

Editors' Preface

“National security” has become a powerful watchword for politicians, lawyers, policy makers, and academics alike. Invocation of the “national security” label typically aims to signal that the issue under discussion is of the highest priority for public policy. And yet, when we, as students of national security law, proposed the creation of a journal dedicated to national security, one of the first questions posed to us was: How do you define national security? What is it, exactly?

In the middle of the twentieth century, the National Security Council stated that its mission was to “preserve the United States as a free nation with our fundamental institutions and values intact.” In 2010, President Barack Obama said that national security describes the United States’ ability to leverage national attributes through military might, economic competitiveness, moral leadership, and global engagement. This is an expanded, and expansive, characterization; its reach extends to a broad range of social and political institutions. The threats to our national interests are numerous and complex, and use of the term “national security” often clouds the degree to which various fields of expertise may be implicated in the effort to defend the nation against the threats we face. The term applies to military strategy and intelligence collection as well as to climate change and global financial regulation. It covers issues as old-fashioned as piracy and territorial sovereignty and as high-tech as cybersecurity and robotic warfare.

Ultimately, for purposes of this journal, we decided not to decide what the term national security means to us. After all, one of the driving motivations behind establishing the *Harvard National Security Journal* has been to provide a forum for discussion on the full array of issues — to facilitate the weaving together of the many threads that make up national security so as to advance discussion and help influence practice. Moreover, as it responds to current events and anticipates rapidly evolving threats, the subject matter of this journal demands a measure of agility. NSJ must be equal to the challenge: it must be flexible and accessible, not tethered to any fixed preconceptions.

This, our first volume, aims to reflect the diverse and changing nature of the national security field, and in particular its myriad legal dimensions. If there is a unified theme among the articles and essays that follow, it is an examination of how national security *practice* — whether through law enforcement, military engagement, or other means — responds to changes in law and policy, and how, in turn, law and policy must engage with the changing realities of threats to our nation.

With the changes wrought by the post-September 11 threat environment, national security law and policy have changed in turn — substantially so (too substantially some might suggest). Now, nine years later, the threat environment continues to raise new challenges. In *FISA's Significant Purpose Requirement and the Government's Ability to Protect National Security*, Scott Glick argues that the current threat matrix demands a more flexible degree of domestic surveillance authority than that permitted under Congress's most recent reauthorization of the Foreign Intelligence Surveillance Act. Underscoring the need for transnational harmonization of norms and strong state responsibility in light of the current geopolitical landscape, Chris Jenks and Eric Jenson contend that Italy violated its legal obligations under the NATO Status of Forces Agreement and the European Convention on Human Rights when it prosecuted CIA officers *in absentia* for the kidnapping of a suspected terrorist on Italian soil. The normative arguments in these pieces help to advance legal debate and contribute to our collective understanding of the ways national security can and should be protected under law.

It is no secret that the wars in Afghanistan and Iraq, as well as the broader (and decidedly nebulous) “War on Terror,” have challenged our understanding of warfare and the extent to which emerging features of armed conflict are amenable to conceptualization under traditional legal paradigms. Michael Schmitt's article, *The Interpretive Guidance on the Notion of Direct Participation in Hostilities: A Critical Analysis*, examines the recent guidance issued by the International Committee of the Red Cross, concluding that the document, while valuable, fails to strike the appropriate balance between military necessity and humanity — the foundational principles of international humanitarian law (IHL). Laurie Blank and Amos Guiora, in *Teaching an Old Dog New Tricks: Operationalizing the Law of Armed Conflict in New Warfare*, seek to clarify, in light of new operational realities, the traditional framework of IHL for commanders on the ground in armed combat.

As conflict in the name of security rages on in more traditional domains, new and developing threats have begun to test our existing legal regimes. In *Cybersecurity and National Policy*, Dan Geer translates a distinct conceptualization of cybersecurity into recommendations for social and policy shifts that reflect the vexing security challenges posed by computer network communications. The NSJ Symposium, “Drone Warfare: New Robotics & Targeted Killings,” featured speakers from a range of perspectives and backgrounds who collectively explored the ways in which technical advancements in the targeting of one’s enemy are affecting the practice of warfare and its legal implications. Our “Forum” hosts pieces from Mary Cummings and Brett McGurk that reflect and draw upon the expertise of the Symposium’s participants. Similarly attuned to emerging developments in counterterrorism, and in particular the tension between law enforcement and military approaches, is a piece by Professors Gabriella Blum and Philip Heymann entitled *Law and Policy of Targeted Killing*, derived from their recent book, *Laws, Outlaws and Terrorists: Lessons Learned from the War on Terrorism*.

Volume 1 was rounded out by a constant stream of commentary and analysis from NSJ members who brought their own diverse perspectives to bear on developments in national security. The timely contributions of these dedicated students provided a fuller contextual backdrop for the journal’s first volume, helping to make this collection of scholarship more than the sum of its parts.

This year we were fortunate to have the support of a great many individuals in addressing the challenges of launching a new journal. For the success of Volume 1, we owe a great thanks to the members of our Advisory Board, Dean Martha Minow, the staff in the Journals Office at Harvard Law School, and most importantly the student editors on our staff whose hard work made this possible. Next year, NSJ will face novel challenges under talented new leadership. The field of national security law and policy will continue to evolve, and we are confident that the journal will evolve in step. With high hopes for the future of the journal, we look forward to keeping in touch with its development in the years to come, and we are grateful for the opportunity to have been a part of it thus far.

- Robert & Siders