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OPERATIONALIZING INTERNATIONAL LAW: BEYOND THE STATE

This panel was convened at 9:00 a.m., Thursday, April 5, 2018 by its moderator Hélène Tigroudja of Aix-Marseille University, who introduced the panelists: Liz Evenson of Human Rights Watch; Sarah Williams of the University of New South Wales; Elan Strait of the World Wildlife Fund; and Stephen Mathias of the UN Office of Legal Affairs.

Introductory Remarks by Hélène Tigroudja*

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Good morning, everybody, and welcome to this extraordinary panel on the operationalization of international law, beyond the state, so it is a very ambitious title and it is a very ambitious question, and we are trying to discuss a bit more about the private actors and the role and the place of the private actors in international society, but not only private actors as such but private actors in their relationship with other classical subjects of international law of states across an international organization.

We are going to raise, and the panelists are going to raise very significant questions, for instance, about the role of the place of private actors in case of push-back or in case of failure of international organizations or failure of states to comply with international obligations. We are trying to cover all these topics about the role and the place of private actors in international society.

Before this, I have just a few general comments, and I have been asked to inform you that there will be a test of the regional alert system sent to mobile devices in D.C. between ten and eleven, so do not be afraid. If your mobile phone suddenly rings it is normal. It is a test. Of course, it is better if the telephones are switched off, of course. Do not be afraid. It is just a test.

Perhaps a general word on our panelists, and I will present first Liz Evenson. Liz is Associate Director of the International Justice Program of Human Rights Watch, where she has worked since 2006. Her research and advocacy centers are focused on the International Criminal Court (ICC) monitoring the Court's institutional development and conducting advocacy to world court officials and member states of the International Criminal Court. Her speech will focus on the different role of NGOs in the ICC process, and to be more specific, the role of NGOs in cooperation with the International Criminal Court.

Then I will give the floor to Professor Williams. Professor Williams is a professor at the University of New South Wales in Sydney. Sarah will also talk about the ICC and the role and the place of NGOs, private actors in the International Criminal Court system, but from a slightly different perspective than Liz. Sarah is going to focus on the role of NGOs in cooperation with the prosecution based on Article 15 of the ICC Statute, and also, if she has time, the role of NGOs in the reparation process, a very significant issue.

Then Elan will have the floor. Elan Strait is the Deputy Director for Policy and Strategy for WWF. He was recently at the National Security Council at the White House, and before that he was a negotiator of the Paris Agreement at the State Department. Elan will discuss about the role of subnational actors in the implementation of the Paris Agreement on climate change, and especially

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with a focus on the United States, and when a state decides to withdraw from an international agreement how the subnational actors or private actors may play a role in terms of implementation.

And then we will end our general presentation with Steve Mathias. Just a few words on his wonderful career. Steve is Assistant Secretary-General of the UN for Legal Affairs and head of the Office of the Legal Counsel within the UN Office of Legal Affairs. His speech will be a little bit different, and it will be more institutional and based on the way the United Nations has more and more involved private actors in different institutions and mechanisms.

If you agree, we will hear the different presentations and then, of course, we will have time for Q&A and for discussion with you. I guess that you may have a lot of interesting questions.

Liz, you have the floor for no more than ten minutes, please.

Remarks by Liz Evenson*

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Okay. Thank you very much, Hélène, and thank you to the organizers for putting together this panel and for the invitation to be here.

As Hélène has indicated, my remarks will focus on the role of NGOs in the operationalization of the Rome Statute, which is, of course, the founding treaty of the International Criminal Court, the ICC. And even more specifically, I am going to address a few of the ways in which NGOs promote state cooperation with the ICC. This is, of course, just one of the many, many roles that NGOs play when it comes to the Rome Statute system. Sarah will address some of those other roles, and I hope we can come back to perhaps even additional roles in the discussion.

As I think most of you will know, to carry out its mandate and afford victims access to justice, the ICC depends, to a significant degree, on the cooperation of states. In particular, its states parties, but also other supportive states and intergovernmental organizations at the international and regional levels. And this need for cooperation ranges from what might be thought of as more technical forms of assistance—cooperation in investigations, cooperation in arrests—to diplomatic and political support.

And the latter is particularly important given the Court's mandate. This is a court that was set up to hold those most responsible for the world's worst crimes to account. And that means that the reality is, for as long as the ICC is doing that job it is going to run up against powerful interests that are opposed to accountability and which may seek, in many different ways, to undermine the Court's work and its legitimacy. In the face of those efforts, the ICC needs states parties—not exclusively but in particular its states parties—to work together to defend the integrity of its treaty and its ability to carry out its mandate.

We have this tremendous need for technical cooperation, this need for political support, but it is not obvious that either of those are going to be available to the ICC. You also have this need to have a range of efforts to ensure that that cooperation, that support is there and that it is there, most of all, when it matters most. NGOs have ended up having a very significant role to play in those collective efforts to ensure the Court has the support and cooperation it needs.

I am just going to highlight two examples in the remainder of my remarks, which both fall more on that spectrum of diplomatic or political support, although when it comes to arrests there is a clear link between political and diplomatic support and operational support. And those two examples are the assembly of states parties' procedures on deterring non-cooperation with the ICC, and then the

* Human Rights Watch.

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