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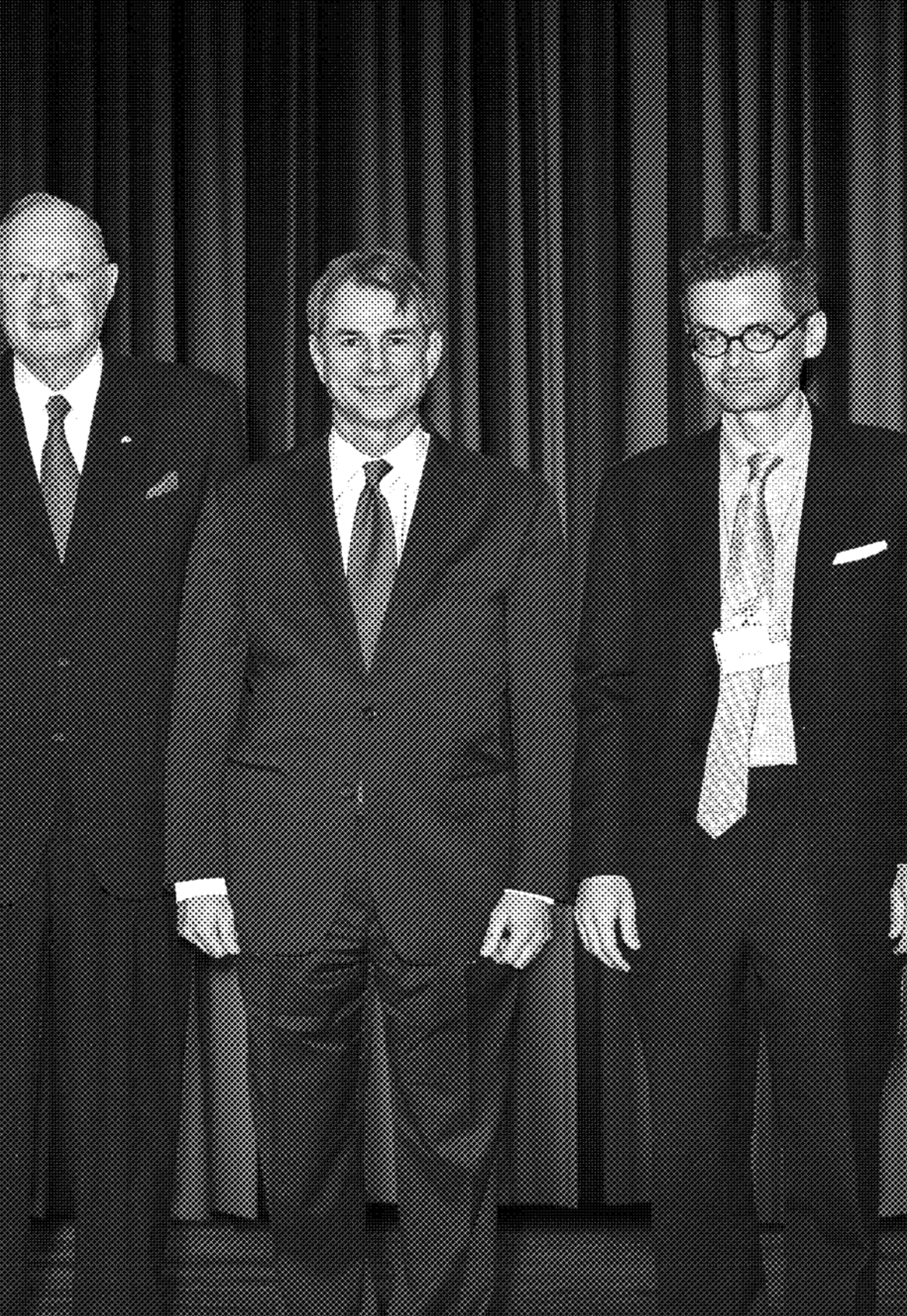


THE SIXTH ANNUAL LLOYD N. CUTLER LECTURE ON THE RULE OF LAW

LAW AND THE USE OF FORCE: CHALLENGES FOR THE NEXT PRESIDENT

LECTURE DELIVERED BY JOHN B. BELLINGER III





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**IT WILL BE CRITICAL
FOR PRESIDENT TRUMP
TO LEARN AND FOLLOW
DOMESTIC AND
INTERNATIONAL LAW
GOVERNING THE USE
OF FORCE.**

”

John Bellinger

delivered by **John B. Bellinger III**

former Legal Adviser

US Department of State and National Security Council;

Partner

Arnold & Porter LLP

Opening remarks by **The Honorable Anthony M. Kennedy**

Associate Justice

Supreme Court of the United States

Introduced and chaired by **David Rennie**

Washington Bureau Chief and Lexington columnist

The Economist

Concluding remarks by **Stephen L. Salyer**

President and Chief Executive Officer

Salzburg Global Seminar

Kindly hosted at **the US Supreme Court**

This lecture was delivered in honor of **Lloyd N. Cutler**,
held in **Washington, DC, USA, November 20, 2016**

This lecture was held by **Salzburg Global Seminar**
under the auspices of the **Lloyd N. Cutler Center for the Rule of Law.**

THIS LECTURE WAS HELD IN MEMORY OF

LLOYD N. CUTLER

Lloyd N. Cutler (1917–2005), who has been described as the last “super lawyer,” had a brilliant legal career. A founder of the Washington, DC law firm, Wilmer Cutler & Pickering, and White House Counsel to two US presidents, he fulfilled the calling of a public servant over his lifetime as he was repeatedly nominated for, and accepted, appointments in Democratic and Republican administrations and a vast array of charitable, educational and legal organizations that he led and supported.

He was a long-time champion of Salzburg Global Seminar, serving as chair of its Board of Directors for a decade. Believing passionately in the role that law plays in nation building, and in the ability of the law and legal experts to contribute solutions to the world’s most pressing challenges, Lloyd Cutler was able to attract to Salzburg Global Seminar high court judges from around the world. In addition, he was personally committed to ensuring that promising young international lawyers, academics, and jurists had access at Schloss Leopoldskron to a rich variety of judicial traditions, international legal institutions and the international legal community at large.

Today, Salzburg Global remembers him not only for his intellectual brilliance, but for his commitment to advancing respect for the law as a tool for resolving the tough issues of our times.

Lloyd Cutler’s influence on people and institutions is felt in the United States and around the world. In his tradition and in his name, Salzburg Global Seminar continues to advance the Rule of Law. With mission, focus and global connections equal to Lloyd Cutler’s interests and concerns, and with the support of his friends and colleagues worldwide, his commitment to the Rule of Law will endure.



INTRODUCTION TO THE SPEAKERS

LECTURER AND SPEAKERS

John B. Bellinger III is a partner in the international and national security law practices of Arnold & Porter in Washington, DC, and Adjunct Senior Fellow in International and National Security Law at the Council on Foreign Relations.

A globally known expert on international law, he served as the Legal Adviser for the Department of State from 2005-2009 under Secretary of State Condoleezza Rice, and previously as Senior Associate Counsel to the President and Legal Adviser to the National Security Council at the White House from 2001-2005. He previously served as Counsel for National Security Matters in the Criminal Division of the Department of Justice and as Special Assistant to Director of Central Intelligence William Webster. He is a member and former chair of the Secretary of State's Advisory Committee on International Law and a member and former chair of the US "National Group" that nominates judges to the International Court of Justice.

He writes, speaks, and testifies regularly on international and national security law issues. He holds a J.D. from Harvard Law School, an M.A. in Foreign Affairs from the University of Virginia, and an A.B. from the Woodrow Wilson School of Public and International Affairs at Princeton University.

Justice Anthony Kennedy was nominated by President Ronald Reagan to the Supreme Court of the United States, he was confirmed in 1988, and has served as Associate Justice since that time. He was appointed to the Court of Appeals for the Ninth Circuit by President Gerald Ford in 1975. Justice Kennedy was educated at Stanford, the London School of Economics, and the Harvard Law School. He holds an A.B. with great distinction from Stanford University and an LL.B. *cum laude* from the Harvard Law School.

David Rennie is the Washington Bureau Chief and Lexington columnist at *The Economist*. He was previously British political editor and author of the Bagehot column, and before that EU correspondent and author of the Charlemagne column, based in Brussels. From 1998 to 2007 he was a foreign correspondent in Sydney, Beijing, Washington and Brussels for the *Daily Telegraph* of London.

Stephen L. Salyer became the eighth president of Salzburg Global Seminar in 2005. Under his leadership, Salzburg Global's program has become more policy-oriented, including long-term initiatives to promote the rule of law across diverse societies, to foster global economic growth and stability, and to create civic media for social change. Salyer was president of Public Radio International from 1988 to 2005 and oversaw its expansion to become a force for innovation in public radio. He co-founded in 1999 a nationwide web service company for public television and radio stations, Public Interactive, LLC. He was senior vice-president of WNET/Thirteen, the PBS flagship program producer, and associate-in-charge of Public Issues at The Population Council in New York City. He is a graduate of Davidson College and Harvard University's Kennedy School of Government. He spent a Thomas J. Watson Fellowship year investigating population and development policy in Sub-Saharan Africa, and was a Root-Tilden Scholar at New York University School of Law.

EXECUTIVE SUMMARY

LAW AND THE USE OF FORCE: CHALLENGES FOR THE NEXT PRESIDENT

On November 8, 2016, businessman Donald J. Trump was elected president of the United States – the first to be elected without prior government or military experience. On November 20, 200 guests gathered at the US Supreme Court for the Sixth Annual Lloyd N. Cutler Lecture, where John B. Bellinger, III, former Legal Adviser to the Department of State during the George W. Bush administration, offered advice for the incoming President.

“It will be critical for President Trump, Vice President Pence, and their senior advisers to learn and follow domestic and international law governing the use of force. And if there’s one message I have tonight, that is it,” declared Bellinger, now a partner in the international and national security law practices of Arnold & Porter in Washington, DC, and Adjunct Senior Fellow in International and National Security Law at the Council on Foreign Relations.

The lecture was held by Salzburg Global Seminar under the auspices of the Lloyd N. Cutler Center for the Rule of Law. The lecture series was started by Salzburg Global Seminar in 2009 to honor the life and work of Lloyd N. Cutler, former White House Counsel to Presidents Carter and Clinton and long-time Chair of Salzburg Global’s Board of Directors.

Bellinger’s timely lecture was titled “Law and the Use of Force: Challenges for the Next President” and was followed by a question and answer session moderated by David Rennie, Washington bureau chief at *The Economist*. This year’s lecture was hosted by Associate Justice and Salzburg Global

Faculty member, Anthony Kennedy who delivered the opening remarks. In his speech, Justice Kennedy reflected on Salzburg Global's history and importance in rebuilding post-war Europe intellectual capacity by spreading American values of democracy and the rule of law. Justice Kennedy also congratulated Salzburg Global for its ability to nurture young talents and to give them the opportunity to engage in political and civic discourse.

Reflecting on the US' involvement in military conflicts over the past 15 years, Bellinger provided a thorough analysis of domestic and international legal rules governing the use of military force by the executive branch. Bellinger particularly reflected on the Bush and Obama presidencies and looked ahead to the legal challenges for the next President, offering some clear recommendations.

As Bellinger explained, while Article II of The Constitution provides the President with broad but not unlimited powers as Commander-in-Chief to use military force for self-defense purposes or national security issues, most Presidents prefer to also seek congressional approval through the so-called "Authorization to Use Military Force" (AUMF). The President should also adhere to the War Powers Resolution of 1973, which requires the President to report the use of US armed forces and to terminate their deployment within 60 days unless authorized differently by Congress. However, due to recent political gridlock, the last AUMF passed by Congress dates back to October 2002 when Congress authorized military intervention in Iraq. In order to gain authorization for the use of force against groups loosely associated to Al-Qaeda that did not exist at the time of 9/11 (such as Al-Shabaab in Somalia, Boko Haram in Nigeria and ISIS in Syria and Iraq), recent administrations have resorted to stretching an AUMF passed right after the attacks of 2001.

International laws can be even more challenging than domestic rules: The United Nations (UN) Charter, and the Geneva Conventions, both adopted after World War II, were intended to apply to conflicts between nation

states. The UN Charter does not allow the use of force against terrorists in another country unless authorized by the UN Security Council or the state itself consents. Therefore, the US' use of force against terrorist suspects in countries that have not consented to such interventions, like the raid in Pakistan that killed Osama Bin-Laden, is very controversial; legal approval from Congress does not necessarily stop the US' actions from being in violation of international law. As Bellinger remarked, domestic and international laws are outdated and need to be updated to better reflect the realities of modern warfare against non-state actors.

Given his isolationist, non-interventionist remarks during the recent Presidential campaign, Bellinger expects that Trump will be less likely to order the use of force than President Obama has (or Hillary Clinton would have) been, Bellinger believes Trump could still be confronted with a situation that would require intervention.

Bellinger presented the following recommendation for the President-elect: From a domestic law perspective and with respect to the conflicts with al-Qaeda and ISIS, President Trump should push Congress to enact a new authorization in early 2017 that would revise and update the 2001 AUMF and legally approve the use of force against ISIS. President Trump should also ask Congress to revise and update the War Powers Resolution that has been increasingly ignored by recent Presidents. Bellinger also advised the new administration to refrain from ignoring international law. If the US violates international law, it might empower other countries such as Russia and China to do the same and alienate international allies in Europe, Canada and Australia. The Trump administration should work together with other countries to update the international legal framework regarding the use of force and develop new rules for the detention of non-state actors.

Bellinger concluded his lecture with the following words: "We must hope that President Trump will select advisers as wise as Lloyd Cutler to give him sound legal advice – and that he will listen to their advice."

In the Q&A section of the evening, David Rennie and John Bellinger discussed the lack of interest of the US Congress and even the American people to question the legitimacy of the use of force under international law compared to other countries, for example in Europe. The conversation, which also included questions from the audience, touched upon the legal framework for preventing or executing cyberattacks, the use of torture and the legitimacy of civilian casualties.

The lecture concluded with closing remarks delivered by Stephen Salyer, President of Salzburg Global Seminar.

For further analysis of the lecture, read David Rennie's Lexington column in *The Economist*: "Donald Trump and the dark side" www.economist.com/news/united-states/21710804-barack-obama-has-bequeathed-his-successor-fragile-legal-rules-fighting-terrorism-donald



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LAW AND THE USE OF FORCE: CHALLENGES FOR THE NEXT PRESIDENT

— **John Bellinger**, *Partner, National Security and Public International Law Practices, Arnold & Porter; and former Legal Advisor, US Department of State and National Security, George W. Bush Administration*

Justice Kennedy, thank you very much for having us here. It really is an honor. It's extraordinary to be facing this way rather than the other way, and I think a good deal less terrifying. And, Stephen [Salyer, Salzburg Global President], thank you very much to you and the Board for having me. Heather [Haaga, Chair of the Salzburg Global Board of Directors], thank you very much. It's really a great privilege to give this lecture. And I want to thank all of you all for coming this evening. To Lloyd Cutler's two daughters in particular, it's wonderful to have you here.

I was very fortunate to be able to work closely with Lloyd Cutler when I was an associate at Wilmer Cutler & Pickering in the early 1990s. I had recently left the CIA where I had been a young special assistant to Judge William Webster, when he was the CIA director, sent me on to Lloyd. Lloyd recruited me to work on some of his most interesting government-related projects. Among other assignments, I helped Lloyd to represent three different former Republican Secretaries of State with their legal problems – Henry Kissinger, George Schultz, James Baker – all still alive, and each of whom would become the subject of one of these various Washington,

congressional, or independent counsel investigations.

My fellow associates were rather envious that I had come out of government and I was immediately as a young lawyer representing former Republican Secretaries of State. But they did say to me: “What future is this to this practice?”

And I am glad that I was able to say that they were wrong.

In 1994, Lloyd abandoned me. He was recruited by President Clinton to the White House, and he said at the time: “In government as in other aspects of life, trust is the coin of the realm. And I pledge myself to do what I can to assure that trust is maintained.” That is vintage Lloyd Cutler, and it’s an important credo for all of us today.

Now, when I moved to the White House myself in 2001, I continued to seek Lloyd’s counsel. I would invite him over periodically to the White House to pick his brain. And, as you know, he was particularly interested in intelligence and international matters, and he always gave me very good advice.

I was amused to read later in *Newsweek* that some of my more conservative White House colleagues were appalled that I would regularly meet with a pillar of the Democratic establishment to seek his advice... But I didn’t think of Lloyd as a partisan Democrat, but rather simply as a wise man.

Now, when I worked with Lloyd I knew he was the chairman of the Salzburg Seminar, but I didn’t know what the Seminar was. I have a vague recollection of writing to them, maybe even the days before email, to ask how I could participate in the Salzburg Seminar. And I have an equally vague reaction that I received a response from them saying don’t call us, we will call you.

Whether that recollection is accurate or not, I am very glad that the Seminar did call me some years later.

And it’s been my great pleasure to participate in several Salzburg Seminars, both when I was legal adviser and since.

Many people here tonight, like Justice Kennedy, have enjoyed the stimulating discussions both inside the Schloss and on that wonderful terrace over the lake where, as most of you know, *The Sound of Music* was

filmed. It's also been my great privilege to speak each year to the Salzburg Cutler Fellows, a number of whom are here tonight, and thank you all for coming. One of the reasons that I'm particularly honored to give this lecture is really for the next generation. It's all about you all. That's why we're here. Thank you all for coming. This is all very important work. These are rising international lawyers from our top law schools who are interested in international law.

Because this is the Lloyd Cutler Rule of Law Lecture, and we have just elected a new President, I've decided to speak tonight about some of the most important legal rules applicable to the next President, the laws that govern his use of military force. These were issues that I was extensively involved in when I was the legal advisor to the National Security Council, and then later as legal advisor to the Secretary of State. And these were laws that were also of great interest to Lloyd Cutler personally.

One of the best-known moments of his tenure as counsel to the President was the advice that he gave in 1980 that the War Powers Resolution did not require the President to consult with Congress before ordering US armed forces to attempt the rescue of the American hostages in Iran. Lloyd wrote and spoke about this incident on a number of occasions, recalling that the operation was so secret that he was told to consult no one, and that he did his own research in the White House library.

Now, the United States has now been in a continuous state of armed conflict for over 15 years straight. Presidents Bush and Obama have ordered the use of military force in Afghanistan, Pakistan, Yemen, Iraq, Syria, Somalia, and Libya, and perhaps other countries as well. President-Elect Trump will become Commander-in-Chief when the United States continues to use military force in all of these countries, and he may find it necessary to order the use of force in other countries over the next four years.

It will be critical for President Trump, Vice President Pence, and their

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senior advisers to learn and follow domestic and international law governing the use of force. And if there's one message I have tonight, that is it.

Many previous Presidents, even those with government experience as state governors, such as Presidents Reagan, Clinton, and George W. Bush, were initially unfamiliar with these rules that limit their actions as Commander-in-Chief and Head of State. They had to be schooled by their advisors and to learn the applicable law.

During Mr. Trump's presidential campaign, I and many others were extremely troubled by his statements advocating counterterrorism policies that would violate domestic and international law, statements that were reiterated today by his Vice President. Such statements may have appealed to some voters during a campaign, but they must be strongly repudiated by a President of the United States.

Now, any new President is likely to find it frustrating to try to comply with domestic and especially international laws governing the use of force.

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Some of the key governing laws' rules are old and were not designed for contemporary problems. The War Powers Resolution was enacted by Congress in 1973 during the Vietnam War. The UN Charter was drafted in 1945 after World War II. The Geneva Conventions were adopted in 1949 and were intended to apply to conflicts between states.

Even the two protocols to the Geneva Conventions negotiated in the 1970s after the Vietnam War were not negotiated with modern terrorists in mind.

But even if these rules are dated, a President is still required by the Constitution to comply with domestic law and with international law as a matter of international obligation, and for reasons of reciprocity and practicality.

This evening I want to discuss the applicable rules regarding the use of force and how the last two Presidents have tried to comply with them. I want to draw some lessons from my own service in the Bush Administration, and then and with some recommendations for President-Elect Trump and

his advisors. Now, this is obviously a very broad subject area, and I plan just to focus really on the rules that govern the initiation of hostilities rather than the specific rules that govern the conduct of hostilities. So, let me just quickly remind you of the domestic law rules that the President must operate under.

Under Article II of The Constitution, the President has broad, but not unlimited, powers as Commander-in-Chief and Chief Executive to authorize the use of military force in self-defense or to serve important national security interests. Now, most

Presidents prefer also to seek congressional authorization in the form of an authorization to use military force, or an AUMF, if possible. But Congress can be reluctant to vote to authorize the use of force, and the President must often push hard for congressional authorization. Congress has not voted a new AUMF since authorizing the use of force against Iraq in October 2002.

Presidents must also take into account the War Powers Resolution of 1973, which purports to require the President to report the introduction of US armed forces into hostilities or combat situations, and to terminate any use of force covered by the resolution within 60 days unless Congress issues a specific authorization. And I say “purports,” as most of you know, because most Presidents have concluded that at least some parts of the War Powers Resolution are unconstitutional, although all Presidents have tried to act consistent with the Resolution’s provisions.

So, that’s the applicable domestic law in broad brush, but executive branch lawyers also usually want to ensure that any US use of military force in another country is consistent with international law. But international law rules can be even more challenging than domestic rules.

The UN Charter prohibits the use of force against or in another country unless authorized by the Security Council or the state itself consents. Article 51 of the Charter, however, recognizes that every state has an inherent right

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to use force in collective or individual self-defense in response to an armed attack. Most international lawyers agree that this includes a right to use force in anticipatory self-defense to prevent an imminent attack, although lawyers debate the definition of “imminence.”

These are the only bases for the use of force recognized in the UN Charter. The UN Charter does not specifically permit a state to intervene in another country for a humanitarian purpose. The United Kingdom

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and a few other countries have asserted that international law permits the use of force to prevent a humanitarian catastrophe in limited circumstances, but the United States and the majority of countries do not recognize a right of humanitarian intervention.

So, with that background, let me quickly survey the difficulties that the last two Presidents have had trying to comply with those rules in US military actions against al-Qaeda and the Islamic State as well as in Iraq and Libya. President Trump will face the same challenges.

Let me start with the conflict with al-Qaeda. As you know President Bush and Obama have been using substantial military force against the Taliban, al-Qaeda, and associated groups for 15 years since October 2001. As domestic law authority, they’ve relied on the authorization to use military force passed by Congress in September 2001, which I helped to draft when I was in the White House. That authorizes the use of force against persons or organizations that committed the 9/11 attacks. This has been the authority for a vast amount of counterterrorism action – the invasion of Afghanistan in 2001, more than 500 drone attacks in Afghanistan, Pakistan, Yemen, and Somalia, and the detention of thousands of individuals.

In recent years, however, Administration lawyers have had to stretch to conclude that the 2001 authorization authorizes the use of force against new terrorist groups loosely associated with al-Qaeda that did not exist at the time of the 9/11 attacks, such as Boko Haram in Nigeria, or al-Shabaab in Somalia.

Now, with respect to international law, both the Bush and the Obama

Administrations have cited a right of self-defense to use force against al-Qaeda and associated groups in multiple countries, including hundreds of drone strikes during the Obama Administration. But what has been more controversial has been the US use of force against terror suspects in countries that have not themselves consented to the use of force in their territory. Both Administrations have asserted a right to use force against terrorists in the territory of any country that is unable or unwilling to prevent the threat posed by terrorists as the Obama Administration did in the raid in Pakistan that killed bin Laden.

So, in short, although there was clear domestic and international law basis to use force to respond to the 9/11 attacks, it has been harder for Executive Branch lawyers to argue that the 2001 authorization and international law permit the use of force against groups that did not exist 15 years ago, or that operate in countries that have not consented to the use of force. And there continues to be significant disagreement among legal experts, both inside and outside the United States, regarding whether US actions have been lawful.

So, that's the use of force against al-Qaeda and associated groups. Let me turn to the Iraq War.

Although the war was controversial, it was clearly authorized as a matter of domestic law. In October 2002 in the last authorization that Congress passed, Congress authorized the President to use force to defend the national security of the United States against the continuing threat posed by Iraq and enforce all relevant UN Security Council resolutions regarding Iraq. So, while the domestic legal basis was clear, the international law basis was less so.

The United States and the United Kingdom had tried to persuade the Security Council to adopt a new resolution authorizing the use of force against Iraq after Saddam Hussein had failed to comply with his obligations, but they were unable to do so.

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And so, they instead relied on UN Security Council resolutions that had been adopted by the Security Council in 1990 and 1991, more than a decade earlier at the time of the first Gulf War. The US and its allies concluded that these old resolutions continued to provide authority for the use of force against Saddam. Many critics of the Iraq War believed that it was legally wrong to rely on these decade-old Security Council resolutions.

Let me turn to the Obama Administration's use of force in both Libya and against ISIS before drawing some conclusions.

As a candidate, President Obama said the President does not have power under the Constitution to unilaterally authorize a military attack in a situation that does not involve stopping an actual or imminent threat to the Nation. But as President, he has been unable to secure new congressional authorizations for his Administration's conflicts in Libya and with ISIS in Iraq and Syria.

In Libya, the Obama Administration participated in an air campaign from March to October 2011 with a coalition of other countries in response to serious human rights violations by the Gaddafi regime. The initial US use of force was clearly permitted as a matter of international law after the UN Security Council adopted UN Security Council Resolution 1973, authorizing member states to use force to protect civilians and civilian populated areas under threat of attack. But many government and legal experts believe the US and its allies exceeded this authority when they went farther to overthrow the Gaddafi government. But even if the use of force was permitted under international law, President Obama never pushed Congress to pass an authorization to provide specific authority for the

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Libya War. He relied instead on his Article II powers as Commander-in-Chief, contrary to what he said he would do as a candidate.

As the conflict in Libya continued, President Obama confronted the requirement in the War Powers Resolution that the President terminate the use of armed forces after 60 days unless specifically authorized

by Congress. And faced with the choice of either scaling back US military operations or declaring the 60-day termination provision unconstitutional, the White House instead chose a third route. They instead chose to interpret the provision not to apply.

In June 2011, the White House notified Congress that the termination provision was not triggered because US operations do not involve sustained fighting or active exchanges of fire with hostile forces, nor did they involve US ground troops. This highly unusual interpretation was widely criticized by Congress, the press, and legal experts, who accused President Obama of undermining a key legal check on arbitrary presidential power.

Let me end with the President's difficulties in his military campaign with ISIS, which commenced in the summer of 2014.

President Obama initially informed Congress that he was relying on his Article II powers. In September 2014, however, the President and his lawyers were again faced with the War Powers Resolution's 60-day termination provision as they had in Libya in 2011. Instead of continuing to rely on his Article II powers, the President present notified Congress that the use of armed forces against ISIS actually had been specifically authorized by Congress in the 2001 and 2002 AUMFs against al-Qaeda and against Iraq on the basis that ISIS, even though it was not associated with al-Qaeda, was actually a descendant of al-Qaeda. Now, this interpretation relieved Congress from having to vote on a new AUMF before the midterm elections, but the Administration's reliance on these decade-old authorizations was widely viewed as a very strained legal interpretation.

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After the election, at the urging of many members of Congress, especially Senator Tim Kaine, the White House asked Congress to pass a new AUMF specifically authorizing the use of force against ISIS. But the White House draft was viewed by many Democrats as too permissive and by many Republicans as too restrictive. And despite urging by President Obama to

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take a vote, both the House and the Senate were unable to agree on consensus language to authorize the use of force against ISIS.

The US' use of force against ISIS in several countries has also raised difficult questions under international law. While the governments of Iraq and Libya have

consented to the use of force against ISIS in their countries, the Syrian government has not agreed to the use of force against ISIS in Syria. And the US appears to be relying on a theory of self-defense on the basis that President Assad is unwilling or unable to stop the threat posed by ISIS.

So, that is a brief survey of the difficulties that the last two Presidents have had trying to comply with domestic and international law rules regarding the use of force. President Trump and his lawyers will face similar challenges.

A major part of the problem is that the domestic and international law rules were intended to address previous historical events and are not sufficiently flexible to address contemporary challenges, such as terrorism by non-state groups and governments that abuse their populations. When legislative institutions like Congress and the Security Council become gridlocked and refuse to act, the President and his lawyers are left with the choice of not acting in the American interest, ignoring the law, or interpreting in the law in strained ways.

Clearly it would have been better for President Bush to have secured a new Security Council resolution for the Iraq War rather than rely on decade-old resolutions, just as it would have been better for President Obama to have secured new congressional authorizations for the US air campaign in Libya and against ISIS rather than interpreting the War Powers resolution not to apply, or relying on the 2001 and 2002 AUMFs. But the Security Council and Congress had refused to act.

As long as the conflicts with al-Qaeda, ISIS, and other terrorist groups continue, President Trump and his lawyers will have to deal with difficult questions of interpretation of the 2001 AUMF and of international law rules governing the use of force. President Trump seems less likely than



President Obama or Hillary Clinton to order the use of force in another country, such as Syria, for humanitarian purposes, but he could still confront a situation that would lead him to want to intervene in Syria or elsewhere to prevent a humanitarian catastrophe. So, I want to end with some specific recommendations for President Trump and his administration to address some of these legal challenges.

Let me begin with domestic law. With respect to the conflicts with al-Qaeda and ISIS, President Trump should push Congress hard to enact a new authorization early in 2017. And rather than go through the exercise twice, he should ask Congress to pass a comprehensive new authorization against terrorist groups that revises and updates the 15-year-old 2001 AUMF and also authorizes the use of force against ISIS. The authorization should be broad enough to authorize the use of force against groups that pose imminent threats to the United States.

Now, congressional Democrats may be reluctant to give President Trump

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IMPRACTICAL AND
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any additional war powers, but he should agree on his side to reasonable limits to avoid protracted ground wars. More generally, President Trump should ask Congress in 2017 to revise and update the War Powers Resolution, which has increasingly been ignored by modern Presidents.

The White House should study the recommendations of the National War Powers Commission, which was co-chaired by former Secretaries of State James Baker and Warren Christopher and issued a report in 2008 that called the War Powers Resolution impractical and ineffective. The Commission stated that no President has treated the resolution as mandatory and “that this does not promote the rule of law.” They recommended that the Resolution be repealed and replaced with a mandatory consultation process.

In 2013, Senators Tim Kaine and John McCain introduced the War Powers Consultation Act to implement the Commission’s recommendations. Any general reform of the War Powers Resolution must address contemporary conflicts and take into account increasing congressional reluctance to vote to authorize the use of force.

Now, President Trump and his advisors may not view a new counterterrorism AUMF or a reform of the War Powers Resolution as top legislative priorities, but they should undertake the effort anyway as a matter of good government. The 2001 AUMF has been stretched far beyond its original purpose, and the War Powers Resolution is close to becoming meaningless.

With respect to international law governing the use of force, the President and his White House advisors should resist any temptation to ignore international law as politically correct or as Lilliputian infringements on US sovereignty. If the United States violates or skirts international law regarding use of force, it encourages other countries, like Russia or China, to do the same, and it makes it difficult for the United States to criticize

them when they do. And if the United States ignores international law, it also makes our friends and allies who respect international law, such as the UK, Canada, Australia, and EU countries, less likely to work with us. Unlike Russia and China, the United States

has many friends and allies who share our values, including respect for the rule of law, but we lose our friends when we do not act consistent with law and our shared values.

More generally, President Trump should recognize that when he speaks as President, he speaks to multiple audiences. He must be cautious not to advocate policies that will provide cover for unlawful actions by other governments. Moreover, statements that are popular with some in the United States may be highly unpopular and stir up anti-American sentiments abroad.

When I made this argument in the Bush Administration, some of my colleagues responded by saying, “It doesn’t matter what other countries think. They don’t vote for us.” But other countries do vote for us by deciding whether to cooperate with us on intelligence, law enforcement, diplomatic, and military matters.

During the Bush Administration, many European governments became reluctant to share intelligence information with us because they believed our intelligence agencies might use information to commit violations of law. And after what I heard this morning, I can see that happening again.

The Trump Administration must also recognize that foreign leaders face their own domestic political pressures, and they must respond to the views of their own populations. If the US government engages in unilateral actions or pushes foreign leaders to join in American actions that are unpopular or viewed as unlawful in their own countries, the US loses the support of these governments, and may actually cause them to fall.

President Trump will find that he will be most effective in his international actions if he works with our allies rather than alienating them. The Bush Administration learned this lesson from its actions in the first term, including the Iraq War and some of its counterterrorism policies. In its second term,

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the Bush Administration found that it could be more successful through multilateral diplomacy. The United States achieves more, not less, through international cooperation.

To the extent that international law rules regarding the use of force are outdated, and they are, the Trump Administration should work with other countries to update them rather than condemn them or ignore them. Other governments are unlikely to amend the UN Charter or to replace the Geneva Conventions, but the Trump Administration can still work with them to develop principles or additional rules so that international law can evolve to address contemporary international problems.

When I was legal advisor, I began a series of talks with our closest allies that produced principles for use of force against terrorist groups in countries that are unwilling or unable to prevent the threats. The Administration should continue to refine these principles so that they are accepted by a broader group of states. And the Administration should also work with other governments to develop new rules for detention of non-state actors where even the International Committee for the Red Cross has acknowledged that there are legal gaps that need to be filled.

And even if President Trump is initially disinclined to use military force for humanitarian purposes, his Administration should still continue discussions with US allies regarding the appropriate circumstances for humanitarian intervention. Should President Trump decide to use force in another country for a humanitarian purpose without approval of the Security Council, he should be prepared to explain when and why the use of force is legitimate under certain limited circumstances, even if not clearly lawful under international law.

In closing, when Donald Trump becomes President he will have the awesome responsibility of commanding the most powerful military in the world. He will immediately be responsible for the direction of our military in combat operations in at least seven countries in the Near East and North Africa. At some point over the next four years, he may have to

make the very difficult decision to send US armed forces into action in or against another country either to defend the United States or US interests.

Because they are likely not familiar with the domestic and international law rules that govern the use of military force and the conduct of military operations, President-Elect Trump and Vice President-Elect Pence should take time during the transition to be briefed on these rules and understand why they are important. The President should appoint Secretaries of Defense and State and senior White House advisors who know the applicable law and have experience with the use of military force. Choosing a White House counsel and deputy counsel with experience in national security issues will be vital. We must hope that President Trump will select advisors as wise as Lloyd Cutler to give him sound legal advice, and that he will listen to their advice.

Thank you.

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John Bellinger



QUESTION AND ANSWER

— **David Rennie**, *Washington Bureau Chief and
Lexington Columnist, The Economist*

— **John Bellinger**, *Partner, National Security and Public
International Law Practices, Arnold & Porter; and
former Legal Advisor, US Department of State and
National Security, George W. Bush Administration*

— **Mr. Rennie:** Thank you very much for that extraordinary clear overview of something pretty urgent, but also very old in terms of how this country views itself.

Before we turn to kind of topical questions – which I’m very keen to examine, of the advice that you would give to the incoming government – I just want to sort of set some baselines, I think, about where we (the United States) are in terms of the rule of law when Congress talks about authorizing war, when there’s a debate in this country about whether international or domestic law is being met.

In your experience, does it work the same way here in America as it does with America’s allies, say, in Europe – the kind of the social compact? When a European government needs to prove that it’s obeying the law when it’s going to war, does that work in the same way here? And I guess to tip my hat, I think in Europe sometimes when you discuss whether a war is lawful, it’s about what kind of country a European nation thinks it is.

My sense is that to date America has been much more comfortable in believing that it’s always a good country, and so discussions in Congress about the law of war, and the AUMF, or going back to the Ludlow Amendments

in the 30s, it was almost always a kind of practical question about “Are we going to let this war take place?”, “Who owns this war?”, as opposed to a kind of discussion about whether America was a good, law-abiding country.

Is that right, and is that changing, and does it need to change its sort of understanding?

— **Mr. Bellinger:** Interesting question. Let me take them in reverse order and actually start with international law first because one of the things that has always surprised me is how uninterested our Congress and even the American people are about whether our uses of force are unlawful under international law.

After the Iraq War, as you know, Tony Blair was accused of waging an illegal war. And while everybody was upset about the policy in both the United States and in Britain, in Britain much of the question was: was the war illegal? In the United States that question really hardly came up. There has been as much on happiness about the Iraq War, but I don’t think you could ask any American or probably any member of Congress whether they thought that the Iraq War was illegal under international law.

So, just starting in reverse order, it’s always interested me in my discussions going back and forth between the United States and Europe how much more Europeans are focused on whether their use of force is actually legal or not. And that’s one of my themes tonight: that if we want to work closely with our allies, we have to respect the fact that they take international law much more seriously. In the Bush Administration, there was often eye rolling about this, but we have to take the fact that our allies take those rules much more seriously.

With respect to domestic law, I think that’s a grander philosophical question than our Congress really focuses on. In authorizing the use of force – and there has not been an authorization since 2002 – I think they focus more on the balance between congressional and executive power under our Constitution, and they are thinking what do the American people want, and how much power do they want to give the President. David, you and

I talked a little bit before about are we really in a downturn right now in terms of congressional reluctance to authorize the use of force. President Obama could not get Congress to authorize either his Libya conflict or the conflict against ISIS, which almost nobody disagrees with. I would think that 535 or 534 members of Congress agree with the policy, but they can't bring themselves to actually authorize it because they don't want to go on record again as authorizing another conflict. So, we just seem to be, at least politically, in a situation where Congress is unwilling to authorize new uses of force perhaps as a reaction to the 15 years of war that we have been in.

— **Mr. Rennie:** So, I'm assuming that were you advising the incoming President Trump, if a discussion starts that involves interests and values, it seems to me a fair, if pessimistic, bet that he'll be more interested in hearing arguments about interests, not about values. I think what you were saying in your lecture is that you don't get one without the other partly because of how allies behave and partly because of what it says about America.

But say you're in that office and the President is pushing back on you, and he's saying these people, as people said to you in the Bush Administration, these people don't get a vote. They'll do what I say. You know, I think you're then saying there is sort of a whole cascading series of coalitions with your allies when it comes to military alliances, intelligence cooperation, security cooperation, but also within the United States, the relationship between the President and the CIA, the President and the Uniformed Branch.

Because this is so important, can we unpack that a base and ask you kind of in turn, if you are making a case to a skeptical President that values cannot be ignored if you are focused entirely on interests, starting domestically with your experience in the CIA, your experience of dealing with the Department of Defense.

You know, we see CIA figures saying that, they will not torture. They will not waterboard. Is that just rhetoric, or if you're making that case to a skeptical President actually he needs that coalition to be kind of full bore, how does that work domestically? What are the constraints on it? How do you make that case?

— **Mr. Bellinger:** Well, I would make the point about both values and interests. We still have to start with values in that America is a great country, and because we are true to our values. I mean, other countries around the world respect us not just because we are powerful, but because of the ideal of the United States going back to our Declaration of Independence, and our Constitution, and our rule of law. That's why it's wonderful when we can bring foreign nationals here to this Supreme Court and to see what Justice Kennedy and his colleagues do every day. This is really what people respect about America. That, of course, is not the only thing, but that is a lot of it is we are a country that has long been focused on rule of law.

But I get it, and in the Bush Administration, and I think pretty much in the Trump Administration, you can't just appeal to the better angels of these values and talk about "You're just not going to get what you want, Mr. President." You can maybe beat an ally, one government or a group of governments into doing something for a short period of time, but you are not going to achieve what you want to achieve unless you can appeal to their interests as well. Other countries are just going to simply stop cooperating.

And I saw this in intelligence cooperation. One foreign government when I was visiting them said, well, you know, before we started having these problems with the Bush Administration, we always gave cooperation-plus. You asked, and we gave you twice as much as you asked for. After that, you had to justify with every sign off, and every assurance, and every promise that someone wasn't going to be sent to Guantanamo, and they weren't going to be tortured, and they weren't going to be this before you got anything, much less the cooperation-plus.

So, Mr. President, the lesson of the last Administration, the last Republican Administration, is that you can't beat your allies into cooperating with you. You get what you want. You make America great. You achieve what you want by getting your allies to cooperate with you, and that means respecting their respect for international law.

— **Mr. Rennie:** And does that apply domestically, without asking you to kind of reveal the secrets of your time in government? I mean, if the

President says, “You know, if the CIA resists me, I’ll sack the people who are resisting me, and they’ll do what they’re told. The generals, I can get new generals, great generals, the best.”

— **Mr. Bellinger:** I think I’ve heard that before.

— **Mr. Rennie:** “And they’ll do what they’re told.” But he’s there for four years, maybe eight years. In your experience, is it just rhetoric when senior figures in the military or intelligence say actually this matters to us, not least because they’re there for life? They don’t want to be left high and dry when a President leaves office. How serious a possible constraint is it on a President’s actions?

— **Mr. Bellinger:** Well, you know, of course the political appointees, and particularly the senior people, are going to want to do what the President wants them to do. You often see resistance in the career ranks, in the career military, in the career intelligence officials, amongst career lawyers at the Justice Department. They are the ones who serve 20-30-year careers in Republican and Democratic Administrations. And if they feel, as our military did or some of our intelligence officials did, that what the President is proposing is, in fact, unlawful, then they are going to resist.

For example, these proposals to bring back waterboarding, which the Vice President repeated again this morning, we now have a congressional statute that was passed by Congress just about a year ago now in which Congress flatly prohibited any interrogation techniques that are not listed in the Army Field Manual. So, to bring back waterboarding the President would either be ordering our intelligence agencies to violate a statute passed by Congress or suggesting that he is going to get Congress to change its mind.

— **Mr. Rennie:** So we’ve discussed what America does and gets to do domestically and with allies. I want to turn later to what America’s ability to influence global norms and the whole sort of Pandora’s Box question, and what others do without America. Before we get to that, just to wrap

up your view of the Obama Administration, and you said quite clearly that they had stretched these definitions in a very sort of elastic way.

Other than kind of legal tidiness, again, while we're in a kind of realpolitik mindset, has the fact that America has had to stretch those definitions to a kind of breaking point, have you seen practical consequences flow from that? Has it limited America's ability to chide the Russians in Syria or to take a stand? Are there real world consequences from the use of these very stretched, elastic definitions?

— **Mr. Bellinger:** I guess I would say on use of force maybe not quite so much. So, where President Obama has really stretched the rules on use of force has been domestically. Of course, ironically it was President Obama who came in who said that he was going to cut back on the excesses of executive power in the Bush Administration, but he's actually gone much farther in terms of his creative interpretations of the War Powers Resolution and his authorities.

As far as international law, this is something that we at the State Department are particularly concerned about. Every time the United States takes an edgy international position on any issue, but particularly when it comes to use of force, we at the State Department worry, well, what if another country takes that position? And we try to get the President and Congress to think about that.

Drones is a good example, and I think drones were presented to President Obama as a nifty counterterrorism tool that meant you didn't have to send in the military. You didn't have to detain people. You didn't have all those problems that the Bush Administration had. But as he really began to rely so heavily on them, he not only raised human rights issues or raised use of force issues, but he began to think, well, what if Russia, and China, or other countries begin to use drones as much as we do? I used to think I would not want to be the legal adviser at the State Department at the time that Russia launched its first drone strike into Ukraine or Chechnya or elsewhere, and then used our talking points.

So this is a concern that when the United States pursues broad

interpretations of international law, even though our lawyers are comfortable with it, we have to make sure that if other countries pursued the same policy, we're comfortable with that.

It's one of the reasons why the United States has never adopted the doctrine of humanitarian intervention, which almost all of us have probably studied whether we're lawyers or not, as a policy matter. It sounds like a good thing to go and rescue people in other countries who are being oppressed by their government. The UN Charter doesn't recognize that. International law doesn't recognize that. But there's been a push to recognize a right to intervene for a humanitarian purpose.

The reason the United States has resisted that is that we are concerned about the Pandora's Box, about the reciprocity. And, in fact, when I was originally preparing this lecture tonight and thought I might be talking about Hillary Clinton's use of force in no-fly zones in Syria; that would've been one of the challenges for her if we had intervened in Syria with no-fly zones, asserting that we have a right to put up no-fly zones over someone else's country, or to intervene as a humanitarian purpose. How do we do that in a way that is sufficiently narrow that we are not inviting Russia to do the same thing in Ukraine or in the Baltics? So, that is something at least that the State Department is concerned about is the actions that we take, will they be abused by countries.

So, I haven't seen it quite so much yet, but it is a concern.

— **Mr. Rennie:** I'm very glad we've sort of ended up at this place before we go to the audience. I'm very keen to take audience questions because it seems to me that if we've gone through this list of reasons to do the right thing, why interests and values go together, you could make the case to a skeptical new President that what America does and gets to do requires some fealty to international norms and values because you'll get more cooperation, real cooperation, that "cooperation-plus" that you talk about, as opposed to just kind of the minimum required. It's also about the unity of his own government, whether the CIA is kind of thinking about whether they're going to get put in prison in 30 years' time for what they're doing.

But let's just end with this point about the Pandora's Box. And I remember interviewing you a while ago when you were talking about the laws that apply to drone warfare when the President set out his vision of how you should have the laws of drones. Do you think it's possible that this is also an argument that you could make to a Congress that doesn't really want to get involved in this, that even if the President is being kind of gung ho and thinks he has public opinion on his side that Congress needs to think about if you don't get this right, then what will others start to do without America, that if you kind of open this Pandora's Box, if you don't have these rules, can you appeal to Congress's sense of patriotism to wonder what happens when the Chinese have drones, when the Russians have drones, when it's not just America that is a kind of global counterterrorist force?

Am I being naive in this town to think that Congress could be alarmed in that way, or do you think that's something that is part of your mission?

— **Mr. Bellinger:** I'm seeing smiles around the room. Maybe, maybe a very small number of people in Congress, but I have to say unfortunately not. One of the great challenges, particularly for the State Department, is trying to get Congress to think reciprocally, you know. We've just gone through this law JASTA, the Justice Against Sponsors of Terrorism Act, in which Congress almost unanimously stripped the immunity of Saudi Arabia so that it could be sued. But, of course, you know, it's hard to remind Congress that immunity is not there to protect other countries. Immunity is there to protect the United States. That's why we have diplomatic immunity. That's why we have sovereign immunity. So, when we strip the immunity of other countries, it ends up but hurting us around the world.

So, I think certainly, David, there are a few in Congress that when they see the United States pursuing really aggressive international law positions, whether it is drone use in multiple countries without the country's consent, whether it is creative arguments under a UN Security Council resolution, there are certainly going to be some members of Congress who will worry that it will be abused by other countries. But unfortunately, that does not seem to be top on the minds of most members of Congress.

— **Mr. Rennie:** Well, I'm very keen to go to the audience for questions.

— **Question from the floor:** With our last election having had a very well executed cyberattack from someone, what does the law say about the President's ability to execute a cyberattack on another nation that could lead to some retaliatory attack against us, or has the law caught up with technology at this point regarding cyberattacks, which could be very serious at some point in the future?

— **Mr. Bellinger:** It's a great question, and the answer is no, that the law has not caught up with cyberattacks. This is yet another area where we are trying to squeeze square pegs into round holes.

Much of the basic law about whether you can use force either offensively make our own cyberattack or defensively, our lawyers analogize to just old rules of kinetic force. Can you respond to somebody who has launched a missile at you? Can you shoot a missile at them first to prevent an attack? Cyberattacks are really a new kind of use of force, but are virtual. Our lawyers are trying to analogize these new kinds of uses of force and attacks using old rules, but they really don't fit very well...This is why I was talking about the fact that our rules are outdated. That doesn't mean that we ought to ignore them, but it does mean that whether it is cyber, whether it is humanitarian intervention, that the rules that were set up a long time ago constrain us in ways that are difficult.

I mean, that's why humanitarian intervention is so difficult. When the UN Charter was put together, it was basically set up to protect states, not people. But now we are much more protective of people in other countries, but the law has not caught up with it. So, cyber is a good example.

— **Question from the floor:** A question for you on AUMFs since you put a lot of pressure on us in Congress tonight.

Given the challenges we've faced in the past 15 years, what sort of temporal and geographic limitations do you think are appropriate for a new AUMF as a policy matter?

— **Mr. Bellinger:** Thanks, and that's one reason that I invited you. I really want this: this is the next generation. These are the lawyers in Congress who are going to have to grapple with these questions.

I think we all know it was difficult politically over the last couple of years to try to agree on a new authorization, but we're going to have a new Congress. We're going to have a new President. We have 15-year-old rules. We have a conflict with ISIS that isn't even authorized by Congress, so it's important to try to get this right.

One of the reasons that members of Congress, mostly on the Democratic side, but some on the more Libertarian Republican side, have not wanted to pass a new authorization is that they don't want a broad new authorization that would authorize new ground wars in multiple countries that might go on for a long time. And all of those are legitimate concerns. So, how do you constrain that?

The problem is...if we had a perfectly functioning Congress, you would pass a new AUMF every year every time some new group came along, but as we well know, that's not going to happen. It's just not practical. So, we either have no authorizations, we have these 15-year-old authorizations, or we try to get something that's sufficiently broad and flexible, but that has certain restrictions.

So, I guess, one of the things is do we put a sunset on it. You can argue that both ways. I personally used to be against sunsets because I think it looks bad to an enemy to say, well, we're going to authorize the use of force, but only for about two years, and then we'll rethink. I guess on balance if I am trying to reach a consensus, if the way to get a broad enough authorization is to tell the other side that we're not authorizing this in perpetuity and have an endless war, I guess I could live with a three-year authorization, and you know the optics of it to the other side. I just don't think it's that big a deal.

I don't think that you can authorize the use of force just in a specific set of countries and say, well, it's only in Libya, and Somalia, and Syria because then these groups will just go off to other countries. So, I think what you need to do is give the President broad enough authorization, and then some sort of a consultation provision, which is really what was at the base of the

recommendation of the National War Powers Commission, that rather than try to tie the hands of the President with specific notifications to require consultation with Congress. And if the President comes to Congress and says I want to start something in Morocco, or Algeria, or some new country – he talks to Congress before he does it. But I just don't think you can try to micromanage these authorizations.

— **Question from the floor:** I wanted to ask a little bit about international privacy rules. The Bush Administration had taken a very broad view of executive authority when it came to surveillance, which led to a very strong international reaction and the adoption by the Obama Administration of Privacy Act rules when it comes to that. What would you advise the incoming Administration on surveillance, especially given the sensitivities of our European allies?

— **Mr. Bellinger:** Well, a part of the European shock about surveillance was the old shock about gambling going on in the casino! You know, for Angela Merkel to say that she was shocked – shocked – that this was going on. But this gets to my point about domestic politics...I saw in the Bush Administration – it's funny for politicians who have been elected at home, there's often a lack of appreciation for the fact that they are dealing with world leaders who have been elected in their own countries. There's often a feeling that we can beat a foreign leader – because they're someone you know personally – into doing something, not bearing in mind that that leader is becoming unpopular or has to respond to sentiments in their own countries. I think that was what was going on with a lot of this European unhappiness about surveillance, you know.

Their intelligence agencies knew we were doing this. We were mostly cooperating with them, and most of what we were doing was helping them. But because of the way it spilled out in the press, the European politicians had to act that they were shocked and were opposed to this. I think most of this has sort of settled down.

What I frankly would have liked to have seen, but it was probably just

not realistic domestically, is to have seen European leaders stand up to their own populations a little bit to say, “Look, we understand this resentment of what the United States is doing, but let me tell you how much we benefit from US counterterrorism policies, and how much they are actually sharing with us.” That was one thing that made me unhappy was European leaders really not standing up to their own populations. But, you know, it gets down to a matter of domestic politics.

— **Question from the floor:** Could I ask how effectively do you think international law deals with the subject of collateral damage or civilian deaths in warfare, because it seems to me one of the things that’s changed fundamentally in the way warfare is conducted is the political and perhaps public tolerance of civilian casualties. I mean, we saw in the Iraq War tens of thousands of civilians [killed]. We know with the drone program there were civilian casualties... In the Gaza War there was considerable loss of civilian life, and now in Yemen. I mean, some British officials have been concerned that the British government is being held complicit in war crimes as a result of the assistance the UK has been giving to Saudi.

Is there a problem there? I mean, it does seem to, I think, discredit people’s faith in international law that warfare can be conducted in this way.

— **Mr. Bellinger:** It a great question, and it’s certainly becoming a problem for our military and, therefore, for political leaders. Historically, of course, collateral damage is accepted: civilians sadly do get killed in wars. What international law prohibits is, of course, you can’t target civilians and you can’t launch an attack against a military target if you conclude that the collateral damage is going to be disproportionate to your military advantage. Of course, that’s a fuzzy standard.

What has been happening over time is almost intolerance for any civilian casualties, and a suggestion that if any civilians are killed, then it must be a war crime. I mean, and what’s very disturbing to those of us in government, and I think particularly to the military and to military lawyers, is in these sad situations where a hospital is bombed or civilians are killed, the very

first thing some human rights group comes out and says is, well, it must be a war crime.

Well, it's only a war crime if you know that either the civilians were targeted or you know that the targeteers intentionally disregarded the rules of proportionality. And so, we jump to these conclusions that no civilian casualties can be tolerated, and that is becoming, I think, a problem for many countries. Now, that's just a real push.

I'll just end on this point on drones. You know, President Obama, I think, tried at the end of his term to constrain his own drone program in many ways for two reasons: one, so that he would, I think, really tie the hands of the next President, whoever that might've been at the time, but also because of the Pandora's Box problem, to show other countries that the United States had very, very limited rules. And one of the really quite surprising rules that he put out – a policy matter – was that the United States would not target anyone in a country that we were not at war unless there was a near certainty that there would be no civilian casualties. Now, that has never been the rule of international law in the military. So, for the President to lay down a no civilian casualties rule was really quite significant, at least in the drone program.

— **Mr. Rennie:** Thank you so much.

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