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Closing Plenary: Preventing Torture in the Fight against Terrorism - Remarks by Lori Damrosch

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CLOSING PLENARY: PREVENTING TORTURE IN THE FIGHT AGAINST TERRORISM

This panel was convened at 11:00 a.m., Saturday, April 11, by Lori Damrosch, president of the American Society of International Law. Elisa Massimino of Human Rights First introduced the panelists: John Norton Moore of the University of Virginia School of Law; Alberto Mora of the Harvard Kennedy School and former General Counsel of the U.S. Navy; and Claudio Grossman of the American University Washington College of Law.

REMARKS BY LORI DAMROSCH*

I am Lori Damrosch. I am the president of the American Society of International Law. As this is our closing plenary for our 2015 annual meeting, I thought it would be appropriate for me to open it and to say a few words. First of all, it is a tradition at our annual meeting to reserve a place or two for the late-breaking events, or the “hot topics.” Last year, you will remember, we were racing to put together a panel on Crimea a day or two after the annexation had happened, and this year as the very most intensive phase of the preparations for the annual meeting were taking place, the Senate Select Committee on Intelligence released its report on torture. The United Nations Committee Against Torture, in approximately the same time frame, released its concluding observations on the report of the United States. So, even though torture is a problem that has been with us for centuries, and the knowledge of practices undertaken by persons of United States authority has been known for a very long time, it was a late-breaking topic in the context in which we had been putting together this annual meeting, and it was a late-breaking topic that posed a number of sensitivities—political and otherwise—for trying to put together a program.

I want, as my final act for this year’s annual meeting, to once again thank the program committee, the three program committee co-chairs—several of them I think are here—and all the members of the program committee who helped us brainstorm this event and put together a panel that we hope will be enlightening for you. We will do what we always try to do at the ASIL annual meetings, namely, elevate the debate and get away from some of the partisan mudslinging and get back to what we really think are the core issues: what are the international legal obligations of the United States; how are those international obligations defined and clarified, how are they implemented; and is the implementing structure in the United States adequate. And, so, we want it to be a forward-looking panel. That is the spirit in which we have constituted it. I also want to say that the newsletter—the one released a week or so ago which has a presidential column—that is mine, and it says January through March, which is when I was preparing it, but it was released around April 1 and I think you can probably pick it up at the ASIL table. I talked a little bit in the column about the two reports that were issued in late 2014, but I also look back to what this organization, the American Society of International Law, has done about torture. Although we are an institution that almost never takes policy positions and almost never intervenes on issues of controversy, we do have a mechanism prescribed by our constitution and regulations for coming together in a single voice, as we did at our centennial annual meeting in 2006. And we adopted a resolution expressing the sense of the American Society of International Law that included a few passages on the torture issue as it was then current, and that is the sense of the American Society of International Law reprinted in this newsletter, and it remains the sense

* President of the American Society of International Law.

of the American Society of International Law, governing us from our centennial meeting in 2006 until time immemorial. So, with those as the opening words, I turn it over to Elisa to moderate the program. Thank you.

REMARKS BY ELISA MASSIMINO*

Thank you all for joining us today. It takes a special kind of person to spend a glorious spring morning like this in a windowless hotel conference room talking about torture. So thank you all for being that kind of person!

You are here, I think, because this is a critical issue—not just for our country—but for the integrity of international law. So it is fitting that we will close out this year's ASIL annual conference discussing it.

And we are especially fortunate to have three esteemed experts in the field of human rights and international law to help us explore this issue today. I will introduce each of them in a few minutes. Following their opening remarks, we will open up the discussion to all of you.

The public release in December 2014 of portions of the Senate Select Committee on Intelligence report on its investigation into the CIA's post-9/11 interrogation and detention program generated a lot of partisan heat. But for those who have taken the time to actually read the 500-plus page document, it actually sheds a fair amount of light—finally—on what happened, how it happened, and what—if anything—was gained from the torture program. Today we want to discuss what we learned, and what the implications are for both domestic and international law on torture and other cruel and inhuman treatment.

How many people know about the Senate Committee Intelligence report? Most of you—that is good. We will not spend a lot of time talking about it. I do want to note that the complete report is about 6,900 pages. The executive summary is about five hundred pages—that is what has been released. While it is quite heavily redacted, it is nonetheless possible to glean new information from the report. The report, which was supported in three bipartisan votes taken by the intelligence committee, is a very significant—some have said historic—exercise of oversight by Congress. There is a lot to learn from it.

Today we are going to explore what lessons we can learn both from the report and from the role of the United Nations Committee Against Torture and its wisdom in terms of evaluating U.S. performance under the treaty. Torture continues to be a serious and widespread global problem. It is certainly a problem not only for the United States and it is a problem not only—or perhaps not even most significantly—in the context of national security. But because of the leadership role the United States has played historically in developing human rights standards, it is particularly important to understand, now that we know more about the use of torture and other cruelty against prisoners in its custody, how the United States intends to address this problem.

Let me stop there and introduce our three speakers who will each give brief opening remarks of no more than ten minutes. I will then kick off our discussion with a few questions and bring you all into the discussion. Panelists, this is not like a congressional testimony; please feel free to address each other directly.

Our first speaker is John Norton Moore, who is a professor of law at the University of Virginia where he directs the Center for International Law and the Center for Oceans Law and Policy. John has written extensively on international law generally and on these issues

* President and Chief Executive Officer of Human Rights First.