Introduction

Every generation of national security leaders faces challenge. Some challenges are serial in nature crossing from administration to administration and falling within existing rubrics of response, like containment during the Cold War. Other challenges are new or evolving, like those presented by terrorism, climate degradation, public health, and cybersecurity. Still other challenges are sudden and existential, potentially threatening the physical existence of the state, or its fundamental nature, like the Civil War and the War of 1812.

Perspective is helpful, as there is a tendency for each new generation of specialists, and each new administration, to feel as if they are facing challenges like no others before. The words of the Doolittle Committee in 1954 come to mind: “It is now clear that we are facing an implacable enemy whose avowed objective is world domination by whatever means at whatever cost. There are no rules in such a game. Hitherto acceptable norms of human conduct do not apply.” The classic and calm retort by George Marshall when confronted with a new crisis in a different context comes to mind: “I have seen worse.” At the same time it is hard to take issue with the thought that the War of 1812, the Civil War, and World War II presented national security challenges unlike others.
With this perspective in mind, there is no question the next administration, like those before, will face a seemingly daunting list of foreseeable and ongoing challenges, including: the Civil War in Syria; rivalry with Russia and China, involving every domain from the South China Sea to cyber space; the proliferation of WMD weapons and corresponding risks with Iran and North Korea; the impact of failed or failing states, like Yemen, Venezuela, Nigeria, and Mali; and, international terrorism, domestic terrorism, and something in-between involving home-grown terrorism, actualized or inspired from overseas. The next administration will also face less well understood, but nevertheless foreseeable challenges, like those presented by potentially pandemic diseases like Ebola, Zika, and the H1N1 flu; the growing impact of climate change; increasingly serious cyber-attacks and network intrusions, to say nothing of the economic changes, challenges, and opportunities ahead.

One can debate whether this breadth of national security concerns is unprecedented. One thing that does seem new is the environment in which the U.S. Government now operates. Whether manifest in the approval ratings of presidential candidates, or in the public’s response to the Snowden leaks, or as ironically summarized in the news photograph of the man thanking firefighters for rescuing him from a forest fire in a t-shirt emblazoned with the phrase, “Less Government = More Freedom,”
government today operates in an environment of skepticism, mistrust, doubt, and even anger. The mission and role of government may well be misunderstood and underappreciated by many Americans, perhaps a majority of Americans. It may also be true that the focus and nature of government will continue to evolve in the face of new public and security priorities.

The Standing Committee on Law and National Security is committed to educating the Bar and the public on the importance of the rule of law in protecting U.S. national security, reflected in our freedoms and liberty and in our physical security. The Committee was founded in 1962 by, among others, then ABA President and later Supreme Court Justice Lewis Powell. Since that time, the Committee and its companion Advisory Committee, have conducted studies, written reports, and held conferences and working groups on the most pressing issues of the day at the intersection of law, policy, and national security. It is the tradition and practice of the Committee to address not just the substance of the law, but also the process by which decisions are made and the manner in which the government is structured to address national security. The Committee’s work is also focused on the values embodied in U.S. constitutional law and process. That is because the goal of the Committee is not just to educate the public and the Bar, but to help prepare and
inform policymakers and lawyers as they undertake to meet the national security challenges of the day.

In light of the present and prospective challenges, the Standing Committee asked and considered two questions.

Is the government properly organized to meet these challenges?

And, are there ways the Government might better structure its operations or process to better meet these challenges?

We call this project: Governance, Process, and Structure, or GPS in short, because its intent is to offer a better bureaucratic compass. The project is not addressed to the substance of the U.S. response, but to the USG’s capacity to respond. It is also raising two recurring questions, or complaints about the process of government.

Is it too centralized in the White House and at the NSC, undercutting departmental expertise and capacity and delaying decision? and

Is it effective and timely in providing a “whole-of-government” approach to security?

In response, we invited the members of our Committees to consider these questions in the context of their specialized fields of practice, study, and knowledge. We further invited our members to do so in the form of brief papers that might quickly orient a transition team, NSC staff, or legislator, to the core organizational and structural issues, appreciate the necessary background, and identify possible solutions and answers.
As is our tradition, we have sought to frame the issues and options, without ultimately making a recommendation. This approach reflects our Committee’s longstanding bipartisan composition and non-partisan approach, allowing members to fully participate without being tied to or associated with particular views or outcomes. Toward this end, Committee members were invited to comment on the attached paper, along with the others, without attribution, or if they felt compelled, with a written addendum. Likewise, a Steering Committee of the willing, volunteered to edit and review each paper for consistency in tone, format, and style. (However, the views are those alone of the identified author.) Our goal, and the Committee’s goal is to have the next administration make informed and purposeful decisions, not necessarily reach a particular result.

The first of these papers is addressed to the National Security Council (NSC), NSC process, and the NSC staff. It is our intention that as other papers are prepared we will release them as well. We start with the NSC because the NSC system has been and is likely to remain the principal mechanism by which the President makes national security decisions and addresses national security crises. In addition, the composition and organization of the NSC system should be among the first set of national security decisions the President-elect and President elect’s team should make during the transition. This process
will inform the substantive decisions to come. Moreover, we can expect our adversaries and enemies to test the NSC, the NSC process, and the NSC staff at the outset of the next administration. The President and the President’s staff must be ready for these tests, just as they must be ready to implement the next President’s policy initiatives.

Signed:

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