

By Dan Roberts

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The lawyer who first drew up White House policy on lethal drone strikes has accused the [Obama administration](#) of overusing them because of its reluctance to capture prisoners that would otherwise have to be sent to [Guantánamo Bay](#).

John Bellinger, who was responsible for drafting the legal framework for targeted drone killings while working for George W. Bush after 9/11, said he believed their use had increased since because President Obama was unwilling to deal with the consequences of jailing suspected [al-Qaida](#) members.

"This government has decided that instead of detaining members of al-Qaida [at Guantánamo] they are going to kill them," he told a conference at the Bipartisan Policy Center.

Obama this week pledged to renew efforts to shut down the jail but has previously struggled to overcome congressional opposition, in part due to US disagreements over how to handle suspected terrorists and insurgents captured abroad.

An estimated 4,700 people have now been killed by some 300 US drone attacks in four countries, and the question of the programme's status under international and domestic law remains highly controversial.

Bellinger, a former legal adviser to the State Department and the National Security Council, insisted that the current administration was justified under international law in pursuing its

targeted killing strategy in countries such as Pakistan and Yemen because the US remained at war.

"We are about the only country in the world that thinks we are in an armed conflict with al-Qaida," Bellinger said. "We really need to get on top of this and explain to our allies why it is legal and why it is permissible under international law," he added.

"These drone strikes are causing us great damage in the world, but on the other hand if you are the president and you do nothing to stop another 9/11 then you also have a problem," Bellinger said.

Nevertheless, the legal justification for drone strikes has become so stretched that critics fear it could now encourage other countries to claim they were acting within international law if they deployed similar technology.

A senior lawyer now advising Barack Obama on the use of drone strikes conceded that the administration's definition of legality could even apply in the hypothetical case of an al-Qaida drone attack against military targets on US soil.

Philip Zelikow, a member of the White House Intelligence Advisory Board, said the government was relying on two arguments to justify its drone policy under international law: that the US remained in a state of war with al-Qaida and its affiliates, or that those individuals targeted in countries such as Pakistan were planning imminent attacks against US interests.

When asked by the Guardian whether such arguments would apply in reverse in the unlikely event that al-Qaida deployed drone technology against military targets in the US, Zelikow accepted they would.

"Yes. But it would be an act of war, and they would suffer the consequences," he said during the debate at the Bipartisan Policy Center in Washington. "Countries under attack are the ones that get to decide whether they are at war or not," added Zelikow.

Hina Shamsi, a director at the American Civil Liberties Union, warned that the issue of legal reciprocity was not just a hypothetical concern: "The use of this technology is spreading and we have to think about what we would say if other countries used [drones](#) for targeted killing programmes."

"Few things are more likely to undermine our legitimacy than the perception that we are not abiding by the rule of law or are indifferent to civilian casualties," she added.

Zelikow, a former diplomat who also works as a professor of history at the University of Virginia, said he believed the US was in a stronger position when it focused on using drones only against those directly in the process of planning or carrying out attacks.

"Bush badly mangled the definition of enemy combatant to expand to anyone who might be giving support, which was very pernicious," he said.

Zelikow – stressing he was speaking in a personal capacity, not on behalf of the administration – added that he felt the US should be clearer in explaining that its targeted killing programme was responding to specific threats against national security.