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ARTICLES

Symposium on Canada before International Courts and Tribunals

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It is no secret that international law has been under strain in recent years given the global rise of populism, authoritarianism, protectionist policies, and states' strategic retreat from multilateral institutions, including, notably, various international dispute settlement (IDS) mechanisms. This trend includes states withdrawing from international tribunals[1] and from provisions on investor-state dispute settlement (ISDS) in recent international investment agreements (IIAs) or from treaties altogether.[2] The withdrawal from such mechanisms, which some publicists dubbed an "assault on international adjudication," has reinforced the fundamental assumption

[1]See e.g. Joost Pauwelyn & Rebecca J Hamilton, "Exit from International Tribunals" (2018) 9 JISD 679. Recent examples include withdrawals from the *American Convention on Human Rights*, 21 November 1969, 1144 UNTS 123 (entered into force 18 July 1978) (by Trinidad and Tobago, Venezuela and Nicaragua); withdrawals of declarations under Article 34(6) of the *Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights*, OAU Doc OAU/LEG/EXO/AFCHPR/PROT(III) (10 June 1998; entered into force 25 January 2004) (by Tanzania, Rwanda, Côte d'Ivoire, Benin, and Tunisia); withdrawals from the *Convention on the Settlement of Investment Disputes between States and Nationals of Other States*, 18 March 1965, 575 UNTS 159 (entered into force 14 October 1966) (by Bolivia, Ecuador, Venezuela and Honduras); or withdrawals from the *Rome Statute of the International Criminal Court*, 17 July 1998, Can TS 2002 No 13 (entered into force 1 July 2002) (by Burundi, the Philippines, and, most recently, in 2025, notification of withdrawals by Burkina Faso, Mali, Niger, and Hungary).

[2]This trend includes Canada's withdrawal from investor-state dispute settlement (ISDS) in the *United States-Mexico-Canada Agreement* (*USMCA*) and Australia and New Zealand excluding the same in the *Comprehensive and Progressive Agreement for Trans-Pacific Partnership*, 8 March 2018, ch 9, online: <www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/tpp-ptp/text-texte/toc-tdm.aspx?lang=eng> (entered into force 30 December 2018). See e.g. Luke Nottage, "Australia's Ambivalence Again around Investor-State Arbitration: Comparisons with Europe and Implications for Asia" (2024) 39 ICSID Rev 320 at 343; Temitope Badejo, "Canada's Withdrawal from Investor-State

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that the international legal order's success remains inextricably tied to states' submission of their international disputes to adjudication or other peaceful dispute settlement mechanisms.[3]

As a corollary, this phenomenon signals broader implications for the international legal system, such as a larger retreat from multilateralism, which has propelled the perceived dwindling relevance and efficacy of international law as a discipline to the forefront of academic and policy commentary. Various evocative terms — ranging from "total collapse,"[4] to "crisis,"[5] "dystopia,"[6] "destruction,"[7] and "death"[8] — have been invoked to describe the challenges currently afflicting international law and its institutions, which American posture and acts have likely exacerbated.[9] At a minimum, the shunning of both international law and IDS mechanisms by powerful states disrupts and arguably threatens to erode the carefully balanced equilibrium between post-Second World War progress and the increasingly demanding needs of a multipolar world. It also ignores the decades of hard-fought negotiations, adjustments, hard-learned lessons, and the progressive development of norms, institutions, and processes in the IDS field and beyond.

Against this backdrop, and without resorting to unnecessary patriotic chest thumping, the Editorial Board of the *Canadian Yearbook of International Law* thought it would be a propitious time to dedicate this symposium issue to the theme of "Canada before International Courts and Tribunals." This volume of the *Yearbook* comes at a time of historically high tensions between Canada and the United States, exemplified by several frictions, including trade tariffs and counter-tariffs, security and other cross-border issues, and threats of annexation.[10] Yet the picture that emerges over the last decade and beyond is one in which Canada has remained steadfast in its support for, and involvement in, IDS processes and institutions. What is more, Canada has consistently and resolutely promoted the international

Arbitration in the USMCA: Implications and Alternative Dispute Resolution Mechanisms for Investors" (2024) 48 Can-USLJ 187.

[3]See Campbell McLachlan, "The Assault on International Adjudication and the Limits of Withdrawal" (2019) 68 ICLQ 499.

[4]Patrick Wintour, "Willing States Must Act to Save International Legal Order, Warns Top Academic," *The Guardian* (11 November 2025).

[5]Ntina Tzouvala, "International Law as a Discipline in Crisis" (2025) 79 International Affairs 71. For the original, seminal contribution, see Hilary Charlesworth, "International Law: A Discipline of Crisis" (2002) 65 Mod L Rev 377. See also Arnulf Becker Lorca, "Five Reasons to Stay Away from the 'Crisis and Renewal' Narrative in International Law," *EJIL: Talk!* (28 November 2025); Vasuki Nesiah, "'A Mad and Melancholy Record': The Crisis of International Law Histories" (2021) 11 Notre Dame J Intl & Comp L 232.

[6]Marko Milanovic, "Dystopian International Law," *EJIL: Talk!* (30 September 2025).

[7]Philippe Sands, "Trump and His Ilk Imagine a World without International Law – but They Will Not Achieve It," *The Guardian* (19 November 2025).

[8]Linda Kinstler, "Are We Witnessing the Death of International Law?" *The Guardian* (26 June 2025).

[9]See e.g. Harold H Koh, *The Trump Administration and International Law* (Oxford: Oxford University Press, 2019).

[10]See e.g. "Complete List of U.S. Products Subject to Counter Tariffs" (updated on 1 September 2025), online: Government of Canada <https://www.canada.ca/en/department-finance/programs/international-trade-finance-policy/canadas-response-us-tariffs/complete-list-us-products-subject-to-counter-tariffs.html>; Edward Alden, "Canada Lays the Groundwork to Pivot Away from the United States" (10 September 2025), online: Council on Foreign Relations <https://www.cfr.org/articles/canada-lays-groundwork-pivot-away-united-states>; Matina Stevis-Gridneff, "How Trump's '51st State' Canada Talk Came to Be Seen as Deadly Serious," *New York Times* (24 March 2025).

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rule of law and championed human rights and other fundamental international legal norms.

The present symposium provides a fitting opportunity to take stock of and celebrate Canada's engagement with, and contributions to, international courts and tribunals. The basic but important premise that undergirds this volume — namely, that Canada has remained an active participant and contributor to IDS, committed to the promotion of international justice and the fight against impunity — should come as no surprise to the reader but nonetheless warrants re-emphasis at this perilous time for our discipline. After all, Canada has had a long-standing and privileged history with international law and IDS, both as their proponent and frequent user.

From a strictly historical standpoint, Canada was both the locus and a key stakeholder in foundational international law cases. For instance, a transborder altercation in 1837 during which Canadian irregulars attacked the American steamboat *Caroline*, targeting Canadian rebels led by William Lyon Mackenzie, ultimately established the authoritative legal principles to ascertain the legality of anticipatory self-defence in international law.[11] Canada also played a pivotal role in the factual matrix surrounding the *Alabama Claims* dispute,[12] which culminated in the 1871 *Treaty of Washington*,[13] thereby cementing both Canada's sovereignty and the important role of peaceful IDS.[14] Similarly, the famous *Trail Smelter* case involved noxious fumes emanating from British Columbia, which affected rights and interests in Washington state, opposing Canada and the United States in this seminal arbitration.[15] And the list goes on.

Canada's active engagement with international courts and tribunals has continued — unabated — in the intervening decades, with a strong record of participation before various dispute settlement mechanisms. For example, Canada has been a party in seven contentious cases before the International Court of Justice (ICJ), three of which are currently pending: *Delimitation of the Maritime Boundary in the Gulf of Main Area (Canada v United States of America)*; *Fisheries Jurisdiction (Spain v Canada)*; *Legality of Use of Force (Serbia and Montenegro v Canada)*; *Application of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Canada and Netherlands v Syrian Arab Republic)*; *Alleged Violations of State Immunities (Islamic Republic of Iran v Canada)*; *Aerial Incident of 8 January 2020 (Canada, Sweden, Ukraine and United Kingdom v Islamic Republic of Iran)*; and *Appeal Relating to the Jurisdiction of the ICAO Council under Article 84 of the Convention on International Civil Aviation (Islamic Republic of Iran v Canada,*

[11]For a thoughtful treatment of the Caroline incident, see Craig Forcese, *Destroying the Caroline: The Frontier Raid That Reshaped the Right to War* (Toronto: University of Toronto Press, 2018).

[12]*Alabama Claims of the United States of America against Great Britain*, (1872) 29 RIAA 125.

[13]*Treaty of Washington (Amity) between the United States of America and the United Kingdom*, 8 May 1871, 17 Stat 863.

[14]See generally Adrian Cook, *The Alabama Claims: American Politics and Anglo-American Relations, 1865–1872* (Ithaca, NY: Cornell University Press, 1975); Tom Bingham, "The *Alabama* Claims Arbitration" (2005) 54 ICLQ 1.

[15]*Trail Smelter Case (USA v Canada)* (1941), 3 RIAA 1905. For wide-ranging scholarly commentary on the various implications of the case, see Rebecca M Bratspies & Russell A Miller, *Transboundary Harm in International Law: Lessons from the Trail Smelter Arbitration* (Cambridge, UK: Cambridge University Press, 2009).

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Sweden, Ukraine and United Kingdom).[16] It is also an intervener in two pending cases and has participated in several advisory proceedings before the ICJ.[17]

Canada also participated in forty-four cases as complainant, twenty-five as respondent, and 181 as a third party in the World Trade Organization's (WTO) dispute settlement system.[18] However, since 2017, the WTO's Dispute Settlement Body and its Dispute Settlement Understanding (DSU) have become unfortunate casualties of the political climate prefaced above, despite comprising one of the most prolific (if not the most prolific) IDS bodies in history.[19] As widely discussed in various circles, the United States has resisted the WTO's dispute settlement system in various ways, including through the prospects of handling trade disputes outside the WTO system (an option not available under the DSU)[20] or of flat-out defying the WTO's rulings with which it disagrees and blocking the selection procedure for new members of the Appellate Body.[21]

[16]*Delimitation of the Maritime Boundary in the Gulf of Main Area (Canada/United States of America)*, [1984] ICJ Rep 246; *Fisheries Jurisdiction (Spain v Canada)*, [1998] ICJ Rep 432; *Legality of Use of Force (Serbia and Montenegro v Canada)*, [2004] ICJ Rep 429; *Application of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Canada and Netherlands v Syrian Arab Republic)*, Joint Application Instituting Proceedings of 8 June 2023, online: <www.icj-cij.org/sites/default/files/case-related/188/188-20230608-app-01-00-en.pdf>; *Alleged Violations of State Immunities (Islamic Republic of Iran v Canada)*, Application Instituting Proceedings of 27 June 2023, online: <api.icj-cij.org/sites/default/files/case-related/189/189-20230628-app-01-00-en.pdf>; *Aerial Incident of 8 January 2020 (Canada, Sweden, Ukraine and United Kingdom v Islamic Republic of Iran)*, Joint Application Instituting Proceedings of 4 July 2023, online: <www.icj-cij.org/sites/default/files/case-related/190/190-20230704-app-01-00-en.pdf>; *Appeal Relating to the Jurisdiction of the ICAO Council under Article 84 of the Convention on International Civil Aviation (Islamic Republic of Iran v Canada, Sweden, Ukraine and United Kingdom)*, Application Instituting Proceedings of 17 April 2025, online: <www.icj-cij.org/sites/default/files/case-related/198/198-20250417-app-01-00-en.pdf>.

[17]See the contribution to the symposium by Céline Braumann & Vladyslav Lanovoy, "Canada's Legacy at the International Court of Justice" in this issue.

[18]The statistics and particulars are available at "Disputes by Member" (accessed 6 March 2026), online: <www.wto.org/english/tratop_e/dispu_e/dispu_by_country_e.htm>.

[19]See e.g. World Trade Organization (WTO), "WTO Disputes Reach 500 Mark," *News and Events* (10 November 2015), online: <www.wto.org/english/news_e/news15_e/ds500rfc_10nov15_e.htm>.

[20]Indeed, this is a unique feature of the WTO's dispute settlement architecture in that it constitutes a "no way out" package deal for any legal disputes arising between WTO members under the covered agreements. See *Understanding on Rules and Procedures Governing the Settlement of Disputes (Annex 2 to the Marrakesh Agreement Establishing the World Trade Organization)*, 15 April 1994, 1869 UNTS 401, arts 23.1, 23.2(a) (entered into force 1 January 1995) (stipulating that WTO members shall "not make a determination to the effect that a violation has occurred, that benefits have been nullified or impaired or that the attainment of any objective of the covered agreements has been impeded, except through recourse to dispute settlement in accordance with the rules and procedures of this Understanding"). See also *US: Sections 301–310 of the Trade Act of 1974*, WTO Doc WT/DS152/R (1999) at para 7.43 (Panel Report) (underscoring that all WTO members must "'have recourse to' the multilateral process set out in the DSU when they seek the redress of a WTO inconsistency," which means that "[m]embers have to have recourse to the DSU dispute settlement system to the exclusion of any other system, in particular a system of unilateral enforcement of WTO rights and obligations"). The panel went on to emphasize that "[t]his, what one could call 'exclusive dispute resolution clause', is an important new element of Members' rights and obligations under the DSU." See *ibid.*

[21]See e.g. Gregory Shaffer et al, "Trump Is Fighting an Open War on Trade: His Stealth War on Trade May Be Even More Important," *Washington Post* (27 September 2017); "America Holds the World Trade Organisation Hostage," *The Economist* (23 September 2017); Douglas A Irwin, "The False Promise of Protectionism: Why Trump's Trade Policy Could Backfire" (2017) 96 Foreign Affairs 45. On the implications

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To many commentators, this stance sends undesirable signals about binding multilateral norms and systems in which all players have agreed to play by the same rules, including potentially unfavourable outcomes being imposed on them in dispute settlement contexts. This state of affairs even prompted James Crawford — while he was a sitting judge hearing state-to-state disputes at the ICJ — to call out the Trump administration for "challenging the whole post-1945 system as put together by the United States," opining that "[a] serious economic recession and the collapse of the WTO appeals body would be the worst case scenario from current US trade policy and a move from multilateralism."[22] Echoing our earlier remarks, Judge Crawford affirmed that the WTO's Appellate Body was "the most successful appellate mechanism in international history," adding that "[i]t's associated with the considerable success of the WTO as a trade regulator" and "[i]f that breaks down, we're really back to square one."[23]

Despite these challenges and this rather grim prognosis, Canada has remained committed to the WTO's underlying aims and its rules-based legal order, while embracing potential reforms to its functions and procedures to strengthen its effectiveness and modernize the institution. In fact, Canada volunteered a discussion paper in the context of the WTO's ongoing reform efforts that formulated several proposals, including recommendations to enhance the efficacy of its dispute settlement system.[24] Canada also participated in the workaround procedures set up by states parties to palliate the Appellate Body's paralysis, including notifying one appeal of a WTO panel report "into the void."[25] More importantly, Canada joined the Multi-Party Interim Appeal Arbitration Agreement Arrangement (MPIA) — conceived by select WTO members pursuant to Article 25 of the DSU — which implemented an alternative appeal mechanism to ensure review of panel reports in light of the Appellate Body's current inability to do so.[26] In that context, Canada acted as complainant in one ongoing MPIA case and respondent in another pending MPIA

of the Trump administration's current policies on trade dispute settlement, see also Gregory Husisian & Robert N Huey, "The Future of International Trade Litigation and the Trump Administration" (2017) 23 Intl Trade L Reg 49. For a recent account on the US administration's trade policy and its implications for the multilateral trading system, see Jeffrey L Dunoff & Mark A Pollack, "The Trump Administration's Trade Policy and the International Trading System" (2025) 119 Am J Intl L 680.

[22]Ronald Mizen, "'Back to Square One' If WTO Appeals Body Fails: Judge James Crawford," *Financial Review* (2 August 2018).

[23]*Ibid.* See also generally Keith Jonhson, "How Trump May Finally Kill the WTO," *Foreign Policy* (9 December 2019).

[24]See WTO, "Strengthening and Modernizing the WTO: Discussion Paper", Communication from Canada, WTO Doc JOB/GC/201 (24 September 2018) at 3–4, online: <docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/Jobs/GC/201.pdf&Open=True>. For a summary of the status of current WTO reform efforts stemming from the twelfth Ministerial Conference, see WTO, "MC12 Briefing Note: WTO Reform – An Overview" (accessed 6 March 2026), online: <www.wto.org/english/thewto_e/minist_e/mc12_e/briefing_notes_e/bfwtoreform_e.htm>. The summary of the thirteenth Ministerial Conference is online: <www.wto.org/english/thewto_e/minist_e/mc13_e/mc13_e.htm>.

[25]See *Notification of Appeal by Canada in DS534: United States – Anti-Dumping Measures Applying Differential Pricing Methodology to Softwood Lumber from Canada*, WTO Doc WT/DS534/5 (5 June 2019), online: <docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/DS/534-5.pdf&Open=True>.

[26]See WTO, "Statement on a Mechanism for Developing, Documenting and Sharing Practices and Procedures in the Conduct of WTO Disputes," WTO Doc JOB/DSB/1/Add.12 (30 April 2020), online: <docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/Jobs/DSB/1A12.pdf&Open=True>.

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proceeding.[27] It was also involved as a third party to the original proceedings that resulted in two finalized MPIA awards,[28] and it is involved in the same capacity in five ongoing MPIA cases.[29]

Shifting from state-to-state dispute settlement to the mixed disputes space, Canada has also been an active proponent of investment arbitration and a participant in ISDS cases in various contexts. For one thing, Canada was one of the original parties to the *North American Free Trade Agreement* (*NAFTA*), the first trade deal with an investment chapter containing the now familiar detailed menu of procedural and substantive obligations that we see replicated in newer generation IIAs, including in recent so-called "mega-regionals."[30] In many ways, this pathbreaking treaty — coupled with the illuminating jurisprudence, hard-fought battles, and valuable lessons learned in the wake of its adoption — paved the way for future treaty drafting and interpretation across various corners.

NAFTA's legacy and influence have been pervasive, embodying Canada's enduring commitment to ISDS as a viable dispute settlement mechanism, specifically, and to the value of entrusting such a function to international tribunals, more generally.[31] To date, Canada has been involved in at least thirty-six publicly known ISDS cases as a respondent,[32] while Canadian investors have launched at least seventy-six ISDS cases against third states,[33] which have been administered by institutions such as the International Centre for Settlement of Investment Disputes (ICSID) and the Permanent Court of Arbitration (PCA). Moreover, Canada's intellectual resources — both private and public — have enriched the work of international courts and tribunals in a wide range of international disputes. By the same token, the participation of several Canadian government officials, academics, and scholars as agents, counsel,

[27]See the particulars of *China – Measures Concerning the Importation of Canola Seed from Canada*, WTO Doc WT/DS589/5 (28 September 2021) (Agreed Procedures for Arbitration under Article 25 of the DSU), online: <docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/DS/589-5.pdf&Open=True>; *Canada – Measures Governing the Sale of Wine*, WTO Doc WT/DS537/15 (3 June 2020) (Agreed Procedures for Arbitration under Article 25 of the DSU), online: <docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/DS/537-15.pdf&Open=True>; *Canada – Measures Governing the Sale of Wine*, WTO Doc WT/DS537/R (25 May 2021) (Report of the Panel), online: <docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/DS/537R.pdf&Open=True>.

[28]*China – Enforcement of Intellectual Property Rights*, WTO Doc WT/DS611/ARB25 (21 July 2025) (Arbitration under Article 25 of the DSU, Award of the Arbitrators), online: <docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/WT/DS/611ARB25.pdf&Open=True>; *Turkey – Certain Measures Concerning the Production, Importation and Marketing of Pharmaceutical Products*, Award of the Arbitrators, WTO Doc WT/DS583/ARB25 (25 July 2022) (Arbitration under Article 25 of the DSU, Award of the Arbitrators), online: <www.wto.org/english/tratop_e/dispu_e/583-13_e.pdf>.

[29]The case particulars are available at "Multi-Party Interim Appeal Arbitration Arrangement" (accessed 6 March 2026), online: <wtoplurilaterals.info/plural_initiative/the-mpia/> [MPIA]. For more background on the MPIA, see Bashar H Malkawi, "MPIA and Use of Arbitration: Bypassing the WTO Appellate Body," *Jurist* (28 May 2020).

[30]*North American Free Trade Agreement*, 17 December 1992, Can TS 1994 No 2 (1993) 32 ILM 289 (entered into force 1 January 1994) [*NAFTA*].

[31]For a review of Canada's involvement in ISDS, see contribution to the symposium by Alison FitzGerald, "Canada's Role over Time in Investor-State Dispute Settlement" in this issue.

[32]The case particulars are available online: <investmentpolicy.unctad.org/investment-dispute-settlement/country/35/canada/state>.

[33]The case particulars are available online: <investmentpolicy.unctad.org/investment-dispute-settlement/country/35/canada/investor>.

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advocates, and expert witnesses before such institutions has contributed to our country's enduring legacy of promoting international justice, strengthening the international rule of law, and facilitating the peaceful settlement of international disputes.

Over the years, several distinguished Canadian jurists have served as judges and arbitrators within international courts and tribunals. John Erskine Read, a native of Halifax who enjoys a privileged place within the Canadian Council on International Law,[34] was the only Canadian to serve as a judge at the ICJ and held that noble judicial office from 1946 to 1958. In that capacity, he participated in some of the Court's early, foundational cases, such as *Corfu Channel (United Kingdom v Albania)* and the advisory opinion in *Reparation for Injuries Suffered in the Service of the United Nations*.[35] Furthermore, Judge Read issued, *inter alia*, robust dissenting opinions in the *Fisheries Case (United Kingdom v Norway)*,[36] the *Nottebohm (Liechtenstein v Guatemala)* case,[37] and the *Certain Norwegian Loans (France v Norway)* case.[38]

In addition, at least six Canadian nationals have served or are currently serving as judges ad hoc in contentious ICJ proceedings — namely, Louise Arbour (one case), Maxwell Cohen (one case), John H. Currie (one case), Yves L. Fortier (two cases), Marc Lalonde (two cases), and Donald M. McRae (eight cases).[39] On this score, the ICJ's database does not include Philippe Kirsch, a dual national of Belgium and Canada, who served as judge ad hoc in one case.[40] To this list, one could add, perhaps as "adoptive Canadian," the eminent scholar Thomas M. Franck — known primarily for his seminal academic work[41] — who also served as judge ad hoc in one ICJ case and whose history was intimately tied to Canada.[42]

[34]The Canadian Council on International Law awards the John E. Read Medal to Canadians "who have made a distinguished contribution in fostering the development, better understanding, or application of international law." See "John E. Read Medal" (accessed 17 March 2026), online: CCIL <www.ccil-ccdi.ca/john-e-read-medal>.

[35]*Corfu Channel (United Kingdom v Albania)*, [1949] ICJ Rep 4; *Reparation for Injuries Suffered in the Service of the United Nations*, [1949] ICJ Rep 174.

[36]*Fisheries (United Kingdom v Norway)*, [1951] ICJ Rep 116.

[37]*Nottebohm (Liechtenstein v Guatemala)*, [1955] ICJ Rep 4.

[38]*Certain Norwegian Loans (France v Norway)*, [1957] ICJ Rep 9.

[39]See the contribution to the symposium by Donald McRae, "Preface to the Symposium on Canada before International Courts and Tribunals" in this issue.

[40]Judge Philippe Kirsch received his undergraduate legal education from the Université de Montréal. The full list of judges ad hoc in the International Court of Justice's proceedings is available online: <www.icj-cij.org/all-judges-ad-hoc>.

[41]See e.g. Thomas M Franck, *The Power of Legitimacy among Nations* (New York: Oxford University Press 1990); Thomas M Franck, *Fairness in International Law and Institutions* (Oxford: Oxford University Press 1995); Thomas M Franck, *Recourse to Force: State Action against Threats and Armed Attacks* (Cambridge, UK: Cambridge University Press 2002).

[42]While Franck established his scholarly career in the United States, his legal career and foundational training in the discipline both began in British Columbia. Although he was born in Berlin, Franck's family moved to Switzerland when he was seven years old, only a few days before the antisemitic assaults of Kristallnacht in 1938. They subsequently emigrated to Vancouver, after being denied visas to the United States. Franck obtained his first law degree (LLB) from the University of British Columbia (UBC) in 1953, before he relocated to Harvard Law School to pursue his graduate studies. See e.g. Philippe Sands, "Obituary: Thomas Franck," *The Guardian* (23 August 2009); "Thomas Martin Franck (LLB '53)" (22 December 2014), online: UBC Peter A Allard School of Law <historyproject.allard.ubc.ca/law-history-project/profile/thomas-martin-franck-llb-53>.

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While no Canadian individual has ever served as a member of the WTO's Appellate Body, several Canadian nationals have acted as members of WTO panels in adjudicating trade disputes at the first instance level. These individuals include Armand de Mestral, Valerie Hughes, and Donald McRae, although no comprehensive database of WTO panellists exists.[43] Similarly, while there is no comprehensive listing of Canadians having served as arbitrators in state-to-state proceedings — be they under the aegis of Annex VII of the *United Nations Convention on the Law of the Sea*, the *Canada-US Free Trade Agreement*, *NAFTA*, the *Canada-United States-Mexico Agreement* (*CUSMA*), and so on — some Canadians have received such prestigious appointments including Yves L. Fortier, Robert A.E. Greenshields, Valerie Hughes, Marc Lalonde, and Donald McRae.[44]

It is similarly impossible to produce an exhaustive list of individuals who have served as arbitrators in ISDS disputes, although many Canadians have done so across various territories and industries, including in notable cases like *Yukos v Russian Federation*, *The Eurotunnel Arbitration*, *CMS Gas Transmission Company v Argentina*, and *Sempra Energy International v Argentina.* Notable examples of distinguished Canadian ISDS arbitrators include Henry C. Alvarez, Pierre Bienvenu, Ian Binnie, Stephen Drymer, Yves L. Fortier, David Ross Haigh, Marc Lalonde, Beverley McLachlin,[45] J. William Rowley, and J. Christopher Thomas.

Moreover, various Canadians have served in different capacities, including in senior and/or managerial positions, in the staff of many international courts and tribunals, including at the International Criminal Court (ICC), the ICJ, ICSID, the International Criminal Tribunal for the former Yugoslavia (ICTY), International Criminal Tribunal for Rwanda (ICTR), the PCA, the Special Tribunal for Lebanon, and the WTO. Recent appointments include Meg Kinnear's tenure as ICSID's first full-time secretary-general from 2009 to 2024, Kevin Nash's current tenure as the director general of the London Court of International Arbitration and his past appointments as deputy registrar and registrar of the Singapore International Arbitration Centre from 2011 to 2024, Marek Krasula's ongoing appointment since 2020 as director of arbitration and ADR for North America at the International Chamber of Commerce, and Martin Doe's current tenure as deputy secretary-general and principal legal counsel of the PCA. Debra Steger served as the first director of the WTO's Appellate Body Secretariat from 1995 to 2001, a position later held by Valerie Hughes from 2001 to 2005, who was also later appointed director of the WTO's Legal

[43]See Valerie Hughes, "Canada: A Key Player in WTO Dispute Settlement," (2018) Centre for International Governance Innovation Paper No 11 at 15 (noting that out of more than 250 individuals, twenty-two different Canadians have served as WTO panellists since 1995), online: <www.cigionline.org/static/documents/documents/Reflections%20Series%20Paper%20no.11%20HughesWEB.pdf>

[44]*United Nations Convention on the Law of the Sea*, 10 December 1982, 1833 UNTS 3 (entered into force 16 November 1994); *Canada-US Free Trade Agreement*, 2 January 1988 (entered into force 1 January 1989), online: <www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/united_states-etats_unis/fta-ale/background-contexte.aspx?lang=eng>; *NAFTA*, *supra* note 30; *Agreement between Canada, the United States of America, and the United Mexican States (CUSMA)*, 30 November 2018 (entered into force 1 July 2020), online: <www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/cusma-aceum/text-texte/toc-tdm.aspx?lang=eng>.

[45]Former Chief Justice McLachlin also currently serves as international judge of the Appellate Bench of the Singapore International Commercial Court (SICC). "General Division of the High Court of Singapore (SICC)" (accessed 6 March 2026), online: <www.judiciary.gov.sg/singapore-international-commercial-court/about-the-sicc/judges>.

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Affairs Division from 2010 to 2016.[46] Similarly, Gabrielle Marceau joined the *General Agreement on Tariffs and Trade* Secretariat in 1994 and served at the WTO in various capacities until 2025, including as legal advisor, acting director of its Legal Affairs Division, and senior counsellor in its Economic Research and Statistics Division.[47]

Over the decades, Canada also remained a strong proponent of international criminal law and justice — for instance, by playing a "brokering role in negotiations" concerning the establishment of the ICC, its jurisdiction, the definitions of crimes, and its procedures and general principles.[48] The Canadian delegation included Valerie Oosterveld, who assisted in negotiating various gender provisions in that context. As chairman of the Committee of the Whole of the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, Philippe Kirsch spearheaded the final global proposal for the ICC, which received robust approval from the states parties.[49] Kirsch was later elected judge at the ICC from 2003 to 2009 and served as its first president.[50] In 2017, Kimberly Prost became the second Canadian individual elected to the ICC as a judge, having previously served as chef de cabinet of the ICC president.[51]

Throughout the years, Canada has supported the ICC's work in various ways, including by being the first nation to legislate its relevant obligations domestically through the 2000 *Crimes against Humanity and War Crimes Act*, which granted Canadian courts universal jurisdiction over the core crimes and established a comprehensive network for it to cooperate with both the ICC and the ad hoc tribunals while ensuring mutual assistance with other key actors.[52] Canada continues to promote and champion the ICC through its leadership and advocacy for the Court's work, providing both resources and personnel to facilitate ICC investigations and prosecutions and generating broader support from diverse constituencies through lobbying and other means.[53]

Similarly, Canadians have left an indelible mark at the ICTY through their commitment to international justice and the fight against impunity, with Louise Arbour serving as its chief prosecutor from 1996 (and as chief prosecutor of the

[46]A recently published *festschrift* celebrates the many contributions of Valerie Hughes to the success of the WTO's dispute settlement framework, while engaging with various topical aspects of that regime. See Nicholas Lamp, ed, *Reckoning and Renewal: The World Trade Organization and Its Dispute Settlement System at 30: Essays in Honour of Valerie Hughes* (Toronto: University of Toronto Press, 2025).

[47]See the contribution to the symposium by Gabrielle Marceau and Antoine Comont, "Le Canada dans le développement du mécanisme de règlement des différends du GATT et de l'OMC: l'engagement historique d'un acteur essentiel" in this issue.

[48]See Government of Canada, "Canada and the International Criminal Court" (accessed 6 March 2026), online: <www.international.gc.ca/world-monde/international_relations-relations_internationales/icc-cpi/index.aspx?lang=eng>.

[49]See *ibid.*

[50]See "Judge Philippe Kirsch" (accessed 6 March 2026), online: ICC Judges <www.icc-cpi.int/judges/judge-philippe-kirsch>.

[51]See "Judge Kimberly Prost" (accessed 6 March 2026), online: ICC Judges <www.icc-cpi.int/judges/judge-kimberly-prost>.

[52]See *Crimes against Humanity and War Crimes Act*, SC 2000, c 24, online: <laws-lois.justice.gc.ca/eng/acts/c-45.9/>.

[53]See note 48 above; Scott McTaggart, "The International Criminal Court: History and Role," *Library of Parliament Hill Studies* (1 December 2022), online: <lop.parl.ca/staticfiles/PublicWebsite/Home/ResearchPublications/HillStudies/PDF/2002-11-E.pdf>.

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ICTR). With the assistance of legal staff, including Payam Akhavan, who served as both legal advisor to the ICTY's Office of the Prosecutor and special advisor to the ICTR, Arbour indicted Slobodan Milošević in 1999. This milestone marked the first time in the ICTY's history that a head of state was indicted.[54] Three Canadians also served as judge *ad litem* at the ICTY during its operation — namely, Jules Deschênes, Kimberly Prost, and Sharon Williams.

Again, Canada unfailingly supported the ad hoc international criminal tribunals by adjusting its domestic legislation to facilitate cooperation with the tribunals, extradition, arrest, and surrender of perpetrators of international crimes to the tribunals (or those complicit therein), denying safe haven to individuals believed to have committed such crimes, and lending legal expertise to the development of international criminal legal norms. Moreover, Lieutenant General Romeo Dallaire's testimony about the Rwandan genocide in different ICTR proceedings proved instrumental for that tribunal to achieve its judicial mission.[55] Needless to say, many other Canadians made valuable contributions to the work of international and hybrid criminal tribunals, and those contributions cannot be enumerated in this brief introduction.

Finally, it is important to highlight that Canadian jurisprudence on international law has also enjoyed considerable traction and influence worldwide. Again, it is impossible to do justice to the breadth of influence that Canadian case law has exerted beyond our borders. After all, it is no secret that the Supreme Court of Canada's (SCC) decisions have considerable purchase throughout the world, as do some decisions of our provincial appellate courts. This process, through which foreign and international courts take stock of Canadian jurisprudence, has resulted in transnational judicial dialogue, which in turn has empowered the marketplace of legal ideas through processes such as legal borrowing and cross-fertilization.[56] Suffice it to identify a few examples illustrating the transnational influence of Canadian jurisprudence and the rich judicial cross-pollination that has ensued.

For instance, the SCC's *R v Finta*[57] judgment played an important role in informing the work of international criminal tribunals on the constituent elements of crimes against humanity,[58] including in the seminal ICTY *Tadić* trial and appellate

[54]See e.g. ICTY, "President Milosevic and Four other Senior Fry Officials Indicted for Murder, Persecution and Deportation in Kosovo," press release, ICTY Doc JL/PIU/403-E (27 May 1999), online: <www.icty.org/en/sid/7765>.

[55]See e.g. UN International Residual Mechanism for Criminal Tribunals, "General Dallaire, Former Commander of UNAMIR, Gives Testimony," press release (23 February 1998), online: <unictr.irmct.org/en/news/general-dallaire-former-commander-unamir-gives-testimony>; UN International Residual Mechanism for Criminal Tribunals, "Lt. General Dallaire Begins Testimony," press release (19 January 2004), online: <unictr.irmct.org/en/news/lt-general-dallaire-begins-testimony>.

[56]See e.g. Anne-Marie Slaughter, "A Global Community of Courts" (2003) 44 Harv Intl LJ 191 at 193 (citing Claire L'Heureux-Dubé, "The Importance of Dialogue: Globalization and the International Impact of the Rehnquist Court" (1998) 34 Tulsa LJ 15 at 16); Anne-Marie Slaughter, *A New World Order* (Princeton, NJ: Princeton University Press 2004) at 69–79. See also generally Robert J Sharpe & Vincent-Joël Proulx, "The Use of Academic Writing in Appellate Judicial Decision-Making" (2011) 50 Can Bus LJ 550 at 554–58.

[57][1994] 1 SCR 701.

[58]See e.g. *Prosecutor v Kupreškić et al*, IT-95-16-T, Judgment (14 January 2000) at para 553 (International Criminal Tribunal for the former Yugoslavia, Trial Chamber) (drawing on the *R v Finta* decision to tease out the "policy element" of crimes against humanity).

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proceedings.[59] For its part, the SCC's *Reference re Secession of Québec*[60] was largely received as a robust international law treatment of legal issues surrounding secession between national political entities, with particular relevance as to the results of a referendum in such a context. As a result, it gained considerable global traction and was widely cited, including by the ICJ in its *Kosovo* advisory opinion.[61] Similarly, the Court of Appeal for Ontario's decision in the *Bouzari* case,[62] which addressed immunities and related legal questions, provided guidance to the ICJ on key issues in its judgment in *Jurisdictional Immunities of the State*.[63] In that same judgment, the ICJ further enlisted the support of other notable SCC decisions — namely, *Schreiber* and *Kuwait Airways Corp*.[64] Several SCC decisions were also recently relied on by the participants in the pending advisory proceedings on the *Right to Strike under ILO Convention No. 87*.[65] These and other examples show the multifaceted contribution of Canadian practice in shaping the pleadings of states and, ultimately, the jurisprudence in different areas of international law, going well beyond multiple instances of direct involvement by Canada and Canadians in dispute settlement proceedings.

We have curated this symposium with the above considerations in mind. It brings together contributions from both seasoned IDS practitioners and more junior scholars, serving as a fitting tribute to celebrate Canada's inspiring and enduring legacy in promoting international justice, the international rule of law, the peaceful settlement of international disputes, and the fight against impunity. The first part of the symposium features relatively short pieces by established Canadian practitioners and scholars who have actively contributed to Canada's role in IDS. The symposium opens with a preface by Donald McRae, who was counsel in the *Gulf of Maine* case, the very first contentious case for Canada before the ICJ. Colleen Swords shares words of wisdom on Canada's past efforts to secure better representation of Canadians on the bench of international courts and tribunals and reflects on key challenges and prospects in that context. Douglas Harrison provides a rich historical account of the *Bering Sea* (*Fur Seals*) case, the very first arbitration involving Canada, which has profoundly shaped Canada's involvement in subsequent arbitrations and the development of international environmental law. Alison FitzGerald undertakes a thoughtful inquiry into the evolution of ISDS and the significant role that Canada has played in shaping that regime, including through its *NAFTA* cases. Gabrielle Marceau and Antoine Comont unveil significant contributions that Canada and Canadians

[59]*Prosecutor v Tadić*, IT-94-1-T, Judgment (7 May 1997) at paras 656–57 ((International Criminal Tribunal for the former Yugoslavia, Trial Chamber) (invoking the *R v Finta* precedent as "instructive" in unfolding its analysis on intent); *Prosecutor v Tadić*, IT-94-1-A, Judgment (15 July 1999) at paras 265–67, 290 (International Criminal Tribunal for the former Yugoslavia, Appeals Chamber).

[60]*Reference re Secession of Quebec*, [1998] 2 SCR 217.

[61]See *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, [2010] ICJ Rep 403 at para 55.

[62]*Bouzari v Islamic Republic of Iran*, [2004] DLR (4th) 406.

[63]See *Jurisdictional Immunities of the State (Germany v Italy: Greece intervening)*, [2012] ICJ Rep 99 at paras 85, 96.

[64]See *ibid* at para 64, citing *Schreiber v Federal Republic of Germany and the Attorney General of Canada*, [2002] 3 SCR 269 at paras 33–36, 130, citing *Kuwait Airways Corp v Iraq*, [2010] 2 SCR 571.

[65]See e.g. *Right to Strike under ILO Convention No 87* (pending advisory proceedings before the ICJ), various references in written statements by South Africa (15 May 2024), online: <www.icj-cij.org/sites/default/files/case-related/191/191-20240515-wri-05-00-en.pdf> and by Australia (16 May 2024), online: <www.icj-cij.org/sites/default/files/case-related/191/191-20240516-wri-10-00-en.pdf>.

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have made to the architecture of the WTO's dispute settlement system, including in developing the most recent solutions, such as the MPIA, to address the blockage of the WTO's Appellate Body.

The second part of the symposium features longer pieces that reflect on specific aspects of Canada's role before international courts and tribunals. Céline Braumann and Vladyslav Lanovoy examine Canada's legacy before the ICJ and its multiple contributions to shaping the Court's jurisprudence. Christopher Penny zooms in on the analysis of the different versions of Canada's Optional Clause declarations at the ICJ, arguing that the scope of its current consent to the compulsory jurisdiction of the Court is extremely limited. Bill Dodge makes a positive case for why Canada's exception to sovereign immunity does not violate international law, an issue currently pending before the ICJ in a case brought by Iran against Canada. Gaëlle Foucault and Steve Tiwa Fomekong reflect, respectively, on different aspects of another case involving Canada, which it brought alongside the Netherlands against Syria under the *Convention against Torture*.[66] While Foucault shows the prospects and limits of the Court's potential decision in this case, Fomekong considers other parallel avenues to the ICJ that Canada should explore and how it could build its claims based on the *Convention against Torture*, while having due regard to international humanitarian law as a matter of treaty interpretation. Jean-Michel Marcoux and Waldo Ali provide an original assessment of the notion of "legitimate objectives" in Canadian investment treaties, drawing on existing case law. Finally, Guillaume Larouche examines the links between international and domestic courts — in particular, the ways in which domestic judges have construed and applied the scope of their power in set-aside proceedings concerning investor-state arbitral awards.

The variety of issues covered by these contributions is a testament to Canada's active and cross-cutting role in IDS, the consistency of its efforts to seek peaceful resolution of international disputes, and its ability to develop new institutional solutions in moments of crisis or uncertainty, as the present one. Canada and Canadian jurists have left a significant footprint on the development of third-party binding dispute resolution mechanisms and have contributed to shaping the jurisprudence of the ICJ, the WTO, and ISDS. It is hoped that current and future generations will continue this path.

[66]*Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, 1465 UNTS 85, Can TS 1987 no 36 (entered into force 26 June 1987).

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