foreign sentiments mattering to national security is not as radical, nor as simple, as it may sound. Foreign opinion has been an intensive focus of statecraft for millennia.⁶ What is different is that in our time revolutionary changes in the nature of power globally have accorded unprecedented importance to foreign *public* opinion, specifically foreign popular perceptions of U.S. policy. The George W. Bush and Barack Obama administrations have both understood this and have launched major efforts intended to improve dramatically foreign public perception of the United States. The Bush and Obama foreign public opinion strategies, although significantly different, both transcend traditional public diplomacy. They have also encountered similar challenges associated with tensions between means and ends, the near and long terms, foreign and domestic sentiment, and hope and fear. Foreign public opinion is increasingly becoming a “normal” factor in national security decisionmaking, and accordingly opinion dynamics need to be better understood. Most importantly, at a time of unprecedented domestic politicization of anti-terror policy, the U.S. political culture needs to allow political space for discussion of foreign opinion as a legitimate factor in decisionmaking about national security.

II. NATIONAL SECURITY AND FOREIGN OPINION

National security, at its core, means the protection of the nation’s safety and liberty in physical, political, and economic terms.⁷ And throughout the recorded history of statecraft, states have sought to advance their security by using military, diplomatic, and economic instruments of national power to influence the perceptions of foreign military and political leaders and therefore their conduct.

Examples are legion, but several are illustrative. The ancient Chinese general and father of what we call grand strategy, Sun Tzu,

6. My thoughts here are limited to consideration of foreign opinion in decisionmaking by the political branches of the federal government. This essay does not bear on the debate about whether American courts should consider foreign opinion—legal or popular.

7. I share the view of Judge James E. Baker, that national security means both protection of the nation from attack and protection of our free society as a free society under the rule of law. See JAMES E. BAKER, *IN THE COMMON DEFENSE: NATIONAL SECURITY LAW FOR PERILOUS TIMES* 20–22 (2007).

advised that the able military strategist directs their forces, employs deception, and otherwise shapes the adversary's thinking in such a way that one can win decisively—ideally, without having to fight at all.⁸ At the start of the Peloponnesian War that devastated ancient Greece, Corinthian and Athenian emissaries presented to the Spartan Assembly the cases for and against Spartan intervention on the side of Corinth in its dispute with Athens.⁹ The ancient Romans, for their part, never had enough soldiers to protect all of their vast borders all of the time. Instead, they invested huge sums of money, energy, and time in a combination of fast roads, unmatched legions, expanding fortifications, and persistent diplomacy to convince Persian princes and barbarian tribes alike that fighting Rome would fail strategically. If a warlord started to look wobbly, before the Empire drew the sword, Rome routinely offered trade and cash payments to change minds beyond the Empire's frontier. Many centuries later, Sun Tzu, the Greeks, and Romans would have understood what the great German strategist Carl von Clausewitz was getting at when he famously wrote that war's true aim is influencing the adversary's decisionmaking about whether to continue a contest of arms that is ultimately the continuation of politics by other means.¹⁰

This business of suasion—dissuasion and persuasion—took on existential importance with the advent of the Cold War and the possibility of nuclear war. Throughout the four-decade superpower standoff, Washington and Moscow relentlessly improved and deftly wielded their nuclear, conventional military, and diplomatic capabilities to produce the condition of deterrence: dissuasion of attack on one's interests by means of communicating to the adversary's leadership one's capability and willingness to inflict losses the adversary would find unacceptable relative to the anticipated gain. Meanwhile, through arms sales, diplomatic engagement, and economic aid, the United States and Soviet Union competed for the support of leaders throughout the developing world and for the

8. See SUN TZU, *THE ART OF WAR* 77, 79 (Samuel B. Griffith trans., Oxford Univ. Press 1963) (“To subdue the enemy without fighting is the acme of skill. . . . [Allowing the able general to] take All-under-Heaven intact.”).

9. THUCYDIDES, *HISTORY OF THE PELOPONNESIAN WAR* 1.68–1.78, at 73–82 (Rex Warner trans., Penguin Books 1972); see also DONALD KAGAN, *THE PELOPONNESIAN WAR* 42–43 (2003).

10. CARL VON CLAUSEWITZ, *ON WAR* 69, 75 (Michael Howard & Peter Paret trans., Princeton Univ. Press 1976) (1832) (stating that “war is nothing but the continuation of policy by other means,” and military force is but one “instrument of policy” available “to compel our enemy to do our will” in service of political objectives).

resulting perceived advantage in the zero-sum superpower contest.

To be sure, from antiquity through the Cold War, popular sentiment was far from geopolitically irrelevant. Insurrections bedeviled Roman efforts to subdue Judea and Mesopotamia in the first centuries C.E., nationalist sentiment facilitated unification of Germany and Italy in the nineteenth century, and notions of self-determination helped inspire the third world national liberation movements of the twentieth century. During the late Cold War, popular opposition to repressive communist rule—encouraged by Radio Free Europe and other American public diplomacy efforts—hastened the fall of the Berlin Wall. But far more important as determinants and targets of statecraft were the perceptions of the elites who, by controlling the levers of power, exercised effective monopolies on high-intensity violence and diplomacy on the world stage.

III. NATIONAL SECURITY AND FOREIGN *PUBLIC* OPINION

Taking this long view of history allows us to appreciate that what is revolutionary about our age is not that foreign opinion is important to national security, but rather the unprecedented importance of the opinions of foreign publics. This is a sea change in the nature of geopolitical power, driven by globalization: the integration, expansion, and acceleration of flows of ideas and information, goods and services, and people worldwide thanks to the information technology revolution, falling trade barriers, and the post-Cold War global wave of political liberalization. Together, these trends have given relatively average individuals and groups of them—whether beneficiaries or rejectionists of globalization’s integrating force—unprecedented knowledge of America’s leadership position,¹¹ belief that their opinions are important, and ability to organize and act on those beliefs. Two resulting realities have made the opinions—and therefore winning the *consent*¹²—of two foreign publics particularly important to U.S. national security.

First, gone are the days when foreign states were billiard ball-like

11. Joseph S. Nye, Jr., makes a similar point: “[i]nformation is power, and modern information technology is spreading information more widely than ever before in history.” JOSEPH S. NYE, JR., *SOFT POWER: THE MEANS TO SUCCESS IN WORLD POLITICS* 1 (2004).

12. For two thoughtful discussions of the importance of consent to U.S. grand strategy, see PHILIP BOBBITT, *TERROR AND CONSENT: THE WARS FOR THE TWENTY-FIRST CENTURY* (2008) and JOHN LEWIS GADDIS, *SURPRISE, SECURITY, AND THE AMERICAN EXPERIENCE* 117 (2004) (“[Y]ou can’t sustain hegemony without consent.”).

unitary actors under the direction of their elites. In the eighteenth century, Louis XIV may have been essentially right in geopolitical terms when he asserted “I am the state.”¹³ At the end of the nineteenth century, political power remained concentrated in national capitals dominated by relatively stable elites, and where democracy existed at a minimum half the population usually lacked the right to vote.¹⁴ But by the end of the twentieth century, all of America’s major allies had become dynamic democracies, led by a regularly changing cast of leaders hired and fired by universal suffrage electorates with unprecedented access to information about world affairs and the ability to make their views known. Today, even leaders of quasi-democracies like Russia and non-democracies like China must heed domestic public opinion to an extent totalitarian rulers in Moscow or Beijing half a century ago would not recognize.¹⁵

Because political power worldwide is migrating to the people, and because in our interdependent globalized world the United States cannot meet its security needs without the consent (from cooperation to acquiescence) of foreign governments,¹⁶ in the twenty-first century America has a strategic interest in generating consent for U.S. policies and leadership among the citizenry of our allies and other key states. That is a complex and uncertain task, to be sure. But the silver lining is that globalization has matched our national security interest in favorable opinion of the United States abroad with unprecedented ability to influence foreign popular sentiment via the 24/7 global communications system and its incessant focus on American words and deeds.

A second key dynamic of our globalized world is that, along with political power, the ability to create mass destruction (or at least mass disruption) is devolving to non-state actors. The 9/11 attacks demonstrated that relatively small social networks of globalization

13. JOHN BARTLETT, *FAMILIAR QUOTATIONS* 312 (Emily Morison Beck ed., 15th ed. 1980) (“L’état c’est moi.”).

14. See John Lewis Gaddis, *Grand Strategy in the Second Term*, *FOREIGN AFF.*, Jan.–Feb. 2005, at 14.

15. For example, Chinese public opinion regarding Taiwan is acknowledged by leading scholars as a driver of China’s military buildup. One author writes that it is common perception in China that “if the Communist regime allows Taiwan to declare formal independence without putting up a fight, the outraged public will bring down the regime.” SUSAN L. SHIRK, *CHINA: FRAGILE SUPERPOWER 2* (2007).

16. Joseph S. Nye, Jr., memorably termed it the “paradox of American power” that our nation is the world’s most powerful, but we cannot be secure if we fail to work effectively with other states. See generally JOSEPH S. NYE, JR., *THE PARADOX OF AMERICAN POWER: WHY THE WORLD’S ONLY SUPERPOWER CAN’T GO IT ALONE* (2002).

rejectionists can leverage information technology, transportation systems, and a handful of savvy, civilian-looking operatives to inflict casualties on open societies at a level formerly reserved to states. The Cold War's age of superpowers has been followed by the era of what columnist Thomas Friedman terms the "super-empowered individual."¹⁷ Al Qaeda's super-empowered individuals are particularly deadly because they are suicidal religious fanatics and therefore not deterrable, because they move among and target civilians, and because scientific advances and porous borders hold out real risk of their acquisition of weapons of mass destruction (WMD).

In its report, the 9/11 Commission correctly recommended a "broad political-military strategy" to counter the threat of al Qaeda and its associates, one of attacking terrorists and their organizations, protecting against the attacks they do launch, and preventing the continued growth of Islamic terrorism by engaging in the "struggle of ideas."¹⁸ We can lose the war by failing at any of the three tasks identified by the Commission, but it can only be won in the court of Islamic public opinion, in the hearts and minds of the relatively average Muslims at risk of becoming terrorists or supporting them. We cannot win on offense, by capturing or killing every terrorist or somehow coercing Muslims not to become terrorists. Defensive homeland security efforts will not remove the threat to our allies and interests abroad, and cannot be expected always to succeed at home. True victory requires "draining the swamp"—improving Muslim public opinion such that Muslims worldwide stop becoming or supporting terrorists in sufficient numbers to threaten seriously our country, interests, and allies. In other words, our ultimate objective is to win the consent of the Muslim community, writ large, to the end of what the last administration called the Global War on Terror.

Returning again to the long view of history, it is unreasonable to think that enduring availability of WMD and seething anger at the United States among a small but motivated minority of Muslims are realities that can co-exist over decades without an unacceptable risk of another horrific attack on the United States. To their credit, the Bush and the Obama administrations have grasped this and have combined aggressive non-proliferation efforts with renewed emphasis on public diplomacy focused on Muslims abroad.

17. THOMAS L. FRIEDMAN, *LONGITUDES AND ATTITUDES: EXPLORING THE WORLD AFTER SEPTEMBER 11*, at 6 (2002).

18. NAT'L COMM'N ON TERRORIST ATTACKS UPON THE U.S., *THE 9/11 COMMISSION REPORT* 363, 365–98 (2004) [hereinafter 9/11 COMMISSION].

Traditionally, public diplomacy has involved publicizing, explaining, and arguing for U.S. policy, values, and leadership, via use of official and unofficial media and personal engagement. Unlike government-to-government diplomatic activities, public diplomacy has focused on the individuals and groups (formal and informal) that make up “foreign publics.” After the end of the Cold War, public diplomacy suffered significant reductions in prominence, budget, personnel, and bureaucratic autonomy (due in part to merger of the U.S. Information Agency into the State Department). In the wake of the 9/11 attacks, the 9/11 Commission and the Independent Task Force on Public Diplomacy, sponsored by the Council on Foreign Relations (CFR) and led by former Treasury Secretary Peter G. Peterson, called for revitalized emphasis on public diplomacy and recognition that U.S. image and policy are no longer different.¹⁹ Notably, Peterson suggested that policymakers should be willing to adjust not just the packaging of policy but in some cases its content.²⁰

What is remarkable about the Bush and Obama administrations is that they have placed increased emphasis on public diplomacy and gone well beyond, making dramatic change in Muslim popular sentiment not a packaging or tailoring consideration but a prime *objective* of major presidential initiatives. Though the Obama administration is still young, it is fair to say that both administrations have made improving foreign popular opinion of the United States a strategic priority. Their initiatives have differed greatly, yet both administrations have grappled with fundamentally similar challenges.

IV. BUSH: A “FORWARD STRATEGY OF FREEDOM”

Numerous rationales for the U.S. invasion and occupation of Iraq were offered by the Bush administration, its supporters, and critics. Of these, the most idealistic was that it was execution of a grand strategy focused on democratization, a “forward strategy of freedom.”²¹ What historian John Lewis Gaddis rightly termed “the most

19. See *id.* at 376 (“American foreign policy is part of the message.”); PETER G. PETERSON ET AL., THE COUNCIL ON FOREIGN RELATIONS, FINDING AMERICA’S VOICE: A STRATEGY FOR REINVIGORATING U.S. PUBLIC DIPLOMACY 5 (2003); Peter G. Peterson, *Public Diplomacy and the War on Terrorism*, FOREIGN AFF., Sept.–Oct. 2002, at 74, 75 (“[T]he country must come to understand and accept the basic notion that ‘image problems’ and ‘foreign policy’ are not things apart.”).

20. See Peterson, *Public Diplomacy*, *supra* note 19, at 75 (“[T]he United States will need to modify not simply the implementation of its foreign policies but, in certain cases, the foreign policies themselves.”).

21. Press Release, White House, Fact Sheet: President Bush Calls for a “Forward

sweeping redesign of U.S. grand strategy since the presidency of Franklin D. Roosevelt²² was founded upon a new post-9/11 understanding of Muslim public opinion as the strategic center of gravity in the War on Terror.²³ The argument went like this: repressive states had bred frustration and anger among average Muslims; Islam and anti-Americanism had been used strategically by those states (many of which had been supported by the United States during the Cold War as bulwarks against Soviet influence) to focus public attention away from their foul governance; al Qaeda had leveraged that frustration, a multi-generational fundamentalist trend, and anti-Americanism into a hateful popular movement that in the age of globalization and WMD had to be abated; replacing Saddam Hussein with a democratic government in Iraq would both remove the (wrongly presumed) primary potential source of WMD for terrorists and create an example of a self-governing open society that would spread throughout the Arab and Muslim worlds and drain the cauldron of Muslim frustration that sustained al Qaeda; and finally, starting the democratic dominoes falling with military force (unilateral if necessary) was both necessary and expedient.²⁴ Or, as Bush eloquently put it in his second inaugural address:

We have seen our vulnerability—and we have seen its deepest source. For as long as whole regions of the world simmer in resentment and tyranny—prone to ideologies that feed hatred and excuse murder—violence will gather, and multiply in destructive power, and cross the most defended borders, and raise a mortal threat. There is only one force of history that can break the reign of hatred and resentment, and expose the pretensions of tyrants, and reward the hopes of the decent and tolerant, and that is the force of human freedom. We are led, by events and common sense, to one conclusion: The survival of liberty in our land increasingly

Strategy of Freedom” to Promote Democracy in the Middle East (Nov. 6, 2003), available at <http://georgewbush-whitehouse.archives.gov/news/releases/2003/11/20031106-11.html>; see also THE NATIONAL SECURITY STRATEGY OF THE UNITED STATES OF AMERICA, at ii (2006), available at <http://georgewbush-whitehouse.archives.gov/nsc/nss/2006/nss2006.pdf>.

22. Gaddis, *supra* note 14, at 2.

23. Condoleezza Rice, *Rethinking the National Interest: American Realism for a New World*, FOREIGN AFF., Jul.–Aug. 2008, at 2, 16 (“[T]he fight against terrorism is a kind of global counterinsurgency: the center of gravity is not the enemies we fight but the societies they are trying to radicalize.”).

24. For related discussion, see Gaddis, *supra* note 14, at 12–13.

depends on the success of liberty in other lands. The best hope for peace in our world is the expansion of freedom in all the world. America's vital interests and our deepest beliefs are now one.²⁵

Acknowledging that consent of Muslims is integral to this strategy and that legal norms are integral to just, open societies, the President observed that “[f]reedom, by its nature, must be chosen, and defended by citizens, and sustained by the rule of law and the protection of minorities.”²⁶

Four years after Bush's stirring second inaugural, his administration left office with global popular opinion of the United States generally—and specifically among allied states and Muslims—having fallen far lower than when it entered, and dramatically lower than the immediate post-9/11 period.²⁷ What happened? A complete explanation is beyond the scope of this article. But we can identify as major contributing factors several tensions inherent in national security policy efforts to improve foreign public opinion, ones the Bush administration did not effectively address.

One is that *means can fight ends*. It is one thing—and an important thing—to enhance public diplomacy. It is quite another thing to launch a war with dramatic change to foreign public opinion as one of its primary rationales. In that case, we have crossed from messaging into grand strategy, and that requires aligning large means and large ends. For the Bush administration, its method of getting the democratic dominoes falling across the Middle East was an enormous gamble that polls show dramatically hurt perceptions of the United States abroad.²⁸ As Gaddis observed, the Bush team miscalculated the psychological effect of the war. Saddam's removal “humiliated at least as many Arabs as it pleased.”²⁹ The looting and anarchy that ensued on America's watch left many Muslims with the impression that the United States did not really care about them, after all—and left Bush

25. President George W. Bush, Second Inaugural Address (Jan. 20, 2005) (transcript available at <http://www.npr.org/templates/story/story.php?storyId=4460172>).

26. *Id.*

27. See, e.g., Peter Katzenstein & Jeffrey Legro, *Think Again: America's Image*, FOREIGN POL'Y, Oct. 5, 2009, http://www.foreignpolicy.com/articles/2009/10/05/think_again_americas_image.

28. “From nearly universal sympathy in the weeks after September 11, Americans within a year and a half found their country widely regarded as an international pariah.” Gaddis, *supra* note 14, at 6.

29. *Id.* at 10.

with an unattractive choice between further worsening Muslim opinion of America by abandoning Iraq to chaos and civil war, or defying local popular opposition to the U.S. presence and extending and expanding the U.S. deployment to keep order.

The failure to secure Iraq after the invasion was due in part to lack of sufficient troops, and that stemmed in large part from the lack of support from longstanding U.S. allies—a reality evident when the Bush administration went to war despite objections from France, Germany, and other allies, and consequently without explicit legal authorization of force by the U.N. Security Council. A host of reasons for opposition in allied capitals can be identified. Yet many—from the Bush administration’s rhetorical emphasis on unilateralism dating to its first days in office, to its categorical rejection of the Kyoto climate treaty and other key elements of the diplomatic agenda of U.S. allies in early 2001, to the Bush administration’s bewildering rejection of offers by NATO allies of help in Afghanistan immediately after 9/11³⁰ and Manichean with-us-or-against-us rhetoric—have common root in apparent lack of understanding by the Bush team of America’s strategic interest in favorable opinion among the populations of U.S. allies. Ironically, the Bush administration so thoroughly internalized the importance of Muslim public opinion that it redesigned U.S. grand strategy around bringing democracy to the Middle East, yet did not seem aware that popular disapproval of the United States in *existing* allied democracies might be reflected in the behavior of their elected leaders. The failure of the parliament of NATO ally Turkey to approve the transit of American ground forces through that country to invade Iraq from the north similarly reflected popular opposition to American policy in an existing Muslim democracy. Ultimately, the alienating way in which the Bush administration went to war in Iraq at least in the near term has prevented that means of advancing the “forward strategy of freedom” from serving its strategic end.

Supporters of the Bush administration could be expected to argue that its rhetorical emphasis on unilateralism and rejection of the Kyoto Accord and other globally popular initiatives reflected an agenda that the American electoral system had endorsed in the contested 2000 election. To the extent that is true, it points up a second key tension that afflicts policy intended to improve perceptions of the United States abroad: *domestic opinion versus foreign opinion.*

30. See *id.* at 5–6.

Ambassador Christopher Ross, special coordinator for public diplomacy at the State Department in the Bush administration, observed that thanks to satellite TV and the Internet “all public messages can, and will, reach multiple publics.”³¹ The same can be said of policies. One could also add that, to whatever extent the Bush administration’s heavy message emphasis on war was intended for domestic consumption, it pitted its domestic political interests against the U.S. foreign policy interest in combating the widespread perception among Muslims abroad that—as al Qaeda alleges—America is at war with Islam.

Those sympathetic with Bush’s rejection of much of the international community’s agenda in 2001 and martial rhetoric post-9/11 might object that these were necessary steps, and that some number of otherwise unrelated U.S. Government activities will always be in tension with foreign public opinion improvement efforts. The latter is true as a general proposition, and another way of saying that part of governing is setting and coordinating priorities. A more salient point with particular resonance regarding global opinion improvement efforts is that there is *tension between the near and long term, between expediency and overarching policy goals*.

It is a reality of globalization that western notions of the rule of law, democracy, and human rights have gone global. United States efforts to improve America’s standing therefore naturally emphasize America’s association with law and justice values. But a values-based campaign that targets foreign sentiment—whether via traditional public diplomacy or via regime change by military force—is inevitably a long-term project, one easily frustrated by the sheer volume and pace of the 24/7 news cycle and its relentless search for sensational images and the new hot issue of the day.³² Expedient actions that suggest hypocrisy when set against that values campaign become instantly attractive and enduringly damaging stories.

The Bush administration’s effort to improve Muslim opinion of the United States in the years and decades to come was undermined by coverage of the extra-judicial detention of several hundred Muslim terrorist suspects at Guantanamo Bay and by revelation of the use of enhanced interrogation techniques on Muslim detainees at “black sites.”³³ Against intense criticism at home and abroad on legal, policy,

31. Christopher Ross, *Pillars of Public Diplomacy: Grappling with International Public Opinion*, 25 HARV. INT’L REV. 22, 24 (Summer 2003).

32. Ross makes a similar point. *See id.* at 27.

33. Dennis C. Blair, Director of National Intelligence, has described Guantana-

and moral grounds, Bush argued to “our people, and the world” that these were lawful, necessary, and limited steps to incapacitate hardened terrorists and gather critical intelligence to prevent further attacks.³⁴ Coming, as the Guantanamo and torture debates did, in the years following the abuse of detainees at Abu Ghraib (which the Bush administration condemned) only made it harder for the Bush team to argue that its agenda was actually intended to *promote* human rights, expand the rule of law, and benefit Muslims.³⁵

Infusing each of these tensions—means versus ends, foreign versus domestic opinion, and the near term versus the long—is a fourth we can call the *fear factor*. It is easier to scare than to inspire, especially for a state whose enormous power will tend to cause anxiety and resentment, and particularly when that powerful state is at war. Alexander Hamilton was thinking of this aspect of the human psyche when he observed that “Safety from external danger is the most powerful director of national conduct.”³⁶ He may not have been surprised to observe that, within a few years of the advent of the Global War on Terror, majorities of Muslims abroad and the electorates of traditional allies regarded not al Qaeda but the United States as a threat to world peace.³⁷ As Richard Armitage, Deputy Secretary of State in Bush’s first term, commented to the 9/11 Commission, the United States was “exporting our fears and our anger” far better than its positive vision for the world.³⁸

If the Iraq adventure ultimately produces the dramatic improvement in Muslim popular opinion and falling democratic dominoes envisioned by the Bush grand strategy, history may give less credit to the Bush administration’s management of the tensions discussed

mo as an asset to terrorist recruiters. See Mazzetti & Glaberson, *supra* note 2.

34. See Press Release, White House, President Discusses Creation of Military Commissions to Try Suspected Terrorists (Sept. 6, 2006), available at <http://georgewbush-whitehouse.archives.gov/news/releases/2006/09/20060906-3.html>. For an example of contemporary coverage, see *Bush Admits to CIA Secret Prisons*, BBC NEWS, Sept. 7, 2006, <http://news.bbc.co.uk/2/hi/americas/5321606.stm>.

35. For Bush’s condemnation of the Abu Ghraib abuses and emphasis on the benevolent intent of the U.S. intervention in Iraq, see Press Release, White House, Global Message from President Bush’s Interviews with Al Arabiya and Alhurra (May 6, 2004), available at <http://georgewbush-whitehouse.archives.gov/news/releases/2004/05/20040506-1.html>.

36. THE FEDERALIST NO. 8, at 45 (Alexander Hamilton).

37. See PEW GLOBAL ATTITUDES PROJECT, AMERICA’S IMAGE SLIPS, BUT ALLIES SHARE U.S. CONCERNS OVER IRAN, HAMAS (June 13, 2006), <http://pewglobal.org/reports/pdf/252.pdf>.

38. 9/11 COMMISSION, *supra* note 18, at 377.

here, and more to the American military and its response to the central importance of Muslim public opinion. After his party lost control of Congress in 2006—in significant measure because of domestic displeasure with the course of the Iraq war—and the bipartisan Iraq Study Group recommended a major reduction in American involvement in Iraq,³⁹ Bush made the largest course correction of his tenure in the form of a “surge” of troops to Iraq and embrace of the revised counter-insurgency (COIN) doctrine developed by General David Petraeus.⁴⁰ Implementation of the COIN strategy in Iraq during Petraeus’s tenure as four-star Combatant Commander of the U.S. Central Command has seen success few expected, and a modified version is now being applied in Afghanistan.⁴¹

The COIN doctrine proceeds from the basic principle that at the strategic level war has political rather than purely military aims, and achieving those aims is a matter of changing opinions. In a COIN campaign, both the perceptions of the insurgent adversary and the populace on which it depends for recruits and support are in play. The key to victory lies in providing security and development and thereby winning popular hearts and minds better than the insurgents. The current commander in Afghanistan, General Stanley McChrystal, described his COIN campaign as “not a physical war in terms of how many people you kill or how much ground you capture, how many bridges you blow up. This is all in the minds of the participants.”⁴²

V. OBAMA: “LIVING OUR VALUES”

In the effort to win the hearts and minds of foreign Muslim and allied publics, Barack Obama’s identity is itself an historic asset: as a minority American of a black Kenyan father and a white Kansan mother, raised in part in Muslim-majority Indonesia, he can credibly

39. JAMES A. BAKER III ET AL., *THE IRAQ STUDY GROUP REPORT*, at xi (2006).

40. See DEP’T OF ARMY, *FIELD MANUAL 3-24: COUNTERINSURGENCY* (2006).

41. See President Barack Obama, *Remarks on the Way Forward in Afghanistan and Pakistan* (Dec. 1, 2009) (transcript available at <http://www.whitehouse.gov/the-press-office/remarks-president-address-nation-way-forward-afghanistan-and-pakistan>) (emphasizing that additional U.S. troops will not only attack the enemy but also secure the population and be supplemented by civilian efforts).

42. See Thom Shanker, *Top U.S. Commander Sees Progress in Afghanistan*, N.Y. TIMES, Feb. 5, 2010, at A10. The Chairman of the Joint Chiefs of Staff, Admiral Michael Mullen, similarly observed that “the battlefield isn’t necessarily a field anymore. It’s in the minds of the people.” Thom Shanker, *Joint Chiefs Chairman Readjusts Principles on Use of Force*, N.Y. TIMES, Mar. 4, 2010, at A16.

speak not just as an American but as a global citizen. Although the Obama administration is just over a year old and as of this writing has not yet released its national security strategy, its statements and actions to date suggest a focused strategy that recognizes globalization's elevation of the importance of the opinion of foreign publics—and particularly Muslim and allied publics—in national security.⁴³

Official statements and media coverage of the Obama campaign and administration to date suggest a five-part strategy, one that focuses to an unprecedented degree on public diplomacy, combined with several legal policy changes.

One element was reflected in then-candidate Obama's address to the people of Berlin in July 2008 as "a fellow citizen of the world" concerned about "the view that America is part of what has gone wrong in our world, rather than a force to help make it right": personal presidential outreach to global opinion generally and reaffirmation of American commitment to cooperation and universal values.⁴⁴ Obama's inaugural address was addressed not only to Americans but "to all the other peoples and governments who are watching today, from the grandest capitals to the small village where my father was born"—average residents of the planet who may "know that America is a friend of each nation, and every man, woman and child who seeks a future of peace and dignity."⁴⁵ The State Department under Secretary Hillary Rodham Clinton has meanwhile "broadened our definition of diplomacy to extend beyond government-to-government engagement, to include NGOs, the private sector, and citizens and media in nations across the world."⁴⁶

Second, the new administration has undertaken high-profile outreach particularly to Muslims, in what President Obama in his May 2009 National Archives speech described as "an era when an extremist ideology threatens our people, and technology gives a handful of terrorists the potential to do us great harm."⁴⁷ To combat the

43. For an example of widespread recognition of this as a major focus of the Obama administration, see Scott Shane, *American's Arrest Stirs Fears that Wars Radicalize U.S. Muslims*, N.Y. TIMES, Mar. 13, 2010, at A4 ("President Obama took office last year determined to combat the notion that the United States is hostile to Islam.").

44. Barack Obama, *A World that Stands As One*, Berlin, Germany (July 24, 2008) (transcript available at <http://www.observer.com/2008/arts-culture/obamas-berlin-speech>).

45. President Barack Obama, *Inaugural Address* (Jan. 21, 2009) (transcript available at <http://www.whitehouse.gov/blog/inaugural-address>).

46. See Scott, *supra* note 3.

47. President Barack Obama, *Remarks on National Security*, National Archives, Washington, D.C. (May 21, 2009) (transcript available at

erroneous perception that the United States is at war with Islam, the administration has dropped the term “Global War on Terror.” And in a major speech to the Muslim world in summer 2009 he began with the Islamic greeting *al-salamu alaykum* Obama explained that

I’ve come here to Cairo to seek a new beginning between the United States and Muslims around the world, one based on mutual interest and mutual respect, and one based upon the truth that America and Islam are not exclusive and need not be in competition. Instead, they overlap, and share common principles—principles of justice and progress; tolerance and the dignity of all human beings.⁴⁸

Obama also taped two annual video messages addressed to the people of Iran during the annual celebration of the holiday Nowruz, extending an offer of dialogue regarding Iran’s nuclear program and emphasizing shared values.⁴⁹ Whether or not Obama’s outreach to Iranian citizens pays dividends in changed policy in Tehran, there is no question that the new administration has succeeded in changing the focus and tone of presidential statements. In today’s changed geopolitical environment, that is no small matter.

A third evident thrust appears targeted at both allied and Muslim foreign constituencies: emphasis on “living our values” as “our best national security asset,”⁵⁰ and attendant legal-related policy moves. Obama in his inaugural address pledged that the United States will “reject as false the choice between our safety and our ideals,”⁵¹ and four months later at the National Archives he emphasized that “I believe with every fiber of my being that in the long run we also cannot keep this country safe unless we enlist the power of our most fundamental values.”⁵² Accordingly, the President issued executive orders to close within a year the Guantanamo Bay detention facility and ban Bush-era enhanced interrogation techniques (EITs),⁵³ which

http://www.whitehouse.gov/the_press_office/Remarks-by-the-President-On-National-Security-5-21-09).

48. Obama Cairo Speech, *supra* note 1. During the campaign Obama pledged to make such a major speech in a Muslim nation early in his presidency.

49. See President Barack Obama, Message to the Iranian People (Mar. 19, 2009) (video message available at <http://www.whitehouse.gov/video/The-Presidents-Message-to-the-Iranian-People>); President Barack Obama, Nowruz Message (Mar. 20, 2010) (video message available at <http://www.whitehouse.gov/blog/2010/03/19/president-obamas-nowruz-message>).

50. Obama Archives Speech, *supra* note 47.

51. Obama Inaugural Address, *supra* note 45.

52. Obama Archives Speech, *supra* note 47.

53. Exec. Order No. 13,491, 74 Fed. Reg. 4,893 (Jan. 22, 2009); Exec. Order No.

Obama stated “serve as a recruitment tool for terrorists, and increase the will of our enemies to fight us, while decreasing the will of others to work with America.”⁵⁴ In the interest of transparency and accountability, the administration also pledged to release documents from the Bush years concerning detainee abuse.⁵⁵ Additionally, the Justice Department announced it would prosecute KSM and other accused 9/11 conspirators in civilian federal court in New York City rather than before military commissions.⁵⁶

These moves have been defended on a number of grounds and no doubt are believed by the administration to be in the interest of justice, whatever their other merits. But we cannot but note the President’s explicit linking of values and national security, and that each of these moves are well within the realm of discretionary legal policy. With the arguable exception of the EITs ban, none of these decisions were required as a matter of law. All could reasonably be expected to improve regard for the United States among foreign Muslim and allied publics. And, regarding KSM and the other 9/11 defendants, the prosecutorial decision is, in the words of the *United States Attorneys’ Manual*, “a policy judgment [about] the fundamental interests of society.”⁵⁷ Provided that the Government has probable cause that a crime has been committed, the Supreme Court has recognized that enforcement priorities are a legitimate factor in charging decisions and that courts should generally avoid questioning motives.⁵⁸

A fourth element of the Obama administration’s apparent strate-

13,492, 74 Fed. Reg. 4,897 (Jan. 22, 2009). Obama also noted these moves in his Cairo speech. Obama Cairo Speech, *supra* note 1.

54. Obama Archives Speech, *supra* note 47.

55. Press Release, White House, Statement of President Barack Obama on Release of OLC Memos (Apr. 16, 2009), *available at* http://www.whitehouse.gov/the_press_office/statement-of-president-barack-obama-on-release-of-olc-memos/.

56. Press Release, U.S. Dep’t of Justice, Attorney General Announces Forum Decisions for Guantanamo Detainees (Nov. 13, 2009), *available at* <http://www.justice.gov/ag/speeches/2009/ag-speech-091113.html>.

57. U.S. DEP’T OF JUSTICE, UNITED STATES ATTORNEYS’ MANUAL § 9-27.001 (1997). Grounds for commencing prosecution include federal interest and the viability of prosecution in another jurisdiction. *Id.* § 9-27.220(A). Whether “substantial federal interest” would be served by prosecution depends on “federal law enforcement priorities” set by the Justice Department and the “nature and seriousness of the offense,” a factor which properly embraces the “potential impact of the offense on the community” and “what the public attitude is toward prosecution under the circumstances of the case.” *Id.* § 9-27.230(A), (B) (2).

58. *See* *Wayte v. United States*, 470 U.S. 598, 607 (1985).

gy is accelerated drawdown of the internationally unpopular Iraq deployment. Meanwhile, the administration has refocused military efforts on reversing the Taliban's resurgence and securing Afghanistan. As with the legal policy decisions, one can take at face value the Obama administration's belief that these moves are by their own merits right, while noting that they are consistent with a broad strategy to improve foreign popular perception of the United States. The same may be said of administration moves on climate change, nuclear threats, and other prominent global issues.

Finally, the administration has sought to reduce the relative emphasis on military or "hard power" in U.S. foreign policy and maximize the utility of other "soft power"-enhancing instruments of national power, particularly diplomacy and development aid.⁵⁹ In this effort the Obama administration has found a strong ally in its first and President Bush's last Defense Secretary, Robert Gates, who in 2007 explained that "smart power" integration of military and non-military efforts is necessary because "military success is not sufficient to win" in Iraq and Afghanistan.⁶⁰ "[E]conomic development, institution-building and the rule of law, promoting internal reconciliation, good governance, providing basic services to the people, training and equipping indigenous military and police forces, strategic communications, and more—these, along with security, are essential ingredients for long-term success."⁶¹

In short, the Obama agenda is broadly responsive to the call of the 9/11 Commission for a consent-building initiative that will "offer an example of moral leadership in the world, committed to treat people humanely, abide by the rule of law, and be generous and caring to our neighbors."⁶²

After the sharp declines in America's standing during the Bush years, opinion of the United States improved dramatically among foreign publics after Obama's election.⁶³ This "Obama effect" has faded over time, however, a trend to which each of the overarching

59. Joseph S. Nye, Jr., coined the phrase "soft power" and defines it as the ability to make others "want what we want." See NYE, *SOFT POWER*, *supra* note 11, at 2.

60. Robert M. Gates, Sec'y of Def., Landon Lecture at Kan. State Univ., Manhattan, Kans. (Nov. 26, 2007) (transcript available at <http://www.defense.gov/speeches/speech.aspx?speechid=1199>). Earlier that month, the Center for Strategic and International Studies (CSIS) released an influential report on the subject of "smart power." See RICHARD L. ARMITAGE & JOSEPH S. NYE, JR., *CSIS COMMISSION ON SMART POWER: A SMARTER, MORE SECURE AMERICA* (2007).

61. Gates, *supra* note 60.

62. 9/11 COMMISSION, *supra* note 18, at 376.

63. See Katzenstein & Legro, *supra* note 27.

tensions in efforts to improve foreign popular opinion identified above likely have contributed.

Despite the success of the COIN-based surge in Iraq and the Obama administration's acceleration of the U.S. withdrawal from Iraq, Obama in Afghanistan has inherited *means-versus-ends* tensions similar to those that dogged Bush's grand strategy once the United States was responsible for keeping order in Iraq. The Obama administration's broad effort to improve foreign Muslim opinion would likely be harmed if the security situation in Afghanistan were to worsen, but military efforts—particularly the administration's deployment of 30,000 more troops—to protect the populace and defeat the resurgent Taliban are unpopular among Muslims, who hear constantly from al Qaeda that Obama is no different from Bush.⁶⁴ Meanwhile, the new administration's need for additional troops from NATO countries in which the Afghanistan war is unpopular creates friction with its goal of improving perceptions of the United States among allied electorates.

So far, the Obama administration has found these tensions more manageable than did the Bush team. There is growing evidence that al Qaeda's murder of so many non-combatants and Muslims may be damaging its standing,⁶⁵ a welcome counter-balance to the potential of the U.S. surge into Afghanistan to drive Muslims into our adversaries' arms. And Obama has gotten additional pledges of troops from allies.⁶⁶

The most difficult strategic tension for the Obama administration in its first fifteen months has been that between *domestic and foreign opinion*. In Berlin last summer, Attorney General Holder explained that "Guantanamo has come to represent a time and an approach that we want to put behind us: a disregard for our centuries-long

64. See Shane, *supra* note 43.

65. See Fawaz A. Gerges, *Al-Qaida Today: A Movement at the Crossroads*, OPENDEMOCRACY, May 14, 2009, <http://www.opendemocracy.net/article/al-qaida-today-the-fate-of-a-movement> (discussing polling data demonstrating a "loss of public support for al-Qaida's wholesale attacks on civilians" and that "confidence in bin Laden has fallen in most Muslim countries in recent years," but also noting that al Qaeda "does appear to have strengthened its foothold along Pakistan's tribal border with Afghanistan thanks to its connection with the Taliban in both countries").

66. See Vanessa Mock, *Obama's Nato Allies to Send 7,000 Troops*, THE INDEPENDENT, Dec. 5, 2009, <http://www.independent.co.uk/news/world/politics/obamas-nato-allies-to-send-7000-troops-1834629.html>. *But see* Craig Whitlock, *NATO Struggling to Fulfill Commitments for More Troops in Afghanistan*, WASH. POST, Jan. 27, 2010, <http://www.washingtonpost.com/wp-dyn/content/article/2010/01/26/AR2010012603698.html>.

respect for the rule of law and a go-it alone approach that alienated our allies, incited our adversaries and ultimately weakened our fight against terrorism.”⁶⁷ In various forms, this view has been widely held among opinion leaders in Washington for several years. However, in 2009 opponents of closing Guantanamo and the Justice Department’s intent to try KSM and other accused 9/11 conspirators in federal civilian court mobilized domestic sentiment against these legal policy moves by alleging, *inter alia*, that they will increase the risk of another attack inside the United States.⁶⁸ Some critics have directly assailed the foreign public opinion improvement rationale for these and other moves. For example, one prominent columnist heatedly opined that “what comes first is not the message sent to America’s critics but the message sent to Americans themselves. . . . [M]ore is at stake here than America’s image abroad—namely the security and peace of mind of Americans in America.”⁶⁹ Other critics have complained of what they view as the apologetic nature of the President’s speeches to foreign audiences, in which the President has acknowledged that America’s track record has not always been perfect.⁷⁰ To date, Congress has denied funding to close Guantanamo,⁷¹ and the case for considering foreign public opinion in U.S. policy has not yet been made effectively.

Another controversy during Obama’s first year—regarding release of photographs of detainees taken by U.S. personnel between 2002 and 2004 reportedly showing abuse—points up a third tension also faced by the Bush administration: the tension between *long term policy objectives and near term necessities*. The new administration promised unprecedented transparency as part of its long-range effort to restore faith at home and abroad in the commitment of the United

67. Holder, *supra* note 2.

68. For an example of media coverage, see Julian E. Barnes & Christi Parsons, *White House Reconsiders Holding Terror Trials in Civilian Court*, L.A. TIMES, Mar. 5, 2010, www.latimes.com/news/la-na-terror-trial6-2010mar06,0,7195116.story.

69. Cohen, *supra* note 5.

70. See, e.g., Nile Gardiner & Morgan Roach, The Heritage Foundation, *Barack Obama’s Top 10 Apologies* (2009), <http://www.heritage.org/Research/Reports/2009/06/Barack-Obamas-Top-10-Apologies-How-the-President-Has-Humiliated-a-Superpower> (discussing ten “apologies” by Obama when addressing a foreign audience).

71. See U.S. Senate, Roll Call Vote 196, 111th Congress, 1st Session, http://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=111&session=1&vote=00196; David M. Herszenhorn, *Funds to Close Guantanamo Denied*, N.Y. TIMES, May 20, 2009, <http://www.nytimes.com/2009/05/21/us/politics/21detain.html>.

States to universal human values and the rule of law. Accordingly, there was support among many in Washington to release the photos, just as the administration had decided to release memos prepared by the Justice Department's Office of Legal Counsel on domestic use of the military and other topics.⁷² As the President explained at the National Archives in May 2009, however, the long-term interest was over-ridden by a near-term foreign opinion risk: "releasing these photos would inflame anti-American opinion" and endanger the "nearly 200,000 Americans who are serving in harm's way."⁷³

When viewed together with domestic alarm about reported potential relocation of Guantanamo detainees to super-maximum security prisons in the United States for detention or to New York for trial, the public debate about the detainee photos reminds us that the *fear factor* that frustrated the Bush administration's strategy abroad can erode favorable domestic opinion, as well. No major presidential initiative can succeed without domestic political support. The reality that voters are more readily scared than inspired therefore can be added to the long list of reasons why grand strategies generally do not work—and never succeed without grand commitments of time, energy, and political capital.

VI. ASSESSMENT AND CONCLUSION

The challenges faced by the Bush and Obama administrations in operationalizing their strategies for improving foreign popular perceptions of the United States have differed in their specifics, but in their common underlying tensions suggest several prospective points.

First, on *ends and means*, developing favorable opinion of the United States among foreign publics—and especially among Muslims and allied state citizenries—is likely to stay with us as a major goal of U.S. foreign policy. The democratization of high-intensity violence and of political power discussed above is likely only to continue, and neither the Bush nor the Obama administrations have yet seemed to find a perfect policy response, much less a simple or easy one.

72. See, e.g., Memorandum from John C. Yoo, Deputy Assistant Att'y Gen., Office of Legal Counsel, to Daniel J. Bryant, Assistant Att'y Gen., Office of Legislative Affairs, Applicability of 18 U.S.C. § 4001 (a) to Military Detention of United States Citizens (June 27, 2002), available at <http://www.justice.gov/opa/documents/memodetentionuscitizens06272002.pdf>.

73. Obama Archives speech, *supra* note 47. This long-term-versus-near-term, policy-versus-practicality point also has resonance in the public discussion both here and abroad about whether the Obama administration has continued too many Bush-era policies.

The urgency of the threat from al Qaeda's super-empowered individuals and our enduring need for active cooperation from our democratic allies suggests that administrations for the foreseeable future will not only be continuing aggressive public diplomacy but will be formulating what we can call "foreign public opinion policy." They will be grappling with how to align policy ends and means, how to weigh foreign popular sentiment effects against other interests. As with any national security policy decision process, these tasks will be intensely context-specific, will involve trade-offs and risk balancing, and will require constant monitoring and reassessment as our understanding of the fact patterns and foreign dynamics evolve. In short, the U.S. policy community will come to understand foreign public opinion as a normal, legitimate national security consideration and focus, one that is sometimes of paramount importance, sometimes secondary, but often relevant and worthy of evaluation.

In view of the policy tension between *domestic and foreign popular opinion*, we also need a public dialogue about the importance of foreign public opinion to American national security, one that ensures there is political space for elected leaders to consider global opinion a legitimate decisionmaking factor or focus. Americans have come to understand that it is not enough to have powerful offensive military and defensive homeland security capabilities—we need to work aggressively to prevent rogue states and terrorists from acquiring WMD. Americans also understand that it is not enough to have domestic markets—we need them abroad, as well. Similarly, our political culture needs to understand that it is not enough to consider the perceptions of foreign leaders (friendly and unfriendly) regarding our nation's reputation. It is also wise national security policy to consider improving foreign public opinion as a factor in and even objective of national security policy.

As part of this discussion, the nation could benefit from a reasoned dialogue about the appropriate role of foreign public opinion in legal policy. Popular opinion abroad clearly matters to national security policy, and national security is a legitimate factor in legal policy decisions such as bringing criminal charges.⁷⁴ However, there

74. See U.S. DEP'T OF JUSTICE, *supra* note 57, § 9-27.230(A)(1)–(2), (B)(1)–(2). The "substantial federal interest" factor implicitly embraces national security. The importance of national security, and the role of senior administration national security officials, in the 9/11 charging decisions was the subject of an exchange between Senator Jeff Sessions, Ranking Member of the Senate Judiciary Committee, and Attorney General Eric Holder, at a recent Judiciary Committee hearing. See *Oversight of the U.S. Department of Justice: Hearing of the S. Judiciary Comm.*, 111th Cong.

is natural skepticism generally even about domestic popular sentiment influencing legal policy. Recognizing foreign public opinion as a legitimate national security consideration in legal policy therefore could benefit from some focused, sober thought and discussion.

On the *long term versus the near*, two closing points. One is that we need to understand better foreign public opinion dynamics over the long term. So many factors are in play, and the volume, diversity, and speed of foreign opinion are so rapidly growing, that modeling the potential impact of U.S. policy is a task that is only becoming more complex and worthy of study.⁷⁵

The second point is an uncomfortable but important truth: our nation's leaders must be prepared to do things that are unpopular abroad (and/or unpopular at home), even intensely unpopular over the long run, if another national interest demands it in the near term and the two interests cannot be reconciled. Employing nuclear weapons, if necessary to protect a vital national interest, is but one example. Even where the United States is not taking action that squarely defies foreign public sentiment, a nation as affluent and powerful as ours will inevitably engender resentment by those less fortunate. It is therefore unrealistic to think that the United States can be universally liked, much less loved, by everyone worldwide, no matter how hard we try. The *fear factor* in politics and human psychology makes this so.

However, it is realistic to develop strategies that align means and ends, have sufficient domestic support, and balance long-term goals with near-term necessities in a way that expand to Muslim nations like Afghanistan, Pakistan, and Yemen the status quo in most other countries today: that we are not so hated that average people in significant numbers join or support terrorist organizations bent on our destruction. It is also realistic to think we can expand the reach of the status quo in many democratic states today: that the United States is not so disliked that their leaders cannot cooperate with America on major matters without risking electoral defeat. After millennia in which states wielded military, diplomatic, and economic instruments of national power to change the minds of foreign elites,

(Apr. 14 2010) (on file with author).

⁷⁵. Among the many questions deserving of study, here is one: Is it significant that the U.S. Government's relationship with foreign publics is not transactional in the way that state-to-state diplomacy is transactional and leaves foreign diplomats with a sense of having secured something from the United States? Might this be part of the reason why after a few years Muslims generally did not seem to give the West much credit for protecting a Muslim majority in the 1999 Kosovo war?

the task of U.S. policymakers today is to foster consent for U.S. leadership abroad more broadly. The experiences of the Bush and Obama administrations teach that this is surely not an easy nor easily understood task, but it is important and will be on every White House agenda from here forward.

PART IV: STUDENT NOTE

The *Journal of the National Security Forum* held a nationwide student note competition. The following note was selected as the winner.
