

46<sup>th</sup> Annual Conference

# Canada at 150

## The Return of History for International Law



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**November 2 & 3, 2017 | Ottawa**



Canadian Council on International Law  
Conseil canadien de droit international

[www.ccil-ccdi.ca](http://www.ccil-ccdi.ca)

## GENERAL INFORMATION

**Conference location:** unless stated otherwise, all conference activities take place at 111 Sussex Drive, Ottawa.

**Complimentary Wifi** is available in all meeting rooms. The code is available at the Registration Desk.

**Simultaneous interpretation** is available in Victoria Hall. Headsets are located at the back of the room.

**Follow CCIL on Twitter:** @CCIL\_CCDI and share conference highlights by using #ccil2017

**Presentation language** is denoted by the letter (E) or (F) after a speaker's name.

**Summaries of sessions** prepared by law student volunteers will be posted to the CCIL website.

**Speakers' presentations** will be made available to conference delegates within the coming weeks.

**Photos and/or videos** may be taken during the conference and subsequently used by CCIL to promote the conference and/or activities on its website. While unlikely, it is possible that media may be in attendance.

### **Continuing Professional Development Credits**

Panel 2A "Ethical and professionalism issues in the practice of international law" is accredited by the Law Society of Upper Canada for 1.5 hours of professionalism content.

Accreditation by the Law Society of British Columbia of sessions on Thursday and Friday for up to 12 hours 30 minutes of credits is pending. Please check the CCIL website for updates.

The Barreau du Québec automatically recognizes the hours accredited by other Canadian or foreign law societies.

### **John P. Humphrey Fellowship**

The Canadian Council on International Law awards annually up to three John Peters Humphrey Student Fellowships in International Human Rights Law or International Organization.

The Fellowships are awarded to outstanding students in order to permit them to pursue full-time graduate studies at leading graduate institutions in Canada or world-wide. Students in Canadian law and political science (or the equivalent) faculties are eligible to apply for the Fellowship. Deadline: December 1, 2017. Additional information and the application are available at [www.ccil-ccdi.ca](http://www.ccil-ccdi.ca)

**Join CCIL:** Your conference registration includes CCIL membership and is valid until the next year's conference. Know someone else who should be a member? Encourage them to join through CCIL's website. A regular one year membership is \$85 while a student membership is only \$25.



## PROGRAM-AT-A-GLANCE

Thursday, November 2, 2017			
8:00 am	6:00 pm	Registration Open	Victoria Hallway
8:00 am	9:00 am	Coffee Service	Ottawa Lounge
9:00 am	10:35 am	Opening Remarks by CCIL President Plenary Panel: Canada and International Law @150: Past, Present & Future	Victoria Hall
10:35 am	10:55 am	Break / Coffee Service and Snacks	Ottawa Lounge
10:55 am	12:25 pm	1A: What are “Progressive Trade Agreements”? Canadian Trade Policy in an Era of Globalization Backlash	Victoria Hall
		1B: Canadian Responses to Mass Atrocities	Bytown
		1C: Highlights of 2017 from the Canadian Yearbook of International Law	Freiman-Guigues
12:25 pm	1:40 pm	Buffet lunch and networking	Ottawa A-C
		Buffet lunch and Career Chat (pre-registration required)	Algonquin
1:40 pm	2:40 pm	Keynote Speech by the Hon. Charles N. Brower Canada’s Embrace of the EU-Inspired “Investment Court System”: Foresight or Folly	Victoria Hall
2:45 pm	4:15 pm	2A: Ethical and Professionalism Issues in the Practice of International Law	Victoria Hall
		2B: Assessing Canada’s Performance in Holding Canadian Extractives Accountable for Grave Violations of Human Rights	Bytown
		2C: Learning from History to Solve Today’s International Investment Law Challenges	Freiman-Guigues
4:15 pm	4:30 pm	Break / Coffee Service and Snacks	Ottawa Lounge
4:30 pm	6:00 pm	3A: The Lifespan of a Trade Agreement: NAFTA Revisions	Victoria Hall
		3B: Canada at 150: International Treaties in the Making and Reshaping of Canada	Bytown
		3C: 150 Years of the Laws of War	Freiman-Guigues
6:15 pm	8:00 pm	Reception Hosted by The Legal Adviser of Global Affairs Canada	125 Sussex, A9
Friday, November 3, 2017			
8:00 am	3:00 pm	Registration Open	Victoria Hallway
8:00 am	9:00 am	Coffee Service	Ottawa Lounge
9:00 am	10:30 am	4A: Negotiation of International Treaties by Canada: Towards an Effective Diversification of Actors	Victoria Hall
		4B: A Manual on International Law Applicable to Military Uses of Outer Space: An International Collaboration to Bring the Past into the Future	Bytown
		4C: Compromise, Cooperation and the Implementation/ Development of Oceans Law in the 21 <sup>st</sup> Century	Freiman-Guigues
10:30 am	10:50 am	Break / Coffee Service and Snacks	Ottawa Lounge
10:50 am	12:20 pm	5A: National Military Justice Systems as Accountability Mechanisms for Enforcing Compliance with the Laws of Armed Conflict	Victoria Hall
		5B: A Return to Transnational Criminal Law	Bytown
		5C: Canada’s Role in International Environmental Law: Past, Present & Future	Freiman-Guigues
12:20 pm	1:35 pm	Buffet lunch and networking	Ottawa A-E
12:50 pm	1:35 pm	CCIL Annual General Meeting	Bytown
1:35 pm	2:35 pm	Keynote Speech by Dinah Shelton Democracy, Human Rights and the Rule of Law	Victoria Hall
2:35 pm	3:15 pm	Awards Session: John E. Read Medal and Public Sector Award	Victoria Hall
3:15 pm	3:30 pm	Break / Coffee Service and Snacks	Ottawa Lounge
3:30 pm	5:00 pm	6A: Finally, Indigenous Rights? Advancing UNDRIP Globally and Locally	Victoria Hall
		6B: IP and International Trade Law: Lessons from <i>Eli Lilly</i> and <i>AstraZeneca</i>	Bytown
		6C: Pivotal Developments in International Law	Freiman-Guigues



## WELCOME MESSAGES

### CCIL PRESIDENT

Dear All,

I would like to thank everyone who made this conference possible, including our sponsors, our speakers, participants and volunteers. I would also like to highlight all the work accomplished by our conference co-chairs Dan Moore, Allison Saunders and Dean MacDougall who have worked tirelessly to create an interesting program and the CCIL Secretariat, LeeAnne Akehurst and Michelle Lawrence who have ensured that all the logistics were ready on-time. Finally, a special thank you our members. Your engagement has made the existence of CCIL possible over the last 46 years.

To all our members: this is *your* association and we want it to reflect your needs and priorities. I invite you to share your vision of the CCIL and to get involved so we can organize activities that are of interest to you.

For our new members: CCIL is not just about our annual conference. An important purpose of CCIL is to foster an international law community to broaden relations and dialogue between international lawyers, scholars and organizations. Annually, we support students by granting the John Peters Humphrey Student Fellowships and we recognize the distinguished contribution to international law by awarding the John E. Read Medal and the Public Sector Lawyer Award. CCIL also encourages international law research and publications through the Four Societies initiative in association with the American Society of International Law (ASIL), the Australian and New Zealand Society of International Law (ANZSIL) and the Japanese Society of International Law (JSIL). This year, for the first time, CCIL has assisted the Legal Bureau at Global Affairs Canada with the appointments to the Canadian National Group of the Permanent Court of Arbitration.

Throughout the year, CCIL organizes and sponsors international law events across Canada such as the International Humanitarian Law Conference which was held in Saskatchewan on October 27 and the upcoming event on Gender equality, governance and rule of law in Ottawa on January 23, 2018.

I hope you enjoy the conference and I look forward to the opportunity of speaking with you over the next two days.

Marie-Claude Boisvert

### CONFERENCE CO-CHAIRS

Welcome to the 2017 Annual Conference of the CCIL! The theme for this year's conference is **Canada at 150: The Return of History for International Law**.

In 2017, Canada finds itself in a global context that can seem increasingly precarious. The key premises and institutions of the international order, which have endured (more or less) since the end of the Second World War, are increasingly being challenged by powerful states, rising powers, populist movements, non-state organizations and multinational corporations. Fundamental questions are being asked about whether and how the international legal framework and its institutions should be reshaped.

The keynotes and panels for this year's conference address many of these fundamental questions. From indigenous rights to the ongoing NAFTA negotiations, from the human rights impacts of transnational corporations to the rules governing military uses of outer space, and from Canada's historical role in international law to our future role in an unstable world, the 2017 conference will address the myriad ways in which international law is being challenged to better reflect our current reality.

The co-chairs would like to thank all the people and institutions who make this conference happen. This includes our distinguished keynotes, Prof. Dinah Shelton and Judge Charles N. Brower, and all the speakers and panel organizers. It also includes the conference sponsors (listed on the back cover) and Global Affairs Canada. The co-chairs would also like to thank the team at Intertask Conferences, especially LeeAnne Akehurst, for their tireless dedication. Finally, the president and board of the CCIL played a crucial role, in particular Marie-Claude Boisvert, Adela Maciejewski Scheer, and Anik Beaudoin.

Our congratulations to the CCIL's 2017 award winners: Anne Daniel, who will receive the Public Sector Award, and Prof. Armand de Mestral, who will receive the John E. Read Medal.

We hope you enjoy the conference! Please give us your feedback, either in person during the conference or through the participant survey that will be sent via email after the conference.

Dean MacDougall, Dan Moore and Allison Saunders





## KEYNOTE SPEAKERS

**Thursday, November 2 | 1:40 PM – 2:40 PM**

**Honourable Charles N. Brower**

**The Honourable Charles N. Brower's** 55-year career in the law has combined extensive practice at the bar with distinguished public service, both national and international, concentrating during 35 years in the fields of public international law and international dispute resolution. Judge Brower spent four years in the State Department (1969-1973), concluding as Acting Legal Adviser. He has served continuously since 1983 as a Judge of the Iran-United States Claims Tribunal in The Hague, The Netherlands, where he sat full-time from 1984 to 1988. That service was interrupted for some months in 1987 by White House service as Deputy Special Counsellor to President Reagan. Since 2001 Judge Brower again has been sitting full-time as a Judge of the Tribunal and, as of 2014, he also sits as a Judge ad hoc at the International Court of Justice.

Judge Brower has served as Judge Ad Hoc of the Inter-American Court of Human Rights, as a member of the Register of Experts of the United Nations Compensation Commission in Geneva (UNCC), and as a member of the Panels of Conciliators and Arbitrators of the International Centre for Settlement of Investment Disputes (ICSID) (a member of the World Bank Group). He has represented various governments in proceedings before the International Court of Justice (World Court) and is a member of the panels of arbitrators of a number of arbitral institutions around the world. As counsel or arbitrator he has handled cases on all six continents, principally under the rules of the ICC, UNCITRAL, the LCIA, the AAA, the UNCC, ICSID, SCC, ARIAS and LMAA. Judge Brower has served as President of the American Society of International Law, Governor of the American Bar Association, Chair of the Institute for Transnational Arbitration, and on the Executive Council of the International Law Association. In 2009, Judge Brower was awarded the American Society of International Law's prestigious Manley O. Hudson Medal for "pre-eminent scholarship and achievement in international law . . . without regard to nationality". (E)

**Friday, November 3 | 1:35PM – 2:35PM**

**Dinah Shelton**

**Professor Dinah Shelton** is the Manatt/Ahn Professor emeritus at the George Washington University Law School. She served as a member of the Inter-American Human Rights Commission (2010-2014) and in 2010 she was president of the Commission. Professor Shelton is the author of three prize-winning books: *Protecting Human Rights in the Americas* (co-authored with Thomas Buergenthal), *Remedies in International Human Rights Law*, and the three-volume *Encyclopedia of Genocide and Crimes against Humanity*. She has also authored other articles and books on international law, human rights law, and international environmental law.

Professor Shelton is a member of the board of editors of the American Journal of International Law. She has served as a legal consultant to international organizations and is on the board of numerous human rights and environmental organizations. In 2006, Professor Shelton was awarded the Elisabeth Haub Prize for Environmental Law and in 2013 she received the Goler Butcher Prize in Human Rights; she was conferred the degree of doctor honoris causa at the University of Stockholm in 2012 and the Pazmany Peter Catholic University of Budapest in 2014. (E)



## AWARDS SESSION

Friday, November 3 | 2:35 PM – 3:15 PM

### Public Sector Award Recipient

**Anne Daniel** recently retired as a General Counsel with the Public International Law Team of the Constitutional, Administrative and International Law Section of Justice Canada. She was with Justice for 35 years and advised on multilateral environmental agreements (MEAs) for approximately 25 years, primarily in the areas of mercury, hazardous wastes, ocean dumping, chemicals, biodiversity, biosafety, genetic resources, air pollution, liability, compliance and UN Environment Programme (UNEP) governance issues. She participated on numerous Canadian delegations as advisor and negotiator, including to negotiate many MEAs. She led Canadian delegations, and chaired a number of UN meetings and negotiating groups, including during the negotiations of the *Minamata Convention on Mercury*, which recently entered into force. She also chaired negotiations for compliance mechanisms, and was a chair or member of treaty compliance committees. She recently was the Chair of the first Effectiveness Evaluation Committee of the *Stockholm Convention on Persistent Organic Pollutants*, which examined how well the Convention is meeting its objectives.

Ms. Daniel has published in a number of areas, including compliance, liability, ocean dumping, chemicals, hazardous wastes and genetic resources. She has delivered training to international colleagues on behalf of UNEP on chairing UN chemicals meetings; on behalf of UNEP and the University of Eastern Finland on MEA negotiations and treaty effectiveness; and to Environment and Climate Change Canada and Health Canada staff on multilateral environmental agreements, including through the conduct of negotiation simulations. She has lectured at a number of law schools, including Kobe University in Japan, and has taught a course on MEA negotiation and implementation at her *alma mater*, the University of Windsor Law School.

### John E. Read Medal Recipient

**Armand de Mestral** is an Emeritus Professor at McGill University and holds the Jean Monnet Chair in Law. He has been a Senior Fellow with the Centre for International Governance Innovation (CIGI) since 2014. Professor de Mestral was the Co-Director of the Institute of European Studies of McGill and the University of Montreal (2002-2008) and before that served as the Interim Director of the Institute of Air and Space Law at McGill University (1998 – 2002). He has written and published extensively. Notable works include: *Second Thoughts: Investor-State Arbitration between Developed Democracies* (co-author, 2017), *Improving International Investment Agreements* (co-author, 2012), *International Law* (co-author, 7<sup>th</sup> edition, 2006) and *Law and Practice of International Trade* (2<sup>nd</sup> edition, 1999).

Professor de Mestral has served as a panelist and arbitrator in disputes under the WTO, the Canada – US Free Trade Agreement and NAFTA. He was a member of the Canadian Delegation to the third United Nations Conference on the Law of the Sea (1973-1980) that led to the adoption of the landmark treaty, the United Nations Convention on the Law of the Sea. He has also acted as a consultant to the North American Commission for Environmental Cooperation and the Law Commission of Canada, and served as the President of the Canadian Red Cross Society (1999-2001).

Professor de Mestral was appointed a Member of the Order of Canada on December 28, 2007.



# PROGRAM

## THURSDAY, NOVEMBER 2

**8:00 am – 6:00 pm Registration Open**

**8:00 am – 9:00 am Coffee Service**

*Ottawa Lounge*

**9:00 am – 9:05 am**

**Opening Remarks by CCIL President**

*Victoria Hall*

**9:05 am – 10:35 am**

**Plenary Panel: Canada and International Law @ 150: Past, Present & Future**

*Victoria Hall*

As Canada marks 150 years since the 1867 Confederation, leading international law scholars and practitioners discuss Canada's contributions to international law, as well as the legal impact of Canada's work in international organizations. The International Law Research Program (ILRP) of the Centre for International Governance Innovation (CIGI) is gathering contributions that reflect on Canada's past successes and failures in international law and that consider what the opportunities are for Canada to provide international law leadership now and in the future. The contributions to the *Reflections* book project span a broad range of topics including the ILRP's core research themes of international economic law, environmental law, intellectual property law and Indigenous law. With diverse perspectives on the broad field of international law, this panel provides an overview of the project and discusses Canada's legacy, current status and potential to shape the future of international rule of law.

### **Moderator**

Oonagh Fitzgerald, CIGI (E)

**Centre for International  
Governance Innovation**

### **Speakers**

Bernard Colas, CMZK (E, F)

Stéphane Beaulac, Université de Montréal (E, F)

Brenda L. Gunn, University of Manitoba, (E)

Adelle Blackett, McGill University (E, F)

Mark Jewett, Bennett Jones LLP (E)

**10:35 am – 10:55 am Coffee Break**

*Ottawa Lounge*

**10:55 am – 12:25 pm CONCURRENT PANELS 1**

**Panel 1A – What are “Progressive Trade Agreements”?  
Canadian Trade Policy in an Era of Globalization Backlash**

*Victoria Hall*

In the midst of public opposition to new international economic agreements, the Canadian government has embarked on a “progressive” trade agenda that seeks to align trade agreements more closely with the interests of a broad array of stakeholders. The session will investigate whether trade agreements that are billed as “progressive” represent a real departure from previous practices and will explore options for a more radical redesign of international economic agreements, which would take full account of their redistributive effects at the national and global level.

### **Moderator**

Nicolas Lamp, Queen's University (E)

### **Speakers**

Meredith Lilly, Carleton University (E)

Dan Ciurak, Ciurak Consulting Inc. (E)

Robert Brookfield, Trade Law Bureau, Government of Canada (E)

**Panel 1B – Canadian Responses to Mass Atrocities**

*Bytown*

Due to a diverse confluence of factors, the demand for accountability for mass atrocities far exceeds the supply. The very international tribunals that Canada has historically invested in and helped to propel onto the global stage are today said to be in “crisis”. While Canada has historically been a leader on accountability for international crimes, its leadership today is needed more than ever. Sponsored by the SSHRC Partnership Grant, “Strengthening justice for international crimes: a Canadian partnership”, the panel discussion will examine the role that Canada can play in achieving justice and accountability for mass atrocities — both domestically and internationally.

### **Moderator**

Amanda Ghahremani, CCIJ (E)

### **Speakers**

Fannie Lafontaine, Université Laval (E, F)

Valerie Oosterveld, University of Western Ontario (E)

Hannah Woolaver, University of Cape Town (E)

Linda Bianchi, Justice Canada (E)



# PROGRAM

## Panel 1C – Highlights of 2017 from the Canadian Yearbook of International Law

*Freiman-Guigues*

The members of this panel, each of whom authors an annual digest in *The Canadian Yearbook of International Law*, will highlight a key case or development from their 2017 digests. Topics will include recent developments in the inter-American human rights system, international trade law, and Canadian court cases invoking public and private international law.

### Moderator

John Currie, University of Ottawa (E, F)

### Speakers

Elise Hansbury, Université du Québec à Montréal (F)  
Bernard Duhaime, Université du Québec à Montréal (F)  
Charles-Emmanuel Côté, Université Laval (F)  
Gib van Ert, Supreme Court of Canada (E, F)  
Joost Blom, University of British Columbia (E)

## 12:25 pm – 1:40 pm Buffet lunch and Networking

*Ottawa ABC*

## 12:45 pm – 1:40 pm Career Chat

*Algonquin*

An opportunity to learn from and ask questions of individuals who have pursued different careers in the practice of international law.



Bennett Jones

## 1:40 pm – 2:40 pm Keynote Speech: Hon. Charles N. Brower

*Introduction by Hon. Yves Fortier, Cabinet Yves Fortier  
Victoria Hall*

### Canada's Embrace of the EU-Inspired "Investment Court System": Foresight or Folly?

The most critical issue currently in relation to settlement of disputes arising between host States and alien investors is whether the prevailing investor-State arbitration system should be replaced by an EU-inspired International Investment Court. Currently alien investors and host States have equal roles in the constitution of one-off arbitral tribunals to adjudicate their disputes. The International Investment Court, now part of CETA, by contrast, consists solely of State-appointed judges, leaving complaining investors without any role in the composition of the Court. This keynote speech will address the comparative merits of the two systems in determining whether Canada's embrace of the Court in CETA is wisely farsighted or shortsighted folly.

## 2:45 pm – 4:15 pm CONCURRENT PANELS 2

## Panel 2A – Ethical and Professionalism Issues in the Practice of International Law

*Victoria Hall*

*Accredited by LSUC for 1.5 hours of Professionalism Content*

This panel will consider ethical and professionalism issues that arise in the practice of international law in various areas. Topics covered include: the role of confidentiality and privilege when working for international organizations with attention to sensitive information in the case of war crimes or human rights abuses; ethics and professionalism issues in the public sector practice of international trade counsel; ethical aspects of treaty negotiations in the context of the Paris Agreement; and ethical aspects of core governance issues in financial institutions.



### Moderator

Konstantia Koutouki, Université de Montréal (E)

### Speakers

Christopher Waters, University of Windsor (E)  
Kevin R. Gray, Trade Law Bureau, Government of Canada (E)  
Marie-Claire Cordonier Segger, CISDL (E)  
Mark Jewett, Bennett Jones LLP (E)

## Panel 2B – Assessing Canada's Performance in Holding Canadian Extractives Accountable for Grave Violations of Human Rights

*Bytown*

A growing number of reports allege links between Canadian extractive companies operating in developing countries and grave human rights violations, many of which could attract criminal liability if perpetrated in Canada. UN and Inter-American human rights bodies have called on the Canadian government to take legislative action to ensure that Canadian extractive companies operating abroad do not violate human rights or cause other grave harm, and to provide effective remedies for victims of such harm. Sponsored by the Canadian Partnership for International Justice and funded by the Social Sciences and Humanities Research Council (SSHRC), this panel will assess Canada's performance in holding Canadian mining and oil and gas companies accountable for grave violations of human rights associated with their overseas activities.



### Moderator

François Larocque, University of Ottawa (E, F)





# PROGRAM

## Speakers

Alain-Guy Sipowo, McGill University (F)  
Amanda Ghahremani, CCIJ (E)  
Penelope Simons, University of Ottawa (E)

## Panel 2C – Learning from History to Solve Today's International Investment Law Challenges

*Freiman-Guigues*

*Celebrating the entry into force of the Mauritius Convention on Transparency in investor-state dispute settlement*

International investment law is one of international law's most contentious fields. States and stakeholders disagree on the scope of investors' rights and the proper form and forum for the resolution of investment disputes. Yet, few of the fields' disagreements are truly novel. This panel will thus look back at investment law's contentious history from the US-Mexican Claims Commission to the negotiation of NAFTA to distill lessons learned that can help solve today's investment law challenges.

## Moderator

Wolfgang Alschner, University of Ottawa (E)

## Speakers

Jason Yackee, University of Wisconsin (E)  
Taylor St John, University of Oxford (E)  
Heather Bray, University of Amsterdam (E)

4:15 pm – 4:30 pm Coffee Break

*Ottawa Lounge*

4:30 pm – 6:00 pm CONCURRENT PANELS 3

## Panel 3A – The Lifespan of a Trade Agreement: NAFTA Revisions

*Victoria Hall*

Times change and agreements have to change with them. This panel will look at the fragility of trade agreements over time, examine how to ensure their long term survival and how to go about making changes. How should one draft a trade agreement to survive over the long term? Institutions are essential and NAFTA lacks institutions – unlike the EU or CETA. NAFTA is now under pressure from the United States but it is also 25 years old and needs to be adapted to changing circumstances.

What do the three governments want from a

**Centre for International Governance Innovation**

negotiation and what is essential for each one to retain?

## Moderator

Debra Steger, University of Ottawa (E)

## Speakers

Armand de Mestral, McGill University (E, F)  
Hugo Perezcano Díaz, CIGI (E, F)  
David A. Gantz, University of Arizona (E)

## Panel 3B – Canada at 150: International Treaties in the Making and Reshaping of Canada

*Bytown*

International treaties help to create a rules-based international order and affect peace and security; the movement of people and goods by land, air and sea; trade and investment; the environment; maritime boundaries; human rights; and more. Treaties also affect how states interact diplomatically and manage and settle their disputes. From the earliest conception of Canada, the country has been linked to and relied on international treaties. Following a brief survey of Canadian treaty activity over the past 50 years, panelists will discuss landmark treaties in their areas of expertise and how these agreements may be reshaped in the years ahead. The panel will conclude with a discussion on the role of international treaties going forward.



The Professional Association  
of Foreign Service Officers

L'Association professionnelle  
des agents du Service extérieur

## Moderator

Gary Luton, Global Affairs Canada (E, F)

## Speakers

Roland Legault, Global Affairs Canada (E, F)  
Béatrice Maillé, Global Affairs Canada (E, F)  
Alain Tellier, Global Affairs Canada (E, F)  
Kenneth Wong, Global Affairs Canada (E)

## Panel 3C – 150 Years of the Laws of War

*Freiman-Guigues*

*Closed to media and under the Chatham House rule*

From the 1859 Battle of Solferino that gave birth to the Red Cross, to the 2017 Battle for Mosul, the laws of war have evolved to withstand extraordinary challenges. In this panel, three internationally-renowned experts in the history and practice of international humanitarian law will contemplate the modern relevance of this body of law aimed at maintaining humanity in humankind's most perilous realm – and Canada's contribution thereto.

## Moderator

Ellen Policinski, ICRC (E)



ICRC



# PROGRAM

## Speakers

François Bugnion, ICRC (E)  
Marco Sassòli, University of Geneva (E)  
Paul Frost, Office of the Judge Advocate General (E)

6:15 pm – 8:00 pm RECEPTION

Hosted by The Legal Adviser of Global Affairs Canada  
125 Sussex Drive, A9

**FRIDAY, NOVEMBER 3**

**8:00 am – 3:00 pm Registration Open**

**8:00 am – 9:00 am Coffee Service**

*Ottawa Lounge*

**9:00 am – 10:30 am CONCURRENT PANELS 4**

## **Panel 4A – Negotiation of International Treaties by Canada: Towards an Effective Diversification of Actors**

*Victoria Hall*

*Panel of the Société québécoise de droit international (SQDI)  
at the CCIL*

This panel discusses the diversification of actors involved in the negotiation of international treaties by Canada. Accordingly, speakers will address the new role of provinces in the negotiation of free trade agreements, using the example of the Canada – EU Comprehensive Economic and Trade Agreement; constitutional competencies over international relations; the participation of non-governmental organizations in international treaties dealing with environment and human rights; and the importance of contributions by business to the negotiation of international treaties in a changing world and business climate.

## **Moderator**

Geneviève Dufour, Université de Sherbrooke (F)



## **Speakers**

Patrick Leblond, University of Ottawa (F)  
Maxime St-Hilaire, Université de Sherbrooke (F)  
Gaëlle Breton-Le Goff, Université de Québec à Montréal (F)  
Jean-Simard, Aluminum Association of Canada (F)

## **Panel 4B – A Manual on International Law Applicable to Military Uses of Outer Space: An International Collaboration to Bring the Past into the Future**

*Bytown*

The central question that this panel will address is the current effort by scholars from around the world to develop a widely-accepted manual clarifying the fundamental rules applicable to the military use of outer space, in times of peace, as well as in periods of tension and in outright armed conflict. As the treaties and rules applicable to the use of outer space were created more than 40 years ago, several questions pertaining to military actions in this environment were broadly stated, unaware of the future evolution of technology.

## **Moderator**

Elle Agnew, Canadian Space Agency (E)

## **Speakers**

Rob Holman, Office of the Judge Advocate General (E)  
Gilles Doucet, Spectrum Space Security Inc. (E)  
Bayar Goswami, McGill University (E)

## **Panel 4C – Compromise, Cooperation and the Implementation/ Development of Oceans Law in the 21<sup>st</sup> Century**

*Freiman-Guigues*

The United Nations Convention on the Law of the Sea (UNCLOS) is remarkable in that its existence required an almost unprecedented level of compromise between competing national objectives and world-views and yet was successful as a comprehensive cooperative regime that has largely stood the test of time. This panel will look at compromise and cooperation in the future implementation of UNCLOS as well as the negotiation and development of new legal instruments as they relate to issues of contemporary concern, such as the transformation of the Arctic Ocean by a changing climate, conserving and managing biological diversity beyond areas of national jurisdiction, the continental shelf and deep seabed mineral resources, the conservation and management of marine mammals and marine scientific research with technology that has advanced significantly since the negotiation of UNCLOS.

## **Moderator**

Cameron Jefferies, University of Alberta (E)

## **Speakers**

Anna-Maria Hubert, University of Calgary (E)  
Aldo Chircop, Dalhousie University (E)  
David VanderZwaag, Dalhousie University (E)



# PROGRAM

10:30 am – 10:50 am Coffee Break

Ottawa Lounge

10:50 am – 12:20 pm CONCURRENT PANELS 5

## Panel 5A – National Military Justice Systems as Accountability Mechanisms for Enforcing Compliance with the Laws of Armed Conflict

Victoria Hall

This panel will provide a global and comparative perspective on some of the different approaches that are used within military justice systems that are created under domestic laws, as tools for promoting and enforcing compliance with international humanitarian law on military operations. By tracing the evolution of many of these systems over time, the panel will attempt to provide a better sense of the history of these systems, and of their likely future.

### Moderator

David Antonyshyn, Office of the Judge Advocate General (E)

### Speakers

Bas van Hoek, Royal Netherlands Air Force (E)

Lars Stevnsborg, Military Prosecution Service, Denmark (E)

Bruce MacGregor, Office of the Judge Advocate General (E)

## Panel 5B – A Return to Transnational Criminal Law

Bytown

While the phrase “transnational criminal law” is of recent origins, the crime suppression treaty regime upon which the field is based has been around since the 19th century. In recent decades, many new suppression treaties have come into force addressing serious transnational criminality. At the same time, however, the emphasis of the international community on prosecutions of core international crimes at international courts in recent decades has distorted the picture of the overall “international” criminal justice system (in the sense of public international law dealing with crime suppression). In light of the changing international political tenor seen today, the increasing isolationism exhibited by many states, and this “return of history”, this panel asks whether the time is appropriate for “A Return to Transnational Criminal Law?”

### Moderator

Christopher Waters, University of Windsor (E)



University  
of Windsor

### Speakers

Rob Currie, Dalhousie University (E)

Joanna Harrington, University of Alberta (E)

Jeff Johnston, Justice Canada (E)

Sara Wharton, University of Windsor (E)

## Panel 5C – Canada’s Role in International Environmental Law: Past, Present and Future

Freiman-Guigues

For many observers, the election of Justin Trudeau in 2015 has placed Canada in an excellent position to play a leading role on key international environmental law issues such as combating climate change. This expectation only grew with the 2016 election of Donald Trump in the United States of America. What are the true opportunities and obstacles for Canada to play a positive leadership role in the development of international environmental law in times of significant geopolitical turmoil? This panel will canvass the trajectory of Canada’s involvement in the development of international environmental law and examine Canada’s role in a number of negotiations on international environmental matters. The panel will highlight specific Canadian contributions to the development of international environmental law and consider areas of future contribution.

### Moderator

Silvia Maciunas, CIGI (E)

Centre for International  
Governance Innovation

### Speakers

Jutta Brunnée, University of Toronto (E)

Anne Daniel (E)

Richard Ballhorn (E)

Dean Sherratt (E)

12:25 pm - 1:35 pm Buffet Lunch and Networking

Ottawa ABCDE

12:50 pm – 1:35 pm CCIL Annual General Meeting

Bytown



# PROGRAM

## 1:35 pm – 2:35 pm Keynote Speech: Dinah Shelton

*Introduction by John Packer, University of Ottawa  
Victoria Hall*

### Democracy, Human Rights and the Rule of Law

Human rights, democracy and the rule of law are often seen as the essential elements of a just society, although they can be in tension with each other and can lead to dysfunction, if one branch of the triumvirate is given disproportionate emphasis. Aspects of each have become part of human rights law: free and fair elections, due process, right to a remedy, but other important elements remain separate if essential parts of good governance. This keynote speech explores the three interdependent parts of creating an open and just society.

## 2:35 pm – 3:15 pm Awards Session

*Victoria Hall*

### Public Sector Award Recipient: Anne Daniel

*Presented by Laurie Wright, Justice Canada*

### John E. Read Medal Recipient: Armand de Mestral

*Presented by Céline Lévesque, University of Ottawa*

### The Search for the Perfect Free Trade Agreement: AFTA

Canada is a party to two of the most complex and ambitious regional trade agreements in modern history, NAFTA and CETA. Yet these agreements are challenged in both the United States and Europe. Should Canada pursue further trade liberalisation in the WTO or should it seek to negotiate new and even more ambitious agreements such as an Atlantic Free Trade Agreement (AFTA)?

## 3:15 pm – 3:30 pm Coffee Break

*Ottawa Lounge*

## 3:30 pm – 5:00 pm CONCURRENT PANELS 6

### Panel 6A – Finally, Indigenous Rights? Advancing UNDRIP Globally and Locally

*Victoria Hall*

*Closed to media and under the Chatham House rule*

#### Moderator

Marie-Claire Cordonier Segger, CISDL (E)

#### Speakers

Sara Mainville, OKT (E)

Sandra Leduc, Justice Canada (E)

Merle Alexander, Gowling WLG (E)

### Panel 6B – Intellectual Property and International Trade Law: Lessons from *Eli Lilly* and *AstraZeneca*

*Bytown*

The panel will discuss investor-state arbitration under NAFTA Chapter 11 in *Eli Lilly v. Canada*, in which Eli Lilly claimed \$500 million for the invalidation of two of its patents by the Canadian courts through the application of the “Promise Utility Doctrine”. Eli Lilly’s claim was rejected by the Arbitral Tribunal in March 2017. In June 2017 the Supreme Court of Canada rendered a judgment, in *AstraZeneca v. Apotex*, in which it appeared to reject and reverse the same “Promise Utility Doctrine”. The panelists will be asked to comment on the merits of the arbitral award in *Eli Lilly* in light of the function of investor-state arbitration and the subsequent reversal of the “Promise Utility Doctrine”.

#### Moderator

Ton Zuijdewijk, CIGI (E)

#### Speakers

Jeremy de Beer, University of Ottawa (E)

Shane Spelliscy, Trade Law Bureau, Government of Canada (E)

Sanjay Venugopal, Justice Canada (E)

Bassem Awad, CIGI (E)

### Panel 6C – Pivotal Developments in International Law

*Freiman-Guigues*

The panel will review recent developments in international law for the past year. Organized by the International Law Group of the Faculty of Law at the University of Ottawa, this year’s panel will feature senior international law professors presenting on international humanitarian law (drones), international investment law (multilateral investment court) and the international law of peacemaking.

#### Moderator

Pacifique Manirakiza, University of Ottawa

#### Speakers

Errol Mendes, University of Ottawa

Céline Lévesque, University of Ottawa

John Packer, University of Ottawa





## NOTES

## NOTES

**THE CANADIAN YEARBOOK OF  
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*The Canadian Yearbook of International Law*, published by Cambridge University Press, is a leading international academic journal covering both public and private international legal issues. Authors from Canada and around the world are invited to submit articles, notes and comments, in English or in French, that advance critical thinking in all areas of international law. Submissions for the next volume (volume 55, 2017) are due no later than 31 January 2018, although earlier submissions are encouraged as the *Yearbook* has a rolling acceptance policy and benefits from Cambridge Journals' "FirstView" feature, which allows completed pieces to be hosted online prior to their inclusion in a final print and online volume. Full submission instructions and other information can be found online at [www.cambridge.org/cyil](http://www.cambridge.org/cyil).

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**Appel de communications**

L'*Annuaire canadien de droit international*, publié par Cambridge University Press, est une revue internationale réputée qui se spécialise dans les questions de droit international public et privé. Les auteures et auteurs, du Canada et de partout dans le monde, sont invités à soumettre des articles, des notes ou des commentaires, en français comme en anglais, qui mettent de l'avant une pensée critique dans tous les domaines du droit international. La date de tombée pour les soumissions pour le prochain tome (tome 55, 2017) est fixée au 31 janvier 2018, quoique l'*Annuaire* suit une politique d'acceptation continue et a accès à la fonction « FirstView » de Cambridge Journals, qui permet d'héberger des textes en ligne avant leur inclusion dans un tome final imprimé et en ligne. Des consignes pour la soumission de textes et d'autres informations se trouvent en ligne à [www.cambridge.org/acdi](http://www.cambridge.org/acdi).

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