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DANS CE NUMÉRO — IN THIS ISSUE

• EN TITRE/FEATURES •

• DU CCDI/FROM THE CCIL •

Message de la Présidente

Il s'agit de la première occasion qui se présente à moi pour m'adresser à ceux d'entre vous qui n'ont pas pu assister au Congrès annuel du CCDI 1999, et l'occasion de faire part de quelques activités récentes du CCDI au grand nombre d'entre vous qui était présent au Congrès.

Avant de faire cela cependant, je voudrais, au nom de tous les membres du CCDI, remercier notre présidente de 1998-1999, Sharon Williams pour sa vision et sa conduite du CCIL pendant une période de transition critique. Elle a apporté non seulement la rigueur académique (que l'on pourrait prévoir!) mais aussi un modèle de conduite collégial et motivationnel au comité exécutif qui a eu comme conséquence un engagement et des résultats exceptionnels. Vous verrez certains de ces résultats reflétés dans cette édition du *Bulletin*.

Le Congrès annuel de 1999, avec son thème « De la souveraineté territoriale à la sécurité humaine », était un de nos congrès le plus réussi, avec 200 participants à travers le Canada et outre-mer. Les discours de notre orateur principal, Dr. David Malone, président de « International Peace Academy » et de notre orateur de banquet, Hans Corell, Secrétaire général adjoint aux affaires juridiques des Nations unies, ont contenu non seulement l'analyse profonde mais également un défi moral pour tous les avocats internationaux et étudiants du droit international. Les deux discours seront reproduits dans nos travaux du Congrès annuel 1999 et, je pense, justifiera la relecture de façon régulière. Tout le crédit pour le succès du Congrès revient au comité organisateur, soit Johanne Levasseur et Darryl Robinson.

Avec cette édition du *Bulletin* vous verrez les premiers fruits du travail stratégique effectué par le comité sur l'avenir du CCDI. Donald Fleming, Valerie Hughes, Donald McRae et Pam Arnott ont énormément réfléchi, ils ont consulté de part et d'autre, et plus important encore ils ont produit un document véritablement utile pour la discussion, la décision et l'action.

Pour complémenter cette approche stratégique, vous trouverez également une version du questionnaire qui a été développé pour le Congrès annuel de 1999, recherchant les idées de nos membres sur une variété d'activités actuelles du CCDI. Bien qu'un certain nombre de questionnaires aient été remplis à la conférence, nous n'avons pas encore de nombres suffisants pour être 'statistiquement significatif'. Remplir ce formulaire et nous le renvoyer est une voie très directe pour que vous encouragiez plus d'activités que vous pensez être importantes.

President's Message

This is my first opportunity to speak to those of you who did not have the opportunity to attend the 1999 CCIL Annual Conference, and a chance to update the many of you who did, on some recent CCIL activities.

Before doing that however I would like, on behalf of all members of the CCIL, to thank our 1998-1999 President, Sharon Williams for her vision and her leadership of the CCIL during a critical transition period. She brought not only academic rigour (as one might expect!) but also a collegial and motivational leadership style to the Executive Committee table which resulted in exceptional commitment and results. You will see some of those results reflected in this issue of the *Bulletin*.

The 1999 Annual Conference "From Territorial Sovereignty to Human Security" was one of our most successful ever, with 200 participants from across Canada and overseas. The addresses of both our keynote speaker, Dr. David Malone, President of the International Peace Academy and our banquet speaker, Hans Corell, Under Secretary-General for Legal Affairs of the United Nations, contained not only penetrating analysis but also moral challenge to all international lawyers and students of international law. Both addresses will be reproduced in our 1999 Annual Proceedings, and I think, will warrant re-reading on a regular basis. All credit for the success of the Conference lies with the conference organizing committee, consisting of Johanne Levasseur and Darryl Robinson.

Included with this issue of the *Bulletin* you will see the first fruits of the strategic work done by the committee looking at the future of the CCIL. Donald Fleming, Valerie Hughes, Donald McRae and Pam Arnott have thought deeply, consulted widely, and most importantly produced a truly useful document for discussion, decision and action.

To complement this strategic approach, you will also find a version of the questionnaire that was developed for the 1999 Annual Conference, seeking the input of you – our members – on a variety of current CCIL activities. Although a number of questionnaires were completed at the conference, we do not yet have sufficient numbers to be 'statistically significant'. Completing this form and returning it to us is a very direct way for you to encourage more of the kind of activities that you think are important.

Finalement, un « service des membres » qui a été proposé par un certain nombre de personnes un bon nombre de fois est le développement d'un bottin des membres du CCDI. Vous découvrirez ce que vous pouvez faire pour aider à faire de ceci une réalité dans une feuille inclue à ce numéro du *Bulletin*.

Pour finir, je voudrais vous dire à quel point je suis honorée d'avoir l'occasion d'être présidente d'une organisation qui a apporté une telle contribution significative et continue au développement et au respect du droit international, au Canada et internationalement. Je vous remercie de la confiance que vous avez placée en moi, et j'attends avec trépidation et beaucoup d'enthousiasme les deux années à venir. ◅

Finally, one "member service" which has been proposed by a number of different people on a number of different occasions is the development of a CCIL Membership Directory. You will find out what you can do to help make this a reality in an insert also included with this issue of the *Bulletin*.

In closing, I would like to tell you how honoured I am to have the opportunity to serve as President of an organization which has made such a significant and continuing contribution to the development of and respect for international law, in Canada and internationally. I thank you for the trust you have placed in me, and look forward to the next two years with some trepidation and a great deal of enthusiasm. ◅

Kim Carter
Présidente / President

President's Year-End Report, October 1999

The 1999 Annual Conference was a great success. Participants were impressed with the high calibre of speakers and panellists, as well as the quality of their presentations. The 1999 John E. Read Medal was awarded at the Conference banquet by Dean Peter W. Hogg of Osgoode Hall Law School to Professor Jean-Gabriel Castel, O.C., O.O., Q.C., for his contribution to international law scholarship. Special thanks are owed to Johanne Levasseur for her enthusiasm, energy and time devoted to the preparation for, and smooth running of, the Conference. I would also like to thank the other members of the Executive Committee, our Administrative Officer, Sonya Nigam, and our student volunteers who worked so hard to make the event such a success. As well, many thanks are due to our sponsors. Without their generous support, the Conference would not have been possible. They are the Department of Foreign Affairs and International Trade (John Holmes Fund), the Social Sciences and Humanities Research Council of Canada, Thomas and Davis (Vancouver) and Macleod Dixon (Calgary) and the Nathanson Centre for the Study of Organized Crime and Corruption at Osgoode Hall Law School, York University.

Regarding the administration of the CCIL office, we had experienced some difficulties in early March following the departure of Nicole Boilard. After three months a search committee under the direction of Ted Lee found Sonya Nigam and she was hired in June. We were and are very pleased that she accepted the position. The three month hiatus that the CCIL faced would have been difficult at any point, but the period from March to June is a critical time in all aspects of the planning and organization of the Conference. The Executive Committee bridged the gap by dealing with the office administration and logistics of the Conference. Once Sonya came on board she quickly came to grips with the many challenges presented and we look forward to working with her in the years to come.

On the publications front, Kluwer published in time for the Conference the *Selected Papers in International Law/ Textes choisis en droit international*. This collection of papers presents an overview of some of the international legal issues considered by the Council at its annual conferences during its first twenty-five years. I extend thanks on behalf of the CCIL to the many members who were involved, but especially to Yves Le Bouthillier. Kluwer is now also our publisher for the proceedings of the annual conferences. The 1998 Annual Conference Proceedings is an impressive volume, beautifully presented. John McManus did a great job in co-ordinating this new venture with Kluwer.

In the three issues of the *Bulletin* that have been published since the 1998 Annual General Meeting, we have increased our efforts to broaden the number of themes covered and expand contacts with other organizations. Plans to establish a presence for the *Bulletin* on the CCIL web site are well under way. Our editor, Robert McDougall is to be congratulated.

Our then Treasurer and now new President, Kim Carter, dealt with the financial report at the 1999 Annual general meeting. While the CCIL remains solvent, funding continues to remain an important issue. A copy of the auditor's Financial Report is available through the office.

We have also established this year a new international environmental law interest group due to the work of Executive member Silvia Maciunas. The Speakers' programme, under the co-ordination of Bruce Stockfish, held two events at the Chelsea Club in Ottawa. The International Law Association has approached the CCIL to explore the possibility of more co-operation, especially in this area.

Plans are progressing for a trilateral conference of Japanese, American and Canadian scholars to be held in Ottawa for two days immediately preceding the 2000 conference.

In conclusion, I have enjoyed immensely this past year as President. As you know I have stepped down after one year as I am currently living in Sweden. I have appreciated the opportunity to work with everyone on the Executive Committee. I want to thank Immediate Past President John McManus for his encouragement, guidance and support. As well I wish to thank John Currie our Secretary, Kim Carter our Treasurer and new President, as well as all other members of the Executive Committee.

Sharon Williams
Présidente sortante / Immediate Past-President

1999 Conference Photos — Photos du Congrès 1999

CCIL President (1998-1999) **Sharon Williams** with guest speaker **Hans Corell**, Under Secretary-General for Legal Affairs of the United Nations, and Banquet bagpiper, just prior to the 1999 CCIL Banquet.

Osgoode Hall Law School Dean **Peter W. Hogg**, presenting **Jean-Gabriel Castel** with the John Read Medal at the 1999 CCIL Banquet.

*More pictures from the 1999 Conference and Banquet are available on the Conference section of the CCIL website (see page 12).
*Plus de photos du 1999 Congrès et Banquet sont disponibles dans la section du Congrès du site Internet du CCDI (voir page 12).

International Law and Society in the Year 2000

Editor's note: For this issue of the Bulletin*, the first of the new millennium, we have asked several scholars to identify some of the issues that one can expect to see at the forefront of developments in international law in the 21st century. Twenty-seven years ago, three Canadian scholars responded to a similar question, providing a comprehensive, often prescient account of the state of international law and organization anticipated at the turn of the century. As we have now arrived at their chosen symbolic date, excerpts of their original article, written in 1973, are reproduced below.*

By R. St. J. Macdonald
Gerald L. Morris
Douglas M. Johnston*

I. Introduction

The difficulties of anticipating the future of international law and society are overwhelming. The potential range of international law is so great that, in an essay of this length, we can attempt little more than to suggest some of the basic changes likely to occur in the international decision-making and law-making processes…. It will be obvious to the reader that we are interpreting the year 2000 as a symbolic date and not a precise point in historic time….

II. New Participants in the Policy-Making Process

The year 2000 will see extraordinary variety in form and substance among the participants in the international policy-making process. Decentralized states, centralized states, blocs of states, mini-states, shell states, international organizations, land-based cities, off-shore cities, international recreation and conservation zones, and various associations of individuals and groups of individuals will be familiar actors in a system that will be characterized by the complexity and diversity of its sub-systems. Technology will be ready to create new communities in underwater and lunar resettlement centres, whose interests will have to be represented in still another form. There will be an extensive network of overlapping jurisdictions, each of which will be recognized as vested with prescriptive or contractual rights of its own. The heterogeneity of the participants will bring about a fundamental incoherence in the present system. The conceptual framework of international law and organization will be radically re-designed to take account of the new structural features and a vastly more complex network of individual and group relations.

We predict that the nation-state will persist as an important actor in the international policy-making process. It will be affected, however, by trends and institutions that have already changed the substance, if not the form, of sovereignty. In the pluralistic, open societies of the West, the decision-making functions and control structures of national governments will no longer be recognized as operative over all major institutions within the state. The claim of governments to exclusive authority over the conduct of foreign affairs will be rejected by sub-states of federal unions, multinational corporations, professional organizations, castes and other minority groups, cultural, academic, and religious associations, individuals and groups of individuals, all of which will be actively engaged in transnational activities of relevance to their particular spheres of concern. The nation - what is left of it - will speak with many voices….

In our view the increased erosion of state authority, the rise of diverse new actors, and the proliferation of inter-connected principles, regulations and procedures will mean that the inter-state system will be inadequate to the dynamics of the tasks at hand. We foresee a world so diversified as regards actors and activities as to make it unreasonable to expect the emergence of a single, universal, all-purpose, ordering system. We believe that there will emerge a variety of ordering systems, some more specialized than others, each with its own built-in techniques for correcting disturbances, ironing out deviations, and keeping the system operationally normal. The speciality of these systems will make the task of co-ordination exceedingly difficult.

III. Technocracy and the Rise of Inter-Populism

By the year 2000 there will have come into existence, at various levels of international organization, a bewildering array of intergovernmental agencies. In highly specialized areas of concern, these agencies will be devoted chiefly to the developmental and related problems of members states and associations. What one foresees is a vast complex of interlocking bureaucracies, each striving for super-efficiency not so much in terms of larger budget allocations as in terms of easier access to the most sophisticated computers in regional and global data centres. By virtue of their

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* When this article was written, Ronald Macdonald Q.C. was Dean of the Faculty of Law at Dalhousie University, Gerald Morris was at the Faculty of Law at the University of Toronto, and Douglas Johnston was at the Department of Political Economy at the University of Toronto and Visiting Professor at the Faculty of Law at Dalhousie University. The article was published in the *Canadian Bar Review* (1973) LI, 316.

technical mastery of research procedures and data retrieval techniques, technocratic super-elites will have acquired control over the process of implementing decisions taken in the name of each agency and considerable influence on the process of identifying problems….

By the year 2000 these international technocratic super-elites serving intergovernmental agencies will find themselves locked in a contest with similar elites serving other interests: trans-national entrepreneurial elites…; and national bureaucratic elites serving the governments of the super states (America, Russia, Japan and China) and the central government of the European Community….

The erosion of state authority by the year 2000 will, then, have been accompanied by spectacular gains in the size, technical sophistication and power of intergovernmental agencies, assisted by the contributions of specialized types of international lawyers. But this trend towards intergovernmental control will also have been accompanied by a counter-trend towards inter-popular authority. The rise of inter-populism in transnational relations will have been evidenced first in developed countries by the gradual evolution of a new coalition of anti-statist, anti-bureaucratic, anti-technological, environmental and minority groups. These groups will receive the support of anti-capitalistic and anti-imperialist groups in developing countries….

"By the year 2000 there will have come into existence, at various levels of international organization, a bewildering array of intergovern-mental agencies"

By the twenty-first century a universal "People's Assembly" will be meeting on an annual basis. It will be composed of "People's Delegates" from most areas of the world. There will be general agreement in these areas that each individual "citizen" is entitled to dual representation at the level of global authority: first, direct representation in the "People's Assembly", which will concentrate on the formulation of general policy guidelines for the world community; and, second, indirect representation by affiliation with a nation state in a system of intergovernmental organizations, which will continue to possess authoritative control over resources subject to the consent of member states. Most national governments will have accepted, with varying degrees of reluctance, that the People's Assembly is a permanent feature of transnational society, that it has a degree of legitimacy which transcends that of inter-state organizations, and that the world community is better served by a policy of co-operation between the United Nations and the People's Assembly.…

IV. Roles and Tactics in Transnational Society: Population and Living Space

The manner in which the complex world ordering system of the next century will function may be best illustrated by examining a crucial issue which seems likely to develop rapidly over the next few decades… Signs already exist which indicate that, as the year 2000 approaches, a radical, novel claim to living space will become a major source of stress between traditional concepts of the sovereign nation-state and the growing concept of transnationalism within the "global village" of the world community. Unlike past claims to *Lebensraum*, the new principle will not involve overt domination of the entire area in question by one expansionist national power but will be promulgated in terms of a newly-recognized, inherent human right: the right to roughly equal living space *per capita*.…

The logic of the right to equal living space follows from existing general acceptance (in theory, if not always in practice) that discrimination based on race or place of origin is unacceptable, that individuals everywhere should be entitled to comparable economic and social opportunities; and, more recently, that everyone can reasonably expect to live his life in an adequate environment. Increasingly, the majority of states (primarily, those of the developing world) see resistance to effective equality - whether of economic opportunity, direct access to resources or living space - as essentially racist and elitist in origin, involving a neo-imperialist conspiracy to ensure the continuation of shocking economic disparity between the rich and the poor nations….

The advanced nations to which large scale migration would flow will make repeated efforts to elaborate legal formulae and regulatory schemes that will give the appearance of liberal, non-discriminatory immigration practices, while in reality protecting narrow national interests… It seems obvious that these stratagems will be transparent and unacceptable… The Canadian philosophy will increasingly be recognized as an elitist, restrictive outlook that does positive harm to developing nations by stripping them of their scarce resources of trained professionals, skilled technicians, and experienced administrators, while leaving the great mass of unqualified applicants to the continuing concern of their native countries.…

The target states, of which group Canada would be a leading member, will attempt to deal with the threat in the classic unilateral fashion of the sovereign national state. They will try, in any event,

to treat it as an inter-state matter, in so far as they are prepared to concede that any aspect legitimately goes beyond simple domestic jurisdiction. … Unfortunately for their purpose, the national state technocrats will … find themselves on a subsidiary battleground while the main action is fought elsewhere…

V. Impact on Legal Theory and Practice Beyond The Year 2000

… The replacement of the traditional sovereign state system by a global order of parallel, often-competing systems in which a variety of international actors play their roles will necessitate major changes in international legal theory and procedures. Basic questions are raised respecting the concepts of sovereignty and territorial jurisdiction when the world community is no longer controlled by an exclusive club of nation states and when the horizontal flow of transnational activity (including migration) challenges the meaning of national boundaries….

"[A]s the year 2000 approaches, a radical, novel claim to living space will become a major source of stress between traditional concepts of the sovereign nation-state and the growing concept of transnationalism"

It appears probable that concepts based on separate systems of international law and municipal law must law yield to a realization that law is more akin to a continuum, as internal regulation of society is increasingly brought into conjunction and conformity with global regulatory-administrative regimes…. These changes will have vast implications for the training of future lawyers, be they labelled "domestic" or "international" practitioners….

… [B]y the year 2000 the "radical" international lawyers will be questioning the usefulness of maintaining the systemic distinction between "international law" and "municipal law". Under the impact of an expanding sense of public interest, government responsibility, and social regulation, agencies will have mushroomed in a pattern of relationships that make it increasingly difficult to regard their activities as confined within separate jurisdictional compartments.…

"Traditionalist" international lawyers will be engaged in philosophical controversy with "radicals" over the state of the discipline.… [C]hange of the discipline's primary concepts will be seen as a necessary corollary of existing transformations taking place in the pattern of value demands from sectors of discontent in international society. It will be demanded of international law, as of economics in the 1960's and the 1970's, that it divest itself of its empty abstractions, and polemical debates will be waged over the relative utility of statist fictions.

Yet optimists will be on hand, as always, to argue that all disciplines have emerged from parametric stress in greater strength and vitality. Despite the world-wide passions and disorders of the previous decades, there will be a continuing persistent hope that the processes of international law will provide a rational and humane response to the ordeals of the human condition.

New Interest Group: International Environmental Law (IELIG)

The inaugural meeting of the *International Environmental Law Interest Group*, a dinner meeting which took place in Ottawa during the Annual Conference of the CCIL, was attended by about fifteen persons interested in this field of international law. The interest group adopted a flexible structure to organize its activities for the upcoming year. Silvia Maciunas, currently in private practice, and Anne Daniel, of the Department of Justice, agreed to act as co-chairs. Denis Langlois of the Department of Foreign Affairs and International Trade will set up and be in charge of the e-mail communication. Others have indicated their interest in helping on special activities or events.

Among the projects adopted for the group are the creation of a Directory of persons in the field of international environmental law and the establishment of an e-mail link between members of the group to share news and views. There was considerable support for scheduling a special session for the next CCIL Annual Conference, or immediately preceding or following it, at which group members could meet and discuss timely or topical issues. The interest group will be responsible for the organization of a panel dealing with an environmental theme for the next annual conference of the CCIL. Several possible themes were discussed, including water issues and trade and the environment.

I invite all interested CCIL members to join our company in this coming year. Assistance with any project and ideas for panel topics are welcome. Should you wish to be included in the Directory, please contact Silvia Maciunas at (613) 841-3635 or e-mail <smaciunas@comnet.ca>.

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Droit international et le "déficit démocratique" - au Canada?

By Stanislas Slosar[*]

Les manifestations sur la voie publique qui ont perturbé le déroulement de la récente Conférence ministérielle de l'Organisation mondiale du commerce (OMC) réunie à Seattle constituaient une version amplifiée des protestations dont avaient été témoin auparavant les négociations de l'Accord multilatéral sur les investissements, menées au sein de l'Organisation de coopération et de développement économique et les réunions des gouverneurs de la Banque mondiale. L'analyse des causes qui ont mobilisé à plusieurs reprises les coalitions hétéroclites d'opposants venus de plusieurs pays dépasse évidemment le cadre de cette note. Ces événements inspirent toutefois quelques réflexions ayant trait au droit international.

Le droit international régissant les échanges de biens et de services, de même que l'assistance économique, a un impact sensible et direct - à en juger par les réactions du public - non seulement sur les États et les sociétés commerciales impliqués dans le commerce international, mais aussi sur l'existence quotidienne du "commun des mortels" dans un nombre considérables d'États. Qui ne connaît pas au moins un exemple des "ravages de la mondialisation", sous forme de chômage sectoriel ou de baisse des profits des entreprises locales, causés par la concurrence internationale facilitée par les règles du commerce extérieur? On parle toutefois moins souvent des bénéfices de la mondialisation sentis par de nombreuses personnes physiques et morales. Par ailleurs, si l'on songe aux effets des "programmes d'ajustement structurel" dont la réalisation constitue la condition de l'octroi aux États de l'assistance financière du Fonds monétaire international, il est permis de conclure que le droit international économique a désormais sur les populations elles-mêmes les incidences aussi directes que les traités en matière de la protection des droits fondamentaux et les règles du droit humanitaire.

Toutefois, à l'époque de l'information instantanée, universellement accessible à virtuellement tous les sujets, la manière - largement confidentielle et pratiquement monopolisée par les fonctionnaires - de formuler les règles de droit international paraît comme un anachronisme. S'il est acquis depuis des siècles que l'entretien des relations extérieures et, par conséquent, l'élaboration du droit international, constituent par nécessité (à quelques nuances près) le champ d'action des exécutifs nationaux, il est également notoire depuis quelque huit cent ans que l'on ne saurait pendant longtemps dissocier les citoyens de la confection du droit, auquel ceux-ci auront par la suite le devoir et parfois le fardeau d'obéir. Certes, aussi longtemps que la portée du droit international était confinée aux relations inter étatiques, ce problème - dont les législatures élues sont la solution - ne se posait pratiquement pas. Ce stade est cependant dépassé depuis belle lurette, au moins dans les États industrialisés, et la question d'une certaine "démocratisation" de la création et de la mise en œuvre du droit international mérite d'être posée. Elle l'est d'autant plus que dans le contexte de l'idéologie unique du capitalisme libéral, plusieurs ont été amenés à considérer les forums secrets des négociations internationales comme les occasions idéales d'exercer des influences occultes par les groupes de pression, à commencer par les sociétés commerciales à ramifications internationales. Les événements de Seattle ont montré qu'en la matière la perception est plus importante que la réalité, mais cette dernière est rarement accessible au public autrement que sous forme de résultats définitifs de la négociation internationale. Il n'en est pas moins vrai que ces événements culminent une série d'incidents semblables qui ont eu lieu lors de cinq dernières années, événements qui reflètent l'existence d'un hiatus - "le déficit démocratique" - entre ceux qui créent et appliquent le droit international et ceux qui sont les récipiendaires des effets de celui-ci.

La démocratisation implique, comme on le sait depuis le temps de la Grèce antique, le savoir et la participation. La connaissance par le grand public des dossiers internationaux, notamment ceux qui ont trait aux relations économiques et qui sont passablement compliqués, laisse à désirer. La presse quotidienne, à l'exception notable de certains journaux nationaux comme *The Globe and Mail* et *The Toronto Star*, consacre peu de place aux événements internationaux, en reprenant les manchettes des agences de presse sans explication du contexte et des implications possibles. La confusion actuelle au sujet des causes de la crise céréalière que vivent les fermiers des Prairies est un bel exemple de l'insuffisance de l'information fournie au public en matière d'échanges internationaux. Plus près du droit international, l'enseignement de cette matière dans un bon nombre de nos universités demeure marginal, c'est à dire proportionnel à l'importance que lui attribuent les barreaux provinciaux. L'ampleur de cette négligence peut facilement être constatée par comparaison de la place occupée par les matières

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juridiques internationales dans les programmes de meilleures universités américaines et de la plupart des universités européennes. Si la connaissance du domaine international devait constituer la condition de la participation éclairée à la création et à l'application du droit international, cette condition ne serait qu'imparfaitement remplie au Canada - hors du cercle relativement étroit de personnes professionnellement impliquées.

Le terme de "participation" doit être entendu dans le contexte du régime parlementaire du type britannique: celui-ci n'offre au citoyen que deux formes d'expression des préférences politiques - la consultation directe (référendum) et l'élection des membres du Parlement. En pratique donc, la "démocratisation" du droit international au Canada serait seulement le fait de ces derniers, ce qui ne satisferait pas nécessairement les protestataires de Seattle et d'ailleurs. De surcroît, cette participation devrait être modulée en fonction de l'origine multilatérale ou bilatérale du droit international.

La participation des parlementaires aux délibérations des organisations internationales n'est pas inconnue: le Parlement européen, élu au suffrage universel et direct, partage pour partie le pouvoir réglementaire (en fait - législatif) détenu pour l'essentiel par le Conseil des ministres de l'Union européenne. La lecture de quelques dispositions du Traité de celle-ci portant, par exemple, sur la procédure budgétaire montre l'extrême complexité et difficulté de l'aménagement sur ce plan des rapports entre les gouvernements et les parlementaires au sein d'une organisation internationale. À cause de cela, le Parlement européen joue plus facilement le rôle de conseiller du Conseil lorsque celui-ci exerce seul le pouvoir réglementaire et le rôle de contrôleur politique de la Commission - l'exécutif technocrate de l'Union. Quelques autres organisations internationales - dont l'Organisation du Traité de l'Atlantique Nord - font appel aux parlementaires désignés par leurs corps d'origine aux fins purement consultatives. Le rôle des parlementaires au sein des organisations internationales est donc non seulement effacé; il est aussi limité aux organisations régionales, composées d'États membres qui sont peu nombreux et relativement homogènes. En effet, la présence des parlementaires au sein des délégations nationales, émanant des exécutifs nationaux et envoyées aux conférences internationales ou aux organisations internationales universelles (comme les Nations Unies), ne pourrait affecter ni le mode parlementaire dont ces réunions délibèrent, souvent en présence de plus d'une centaine d'États, ni surtout l'issue de ces délibérations - qu'elles portent sur le création ou sur l'application du droit international.

Ce qui précède s'applique également aux négociations bilatérales qui sont plus nombreuses. Celles-ci se déroulent en petits comités de fonctionnaires spécialisés, à côté desquels les parlementaires pourraient, au mieux, faire acte de présence. Certes, au Canada et ailleurs, certains parlementaires sont tenus au courant et consultés au sujet des négociations internationales en cours, mais en général ils n'y prennent pas part eux-mêmes. La pratique internationale réduit donc le rôle des parlementaires dans la création et l'application du droit international à une portion congrue, sans que cette situation soit appelée à changer dans un avenir prévisible, du moins en ce qui concerne les institutions internationales universelles.

En fin de compte, s'il y avait des possibilités de réduire le "déficit démocratique" du droit international, elles n'existeraient que sur le plan interne: celui où les parlementaires sont mieux à même de jouer le rôle de représentants de leurs commettants. Plusieurs parlements nationaux exercent en effet un certain contrôle politique de la conduite des relations extérieures par leurs gouvernements respectifs. Deux exemples connus qui ont trait au droit international constituent, d'un côté, le sénat américain qui non seulement consent - après débat - à la ratification par le président des traités internationaux, mais aussi examine les différents aspects de la politique étrangère lors des audiences tenues devant ses comités. De l'autre côté de l'Atlantique, le parlement français autorise la ratification par le président des traités les plus importants au moyen de lois, alors le gouvernement y soumet au débat les volets les plus importants de sa politique extérieure. Bien sur, la plupart des assemblées législatives offrent aux députés la faculté de questionner l'exécutif au sujet de sa conduite des relations internationales. Ces questions et l'adoption des lois de mise en œuvre des traités internationaux sont deux principaux outils du contrôle de la politique étrangère par le parlements du type britannique.

Ces formes de contrôle de la politique étrangère semblent être les seules qui soit encore régulièrement pratiquées à la Chambre de Communes à Ottawa. En effet, les traités internationaux conclus par le Canada n'y sont plus déposés que de façon sélective, si bien que les débats pléniers et les résolutions portant sur les questions internationales sont devenues rares depuis les discussions enflammées au sujet du libre échange. Ni l'avènement de l'OMC qui a sensiblement affecté le rôle joué par l'État dans le domaine agricole, ni l'incidence du régime monétaire international sur la dépréciation du dollar, ni l'attitude adoptée par le Canada à l'égard du nouveau droit de la mer n'ont donné lieu aux débats de fond. La participation du Canada aux

opérations militaires multilatérales et l'impact - pourtant majeur - des engagements internationaux en matière de réduction d'émission des gaz à effet de serre ont donné lieu au débat plutôt bref dans l'enceinte parlementaire. Bien entendu, la majorité gouvernementale y est maître de l'ordre du jour, habituellement bien chargé de questions qui touchent les députés davantage que des problèmes internationaux. De surcroît, il est permis de poser la question de savoir si l'ambiance décidément partisane de la Chambre des Communes est propice à la discussion instructive de la conduite passée et future des relations extérieures du Canada, y compris évidemment la prise d'engagements juridiques internationaux.

De ce point de vue, le Sénat semble avoir un avantage: les clivages politiques y sont moins apparents. En plus, la majorité n'y est pas toujours du côté gouvernemental, alors que la charge du travail paraît moindre, ces deux facteurs pouvant permettre un meilleur ajustement de l'ordre du jour aux problèmes internationaux dont la survenance ne peut pas être planifiée bien à l'avance. Le Sénat canadien a, de plus, une tradition d'initiative législative en matières internationales et celle d'étude au sujet de différents aspects des relations extérieures, par exemple les relations commerciales avec les États-Unis. Le retentissement, aujourd'hui fort limité, des travaux du Sénat dans le domaine international pourrait être facilement augmenté: il suffirait d'adopter une pratique consistant en le dépôt systématique au Sénat des traités internationaux conclus par le Canada, en la présentation dans cette enceinte des déclarations de politique étrangère et en l'adoption des résolutions y afférentes, y compris au sujet de la ratification par le Canada des traités internationaux. En bref, le Sénat aurait la priorité dans le traitement des affaires internationales, ce qui ne nécessiterait ni législation, ni dépenses publiques. En contrepartie, le public pourrait espérer davantage d'attention et d'analyse, moins d'adversité et, peut-être, plus d'information sérieuse dans les médias aux sujets internationaux. L'aliénation actuelle - si ce n'est l'hostilité - de certains groupes sociaux à l'égard des engagements internationaux pris par le Canada et de leurs effets pourrait ainsi être modérée, sinon dissipée. En tout état de cause, le débat parlementaire éclairé, équilibré et bien propagé forcerait l'usage subséquent des arguments rationnels par les opposants et les partisans des solutions choisies par l'exécutif - situation qui n'a pas souvent été observée à Seattle.

L'idée de confier au Sénat le rôle prioritaire dans le contrôle politique de la conduite des relations internationales du Canada a cependant un apparent défaut: peut-on avancer la "démocratisation" du droit international qui touche les citoyens en se servant d'un corps législatif non élu? La réponse serait probablement négative dans l'immédiat. Toutefois, à supposer que l'expérience soit tentée et qu'elle donne des résultats probants, elle pourrait avoir deux autres conséquences désirables, en plus de rapprocher le droit international et les citoyens. L'effort de re-définition de la tâche des législateurs dans le domaine international pourrait déboucher sur l'abandon du modèle britannique en la matière et son remplacement par un autre qui réserverait à ceux-là le rôle plus important et surtout plus actif, comparable à celui qu'ils jouent dans les autres États occidentaux. Par ailleurs, à supposer que la priorité ou un autre rôle défini du Sénat dans les affaires internationales soit assuré, celui-ci serait peut-être plus enclin de consentir à sa propre réforme constitutionnelle qui en ferait un organe législatif représentatif de l'électorat.

Un sujet de réflexion pour ce nouveau millénaire? ◅

Annual Conference 2000

Mark your calendars now! This year's Annual Conference on International Law will take place at the Chateau Laurier Hotel in Ottawa from Thursday evening, October 26 to Saturday afternoon, October 28. Planning is well under way to deliver a variety of interesting future-oriented presentations on the theme "Looking Ahead: International Law in the 21st Century". Any ideas for speakers and panel topics can be transmitted to the conference organizing committee by e-mail at <conference@ccil-ccdi.ca>. More information will be made available in the coming months, including via the CCIL website. ◅

Congrès 2000

Marquez vos calendriers maintenant! Le Congrès annuel de cette année aura lieu à l'hôtel Château Laurier à Ottawa à partir du jeudi soir, 26 octobre jusqu'au samedi après-midi, 28 octobre. La planification va bon train pour fournir une variété de présentations intéressantes sur le thème « Les yeux portés vers l'avenir: Le droit international au 21ème siècle ». Toutes les idées pour des orateurs et des sujets de panels peuvent être communiqués au comité organisateur du Congrès par courriel à <conference@ccil-ccdi.ca>. De plus amples renseignements seront disponibles dans les mois à venir, y compris sur le site Internet du CCDI. ◅

New CCIL Website

The CCIL has a new website. In an effort to both improve the Council's outreach activities to non-members and facilitate the dissemination of information to members, the website has been redesigned and updated. In addition to basic information about the organization and activities of the CCIL, the new website will be a central location for international lawyers in Canada and elsewhere to find information about ongoing Conference preparations, a calendar of events, various on-line forms and links to other electronic resources on international law.

There is also a password-protected area on the website where CCIL members may access further services, such as organizational archives, an electronic discussion group and, eventually, a membership directory. Information on accessing this private site has been included on a separate sheet. The *Bulletin* will increasingly take advantage of both the private and public areas of the web site to gather together and share information on the ideas, activities and publications of Canada's international law community.

The new site is still a work-in-progress, so please excuse us for any rough edges you may encounter. However, with your patience, your feedback on problems you experience and your suggestions for improvements, the CCIL website will become a valuable source of Canadian-produced, bilingual information on developments in international law. ≺

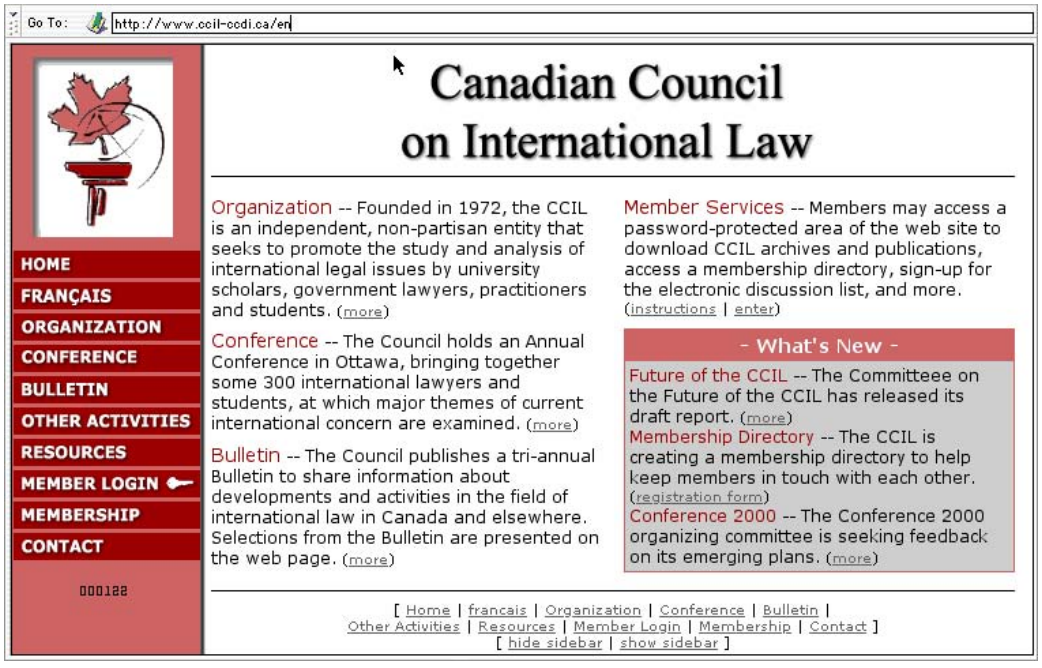
Nouveau Site Internet du CCDI

Le CCDI a un nouveau site Internet. Dans le but de faire connaître les activités du Conseil à ceux qui ne sont pas membres, et de faciliter la diffusion de l'information à ceux qui le sont, le site Internet a été refait et mis à jour. En plus de l'information de base sur l'organisation et les activités du CCDI, le nouveau site sera un lieu central pour les avocats internationaux du Canada et d'ailleurs pour trouver des renseignements sur la planification du Congrès, un calendrier des événements, certains formulaires électroniques et les liens à d'autres ressources électroniques en droit international.

Une partie du site est aussi réservé aux membres où ceux-ci peuvent avoir accès à davantage de services du CCDI, tels que les archives organisationnelles, un groupe de discussion électronique et, plus tard cette année, un bottin des membres. Des instructions pour accéder à ce site privé ont été envoyées séparément. Le *Bulletin* profitera de plus en plus des sections privées et publiques de ce nouveau site pour rassembler et partager des nouvelles sur les idées, activités et publications de la communauté Canadienne de droit international.

Le nouveau site est toujours en pleine construction, veuillez donc nous excuser pour les difficultés que vous pourriez rencontrer. Néanmoins, avec votre patience, vos commentaires sur les problèmes rencontrés et vos suggestions, le site Internet du CCDI deviendra une source de valeur d'information bilingue, produit au Canada, sur les développements en droit international. ≺

• http://www.ccil-ccdi.ca •



International Environmental Law for the New Millennium: The Challenges Ahead

by Nigel Bankes*

The last century knew nothing of international environmental law. Indeed, notwithstanding the *Trail Smelter Arbitration*, the topic was scarcely recognizable as a sub-discipline of public international law before the Stockholm Declaration of 1972. Since then, it has of course grown apace, developing both doctrine and principle primarily through an extraordinary flourishing of multilateral environmental agreements (MEAs). Much of that development has been driven by a growing appreciation that our global environment does not have an unlimited capacity to absorb everything that we chose to throw at it. But what are the challenges that lie ahead?

First, there is the challenge of implementation and compliance. We can negotiate MEAs on all manner of topics from climate change to biodiversity, and from hazardous wastes to trade in endangered species, but unless these agreements are implemented on a consistent basis we shall see little improvement in environmental quality. How can we be sure that this will happen in the absence of effective dispute settlement provisions based upon compulsory jurisdiction?

Increasingly, we look for the answer in the creation of compliance regimes such as those developed for the Montreal Ozone Protocol and the Economic Commission for Europe's (ECE) Long Range Transboundary Air Pollution (LRTAP) Convention and Protocols. These non-adversarial regimes emphasise the importance of bringing parties into compliance. They promote positive solutions and are premised on the multilateral or *erga omnes* nature of MEA obligations. But not all MEAs have such regimes and there is therefore a need to develop compliance regimes for these agreements and especially for some of the older agreements such as Basel (the Basel Convention on the Control of Hazardous Wastes and their Disposal) and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and to ensure that new global regimes, such as the proposed Persistent Organic Pollutants (POPs) Convention, incorporate this idea from the outset.

Compliance regimes will work provided that a spirit of compromise prevails. Where parties demand hard outcomes with economic or other sanctions, the negotiation of a compliance regime will be fraught with difficulty as is demonstrated by the current negotiations on a compliance regime for the Kyoto Protocol (to the United Nations Framework Convention on Climate Change). Furthermore, a demand for hard outcomes inevitably blurs the line between compliance and the dispute resolution provisions of MEAs. Typically, compliance procedures simply acknowledge that such procedures are "without prejudice" to the dispute resolution provisions of the convention but in the future it may be necessary to explore a more interactive relationship between these types of provisions. For example, one can imagine situations in which compliance procedures will throw up difficult interpretive questions that may be better handled by a Court than by the compliance body or the Conference of the Parties (CoP). This may suggest that in crafting the dispute resolution provisions of an MEA we should consider the availability of reference or advisory opinions thereby preserving both the multilateral nature of compliance issues in an MEA and as much as possible of the non-confrontational nature of compliance procedures. Certainly, development along this line may be more fruitful and useful than the current standard dispute resolution procedures of MEAs.

Second, there is the challenge of integrating theory and practice. One of the most positive developments in the literature of international environmental law over the last couple of decades has been the attempt of some writers to measure doctrine against relevant ethical standards. This requires that lawyers engage with some of the difficult problems of contemporary moral philosophy such as the problem of intergenerational equity, Rawlsian ideas of justice, and the broad spectrum of views (from deep ecology to utilitarianism) embraced by the discipline of environmental ethics. These ideas will inform the creation of new regimes such as the conceptualization of the atmosphere as a type of private property rather than as a open-access resource and questions associated with the allocation of rights to that resource. Similarly, we shall need to continue to draw upon the theoretical perspectives of other disciplines (e.g. game and regime theorists) to create meaningful decision-making regimes for

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complex global problems; regimes which will perhaps confer a greater measure of decision-making authority on international institutions. The adjustment procedure under the Montreal Ozone Protocol is one such example, and Dan Bodansky is surely correct when he observes that it is procedures like this that move us beyond the classical idea of voluntarism, and that will force international environmental lawyers to become more concerned with the problem of legitimacy[1].

A *third* and related challenge is to operationalize some of the broad principles of international environmental law. There is little in the literature that is more depressing than the endless discussion of whether a particular proposition has attained the status of a rule of customary law. In the past, that debate typically focussed upon Principle 21 of the Stockholm Declaration of 1972. The current debate is much more concerned with the status of the precautionary principle or approach. Yet ultimately this debate is misconceived and misdirected. It is surely more fruitful to ask what each of these 'principles' or other principles (such as the polluter pays principle or the principle of equitable utilization) might require, either in a given Convention or on a given set of facts.

"One of the most positive developments in the literature of international environmental law over the last couple of decades has been the attempt of some writers to measure doctrine against relevant ethical standards"

But the difficulty of the task is obvious. In the case of Principle 21, for example, one can think of the International Law Commission's (ILC) work on liability for the injurious consequences of acts not prohibited by international law as one attempt to operationalize Principle 21 and its companion Principle 22. That exercise has consumed the ILC for well over a decade and the draft Articles, now at the First Reading stage, hardly represent a Charter for the next century and are largely devoid of the intellectual creativity that characterized the early work of the ILC's first rapporteur on this subject before his untimely death. To me, this confirms that these very general attempts to operationalize such principles will be difficult and that it may be more productive to concentrate on operationalizing principles on a more sector-specific basis. The LRTAP Convention and its protocols provide a positive example of this approach and the ILC's work on non-navigational uses of international watercourses is surely more useful (because applied to a particular sector) than its work on liability.

We can perhaps afford to be somewhat more hopeful of the precautionary approach. While a vociferous debate continues as to the content of the rule and also as to its status, there have been some productive attempts to operationalize the approach in multilateral agreements. The Straddling Stocks Agreement provides one such example, while Article 5(7) of the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS) stands as a more cryptic articulation. The challenge for the future will be to expand this approach elsewhere rather than relying upon general preambular references and objective clauses.

A *fourth* challenge is to try to ensure that existing MEAs are sufficiently responsive to changing needs. Domestic environmental regimes are familiar with this problem and the issue of grandparenting existing interests. Our international experience is more limited but there is a range of tools available. Consider, for example, the LRTAP Convention and the successive protocols that the parties have negotiated. Not only have these protocols expanded the range of substances subject to the LRTAP regime (most recently POPs and heavy metals), but, by moving away from across-the-board percentage cuts in emissions, and adopting instead control measures more closely linked to the concept of carrying capacity, they have forged a stronger link between science, ecological reality, and the economic impact of regulation. While the Climate Change, Antarctic and Ozone treaties provide other examples of the use of Protocols to achieve responsiveness, the Parties to these and other agreements have also used decisions of the Conference of the Parties to elaborate and adapt the original regimes.

Yet there are significant problems with both approaches, grounded in each case in the voluntarist approach to international law. The protocol approach (and by the same token any approach that requires treaty amendment) can lead to differential obligations if only a limited class of parties chose to sign-on to the new obligations. The CoP approach suffers from the defect that such decisions, except to the extent that they constitute authoritative interpretations of Convention obligations, are usually not binding. The way ahead will surely involve the creation of rule-making regimes such as the adjustments procedure of the Montreal Protocol especially where there is a need to respond quickly. But this will not be easy, for even where such procedures are consensus-based, domestic law-makers are reluctant to accept the resulting loss of control.

[1] "The Legitimacy of International Governance: A Coming Challenge for International Environmental Law" (1999), 93 AJIL 596.

In thinking about the responsiveness of treaties to changing values, the *Gabcikovo* decision from the ICJ usefully reminds us that the problem is not confined to complex global regimes but pervades bilateral regimes. In this context, Articles 31(3)(c)(duty to take account of all relevant rules of international law) and Article 64 (peremptory norms) of the Vienna Convention on the Law of Treaties hardly seem to provide an adequate account of the relationship between treaties and principles of customary law. The paucity of doctrine on this point creates by default a hierarchy between customary and positive treaty law that is not intuitively, or doctrinally, obvious.

A *fifth* and final challenge, at least for this short paper, is posed by what I will term the hegemony of the dispute settlement procedures under the WTO. While historians of the common law will remind us that there is nothing new about tribunals competing for jurisdiction, the twist here is that there is simply no contest between the WTO and the dispute settlement procedures of MEAs. Suppose that State A, relying upon the Biosafety Protocol (once it is negotiated and in force) decides to exclude a particular GMO exported from State B on biodiversity grounds. State B will likely be justified as characterizing that measure as an SPS measure just as surely as State A will assert that it is a Biosafety measure. Yet as plaintiff, State B will have its choice of forum and will surely select the WTO forum to contest the validity of the measure rather than compulsory conciliation under the Convention on Biological Diversity. How problematic is this "double aspect" of many environmental measures?

"The way ahead will surely involve the creation of rule-making regimes such as the adjustments procedure of the Montreal Protocol especially where there is a need to respond quickly"

The usual response of the environmentalists is that the WTO has a dismal record in dealing with such cases. The roll call of so-called travesties includes *Tuna-Dolphin*, *Shrimp-Turtle* and *Reformulated Gasoline*. But we should pause before we accept this conclusion. After all, in each of these cases, there is a perfectly respectable argument for urging that the domestic environmental measure fell, not because of an illegitimate goal, but because the United States chose to implement a legitimate objective in a seriously flawed manner. From this perspective we should not be so quick to condemn the WTO dispute panels and the appellate body. True, they will likely continue to be composed of experts in trade law rather than experts in environmental law, but do we really think that it is beyond the ken of these bodies and counsel presenting arguments to make the environmental case? True, in a perfect world, we may seek to include effective dispute resolution provisions in MEAs, (see my first challenge, above) but until that time we should surely take some comfort from seeing operational dispute resolution models both in the WTO and under the Convention on the Law of the Sea. In the long run, this can only encourage respect for the rule of law and perhaps make it easier for states to accept elements of binding dispute resolution under MEAs. It can hardly make it more difficult!

We also need to pursue the relationship between trade law rules and environmental norms at a substantive level as well as at the procedural or dispute resolution level. It seems difficult to make progress here. Certainly, the rote application of Article 30 of the Vienna Convention on the Law of Treaties (application of successive treaties relating to the same subject matter) combined with the use of broadly framed savings clauses seems much too blunt a tool, but proposals to open-up Article XX of the GATT to clarify the relationship between trade disciplines and domestic measures taken to implement MEAs seem unlikely to proceed for political reasons. This is unfortunate.

L'Avenir du CCDI

Après avoir sollicité l'opinion des membres du CCDI, le Comité sur l'Avenir du CCDI vient de livrer un rapport préliminaire, contenant plusieurs recommandations qui visent le renouvellement de l'organisation. Les membres auront trouvé avec ce numéro du *Bulletin* une copie du rapport dans au moins une langue officielle. Le rapport entier est aussi disponible, dans les deux langues officielles, sur le site Internet du CCDI. Veuillez envoyer vos commentaires à propos du rapport au bureau du CCDI soit par la poste, télécopieur ou courriel, le 14 mars, 2000 au plus tard.

The Future of the CCIL

After broadly canvassing the views of CCIL members, the Committee on the Future of the CCIL has released its draft report, including several recommendations aimed at renewing the organization. Members will have found included with this issue of the *Bulletin* a copy of the report in at least one official language. The entire report, in both official languages, is also available on the CCIL web page. Please forward your comments on the report to the CCIL office by regular mail, fax or email by 14th March, 2000.

International Trade Law in the Year 2000

By Donald M. McRae[*]

Any assessment of the direction of international trade law written before the events at the Third WTO Ministerial Conference in Seattle would have to be revised in the light of what occurred there. Both the level and intensity of the protests and the failure of the Conference to launch a "Millennium Round" of multilateral trade negotiations are likely to have far-reaching implications. The debate over trade and the environment, trade and labour standards, and the erosion of national sovereignty will continue to be central to discussions of international trade law, although not necessarily in the apocalyptic terms sometimes heard from Seattle.

At the same time, regardless of any future "round" of trade negotiations, the most important body for the development of international trade law is the Appellate Body of the WTO. The jurisprudence emanating from the Appellate Body in its five years of operation has been extensive, and the volume of complaints continuing to be brought under the WTO dispute settlement process suggests that activity by panels and the Appellate Body is likely to increase rather than decrease.

One can expect, therefore, the procedural and substantive law of the WTO to be developed significantly over the coming years. And this body of law is not just of interest to trade lawyers. The Appellate Body has been dealing with issues of legal process, such as how evidence is to be received and evaluated, the rights of non-governmental "intervenors", and the obligation of a party to disclose information to a tribunal, as well as the scope and ambit of appellate jurisdiction. In addition, concepts and principles of international law, such as those relating to treaty interpretation and to the precautionary principle, have found their way into WTO judicial decision-making.

Moreover, the substantive issues likely to come before the WTO dispute settlement organs will, directly or indirectly, involve many of the issues that were behind some of the discontent voiced in Seattle about the WTO. Complaints relating to the application of sanitary and phytosanitary measures, or to the application of discriminatory environmental standards, or concerning the use of trade sanctions against states that violate human rights, or complaints about subsidization will continue to call into question the capacity of the WTO system to deal with environmental, health or human rights standards and the extent to which WTO disciplines impinge on traditional areas of state sovereignty. What this means is that issues cannot be readily compartmentalized into trade issues, or environmental issues, or human rights issues. Nor will governments any longer be able to negotiate such issues free of intense public scrutiny.

Thus, whether it is through a trade negotiating round, or through the day-to-day operation of the WTO dispute settlement process, issues of transparency, representation, access of civil society, and the impact of globalization will be at the forefront of international trade law. What this means for the international law community is a belated recognition of the centrality of economic issues to their discipline and a challenge to fit those issues within, or to rethink, the traditional assumptions about states on which international law is based.

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J.-G. Castel Receives John Read Medal

The CCIL occasionally bestows a gold medal upon Canadians who have made a distinguished contribution to international law, in honour of the exceptional work of John E. Read, former judge of the International Court of Justice. In 1999 the John Read Medal was awarded to **Jean-Gabriel Castel**, Distinguished Research Professor and Professor Emeritus at Osgoode Hall Law School.

In presenting the medal at the 1999 CCIL Banquet, Peter W. Hogg, Dean of the same law faculty, pointed out that Professor Castel "has been showered with honours too numerous to list in full, but which include an appointment as a Queens Counsel in Ontario, a member of the Royal Society of Canada, an officer of the Order of Canada, and a distinguished research professor at York University… His scholarly productivity has been prodigious. He has published 14 books, several of which have gone through multiple editions, and over a hundred monographs and articles… In the field of public international law, he is also one of the world's leading scholars, and he has been a pioneer in the field in Canada. He was a founding member of the Canadian Council for International Law, and he was a founding editor (and is still a regular contributor) of the Canadian Yearbook of International Law."

Professor Castel receives the John Read Medal in recognition of his foundational contributions to scholarship in international law.

• *WOMEN AND INTERNATIONAL LAW INTEREST GROUP* •
New Work on Gender and International Law

Among the goals of the CCIL Women and International Law interest group are to promote dialogue about gender and international law, and to recognise new ideas and topics in this area. To highlight recent work by young scholars in Canada, Women and International Law asked University of Toronto law student Boris Nevelev to compile a list of graduate theses with an international focus on women or feminism written this past year at Canadian law schools. In addition to the *McGill Law Journal's* annual thesis survey,[2] Boris contacted all the Canadian law schools with graduate programmes directly.[3] The result is an exciting collection of new voices on the Canadian international law scene.

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Ambe, Nicoline. *Integrating the Rule of Law and Women's Equality Rights in the Cameroon*. Doctor of Jurisprudence, Osgoode Hall School of Law, York University, Spring 1999.

Abstract: The struggle to achieve women's equality rights and the struggle to engender the rule of law in Cameroon have been pursued as separate and distinct struggles. This thesis argues that both struggles must be linked; in order for women to obtain and enjoy legal equality either through domestic law and/or international human rights law, the rule of law must be first accepted and institutionalized in Cameroon. The basic feature of the rule of law is an independent judiciary whose responsibility is both to resolve disputes between citizens fairly, impartially and according to law and to hold the government to account to law. In Cameroon, however, the judiciary is influenced by, and accountable to, the executive. Consequently, the Cameroonian government has resorted to various repressive measures to deny the rights of Cameroonian citizens with impunity. The lack of accountability has promoted the breakdown in the rule of law.

Some scholars argue that the failure of the Western liberal notion of the rule of law within contemporary African nation states is explained by referring to Africa's (pre)colonial experiences and its specific cultural context. While there is some truth to this position, the thesis nevertheless examines the rule of law as a normative legal ideal whose existence is necessary to foster women's rights as a variety of human rights. Women's inequality in Cameroon is embedded in the law and is sustained by judicial decisions. The Cameroonian state underrides this gender bias in the private sphere failing to sanction, and thereby condoning, domestic abuse against women. As long as the state takes no active measures to prevent biases against women, or fails to respect due process, the rights of women in Cameroon will remain. Women in Cameroon suffer various forms of systemic inequalities, however, the state has taken no recognizable measures to redress this problem. Instead, women's inequalities are compounded by the institutional inefficiency of the legal system. The effect has been an arbitrary distribution of rights and sanctions by the state. It is on this basis that this thesis argues for the institutionalization of the rule of law as an important precondition for the success of women's equality rights in the Cameroon. The struggles for the rule of law and women's equality rights are therefore integral and should be pursued concurrently.

Andersen, Jacob. *Sexual Orientation: Prospects and Perspectives of a Changing Norm in International Law*. LL.M., Institute of Comparative Law, McGill University, Spring, 1999.

Bunting, Annie. *Particularity of Rights, Diversity of Contexts: Women, International Human Rights and the Case of Early Marriage.* S.J.D., University of Toronto, 1999.

Bunting's SJD dissertation makes a fresh and original contribution to the debate between universalists and cultural relativists in international human rights law. Using the case of early marriage, she shows that general international human rights law norms actually undergo a certain process of particularisation in local practice and that in this process lie useful lessons for how to think about and work with international human rights. Bunting's dissertation includes a case-study of early marriage in northern Nigeria, based on her field work in the region, and a study of the treatment of marriage and culture in Canadian refugee cases involving women. Bunting presented an early version of her study of Canadian refugee cases at last year's CCIL Women and International Law breakfast.

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[2] "Thesis Survey" (1998) 43 McGill L.J. 987.

[3] Replies were received from the following law schools: University of Alberta, University of British Columbia, University of Calgary, Dalhousie Law School, Université Laval, McGill University, Université de Montréal, Osgoode Hall Law School, University of Ottawa, Queen's University, University of Saskatchewan, Université de Sherbrooke, University of Toronto. Abstracts have been included where available.

Jarvis, Michelle. *Redress for Female Victims of Sexual Violence During Armed Conflict. Security Council Responses*. LL.M., University of Toronto, 1998.

Abstract: The problem of how to assist women affected by armed conflict is one of the most pressing concerns facing the world today. This thesis addresses one part of the problem, namely the recovery of women subjected to sexual violence during armed conflict. My aim is to determine the extent to which the international legal system has responded to this problem through an examination of action taken by the Security Council. In particular, I am concerned with the extent to which the Security Council has recognised the importance of prosecuting perpetuators of sexual violence, and providing compensation to female victims. I look at the international responses to sexual violence committed in the former Yugoslavia and Rwanda. I also examine the provision of compensation to victims of sexual violence by the United Nations Compensation Commission, and the ad-hoc criminal tribunals for the former Yugoslavia and Rwanda.

McCallum, Suzanne. *Out of the Ghetto?: The Feminist Impact on International Human Rights Law*. LL.M., Dalhousie Law School, 1998.

Abstract: International human rights were designed to be universal in scope and character. This hounourable intention of the international community has, unfortunately, yet to be fulfilled. Fundamental documents such as the International Bill of Human Rights were drafted in a male biased Eurocentric environment. As a result male interests were protected with guarantees against state inflicted violations. These building block instruments are the foundation of the current human rights system. Partiality to the male dominated public sphere has permeated the structure, creating social peripheries that in practice fall outside the ambit of the international system. This periphery is dominated by women. The pervasiveness of female marginalisation has for a long time been concealed by such concepts as gender-neutral language, decontextualised reasoning, and abstract entities, like the state.

Feminism has become an established voice in domestic legal systems. The alternatives advocated by feminist thought are now posited in the global arena. Questioning international human rights law has revealed stark gender bias. This culminates in the human rights of women being violated with impunity. The need for a feminist perspective on the international legal order, and the gains made therefrom in the field of human rights are the focus of this analysis. International feminist legal thought has been both the catalyst for and the agenda of change. The instant examination is directed towards gender based violence. The traditional practice of female genital mutilation (FGM) is considered in detail. FGM is a symbolic manifestation of violence against all women. The international legal order is responding to the demands of the society it represents. The needs of half the population are eventually being heard through feminist activism. The ever growing effectiveness of international feminist analysis brings the realisation of universal human rights for all, one step closer.

Subsomboon, Kanokchan. *Lutte contre la prostitution enfantine en Thaïlande: les droits internationaux des enfants et le droit interne thaïlandais*. LL.M., Université Laval, 1998.

Abstract: Ce mémoire a pour objet l'étude d'un phénomène qui prend des proportions inquiétantes en Thaïlande: la prostitution enfantine. Nous présenterons dans un premier temps un portrait de la situation thaïlandaise en faisant ressortir les principaux facteurs responsables de l'émergence de ce fléau. Dans un deuxième temps, nous analyserons les différents instruments juridiques nationaux et internationaux pouvant apporter une solution concrète au problème. Finalement, nous constaterons que la véritable solution ne réside pas seulement dans les textes de loi. La prostitution enfantine s'insère dans un cadre beaucoup plus complexe nécessitant une prise de conscience collective.

Thibault, Martine. *Les obligations alimentaires entre conjoints de fait en droit international privé québecois*. LL.M., Université de Montréal, 1998. ◅

Le prix Sylvie Gravel

Depuis 1985, le CCDI accorde un prix annuel de 200,00$ pour honorer la mémoire de Sylvie Gravel, décédée cette année-là lorsqu'elle était Secrétaire du Conseil. Ce prix récompense la ou les personnes ayant rédigées la meilleure thèse ou le meilleur mémoire en droit international, public ou privé, à la Faculté de Droit de l'Université d'Ottawa.

En 1999, ce prix a été accordé à Julie Boulanger et Frédérique Couette. Le mémoire de Julie Boulanger portait sur *Le régime juridique des réserves aux traités relatifs aux droits de la personne*, et le mémoire de Frédérique Couette portait sur *Les normes internationales du travail et la mondialisation de l'économie: une étude sur le système international, l'Europe sociale et l'ANACT*. Le CCDI les félicite toutes les deux pour leur bon travail. Elles recevront chacune 100,00$. ◅

• *THE MARKLAND GROUP* •

Compliance Matters in Retrospect and Prospect

by Douglas Scott

Looking back over the past fifteen years, those of us interested in compliance methodology can observe some striking changes in the nature of the problems that engage our attention.

In 1987, the Markland Group took out a full-page ad in a local newspaper in which we complained about the US plans for launching a program known as the Strategic Defence Initiative. Since its purpose was to develop missiles that would destroy incoming missiles, we said it would be a violation of the Anti-Ballistic Missile Treaty (AMB Treaty). Those were the days when most of the items on the public agenda relating to compliance with treaties were concerned with bilateral treaties, like the ABM, or bipolar treaties like the Intermediate Nuclear Forces Treaty.

About that time, however, negotiations for a new treaty covering chemical weapons were getting into high gear. It became apparent that there was a need for attention to be given to the compliance provisions of the Chemical Weapons Convention (CWC). Compliance-oriented scholars soon recognized that the methodology needed for dealing with compliance under multilateral treaties (like the CWC) was quite different from what is needed under bilateral and bipolar treaties.

The most obvious difference was the need for an inter-governmental body to undertake the collection of data relating to compliance. The structure and powers of this body was a particularly contentious issue during the negotiations for the CWC. Was it to be the type of body set up under the ABM Treaty, namely a "consultative committee", which would make decisions only by consensus? Or was it to be a genuine administrative body with authority to make decisions by majority vote?

It was only in 1991 that the CD agreed that the supervisory body should decide by vote. Accordingly, the Convention now provides that the Organization for the Prohibition of Chemical Weapons (OPCW) makes decisions by two-thirds majority. Nowadays, it seems well accepted that treaty administering organizations, such as the OPCW, should be able to make decisions by vote rather than by consensus. Shortly after the CWC was negotiated, the two-thirds-majority rule was adopted for the two treaties that followed it, namely the Nuclear Test Ban Treaty and the Landmines Convention.

The CWC's compliance regime contained another important feature, namely mandatory legislation. The effect of Article VII of the CWC is to require each State Party to enact legislation making it a crime for an individual to engage in any activity prohibited to States Parties under the treaty. The concept of mandatory legislation was new at the time the CWC was being negotiated. The Markland Group had been advocating its adoption as a measure for enhancing compliance. Nowadays, it appears to be widely accepted. The two recent disarmament treaties, the Nuclear Test Ban Treaty and the Landmines Convention, both contain provisions for mandatory legislation.

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Mention should be made of a feature of the CWC's compliance regime that the US fought hard to have excluded. During negotiations, the US objected to any provision that would set up a procedure by which an authoritative decision would be made on the question whether a State Party was violating the Convention. In the end, authority to make such a decision was omitted from the Convention, at least in express terms, but many would argue that the authority can be taken to exist by implication. Express authority was also omitted in the Nuclear Test Ban Treaty, but as with the CWC, authority by implication will likely be assumed. The Markland Group classifies this type of provision under the heading of evaluation, and lists it among the five basic elements that we recommend for disarmament treaties.

Today's agenda in the field of compliance methodology must necessarily include consideration of the use of sanctions by the Security Council as an instrument for enforcing disarmament treaties. All disarmament treaties eventually rely on the Security Council as the ultimate enforcer when all else fails. Since military measures are ineffective and impractical for enforcing disarmament treaties, the Council is compelled to rely on sanctions.

The Iraqi problem has provided the Security Council with its biggest test of its ability to enforce a disarmament treaty against an unwilling party determined to resist. Although the Council's problem with Iraqi is not usually thought of as one of enforcing a disarmament treaty, it should be

remembered that Iraq's obligations to dispose of its weapons of mass destruction arise under Resolution 687 which was framed after the Gulf War as a cease-fire agreement which Iraq ratified.

The Council has been using sanctions for almost ten years against Iraq and there are many who are urging the Council to cease and desist – arguing that sanctions are inhumane and ineffective. The issue as to whether the use of sanctions is an appropriate instrument for enforcing disarmament is therefore near the top of the agenda of those of us in the field of compliance methodology.

Another matter of concern to the toilers in the field of compliance methodology is the absence of a compliance regime in the Biological Weapons Convention. Although diplomatic negotiations have been underway since 1991 aimed at agreeing on the text of a compliance protocol to be added to the Convention, progress has been slow. Certain countries are opposed to any regime that calls for close scrutiny of biological laboratories or other activities. It appears that the bio-tech industry is not prepared to put its trust in the regime being developed to protect confidential information. The latest issue of **Trust and Verify**, the newsletter issued by the VERTIC, stated the problem this way:

> There is still, however, heated debate over the level of intrusiveness of a BW verification regime… Bio-technology industries, especially in the United States, tend to oppose an intrusive regime for fear that valuable commercial proprietary information may be compromised.

At stake is information encountered by inspectors or other secretariat personnel which the inspected country considers to be sensitive on commercial or military grounds and which the country considers to be unrelated to the weapons prohibited under the Treaty. What is needed is a set of rules to prevent sensitive extraneous information from falling into the hands of parties that are unfriendly to the country from which the information was obtained.

The task of developing a confidentiality regime with rules of this nature had to be faced in the context of the CWC. Those responsible for negotiating the Convention failed to agree on a confidentiality regime, so that the Convention contains only an outline of the regime. The responsibility for completing the job was left to the Preparatory Commission. The elaborate and complicated regime developed by the Commission was put in place about two years ago and its efficacy and trustworthiness are still being tested.

It can be assumed that the confidentiality regime under the CWC has been closely scrutinized by those responsible for negotiating the BWC. Judging by the fact that the bio-tech industry is still concerned about the danger of losing its sensitive information, it would appear that the CWC regime has been found lacking.

We are left wondering whether the elaborate regime developed for the CWC can be considered adequate. If there are real problems, it means that the matter of a confidentiality regime must be put near the top of the agenda for those in the field of compliance methodology. If the diplomatic process is having difficulties, the task of developing a reliable confidentiality regime could benefit from more input from the non-governmental academic/ expert community.

As an academic field of study, compliance methodology is still in its infancy. Many unanswered questions have yet to benefit from scholarly examination. The improvement of arrangements for ensuring confidentiality of extraneous information is only one of many topics needing input from non-governmental experts. ◅

In Brief: "When There's No Forgetting"

One of the goals of the *Bulletin* is to highlight the writings of CCIL members. An article recently published in the *Ottawa Citizen* reminded us of the wide-ranging activities of Executive Committee member-at-large and UQAM Professor, William Schabas. Originally published in the Fall 1999 issue of *Hope Magazine* under the title of "A Deadly Silence", the article shares with readers the lessons the author learned during a 1993 fact-finding mission to Rwanda and by observing the tragic events which occurred after his visit. Condemning the international community for its failure to intervene to prevent the genocide in Rwanda, Professor Schabas encourages all of us to recognize the signs of ethnic hatred and to have the conviction to confront it before it results in violence. With the author's permission and that of *Hope Magazine*, the full text of the article has been reproduced on the members-only section of the CCIL website (see page 12).

The *Bulletin* welcomes information about the recent publications of any member, and will include full text articles on the CCIL web site (private or public), or publish in the *Bulletin* references to, and reviews of, recent writings. ◅

Enhancing International Legal Technical Assistance: Edmonton Workshop Marks New Initiative

By J. Anthony VanDuzer*

On August 22, 1999, a workshop was held in Edmonton on international legal technical assistance ("*LTA*") sponsored by the Department of Justice, the Canadian Council of Law Deans, the Canadian Bar Association and the Office of the Commissioner for Federal Judicial Affairs. The workshop provided an opportunity for members of the Canadian legal community (including judges, practitioners, academics and government officials) who have been involved in development assistance projects in foreign countries to meet and to discuss their experiences with the general objective of finding ways to enhance Canadian involvement in such projects.

As a result of a national consultation organized by the Canadian International Development Agency ("*CIDA*") in 1996, the four sponsoring organizations determined that Canadian expertise and experience was not being tapped to the extent that it might be in LTA projects delivered internationally. In order to explore the possibility for increasing Canadian involvement though more effective collaboration and coordination, they decided to organize the workshop.

Legal Technical Assistance (LTA) is aimed at "developing and improving the effectiveness of legal institutions" and "promoting the development of substantive legal rules"

For the purposes of the workshop, LTA was defined as assistance by legal professionals aimed at (i) developing and improving the effectiveness of legal institutions in the broadest sense, including, for example, judicial training, encouraging the development of an independent legal profession, improving court management, developing law schools and creating mechanisms to promote access to justice, such as legal aid, and (ii) promoting the development of substantive legal rules in areas varying from human rights and criminal law to competition law through advice on substantive legal issues and legislation drafting.

The workshop was attended by a wide range of people with very diverse interests. A few legal academics were present, but, predominantly, the group was made up of practicing lawyers, government officials and a significant number of judges. Judicial training was the primary interest of the single largest group of participants but people interested in human rights, criminal law, labour law, commercial law, family law and international trade law were present as well.

The highlights of the workshop included the following:

1. A very instructive presentation by Stephen Toope, of the McGill Faculty of Law, on the wide range of activities which constitute LTA and some of the lessons which may be learned from delivering LTA.
2. A panel of representatives from CIDA, the World Bank and the Asian Development Bank) during which each discussed their funding policies regarding LTA and lessons they had learned from projects in which they had been involved.
3. A panel of east African lawyers on the profound LTA needs in their countries (Kenya, Tanzania, Uganda and Zanzibar).

Much of the afternoon was spent in an open brainstorming discussion led by George Thompson, special advisor to the Minister of Justice, on how the delivery of LTA by Canadians could be enhanced. In the discussion, four (4) general priorities were identified:

1. Building relationships between individuals and organizations in Canada involved in delivering LTA.
2. Building relationships with key funding organizations, such as CIDA, the World Bank and the Asian Development Bank.
3. Coordinating Canadian LTA efforts.
4. The Department of Justice, along with other organizations, should consider creating an information clearing house to provide (i) an inventory of what projects had been engaged in and by whom and (ii) information regarding current opportunities.

Issues which were raised but not resolved in any particular way were the following:

1. Should private sector consulting firms and non-lawyers (*e.g.* development economists, accountants, statisticians, non-legal government officials) be included in the dialogue initiated by the workshop, given that, to be successful, a multi-disciplinary approach to development assistance is often needed?

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2. Should the Department of Justice (or anyone else) be working to try to identify people for particular projects and facilitate their participation?
3. Should the Department of Justice (or anyone else) be engaged in trying to identify LTA needs and developing projects?
4. Is spending Canadian government funds on promoting LTA, justified by LTA's contribution to economic development, good governance and the advancement of Canadian trade and investment interests?

The Department of Justice has some budgetary allocation for this LTA initiative and has begun to put together an inventory of expertise which will be made available in some accessible, likely web based, format. At this point, it is not clear what additional results may be expected. In order to proceed beyond setting up an information clearing house some clearer, more specific vision of what the initiative is really trying to accomplish will be needed. This would require developing a coherent policy rationale for additional government support for LTA delivered by Canadians which is complementary to the existing development policy framework.

Persons interested in finding out more about the LTA initiative or being listed in the inventory of expertise should get in touch with Thea Herman, Special Advisor to the Deputy Minister of Justice and Director, International Cooperation Group, Department of Justice, by telephone at (416) 973-3596 or by e-mail: <thea.herman@justice.gc.ca>.

Trilateral Conference 2000

Plans are well advanced to hold the Third ASIL, JAIL, CCIL Trilateral Conference in Ottawa on the Wednesday afternoon and Thursday, October 25 and 26, 1999, immediately preceding the CCIL Annual Conference. American and Japanese scholars participating in the Trilateral Meeting will also be asked to participate in Conference Panels.

Among the themes to be addressed by the Trilateral Conference are the use of force, the law of the sea, international trade, transnational litigation, and the domestic implementation of international law. Participants from the three societies will prepare papers for presentation and debate at the Conference.

CCIL members interested in participating in the Trilateral Conference are invited to contact Armand de Mestral at McGill University by e-mail at <demestral@falaw.lan.mcgill.ca>, or by fax at (514) 398-3233.

Calendrier / Calendar

April 5th to 8th, 2000
International Law in Ferment: A New Vision for Theory and Practice? 94th Annual Meeting of the *American Society of International Law,* at the Monarch Hotel in Washington, D.C., USA.
Information: <http://www.asil.org/annual_meeting/amcontnt.htm>
Registration: <services@asil.org>

April 13th to 15th, 2000
Effective Strategies for Protecting Human Rights: Economic Sanctions, Use of National Courts, the Role of Media, and Coercive Power, at Cleveland-Marshall College of Law, Cleveland State University, Ohio, USA.
Information: <http://www.law.csuohio.edu/newsevents/humanrights/index.html>
Registration: on-line or by calling (216) 687-2354

Issue Numbering Change

Due to a change in the numbering of the *Bulletin* there was no issue No. 3 in 1999 (vol. 25). The new sequence, with approximate publication dates in brackets, is: Issue No. 1, Winter (January); Issue No. 2, Spring/Summer (May); and Issue No. 3, Fall (September).

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* de plus amples renseignements sur les membres de l'Équipe du *Bulletin* se trouvent sur le site Internet à:
<http://www.ccil-ccdi.ca>

The *Bulletin* is published tri-annually to share information about developments and activities in the field of international law in Canada and elsewhere. Ideas for articles, publication notices, events or other texts for inclusion in the *Bulletin* can be submitted to the CCIL office or directly by e-mail to *bulletin@ccil-ccdi.ca*.

Publié trois fois par an, le *Bulletin* contient des renseignements relatifs aux développements du droit international et aux activités se rapportant à ce domaine au Canada et ailleurs. Vos idées pour des articles, des annonces de publication et événements, ou d'autres textes pour le *Bulletin* peuvent être envoyés au bureau du CCDI ou directement par courriel à l'adresse *bulletin@ccil-ccdi.ca.*