

some of these serious people in place that the administration may begin to settle down. The National Security Council, in utter disarray in the beginning, is beginning to settle down.

I don't know what direction this is all going to head. It could continue in the first direction of alarm and troubling, but it may—if we get some of these more serious people in place, particularly the lawyers, it may begin to settle down after a while. So I think there honestly is—there is cause for alarm, but it is too early to tell yet.

BENJAMIN WITTES

Excellent. Elisa?

REMARKS BY ELISA MASSIMINO*

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Okay. Thanks, Ben. It's an honor to be here. I wanted to also say a special thank-you to Saira Mohamed for organizing this panel, and thanks to all of you for being here. It takes a special kind of person to come into a cold, dark basement on a beautiful spring day to talk about international law, but good on you.

Here we are, not even a hundred days into the Trump administration yet. It feels like one hundred years to some of us, but there's already been a lot of ink spilled about what this "America First" policy really means. We have the task today to talk about whether international law, as Ben posed at the very beginning, is even relevant now. Is it on the radar screen and factoring into the administration's calculus when it's facing international and domestic security issues?

The conventional thinking is that Trump's "America First" approach is kind of code for a form of populist isolationism that seeks to avoid anything that smacks of globalism, and it remains to be seen whether the Syria strikes are a counterexample to that. But the early signals are that with the silence on human rights—we just saw in the *New York Times* today that in his meetings in Russia Secretary Tillerson not only did not meet with any human rights activists or opposition leaders, but didn't raise human rights at all. This preference for a transactional approach to foreign affairs rather than a relationship-based approach or a values-based approach, the focus on the hard elements of security and the proposal of this hard power budget that would essentially gut the ability of the United States and the United Nations to promote adherence to international law and human rights obligations, all of that poses a threat to international security and domestic national security.

As John mentioned, the tone for all of this was set in the campaign with the advocacy by candidate Trump for a return to torture and a cavalier encouragement of war crimes, and he brought that rhetoric into the White House. He continues to say that torture works and it's a good idea, but says he's going to hold off on it because Secretary Mattis would rather use cigarettes and a chat. So that creates a lot of concern, how the president thinks about these issues and, as John said, whether there are going to be personnel that constrain and advise and steer him into a more traditional respect for international law.

Structurally, I just want to note that there are things going on below the surface. Some may be good; some not so good. There's been a restructuring, as you know, of the National Security Council, but there was also a renaming and likely a repurposing of what used to be the Human Rights and Multilateral Affairs Office at the NSC. Everyone has heard the rumors that the administration is threatening to withdraw from the Human Rights Council at the United Nations, and as I

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said, the budget proposal speaks volumes about what this administration thinks about commitment to international law and international norms.

The executive orders, again, that John mentioned, are of huge concern to us, especially the so-called travel ban and the suspension of resettlement of refugees. These mark a dramatic retreat from American ideals and pose a real security threat. As numerous national security experts from both parties have said, abandonment of American leadership on refugee protection during the worst refugee crisis since World War II poses a significant threat to national security and to our allies in the region and in Europe. So these things all implicate global security and our domestic security.

I don't know if you saw the announcement by Attorney General Sessions at the border the other day about increased prosecutions for so-called illegal entry without any recognition at all that the United States has committed under international law to not punish refugees who seek asylum here for their manner of entry. Sadly, this is not a radical departure from previous policy. Certainly, the Obama administration was using detention as a deterrent for refugees seeking asylum here, but now we have this professed new era. The Trump era of enforcement on immigration poses a lot of challenges for commitment to international law. You've got the pledge to send more people to Guantanamo. We're seeing an increase in civilian casualties at the same time that we're hearing that the administration is looking to reevaluate the rules about targeting. All of these things pose real concerns for those of us who care about adherence to international law and believe that respect for human rights is the foundation of security.

So I'll leave it there, and we'll have a discussion.

BENJAMIN WITTES

Excellent. Thank you, Elisa.

So I actually love John's formulation of two baskets, the troubling and alarming, and the rays of hope as a kind of rubric for this discussion, and I am going to return to that in a moment. But I want to start with the last week and a half in which the president went from—and the secretary of state went from—a policy of benign neglect toward Bashar Assad, despite repeated atrocities involving large numbers of civilians, up to and including the use of chemical weapons to, frankly, the president sounded a bit like Human Rights Watch the other day in talking about Assad and really came close to asserting that we had acted in order to enforce a norm against the man on chemical weapons, and he seemed to include barrel bombs in that, and so seemed to be talking on the basis of an international law justification for what he did that was kind of rooted in humanitarian protection.

On the other hand, the action that he took was, shall we say, weakly predicated in international law, and so my question—and I'll just throw this open to the panel—is this a good week for international law with respect to the Trump administration on the grounds that we are now apparently enforcing humanitarian protections, or a bad week on the fact that we just took military action that can only be—vary weakly, or maybe not at all, supported with reference to the charter?

SHIREEN HUNTER

Can I get in on that?

BENJAMIN WITTES

Please, please.

SHIREEN HUNTER

Well, I really—I'm sorry if I repeat myself. It seems to me that the whole question of humanitarian protection, which was—it's a very new thing. It's a post-Cold War, post-Soviet phenomenon, and that is the essential—to me, it is a very, very cynical justification for intervention because there are many other places where a lot more was going on where there was no humanitarian protection.

Bernard Cazeneuve, the one-time French Minister of Culture, brought this out, and it was, frankly, to me a new version of the civilizing mission, *mission civilisatrice*. You go and colonize because we want to civilize them and bring them over, and humanitarian protection became that. And I think if you really want to see, humanitarian intervention has caused more problems than if they hadn't colonized.

For example, Gaddafi might have killed another two, three thousand people, but look what has happened in Libya after the humanitarian intervention by France and the NATO countries. We went for humanitarian intervention in Iraq. Now you have four million Iraqi orphans, and so this is what I'm trying to say.

And, of course, this, I know it by experience being in international organizations, is that all this actually international—this type of international law is actually a smokescreen for a far more intention by powerful countries. I think that—

BENJAMIN WITTES

So can I just clarify?

SHIREEN HUNTER

What I am saying is that we don't even know whether Assad actually used the chemical weapons or not. I'm not going to defend Assad, please, by no means, but what I'm saying is that there has to be—if you want to go by international law before you attack, you have to have an international committee or something to go and actually ascertain. Even in 2013, there was some doubt whether it was the rebels who were using the chemical weapons or it wasn't, and who is arming the—does international law actually allow arming of rebels by other outside countries? It doesn't. It goes against the principle of nonintervention.

Now, admittedly, there is a conflict, an ethical conflict. The principle of sovereignty clashes with the principle of humanitarian support. But the point I am trying to say is that the debate on this kind of international law and particularly humanitarian intervention is not very rigorous.

BENJAMIN WITTES

Okay. So we have a strong formulation here of the bad week for international law cases.

SHIREEN HUNTER

That's right.

BENJAMIN WITTES

Do either of you want to stand up for the idea that actually this is more in the good week side or mixed week?

JOHN BELLINGER

I am going to continue my theme of saying I think it's too early to tell. I think this is mixed. The president may have recklessly gotten to the right place, and the question is, is this emblematic of a reckless president that we ought to be concerned about or has he gotten to the right place and this showed, in fact, that he is going to adopt policies that are appropriate?

BENJAMIN WITTES

So it's a troubling and alarming ray of hope.

JOHN BELLINGER

Maybe so.

So, look, as a matter of international law, all of us know this cannot be said to be legal under international law. The question is, is it justified as a matter of international law? Do we go by the Kosovo factors—or I actually—I was just saying to Mark on this—I agree with Harold Koh on this. I think there should be an emerging and evolving norm for intervention in such cases, even though international law does not recognize that right now.

The question here is, does Donald Trump even care or look at any of these legal issues? Were there lawyers involved in any of these decisions at all? The picture down in Mar-a-Lago, there was not a lawyer in the room. Now, again, maybe that's because they were all off at a hotel in Florida, but there was no lawyer in the room. All of the National Security Council meetings that I have ever been in and that I saw pictures of in the Obama administration, you had the NSC legal advisor, you had the counsel to the president there in the room. So the question is, did international law inform these decisions at all? I do not think this can be said to be legal, but it may still have been the right thing to do to smack the Syrians back. I do think the Syrians did this. I do not want to have waited for months and months and months to have tried to figure out who did this, and I think that it was probably the appropriate policy. I am concerned that there was no law that was injected into this decision making, and I hope that it's not too late.

I have called repeatedly for the Trump administration to come out and explain, if not the legal basis, because I don't think there's a clear one, at least what the legal justification is for that, and I'm sure that is—the lawyers are urging that, both on the secretary of state and on the counsel to the president, and I hope that we will see more of that.

BENJAMIN WITTES

Okay. Elisa, it's all you. Good week or bad week? Troubling and alarming, ray of hope, or both?

ELISA MASSIMINO

Yes. Well, here's one way we could turn it into a good week, which would be if this tension that arises every time this conflict comes up between the constraints of international law and the imperative also that is in the UN Charter, that respect for human rights is the foundation of peace and security in the world. If this action by the Trump administration prompts all of us as international lawyers to actually engage on this question and start to put forward ideas about how we're going to resolve this tension instead of just putting our heads in the sand, that would make it a good week for international law.

But it's hard to not celebrate an attempt to enforce the prohibition on the use of chemical weapons. I mean, that is an instinct that we want to embrace, I think. But launching missiles is not a

strategy, and to turn it from a troubling ray of hope to a good week for international law and for human rights would require the administration to not only lay out its legal justification, but recognize that if the United States wants to play a leading role on this, it should be taking steps to ensure accountability for the violators of this important international norm and at the very, very least drop this horrendous ban on the resettlement of refugees and increase the number of refugees from Syria that we take into the United States. That would be real leadership.

BENJAMIN WITTES

So I want to focus, before we turn to the rays of hope—because we’re in a dark room, we should focus on the troubling and alarming first.

But I want to go back to the president’s statements. John started his remarks by focusing on a bunch of things that the president, when he was campaigning, had said about our obligations and his lack of regard for them. He’s said a number of not quite as outrageous but almost as outrageous things since he’s taken office, and he does seem to have a lack of filter between him and his fingertips with respect to the Twitter feed.

And so my first question on this is, what does this do to the sort of *opinio juris* of the United States when the president is constantly raising questions about whether we will, in fact, observe obligations that we’ve always accepted as legally binding? And just start with Elisa and go down the row. How disruptive is this, and what are the areas where you’re kind of particularly concerned about disruption?

ELISA MASSIMINO

It’s a big deal, and we’re really concerned. I think as John’s ray of hope is that there are going to be people filling in the administration as it staffs up that will help actually put the brakes on these kinds of radical departures that come out from the president. That’s where the business of diplomacy and law gets done is at that level.

But when you’ve got a president sowing chaos—especially with our ... well, with everybody, allies and enemies alike—I don’t think that it was an accident that the chemical weapons attack happened shortly after the administration made clear that we’re really not going to be that interested in what happens with Assad and Syria.

So those kinds of pronouncements from the top have a big impact. They give Sisi in Egypt a kind of green light when we say, “You’re doing a great job, and welcome to the White House.” Those kinds of things, particularly in the absence of the kind of hard work of international relations done by American bureaucrats and diplomats, have a real impact on people’s lives and security. So those kinds of things, particularly in terms of the impact on our adversaries, that can be really profound, and it’s hard to wind that back.

On our allies also, I think that—and particularly right now with Europe, where there is a clear political battle for the soul of democratic values and ideals in Europe, in a lot of countries—the signal that we don’t care so much about those things anymore, now we’re back on the track that NATO is important is powerful and damaging. But who knows if that’s going to change again, depending on who meets with the president? Those kinds of things can have a very damaging impact on the calculations that our allies make about their own commitment to international norms. There’s a serious risk of long-term damage to the international order that has been instrumental in securing peace and stability.

You simply can’t ignore the guy at the top. As we saw in previous administrations, you can have laws in place prohibiting torture, for example, but if you’ve got somebody at the very top or close to the very top sending a message that this kind of stuff is okay, that goes down the chain of command

like a stone to the very bottom. That message gets received. The impact will be profound, globally and also domestically.

BENJAMIN WITTES

John?

JOHN BELLINGER

Well, I'd just say I agree with Elisa on this. I mean, these are the concerns that I raised in the campaign. It wasn't just that I was concerned about things that Trump said that he would do, but that what he was saying during the campaign was, in fact, dividing the country at the time, so that not only would he make things worse as president, but he had made things worse already. And I have continued to see that. It's extremely destabilizing around the world for the president to say that he does not believe in our international obligations or international law and that he doesn't understand why the Geneva Conventions were negotiated and who would say we couldn't take the oil from Iraq. I mean, this is obviously very destabilizing to everybody.

And a couple things, one, he will find that it will make it much harder for him to be president because people then will not trust him when he tells them things later on. Second, on human rights, of course, the United States has always stood for a rules-based system, a values-based system, commitment to human rights, and when the president himself is suggesting that the United States no longer believes that—and sadly, that some chunk of the population believes that as well, then the United States really suffers internationally. It makes it much harder for the government and for groups like Human Rights First to do their jobs. It's going to be very difficult for the new assistant secretary of democracy and human rights at the State Department to raise these issues with other countries, so—

ELISA MASSIMINO

Maybe there won't be one.

JOHN BELLINGER

So it is very concerning.

What I have to just hope will happen is that as officials come into place and try to educate the president and his advisors, apparently the way General Mattis did with the president, that he will see, perhaps grudgingly, the other side of these arguments, why we believe in international law, why we believe in human rights. And you see this at the beginning of every administration, with every president, that they don't see the arguments on the other side. And we'll just have to hope that despite the things the president has already said and the destabilization that's already happened, that we can try to get him to settle down.

BENJAMIN WITTES

Let me just push you on one aspect of this, which is that you identified one concrete consequence of the destabilization, which is that the president will have a harder time getting people to believe him and doing business. What are the others? When you think about it, if you put yourself back in your legal role, and you have the president constantly both as candidate and as president raising questions about whether we will observe our legal obligations, how does that make either your job

harder—or worse yet, if you put yourself in the comparable role of some foreign legal advisor, what opportunities or negative opportunities does that create for you?

JOHN BELLINGER

I think what may happen is that there will end up just being sort of a disconnect between the president and the rest of the officials in the government. I mean, we are already seeing that just at the cabinet secretary level when the president is tweeting some things and Mattis and Kelly and others—and Tillerson—are going around the world saying something almost completely different and assuring and soothing allies. And I think when we get deputy secretaries, under secretaries, assistant secretaries in place—and many of these people I hope will have government experience—that they will be sending a much different message to foreign governments as they negotiate agreements. But it obviously makes it, Ben, a lot harder as one is trying to negotiate something with another country or, in Elisa's world, to be pushing another country on human rights if the man at the top is saying something different.

ELISA MASSIMINO

Yeah. We may find ourselves nostalgic for the days where all we had to worry about was U.S. hypocrisy on human rights.

BENJAMIN WITTES

Well, if you're on all sides of all issues, you can't be hypocritical.
Shireen?

SHIREEN HUNTER

Yes. Well, to be honest, I don't want to focus too much on the Trump administration because many of the things that we are complaining about—and it is true. I mean, let's face it. Trump did not initiate waterboarding. I mean, these are the things—Guantanamo was done under the George W. Bush administration. I mean, I'm sorry. I have many, many reservations about President Trump, but I'm just trying to be more—not focus so much of an individual, but look at it as a phenomenon rather than—and so President Bush started the waterboarding and so on. Unilateral intervention, President Reagan invading Grenada, not giving any concern, even though Grenada was small. That was a distraction, you know, for domestic purposes and so on, but that is the behavior that, unfortunately, has been going on.

The other thing on the human rights, I think that one thing that I learned from years of serving at the United Nations Committee on Human Rights is the hypocrisy of human rights.

And the second thing, for example, we helped to try to get rid of Assad because we thought that the human rights of the Syrians, for example, they didn't have democracy. And now we have four million. Syria is devastated, and we have four million more Syrian refugees. European societies cannot take all these refugees.

I also served in Human Rights at the United Nations as a delegate of the UN High Commission for Human Rights. So I'm not—refugees—I'm not just saying this from inside of an academic push. I have seen it. I was, more or less, a refugee, an undocumented person, so I have actually experienced these things.

But the fact of the matter is that there's an incredible hypocrisy about human rights. I mean, look, for example, at the Bahraini government literally trying to commit gradually through a change of

population a sort of genocide. It's not just gassing or whatever. It is basically bringing Pakistanis and giving them—and we are selling them all kinds of bombs and so on.

So I think that—and this was the Obama administration that did it. The Clinton administration did many things. They went and bombed whatever—it was like a drug factory in Sudan because we were unhappy about that. So I have to be honest with you. I have become very much concerned about the abuse of human rights.

In fact, the interventions on the basis of enforcing human rights lead to greater disregard for human rights. The biggest right in human rights is right to life. Many who are killed, it doesn't matter whether you have political rights. I mean, this has also been argued intellectually in many, many things.

So, I mean, for example, in Syria, Syria now is not a question about that. Syria has now become a test case who is going to be the hegemon of the region, and there everybody bought regional level for that and national level for that. And so that the whole question of Assad staying or going and whatever, Assad is a tool. If the Russians and Americans cut a deal tomorrow, Assad would be gone, but they cannot agree on what kind of a post-Assad thing.

So what I'm saying in here is that law is always important, but, unfortunately, it's politics that defines, including in internal societies. For example—and laws change because the values of society change. You look at the United States, some forty years I've been here, a lot of things have changed and eventually they are now reflected in laws. So I'm just trying to say that we cannot—the verification of law and abstract of law is different.

The other thing that you were saying, that you said, John, that is international law, what you said it is ethics, and there is a major difference between ethics and law. Of course, ethics should constitute a foundation of law, oftentimes, but law by itself is not—there are unjust laws as well. So what I'm trying to say is that internationally, all these things, everybody, at one level or another, disregards international law. If you look at the number of United Nations resolutions—Security Council resolutions, not General Assembly, because General Assembly resolutions have no weight whatsoever—that nobody applies. They don't. They go and do everything. I can give you many, many examples.

So I think that, yes, President Trump should be kept, you know, his toes to the fire so that he doesn't disregard particular treaty obligations. Treaty obligations are very important, unless they didn't renegotiate. Treaties are renegotiated. They don't last forever and ever. It's not God's covenant. But you do it in a proper way. But let's understand the reality of law and the political context within which law operates.

BENJAMIN WITTES

Okay. So we're going to go to audience questions shortly. As you have questions, please go to the mics. I've got a couple more before we do, but Elisa, you wanted to respond.

ELISA MASSIMINO

Well, I wanted to go back and reinforce the question that you asked, Ben, about what are the concrete costs of this kind of approach. John has said this many times, the extent to which the United States views international law as some annoying hurdle or some T to cross or I to dot, that has a direct relationship to our ability to lead globally and our national security. It's ironic. I was listening, at lunch yesterday, to Lord Goldsmith about the impact of Brexit on sovereignty in the U.K. and everything, and he said it may turn out that this so-called reclamation of sovereignty turns out to be actually not so great for sovereignty in the U.K. And it's here, too, I think, that this “America First” policy might end up, in part because of this approach to

international law, to be “America Alone”—not first, but all by itself. It actually will weaken our country in terms of power to get the outcomes that we want globally, because on all of these big problems, whether it’s terrorism or climate or whatever it is, none of that stuff can be solved alone by the United States. We have to work with others.

Professor Hunter put the Trump administration in the context of previous U.S. administrations that have also had their ups and downs with international law, but I actually think it’s more important to look at Trump in the context of what’s going on globally right now. We’re in a much more dangerous period now, I think, because the Trump administration is less similar to previous U.S. administrations and more similar to what we’re seeing in many countries in Europe and in other places where there are these far-right nationalist, populist parties that have this idea that throwing out the global order, which they see as not serving them well, is the pathway to prosperity and security. That view ignores history, and the suffering and war that resulted from these ideas in the past.

BENJAMIN WITTES

One more question before we go to the audience. Sean Spicer made a remark the other day that—and again, what the status of a White House press statement is these days, is itself an interesting question. But he raised the question of, we have courts for these kinds of assessments, referring to war crimes and whatnot. So this, of course, provoked a barrage on Twitter of, you know, has Trump just endorsed the ICC, and will we now be signing the Rome Convention.

So my question is, where are we with respect to treaties, the ICC, the ICJ, other institutions that the United States has been, to one degree or another, engaged with, signatories to, or kept at arm’s length? How should we understand the Trump administration in relationship to those institutions and bodies?

JOHN BELLINGER

Why don’t I start with that because this is sort of a perfect example of what I’m trying to say which is significant cause for alarm, too early to tell, could go one direction or another, and sort of all three of these. Let me take the ICJ and the ICC and a quick word on theory.

The ICJ, obviously the United States has a case pending before the ICJ, brought by Iran. The administration has suggested it doesn’t like international institutions. Will the Trump administration simply walk away from that case so that we have a repeat of Reagan and the Nicaragua case? Will they do it in the middle, because we actually have very good jurisdictional arguments in that case, but if we lose on jurisdiction will they then walk away? Either of those two things would be very bad. Nothing has happened yet. It may depend heavily on who we get in as legal advisor and what Secretary Tillerson has to say, and it gets back to the point on education to try to restrain the president’s pulses that, well, we don’t like international courts and tribunals, but to explain why it’s important for us to stay in the case.

ICC, same thing. We could certainly see a rollback to the first term of the Bush administration, which really changed, as most of you know, pretty significantly in the second term of the Bush administration to a constructive policy of engagement. And there are, in fact, many conservatives in Congress that have supported the work of the ICC and have even provided rewards for Justice to bring people to the ICC, such as the Lord’s Resistance Army, in certain cases.

So again, the education is going to be important for the president and his advisors. You could see an impulse that would immediately go back to declaring war on the ICC, ceasing assistance. There were some suggestions of that in the draft executive order on the United Nations and international institutions, cease assistance, go back to attacking, so we’ll have to see what happens.

And then I'll just end on treaties because that's really one of my favorites, since this is one of the key roles of the legal advisor. If you didn't see it you really should look at the draft executive order on treaties that was leaked back in January, which is entitled "Moratorium on New Multilateral Treaties" and would have set up a cabinet-level committee to review all treaties, not just multilateral treaties, to recommend to the president which ones he should sign—that, obviously, was written by somebody who did not understand that the president actually doesn't sign most treaties, that they are signed by other people like me—and then to review all multilateral treaties to which we are a party and to determine which ones we should withdraw from. And the premise of this was that the United States was a party to all sorts of treaties that were not in our interest and that needed to be reviewed. But then there was a line that said "except for treaties that clearly relate to international matters."

So these impulses are written by people who do not understand the value of treaties—that the premise for this order cites two treaties to which the United States is not a party, CEDAW and the Rights of the Child, is suggesting that, well, there must be lots of other treaties to which previous administrations have secretly signed the United States up to that are not in our interest and that do not relate to international matters, and that we need to carefully review them to determine which ones we should withdraw from and make sure, certainly, that the president doesn't sign any new ones.

Fortunately, that did not come out. Maybe it will still come out, this executive order. But what we have got to hope is that with new officials in place they will explain the value of many of these treaties. There are at least half a dozen or more multilateral treaties pending before the Senate right now that are very much in our interest, that are IP treaties and other business, private international law treaties, that are indisputably of value and that the administration ought to be supporting.

So again, it all comes back to education and we'll have to see what will happen.

ELISA MASSIMINO

Yeah, and I think just to bring it back to us and this meeting, the education also has to come from all of us to the American public. You know, I think that a draft order like the one John just outlined is clearly a kind of gift to a political constituency, that responds to rhetoric from the campaign. Just as people inside the administration have to do a better job of educating the White House about this, we as a community have to do a better job of making the case for why international law is relevant, important, and beneficial in all of these areas that John just described, from business transactions to human rights. We haven't done that and that's why this kind of thing is a kind of political winner for someone like President Trump.

BENJAMIN WITTES

We're going to go to the floor. When you go to the microphone please start by saying who you are, what organization you represent, if there is one, why don't you add an international treaty that you think the president should withdraw from because it's not in America's interests.

DIANE AMANN

I think I'll pass on that last part.

BENJAMIN WITTES

I thought you might.

DIANE AMANN

I'm Diane Amann. I'm at the University of Georgia School of Law. I'm also the Special Advisor to the International Criminal Court Prosecutor on Children, but I speak exclusively in my personal capacity, as do we all. First of all, all of you, a terrific panel. Really, really useful synthesis of a lot of what we've all been watching. John, I'm with you on the two baskets but my two baskets are troubling and alarming. We see a lot happening. We who know international law see it cropping up all the time. And when I think about—gosh, is it ten or fifteen years ago now, when many of us were equally concerned with developments that impacted international law—and I should add my trouble and alarm, as with many on the panel, extends well beyond the United States to what I see is a global emergency of antiglobalism, if you will, and the rule of law attendant to that.

The last time around, we, as lawyers, knew our role. We started lawyering. We wrote briefs. Many of us were involved as amici, et cetera, sometimes as litigants, before the federal courts of the United States, and that is where we found change and success and adjustment, not to say that other mechanisms are unimportant but that central mechanism of the federal court of the United States was, I think, critical to that moment. We are now in a position, as you've said, where lawyers are not in the room. Women are not in the room. And the federal courts, with the exception of the travel ban, are not an easily imaginable venue for dealing with a lot of these issues.

So my question is precisely what strategies would you recommend for those of us who want to put on pressure, see change, particularly those of us who are not the head of Human Rights First, those of us who are in our universities or elsewhere and unable to do amicus briefs because there's no lawyering going on?

BENJAMIN WITTES

Okay.

JOHN BELLINGER

Can I take a stab at that? That is the key question, and General Taguba, who Elisa will know, said to me a number of years ago—there was old saying in the Army that you could not wring your hands and roll up your sleeves at the same time. I'm completely with you. There is both cause to be troubled and cause for alarm, but we need to do something about it. We need to roll up our sleeves, and some of that is, in fact, litigating in court, such as the travel ban, but some of it is, in fact, trying to—and I really want to echo what Elisa had to say here and what the American Society is doing, and what Mark and Lucinda are doing, which is to educate the American public. Actually, in some ways, although litigation is important, and I support it and our firm does a lot of it, in some ways that can make things worse to some portion of the American public because they think it's just being resisted.

And I really want to make a call to arms to the law professors in the room to, in your communities, try to get out to explain the value of international law and institutions, not just to your own students but to the Rotary Clubs. Accept every invitation. I try to do this myself. I am deeply concerned about it and there is something that all of you can do besides just being alarmed and concerned and litigating, all of which are valuable things. But I think if each one of us, not just on the East Coast and the West Coast but in the middle of the country, can try to go out and explain. There are people that do not know that the reason that we can send letters is because of the International Postal Union, or why, over other countries—

BENJAMIN WITTES

And every time a plane takes off, yeah.

JOHN BELLINGER

Yeah, exactly. So it's important to be able to do these things, and, frankly, to support the people who are in government. Don't just criticize the people who go in. If they are trying to do the right thing, try to help them. Try to educate them. Elisa was helpful to me when I was in government by coming in and talking to me about concerns that Human Rights First had and to come up with helpful suggestions as best that she could.

BENJAMIN WITTES

There are actually two banks of mics, so if you're closer to the one on the left, or to your right, go over there, and if you're closer to the one there, go over there.

MARTA VRBETIC

Thank you. I'm Marta Vrbetic and I'm with Wilson Center and Gallaudet University. I'm not an international lawyer. I have a Ph.D. in international relations, and I also studied international law and have an appreciation for international law, and I am writing a book about the changing norms and how they influence conflict management practices.

So here is my comment and question and I go back to what we were saying about Syria and the strikes. My question to you is, I know it's justified as humanitarian intervention, but isn't it just a case of punishment? I wouldn't say reprisals because the United States hasn't been attacked, but simply punishment with the purpose of sending a message and increasing U.S. credibility, and reassuring of the allies.

BENJAMIN WITTES

Great. This goes back Shireen's question, is this just a punishment and reprisal, and if so, is there anything wrong with that?

SHIREEN HUNTER

Well, first of all, I have to say I look at it because that's my discipline. I am an international relations person. I have had the experience in the United Nations and places like that. The fact of the matter is, unfortunately, in my humble opinion and my experience, ideals are generally at the service of power. Whatever it is, whether it is our father who says religion is this and so on—and my last book, actually, is on religion and international affairs. Ideas have always been at the service of power, and I think that this is a game going on, as far as Syria is concerned, which is a game going on at two levels, basically for hegemony. Whose hegemony is going to prevail?

The reason they wanted Assad to go is not because Assad has a horrible humanitarian record. If that was the reason we should have bombed Syria in 2002, 2003, before even Assad's father was dead. But it is not about that. Assad has, in Middle East politics, an aside that we don't like, and an aside that our allies don't like, whether it's Saudi Arabia, this, and this. And so this is why Assad has become sort of Typhoid Mary.

And so I think that if we say this is a real politic operation, then I would say that this is justified, as a real politic operation to shape the future of politics and geopolitics of the Middle East and beyond, then this is justified. But to come and get on one's high horse and to say that this is in

order to protect the Syrian children and Ivanka gets teary and so we bomb—if we had any concern for the Syrian thing we would not have allowed our allies, Turkey, Syria, this, and that, and of course other side is doing the same thing so playing on both their houses, and been arming all these people who have basically reduced Syria into rubble.

So this is what I'm saying. If this is a real politic, cynical act of demonstration of power, a message, as a lot of people said, a message to Putin, a message to Iran, a message to North Korea, that, you know, be careful if you do anything, you are going to be bombed. And so the whole concept of international law, it just doesn't. International society is not run by law. The only laws that are, are the ones on the functional issues. But everybody disregards international law, and they justify it. There is such a thing called casuistry—you find a legal justification.

I am a human rights person. As I said, in terms of refugees, you know, I was an undocumented person and I realized how important it is to have a travel document. So I am aware of these things and I wish that the world was run on that level. And I join the colleagues here, that the fact that the world is not run like that doesn't mean that it should remain so. So one has to insist that it's changed. But at this point in time, no, this was a very cynical power operation.

ELISA MASSIMINO

I understand that it's easy to be cynical about why the administration did what it did on Syria, but I would caution against building our responses to those things on some interpretation of the motives of the administration. I would say that we look at what it does, what it says about what it does, and then put forward what we think should happen next. So I think if we want to accept at face value that the president is concerned about the extermination of children with sarin gas then we ought to spell out what the United States ought to be doing about that next. I think it's perhaps—what can you say?—it's strategic optimism.

BENJAMIN WITTES

We have three people lined up. We have twelve minutes, or now eleven minutes. I'm going to ask questioners, please keep your questions short and emphatically in the form of a question. And I'm going to ask panelists, please keep your responses as brief as possible so that we can get to everybody.

VED NANDA

Ved Nanda, University of Denver Law School. John, I don't come from the East Coast or the West Coast so I'm in the middle, and I simply want you to know that it's not simply me but faculty members around the country teaching international law that do outreach, that do go to all these civic organizations, bar associations, and do try to convey the message that you have given.

And I want to simply say one word to Professor Hunter before I ask a question, and that is, Professor Hunter, the very first day teaching international law I tell my students that international law does not act in a vacuum. It's part of the international decision-making process. It's part of that political, booming, buzzing, confusing kind of work.

Question is, obviously, this day, with all that happened on Syria, we are all concerned and so the focus has to be on these immediate issues. But I want to ask a question about national/international security, about climate change, and all that is happening at the present time with the Paris Accord. John, who are the people who are going to be educating Trump, and what is likely to happen about that issue, which is of utmost concern, in terms of both national and international security, the Paris Accord, some kind of agreement that people had raised? Thank you.

BENJAMIN WITTES

Okay. John?

JOHN BELLINGER

Thank you for the work that all of you are doing, so thank you for adding that, and I would just say keep at it. I honestly think this is very important work that you all do.

I take your question to be who is going to be advocating inside the administration on this. I think a lot of this will be initially the career people who have worked on these treaties. I mean, it is interesting that President Trump, having said, as a candidate, that Paris was a terrible deal and he was going to tear it up, that he has not taken any action. In fact, if anything, he has made some suggestions that he would not withdraw from it. Of course, what is happening at EPA is a completely different issue and of huge concern. But my hope would be that the career officials inside the State Department, and then again as political officials, will come in, will explain the value of remaining in these international agreements. And again, it is just simply interesting that in one hundred days nothing has happened yet, particularly including what was potentially the nuclear option, which was to not only back away from Paris but to withdraw from the entire UN framework.

BENJAMIN WITTES

Sir?

BRIAN LEPARD

I'm Brian Leppard of the University of Nebraska College of Law. We've talked a little bit about the policy of the Trump administration on treaties, but of course there's another major source of customary international law, and I was just wondering what impact do you believe that the Trump administration will have on existing norms of customary international law but also the future development of customary law, in light of evolving practice, obviously, as well as statements emanating from the government, relating to an *opinio juris* of course?

JOHN BELLINGER

Well, it's a great question. As you well know, customary international law is a lightning rod for many conservatives. I would be doubtful if President Trump knows what customary international law is. I would imagine that there will be political appointees in the administration who will be concerned about customary international law and will be resistant to some development of some norms.

On the other hand, something like humanitarian intervention here, this may contribute to an emerging practice. And again, I personally would prefer to see us, rather than simply basing any intervention simply on factual factors, begin to lay out when the United States thinks that it is actually justified and appropriate such that it becomes a customary international law norm, in a very, very, very limited way, probably laid out like the British in their set of principles. Hard to know beyond that.

Detention would be one possibility. If we get in good general counsels at the Defense Department and the State Department, there are, in fact, areas in the Geneva Conventions where there are simply unanswered questions in noninternational armed conflicts, and since most of the conflicts that we're seeing right now are between states and nonstates and there are not answers in some of the conventions, you could see, with strong lawyers at Defense and State, some

development in those areas. There could be resistance from other countries, depending what direction that they take, but if they head in the right direction, perhaps led by the military and others, one could see potential useful development. So again, we'll have to see.

SHIREEN HUNTER

Can I add one short comment?

BENJAMIN WITTES

Please.

SHIREEN HUNTER

I just wanted to say one thing, and I hope I can be short. Basically, what we have seen happen since the collapse of the USSR has been actually a regression as far as respect for international law is concerned, and this reflects, certainly during the first two decades after the collapse of the USSR, the reason this has happened, an increase in basically American unilateralism and then others follow this, is because of the perception that the balance of global power has changed so much that United States could do certain things without basically any consequences. I think that if the Soviet Union had been in power, the United States would not have invaded Iraq in 2003. And even in 1991, without Gorbachev's policy of détente, that basically did not want, this would not have happened. So this is where I am coming from, that law and power, we need a balance of power in order for international law to be respected.

Now, there is one way that we can have an intervention, humanitarian and otherwise, that would be based on law, because in the United Nations there are provisions for a UN army, and the reason was that during the Cold War Americans and the Russians and others would not be able to work with. So if we want to have, for instance, humanitarian intervention, it should not be a single country, or it should be an international force that actually does, and this will then prevent the manipulation of the so-called humanitarian intervention for purposes of power and prestige and whatever.

BENJAMIN WITTES

Okay. Ma'am.

JACQUELINE PEEL

Jacqueline Peel, Melbourne University, Australia, one of the many allies that are puzzled by the inconsistent policy of President Trump. You were talking on the panel about the concrete costs of President Trump's approach to international law and you mentioned, John, sort of Trump being ignored on other issues or not being able to get traction, or, Elisa, you were referring to "America Alone" rather than "America First." So I just wanted to ask the question, if that does play out in that way, who emerges, potentially, as another power to fill that gap? In our region, we're particularly looking to the role of China, and with the South Sea situation we've seen China going ahead very much without any constraints being imposed by the Trump administration. So I would be interested in your thoughts on that question, of whether Trump's approach to international law opens up possibilities for other powers in this area.

BENJAMIN WITTES

We have two minutes left, so let's use this question as a wrap-up, and just each of you give us a sense of who are the winners of Trump's approach to international law.

JOHN BELLINGER

That's a great question and I think, again, this gets back to the education, and we'll see if it changes. My guess is that President Trump, because he was simply a businessman, did not realize, and may still not realize but I hope will come to realize, just how respected the United States is in the world. Not in every issue, there's a lot of hypocrisy. But there are many countries that look to the United States for leadership. And so when the United States withdraws, that does create a vacuum. I have heard, like you, that in Europe, that China is now everywhere, filling that void. The Europeans, on their own, the EU will have to exercise more leadership, although it has its own problems.

I gave a lecture about this shortly after the election on Trump and the use of force, on the need for the president to understand the value of his words and the impact that those can have on other countries, that things that play well at home do not play well internationally and prevent the United States from exercising that leadership role.

And if I can just, as we're sort of making closing points, I want to just mention one other thing that you may not know, particularly those who are not here in Washington, and it gets to sort of the support of people who are going into the administration, and Elisa may have a word on this. Not only do we need to support the career lawyers who are in a difficult position, many of whom are in the room right now, but not every political appointee who is going in is a longtime Trump believer. Some may be. There may be people who are going in for reasons of ambition and don't really care what the president has said.

But what I can tell you, because I have a lot of these conversations in Washington, as does Ben, and this is talked about at law fairs, there are a lot of people who are as troubled as you are but are still taking political positions because they believe that it is the best way to serve the country. And the thing to do is not to attack them. Do not make their jobs more difficult. Try to support them in what they are doing, because they are the ones who are really the best bastion against some of the concerns that you have.

BENJAMIN WITTES

Shireen, final thoughts?

SHIREEN HUNTER

I will hopefully be very brief. I think that the most important thing is, in my humble opinion, we should not just look to one leader. The whole notion of American leadership or Chinese leadership or Russian leadership and so on is, in my humble opinion, a little bit outdated. And if we really want to create a law-based international society, we have to create a new mechanism for global decision making. And I think that the United States, part of it is because other nations are coming up. No matter what Trump or George Bush or somebody else does, China is waking up. So Australia would feel the weight of China even if we had Franklin Roosevelt as president of the United States. And I think that, in some respects, all these wars and things that the United States has been involved with actually have sapped U.S. energy. The economy is in trouble, and a lot of people in America are unhappy.

So you cannot have a leadership role when a good chunk of your population is unhappy and feeling that the system has not worked for them, whether it's globalization, internationalization, whatever it is. So my bottom line is, don't focus on Trump—Trump is a passing phenomenon—but there are some basic shifts happening internationally, in the international balance of economic and political power, and we need to come up with innovative ways of encouraging international cooperation, and hence, strengthening international law and respect for international ethics, and human rights and others come under that.

BENJAMIN WITTES

Okay. Elisa, wrap us up.

ELISA MASSIMINO

Really quickly. That's such an important question—Who is going to fill the void? We are in, I think, the most dangerous moment since World War II for the values-based, rules-based international order, the order that has largely kept the world at some level of peace and security since that time. So I think that the challenge for all of us is to be making the case for the benefits of that rules-based, liberal international order, whether it's Orban in Hungary or Putin in Russia, China also. These countries are putting forward an alternative view of how the world should work and it does not include respect for rules, international human rights norms. It's antithetical to everything that this society stands for and that the United States has said that it stood for.

So this is our moment, as international lawyers, and a lot is riding on whether we can rise to the occasion.

BENJAMIN WITTES

With that we are going to close. Please join me in thanking our panel.