convicted, so the risks to the defense are much lower than if you were to have someone participate at the trial phase.

One thing that has been raised is there is a limited number of often repeat NGO players, the large international NGOs, and certain academic institutions, who are regularly making submissions and therefore seem to be having quite a strong level of influence, and that raises questions about whether it is a plural or a privileged role for certain NGOs.

In conclusion, despite the kind of promise that was raised at Rome of greater involvement of NGO and other civil society actors, the reality in terms of the Court's formal practice is far more restrained. Why is that so? One way to approach that question is to think, well, what role does civil society engagement with the Court in its formal processes play? Usually it is argued that civil society participation increases the court's legitimacy by allowing for the representation of a broader set of interests and more voices, and in enhancing the legality of the quality of those decisions.

The representation argument explains involvement in the negotiations. It also explains, partly, the role of civil society in Article 15 communications and in providing information around reparations processes. But where we see the chamber is much less willing is where it would be allowing intervention directly in trials, and where we have concerns about fairness to the accused. It could also be that the relatively low reliance is a sign of international criminal law maturing. We have judges who were appointed with expertise, we have a wide range of jurisprudence to draw upon, and the court is usually better staffed with research assistants, so perhaps there is no need for external advice.

But finally, it might also be that civil society is placing less priority on pursuing their goals through formal processes. It might be, that as Liz has been highlighting, the actual issues are not legal. The issues may be political and diplomatic. In an era of reduced funding they are turning their attention to processes outside the formal legal processes and using more diplomatic and political advocacy campaigns.

Thank you.

Hélène Tigroudja

Thank you very much for your presentation, and I was really struck by what you said about the amici and the reluctance of the ICC to accept, because in other international tribunals they may play a very significant role. I get that we will have discussions about this.

Now we are talking about the Paris Agreement and the place and role of the private actors. So, Elan, you have the floor.

Remarks by Elan Strait*

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Thank you very much, and I am actually really excited about the table arrangement here because I am wearing blue jeans, but right now I look very formal, so this is perfect.

I am going to order my speech in basically three sections. The first is what is the Paris Agreement. I think many of us have heard of it but how does it work? The second is now that it is adopted and in force, what is next? And then the third is what is the role of subnationals? And what I mean when I say subnationals, this is actually now an accepted term within the international climate negotiations. It is anything that is not the federal government, anything that is not the

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national government. They could be provinces or states, they could be cities, private sector businesses, faith organizations, indigenous populations, and so on. And they have a growing role in the Paris Agreement, and in particular in the United States, for some obvious reasons.

First, what is the Paris Agreement? The Paris Agreement was adopted in 2015, after four or five years of negotiations on the international scene, and it was intended to replace two parallel but both equally broken international regimes on climate change. The first was the Kyoto Protocol, which was broken for two reasons. The first is the most obvious, which is that the United States declined to participate, and when you do not have the second-largest emitter in the world in the climate regime it is destined to fail, especially when the regime is premised on a global cap on emissions.

The first is Kyoto. The second was the Copenhagen Accord, which was adopted in 2009, and that was broken for the opposite reason, which was it had totally universal participation but it was so bottom-up, it was so determined by national governments, about what they were going to do and how they were going to do it, that it really did not have any credibility as a solution.

The negotiations on the Paris Agreement were trying to resolve that issue of what is the right balance between totally top-down, where you have governments like the United States, and possibly China, who do not want to participate, and bottom-up, where you are never going to get the right level of action on the part of countries to get to global goals.

The Paris Agreement was trying to resolve that issue. It was trying to resolve a second also important issue, which was it was very unlikely that the United States Senate was going to provide advice and consent on a treaty on climate change. There were specific aspects of the negotiations on the Paris Agreement which were designed so that any country, but especially the United States, would not have to adopt the agreement through its formal legislative channels. And that meant, specifically, that any target that a country put forward to reduce its emissions would not be legally binding on that country.

That resulted in three key aspects of the Paris Agreement. The first is that targets to reduce greenhouse gas emissions were not going to be binding, but they were going to be voluntary. The second is that to make up for that, the transparency and accountability elements of the agreement were going to be extremely important and legally binding. Even though what you put forward as a reflection of your effort was voluntary, you had to report and be reviewed on whether you were achieving that every two years, which would create something of a name-and-shame system, that you would be embarrassed if you were not living up to what you set forward. The third aspect is the role of finance, the role of how wealthier nations are going to help less-wealthy nations accomplish their objectives under the Paris Agreement.

Those are the three key aspects of the Paris Agreement. Those were adopted in 2015, through very high-level negotiations. The president of the United States was heavily involved in those negotiations. That is where the heads of many other states—heads of state are still very involved in how climate negotiations are happening but we entered a new phase of international climate. And the phase that we are at now is implementation. Countries put forward their targets in 2015, and if you add up all of the ambition of those targets, which the international process is doing this year, it does not get you to the global goal, which is to hold global warming to well below two degrees. We are already at around one degree of global warming above pre-industrial levels, and so the goal to hold it to well below two degrees is very ambitious, and currently we are not on track for that, which is obviously catastrophic for many countries, including parts of the United States.

What has to happen in the Paris Agreement is in 2020, all countries are invited to increase the ambition of their targets. They are not required to but every country is supposed to take a look at what they are doing and find out whether they can do more. In the case of—just to pick a random

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country—the United States, if it were still in, to put forward a target to reduce emissions 26 to 28 percent below 2005 levels, by 2025, theoretically, the United States should go back this year and next year and think, can we actually do more? That is very difficult for any country to do. They just put forward the targets in 2015. Not a lot has changed in the two years, three years since then. And, like I said, those were head-of-state level targets. It is not easy to just tear that up and start over.

The phase that we are in now is going to require the participation of subnational actors. The only real way for national governments to take a step back and do more, and say that we are going to do more, is for the cities and businesses and states, and so on, in that country, to voluntarily do more. And then the country can take a look around at what is going on, do an assessment of action at the subnational level, and say, actually, we can increase our national target just by adding up this action. A lot of countries are engaged in that process right now.

Specifically, on the role of subnationals I want to talk first about the global picture and then about the interesting United States context. Globally, climate change, of course, requires a whole-of-economy transformation—changing our electricity, changing our behavior, changing what cars we drive, changing the farming practices. All of those things can be signaled by the federal government. They can be regulated or incentivized by the federal government, but at the end of the day, that is up to subnationals and the public to actually implement. Unlike, I think, many international treaties, the success of the Paris Agreement depends not at all on national governments but on the people within those countries to implement the targets.

Around the world, you have national governments who are at a loss of how to handle the implementation of the Paris Agreement. Fortunately, during the negotiations, the French presidency, the French who were hosting the negotiations, placed a special emphasis on the role of subnationals and climate. Now there is an understanding of what cities and businesses and so on can do, but it is still not fully formed. There has been a lot of research and a lot of work on what exactly can those actors do, and to be specific on the spectrum of—Liz to Sarah—on how civil societies can participate, not in the formal process but outside of the process, to the formal process, right now subnationals are very much on the Liz side of the spectrum. There is no real way for them to participate formally, and so what we are talking about is really how do they help implement with national governments aside, internationally.

And like I said, that is a very under-formed aspect of the implementation of the Paris Agreement, and it requires further work. And the U.S. context actually provides an interesting model for how that could happen.

So, the U.S. context. My role, most recently, before working at World Wildlife Fund was at the National Security Council, in 2016, under President Obama, and then I also stayed on for eight weeks during the current administration. And my job was, at the first instance, to help run the process on how they were going to decide whether to stay in the Paris Agreement or not. So, sorry. Maybe next time.

What we have in the U.S. context is the extreme version of this, which is not only how does a subnational government help a national government implement, but what if you do not have a national government? And what you have in the United States is subnationals who are, thankfully, picking up the mantle of climate leadership and saying that they will do more, even though there is not a national government, and, in fact, are entrusted with basically three things now. The first is projecting to the rest of the world that the United States is still in international climate, that there are still actions going on in the United States that would, theoretically, amount to the level of ambition that the United States had previously under the Paris Agreement. The first aspect of that is communicating internationally, which, like I said, is actually a critical part of the Paris Agreement.

The second part of that is, in the United States, to actually fill that gap. The United States was not on track for 26 to 28 when President Obama left office. If you did a projection of emissions, which

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the United States did, it barely, even in the error bars of the projection, touched 26 to 28. In reality, we were well below that. And now with the rollback two days ago, the car emission standards, and the Clean Power Plan, the United States is even further off track. The second role of subnationals is to actually fill that gap, which is difficult. Those two regulations accounted for an enormous amount of ambition in the United States, and now what we have is states, effectively, and cities and businesses who are trying to do enough to fill that gap, which is not easy.

The third thing that, in the United States, is really important for subnationals to do is to create a political mobilization that would allow for re-engagement by the United States, either in the current administration or, more likely, in a future administration. And the real emphasis on that is on the private sector, on businesses, to really talk about why they care about climate change, why climate policy is good for the United States, and you see that happening more and more in the United States, which is good.

However, it has created a bit of a conflict internationally. Effectively, the movement of subnationals, which is most broadly represented by the We Are Still In coalition, has taken on something of a partisan flavor, which is unfortunate. But of the governors who have said that they will uphold the Paris Agreement—there have been eighteen of them; three of them are Republican—of the almost four hundred mayors who have said they want to uphold the Paris Agreement, six are Republican. And so, effectively, what you have is a widespread political movement but one that reflects the partisan divide on this issue nationally, which makes it very difficult for any foreign government to engage with the United States subnational actors, because it looks like you are engaging with the minority party, which is not good practice for any foreign diplomatic effort.

The good news is you have a lot of subnationals in the United States who are picking up the mantle, who are serious about filling that ambition gap, who are serious about creating a political basis for re-engagement, but have difficulty doing that last thing of projecting to the rest of the world what they are doing, because it is difficult to engage with foreign governments because of the partisan divide in this country.

That is where we are at. This is going to be a very important movement for mobilizing other governments, other subnationals throughout the world to pick up that same leadership mantle so that other governments can increase their ambition, so that in 2020 we can get back on track for our global goals.

Hélène Tigroudja

Thank you very much. I have to say it is slightly different from the ICC not only to help save, to implement, or to comply with the international obligations. It is the creation to help fill the gap, and we cannot go beyond this space, and it is very interesting.

Steve, you have the floor now, to tell us about the role of the United Nations and the relationship with private actors.

Remarks by Stephen Mathias*

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Well, thank you, and thank you for the invitation to be here. Good morning, everyone.

The United Nations is, of course, first and foremost, an organization created by states and for states to come together and take collective action to realize the high ideals of the UN Charter. But already in the Charter, with the first words, "We the peoples of the United Nations," we see

* UN Office of Legal Affairs.

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