

2010

# Responses to the Ten Questions

Richard L. Russell

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

Russell, Richard L. (2010) "Responses to the Ten Questions," *William Mitchell Law Review*: Vol. 36: Iss. 5, Article 13.  
Available at: <http://open.mitchellhamline.edu/wmlr/vol36/iss5/13>

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](mailto:sean.felhofer@mitchellhamline.edu).

© Mitchell Hamline School of Law

## RESPONSES TO THE TEN QUESTIONS

Richard L. Russell†

2. WOULD IT BE LEGAL FOR THE OBAMA ADMINISTRATION TO LAUNCH A PREDATOR STRIKE ON OSAMA BIN LADEN IF HE HAS BEEN TRACKED TO A HOUSE ON THE OUTSKIRTS OF KARACHI, PAKISTAN?..... 5171
3. DID MEMBERS OF THE JUSTICE DEPARTMENT’S OFFICE OF LEGAL COUNSEL COMMIT MALPRACTICE IN 2002 BY ADVISING THAT THE GENEVA CONVENTIONS DID NOT APPLY TO AL QAEDA AND THE TALIBAN? ..... 5172
8. DOES AL QAEDA POSE AN EXISTENTIAL THREAT TO THE UNITED STATES? ..... 5173
9. WHAT SHOULD THE UNITED STATES DO IF IT CONFIRMS THAT IRAN HAS NUCLEAR WEAPONS? ..... 5174
10. WHEN WILL THE UNITED STATES CEASE TO BE THE WORLD’S NUMBER-ONE POWER? ..... 5174

2. WOULD IT BE LEGAL FOR THE OBAMA ADMINISTRATION TO LAUNCH A PREDATOR STRIKE ON OSAMA BIN LADEN IF HE HAS BEEN TRACKED TO A HOUSE ON THE OUTSKIRTS OF KARACHI, PAKISTAN?

I suspect that the legality of any such future strike—after the fact—would be vigorously debated for years by legal scholars. Looking at the question from the lens of a strategist, I would judge that such a strike would be justified and warranted. Bin Laden is, after all, the figurehead of al Qaeda which brutally attacked the United States and killed some 3,000 individuals on our home soil. He and his lieutenants today still publicly and loudly call for the killing of

---

† Professor of National Security Affairs, National Defense University, Adjunct Professor of Security Studies, Georgetown University, and author of *SHARPENING STRATEGIC INTELLIGENCE: WHY THE CIA GETS IT WRONG AND WHAT NEEDS TO BE DONE TO GET IT RIGHT* (2007).

Americans and our security partners around the world. A Predator strike in Karachi to kill bin Laden clearly would be a justifiable act of American self-defense. The United States working with Pakistani counterparts, moreover, has already set a precedent for mounting Predator strikes in Karachi by years of similar strikes in Pakistan along the border with Afghanistan. That said, the political consequences and risks of a strike in Karachi would be high, especially if it caused substantial civilian casualties, what we euphemistically call “collateral damage.” Karachi is a political center of gravity in Pakistan, and the United States would have to worry that a Predator strike there could cause a massive public Pakistani backlash. The Pakistani public would be angered by the perceived violation of Pakistani sovereignty and would take to the streets to threaten the stability of the regime in Islamabad and its relations with Washington.

3. DID MEMBERS OF THE JUSTICE DEPARTMENT’S OFFICE OF LEGAL COUNSEL COMMIT MALPRACTICE IN 2002 BY ADVISING THAT THE GENEVA CONVENTIONS DID NOT APPLY TO AL QAEDA AND THE TALIBAN?

Whether the advice constituted malpractice is beyond my expertise to say, but I can say that the advice was politically and militarily foolhardy. As for the politics, an important political aim for American national security is to diffuse widespread and deep animosity against the United States in the Arab Middle East which provides a rich recruitment grounds for al Qaeda. The harsh treatment of al Qaeda captives contrary to the Geneva Conventions only served to reinforce, rather than to diffuse, negative and even hostile Arab public opinion. The United States sought tactical intelligence gains with harsh interrogation techniques only to lose the more important strategic competition to politically delegitimize al Qaeda and its militant Islamic ideology. As for the military aspects, adhering to the Geneva Conventions with al Qaeda and Taliban captives even though they are not soldiers of a nation-state would have made good, common sense. The United States could have used regular Red Cross visits in the immediate aftermath of 9/11 to show humane treatment of captives—as we now belatedly do—to publicly pressure al Qaeda and the Taliban to behave likewise with American and other foreign captives of theirs. Although there is only a slim chance that al Qaeda will reciprocate, our adherence to the Geneva Conventions nevertheless is an important component of our attempts to protect our military personnel and nationals captured by al Qaeda and the Taliban. In

the end, the Bush administration would have been strategically smarter—as well as more ethically consistent with American democratic ideals—had it extended Geneva Conventions protection to al Qaeda and Taliban from the get-go.

8. DOES AL QAEDA POSE AN EXISTENTIAL THREAT TO THE UNITED STATES?

Al Qaeda clearly is a grave threat to the United States as evident from the bloodbath it inflicted on us on 9/11. Often overlooked today though is that before 9/11, Hezbollah—which operates hand-in-hand with Iran—had been the transnational insurgent force with the most American blood on its hands stemming back to its car bombings and hostage takings in Lebanon during the 1980s. While American and international action have seriously disrupted the bin Laden and al Qaeda old guard leadership, it persists and is betting on robustly reconstituting along with the resurgent Taliban fortunes in Afghanistan. Al Qaeda, moreover, much like a metastasizing cancer, is now an ideological umbrella under which younger militant Islamists in Europe, northern Africa, the Middle East, and Asia gain militant Islamic legitimacy critical for recruiting and supporting new waves of jihadists.

While al Qaeda has lacked the means over the past decade to be an “existential” threat to the United States, it might acquire more formidable tools in the years ahead. Al Qaeda has its eyes on nuclear weapons and could most plausibly get them from Pakistani nuclear stockpiles. A worrisome danger is that militant Islamists in Pakistan’s military could help divert Pakistani nuclear weapons into al Qaeda hands in the not too distant future. Another grave danger is that the Taliban could one day roll back into power in Afghanistan and bring al Qaeda along. The Taliban and al Qaeda could then sponsor a robust cross-border insurgency to topple the regime in Islamabad to take full control of Pakistan’s nuclear weapons stockpiles. One has to shudder at the prospect of the catastrophic damage al Qaeda could inflict on the United States if someday it detonated a handful of Pakistani nuclear warheads in major American cities like New York, Boston, Washington, Los Angeles, and Miami. Such a scenario unfortunately is decidedly in the realm of possibility and one well worth keeping in mind as the United States and NATO debate their political, military, and economic efforts in Afghanistan.

9. WHAT SHOULD THE UNITED STATES DO IF IT CONFIRMS THAT  
IRAN HAS NUCLEAR WEAPONS?

My bet is that Iran will eventually acquire nuclear weapons. The United States is fully committed in Iraq and Afghanistan and has little appetite to undertake the military operations needed to severely disrupt Iran's nuclear infrastructure. Although the Israelis who more acutely fear Iranian nuclear weapons give their geographic vulnerabilities might lash out and militarily strike Iran, they lack the muscle of American military which would be necessary to knock back Iran's nuclear program for years to buy the international community more time. Iran's movement toward nuclear weapons already is building pressure on other Middle Eastern states to follow suit with Egypt, Saudi Arabia, and the smaller Arab Gulf states all now publicly calling for investment in nuclear power, no doubt to send a not too thinly veiled threat to Tehran. The grave worry is that an Iran armed with nuclear weapons would feel immune to American military retaliation if Tehran launches even more aggressive efforts to spread its influence through Hezbollah surrogates throughout the Middle East to include in Saudi Arabia, Palestinian territories, Lebanon, the small Arab Gulf states, and Iraq.

10. WHEN WILL THE UNITED STATES CEASE TO BE THE WORLD'S  
NUMBER-ONE POWER?

This question is often a preoccupation for political scientists and some historians. I myself have very little confidence in man's ability to predict the future. What I can say is that the United States would be wise to take some pointers on statecraft from the late George F. Kennan, distinguished diplomat, historian, and intellectual architect of the American Cold War policy of containment of the Soviet Union. Kennan recommended prudent principles for American policy, which I believe are still applicable for our security challenges today. He argued that first and foremost the United States needs to succeed at home as a society, polity, and economy if it is to have hefty power in world affairs. In our international affairs, Kennan urged Americans to hold ourselves accountable to our moral standards and to be an exemplar for other nation-states to emulate should they so choose, but not to try to dictate our ways to the world. He also stressed the importance of managing international balances of power with alliances and coalitions and setting policy goals within the reach of our national power. Kennan argued as early as 1947 that if we did

2010]

TEN QUESTIONS: RUSSELL

5175

these things with confidence, persistence, and patience, we would eventually prevail in our struggle with the Soviet Union, which he thought was bound to fail given its own ideological and economic inefficiencies. If we were to take Kennan's principles to heart and apply them to our security challenges stemming from militant Islamic extremism and taking shape among nation-states in the Middle East and Asia, my guess is that the United States would have a much longer run as the number-one power on the world stage.

\*\*\*

## **PART II: ARTICLE**

**The following section contains an article by Edward P. Richards, III, which examines the Centers for Disease Control and Prevention's national response plan for a smallpox bioterrorism attack.**



\*\*\*