

INTRODUCTORY REMARKS BY OONAGH FITZGERALD

doi:10.1017/amp.2017.92

Thanks very much, Lucinda. Good morning, everybody. It's my pleasure to welcome you to this special session on "International Law and the Trump Administration," with a focus on national and international security.

The Centre for International Governance Innovation is a nonpartisan, independent think tank focused on global governance and law, politics, security, and economics. We're based in Waterloo, Ontario, Canada, and we have fellows all around the world. What we focus on is writing and preparing policy-relevant research on critical issues of international law, mainly focusing on international economic law, environmental law, intellectual property law, and indigenous law.

Now, Canadians have two expressions about America that I'm sure you've heard before and that will be very familiar to Canadians. When America sneezes, Canada and the rest of the world catches a cold, and the other one was by Pierre Elliott Trudeau, who is an earlier prime minister of Canada. He said, "Living next to you, America, is in some ways like sleeping with an elephant. No matter how friendly and even-tempered is the beast, if I can call it that, one is affected by every twitch"—I would add a tweet—"and grunt." So that's why we're interested in sponsoring this event. I think that we watch what happens in the United States with great interest.

How U.S. presidents and, indeed, all national leaders treat international law is a vital aspect of our collective peace, security, and prosperity. Their relationship to international law either lends legitimacy to it or takes it away, and nowhere is this more important than in the very contested area of national security and international security. So I hope you enjoy this panel. Thank you.

LUCINDA LOW

Thank you very much, Oonagh. There is a similar saying in Mexico about colds and sneezes, so maybe they got it from the Canadians.

Let me now turn the panel over to Benjamin Wittes, who will be our moderator, and he will introduce the remainder of the panelists and the topic. Thank you, Benjamin.

INTRODUCTORY REMARKS BY BENJAMIN WITTES*

doi:10.1017/amp.2017.93

Thank you.

So I would be remiss if I didn't begin this panel by just pausing for a moment over the name of it, which is "International Law and the Trump Administration," and if that doesn't bring a smile to your lips in some form, I think we may as well pack up and go home.

So I'm actually going to be very, very brief with the introductions because I want to use as much time for a conversation here as we can and to involve you guys in it. So what we're going to do, the order of operations here, is that we're going to go left to right here, give very brief opening remarks, and then we will start a conversation up here. And as you guys have questions, there are mics on the side. I can't see you very well because of the brightness of the lights. So if you're up there and I'm not calling on you, make florid movements with your hands or something.

So with us today are Shireen Hunter of the Georgetown School of Foreign Service; John Bellinger, who was a State Department legal advisor in the Bush administration, now of Arnold & Porter; and

* Brookings Institution.

Elisa Massimino, who runs Human Rights First. And let's start with Shireen. Just give us your thoughts.

REMARKS BY SHIREEN HUNTER*

doi:10.1017/amp.2017.94

Well, thank you very much, and good morning, ladies and gentlemen. Actually, I have to have a disclaimer. I am not a lawyer, and actually, probably the reason why I am here is to provide a dose of political realism and so really show a little bit still the limits of international law and to what extent actually international law governs international relations and why.

To begin with, one thing we have to understand, that law does not have any existence outside of society and communities, and in other words, law is not something that is out there and it's not related to the social and political conditions and processes that are going on. And, generally, also, laws are the outcome of two basic processes. Either laws develop over time, long time, over long time, or they are the outcome of political struggles and political compromises, and it's when there is a sufficient consensus within a society and that everybody is willing to give up some of their privileges for independent action for the greater good, for greater security and so on and so forth. Then we have a society that develops laws and also creates a mechanism to guarantee the enforcement of those laws.

So the one other thing that is very important to keep in mind is the enforcement mechanism—who is going to enforce laws. Let's say that in national societies it is the police or the military or whatever. So I think these are two things that we have to understand. Laws are the outcome of certain social and political processes unless, of course, we believe in divine law or national law and certain other things, but those are a different category of law.

But when we come to international law, of course, the development of international law has a very long history. It has always been certain that laws that have governed relations among states; for instance, certain things that are governing the rules of war or cease-fires and so on, even in ancient times, or even that states are responsible for the safety of envoys and so on. So let's say that in the old days, an envoy was not treated well and/or was killed. That would have been a *casus belli* it could have left, so there has always been international law.

But if you really want to look at the beginnings of international law, it's very interesting that the beginning of international law—and if you take Hugo Grotius, who talked about the law of peace and war, that was, more or less, also the same time that we see the state system is coming into being in Europe—on the basis of the so-called Treaty of Westphalia. That laid down a number of principles, including, for example, noninterference in international affairs of other states and so on.

So since then, because of expansion of international relations, we have also seen that a number of various types of laws have been developed, and actually, the overwhelming part of these laws that relate to the regulation and management of the various exchanges among nations and societies and so on are observed by everybody. For example, nobody—we think that mail comes and goes. Of course, nowadays with emails, this is another difficulty. I don't know how that's going to be, but when the mail comes and goes even at time of war and nobody interferes with that and all these things are regulations under the International Postal Union, for example, or when you have the maritime law process, which basically functions pretty well—and all of what I call the functional things are essentially not very contested—or aviation laws and so on and so forth. So in that part of

* School of Foreign Service, Georgetown University.