



Canadian Council on International Law  
Conseil canadien de droit international

## CCIL Newsletter | Bulletin CCDI

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REGISTER FOR THE  
CCIL CONFERENCE  
TODAY

**43rd Annual Conference**  
*Theme: Combustion: Energy,  
Resources and  
Environmental Issues  
Igniting International Law*

November 13-15, 2014  
(Ottawa)

Guest speakers include the  
Honourable Jean Charest,  
Thomas Cottier, and Stephen  
Toope

#### HIGHLIGHTS:

Thurs, Nov 13 - Program &  
Professional Practice  
Workshop

Dear Member,

Welcome to the Canadian Council on International Law (CCIL) Fall 2014 newsletter. In this issue, we are excited to bring you news about the upcoming annual conference, announcements, and articles of interest, all to enhance discussions on international legal issues.

Bienvenue au bulletin du Conseil canadien de droit international (CCDI) d'Automne 2014. Nous sommes heureux de vous présenter plusieurs mises à jour, des annonces et des articles d'intérêt concernant le domaine du droit international.

Andrew Lanouette & Adrienne Jarabek Marion  
CCIL Newsletter Team,  
Directors & Co-Chairs of the Communications Committee

**2014 ANNUAL CONFERENCE**  
**"...WHERE THEORY MEETS PRACTICE"**  
**NOV 13-15 - STILL TIME TO REGISTER!**

By Victoria Clark, Conference Co-Chair

The CCIL invites you to its 43rd Annual Conference entitled "Combustion: Energy, Resources and Environmental Issues Igniting International Law", taking place November 13-15, 2014. Drawing on a wealth of practitioners and academics from a range of specializations, the conference will discuss the most salient issues of international law. Confirmed keynote speakers include the Honourable Jean Charest, Thomas Cottier, and Stephen Toope. Plenary discussions will focus on sustainable energy for all, "NAFTA at 20", and the resolution of resource-based disputes through international arbitration. This year's theme presents us with the opportunity to explore various cross-cutting issues under international law, such as human rights, transparency in the extractive sector, environmental protection, sustainable development, trade and investment arbitration, and indigenous rights.

International law is no longer confined to academia. Businesses are increasingly concerned with anti-corruption laws and international

Lester B. Building, 125  
Sussex Drive, Ottawa  
Accredited by the Law  
Society of Upper Canada for  
1.5 Professionalism Hours

Fri - Sat, Nov 14-15 - Regular  
Program

John G. Diefenbaker Building  
(Old City Hall), 111 Sussex  
Drive, Ottawa, Ontario

Fri, Nov 14, 19:30 - Banquet  
Grand Hall, Canadian  
Museum of History  
111 Laurier Street, Gatineau,  
Quebec

For more information, visit  
our website at [www.ccil-  
ccdi.ca](http://www.ccil-<br/>ccdi.ca).

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Chair in Natural Resources and  
Energy Law



arbitration. Renewable energy issues under WTO dispute settlement have attracted the scrutiny of Naomi Klein and the Canadian media. The Supreme Court of Canada continues to grapple with the "trials and tribulations" of interpreting international law. This conference offers academics and practitioners a unique opportunity to further the dialogue on these issues, among others, in a setting where theory meets practice.

Join us on November 13-15 in Ottawa for an opportunity to build new relationships and push the boundaries of international law in Canada. To register as a participant, click [here](#)

If you are interested hosting a panel and/or in sponsorship, please feel free to contact us and read our [Sponsorship Package](#).

## 2014 CONFERENCE SNEAK PEAK

### THE GOVERNANCE GAP: EXTRACTIVE INDUSTRIES, HUMAN RIGHTS AND THE HOME STATE ADVANTAGE

**Penelope Simons and Audrey Macklin**

**To Be Presented November 13 at 4pm**

This book explores the persistence of the governance gap with respect to the human rights-impacting conduct of transnational extractive corporations operating in zones of weak governance. The authors launch their account with a fascinating case study of Talisman Energy's experience in Sudan, informed by their own experience as members of the 1999 Canadian Assessment Mission to Sudan (Harker Mission). Drawing on new governance, reflexive law and responsive law theories, the authors assess legal and other non-binding governance mechanisms that have emerged since that time, including the UN Guiding Principles on Business and Human Rights. They conclude that such mechanisms are incapable of systematically preventing human rights violating behaviour by transnational corporations, or of assuring accountability of these actors or recompense for victims of such violations. The authors contend that home state regulation, while not a silver bullet, has a crucial role to play in regulating such conduct. They pick up where UN Special Representative John Ruggie's Guiding Principles on Business and Human Rights left off, and propose an innovative, robust and adaptable template for strengthening the regulatory framework of home states. Their model draws insights from the theoretical literature, leverages existing public, private, transnational, national, 'soft' and hard regulatory tools, and harnesses the specific strengths of state-based governance.

**BEWARE: BORDER CROSSINGS**



Transnational Law and Justice Network



## INTERNATIONAL LAW EVENTS OF INTEREST

WEBINAR AND IN-  
PERSON WORKSHOP -  
GLOBAL CORPORATE  
LIABILITY: THE NEW  
LANDSCAPE OF  
CORPORATE SOCIAL  
RESPONSIBILITY ISSUES  
WITH THE HONOURABLE  
IAN BINNIE

Philippe Kirsch Institute

About: The complexity of laws and jurisdictional issues affecting CSR is increasing. Lawyers must counsel their clients on a range of CSR topics: business and human rights, anti-corruption, and ethical sourcing and lending. Webinar led by The Honourable Ian Binnie.

Webinar: Facilitated by The Hon. Ian Binnie, David Hamer, Carol Hansell and Prof. Errol Mendes.

Dates: Online October 16 and in-person November 28, 2014, 9:00am-12:00pm

Location: Ivey Tangerine Leadership Centre located on the ground floor of the Exchange Tower, 130 King Street West, Toronto, M5X 1A9

Jose Alvarez

### To Be Presented Friday at 3pm on the Panel, "International Trade Law and International Investment Law: Boundaries, Consistency and Conflicts"

...[T]his author does not believe that boundary crossings horizontally, among international courts and tribunals, or vertically, between international and national adjudicators, are necessarily to be encouraged. But this essay is not an argument against boundary crossings. Some boundary crossings are desirable, others are not. The legitimacy of the "international rule of law" does not always require them. Context matters.

The failure by some international adjudicators - such as investor-state arbitrators in ICSID - to engage in boundary crossings is not always the product of careless or erroneous legal analysis or worse still, a conscious effort to promote a (nefarious) political agenda. . . . Prescriptions for boundary crossings, and jurisprudential approaches that presume that these are "progressive," should be accompanied by a warning: "Beware: unintended consequences ahead." But to pursue the signage metaphor further, the message is "proceed with caution," it is not "no trespassing."

### CCIL EVENT RECAP: DEMOCRACIES, INTERNATIONAL LAW AND THE PARAMETERS OF CONFRONTING TERRORISM: AN ISRAELI PERSPECTIVE

On Friday, October 31, 2014, the Canadian Council on International Law (CCIL) was pleased to host a breakfast entitled "Democracies, International Law and the Parameters of Confronting Terrorism: An Israeli Perspective" with guest speaker Ehud Keinan, Deputy Director General and the Legal Adviser of Israel Ministry of Foreign Affairs. The sold-out event took place at the Lord Elgin Hotel in Ottawa and discussed certain legal issues faced by Israel in the context of asymmetric warfare and terrorism. Mr. Keinan also spoke on the fascinating issue of the role of legal advisors during armed conflict. The insight he provided shed light on how the role of lawyers has expanded over the years.

In the course of previous roles in the Ministry of Foreign Affairs, Mr. Keinan has served as Principal Deputy Legal Adviser, also in charge of regional cooperation and economic and water related regional projects, and as Director of the Diplomatic and Civil Law Department. Mr. Keinan has also served as a diplomat in Israel's Embassies in Caracas, Venezuela, and in Santo Domingo, The Dominican Republic. He has represented Israel in numerous bilateral and multilateral negotiations, and served, inter alia, as the head of the Legal Support Unit of the Annapolis Process Negotiations with the Palestinians, as a member of

[More Details](#)

[Version française](#)

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WEBINAR  
PROTECTING YOUR  
INTELLECTUAL  
PROPERTIES: BEST  
PRACTICES FOR  
CHINA

American Bar Association -  
International Section  
James Zimmerman will  
explore intellectual property  
rights in China, examine  
litigation to recover, and  
discuss market strategies  
employed by foreign  
companies in China.

Date: December 18, 2014,  
11:00am-12:30pm ET

[More Details](#)

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ILA-ASIL ASIA-PACIFIC  
RESEARCH FORUM

Hosted by the Chinese  
(Taiwan) Society of  
International Law - Chinese  
(Taiwan) Branch of the  
International Law Association  
(ILA), in partnership with the  
Law in the Pacific Rim  
Region Interest Group of the  
American Society of  
International Law (ASIL) and  
the Research Center for  
International Legal Studies,  
National Chengchi University

Theme: "Integrating the Asia-  
Pacific: Why International  
Law Matters?"

Date: May 25-26, 2015

Israeli delegation to Camp David Summit, and as a member of the legal team of the Israeli delegation to the negotiations with the Palestinians (Interim Agreement). He has also served as Principal Legal Counselor to the Israeli negotiations with the Holy See.

## INTRODUCTION TO THE PHILIPPE KIRSCH INSTITUTE

**By Clara Vaz, Program Associate**

The Philippe Kirsch Institute is an exciting new Canadian venture, named for the Canadian lawyer and diplomat who served as the first President and one of the first judges of the International Criminal Court in The Hague. Its premiere faculty of judges, lawyers and academics offers the highest quality professional development opportunities to lawyers across Canada in such areas of practice as human rights, constitutional, civil, international and transnational law.

The Institute's in-person and online courses extend beyond standard competencies, litigation strategy and technical proficiency. The Institute is committed to instilling amongst participants a rich understanding of professionalism, its virtues and their effect on the members of the public the legal profession is pledged to serve. The Institute's select list of inaugural faculty members, including the Hon. Ian Binnie, the Hon. Michel Bastarache, the Hon. Frank Iacobucci, Justice Yves de Montigny, Lorne Waldman, Pearl Eliadis, Raj Anand, Lorne Sossin and Kent Roach, are testament to that commitment ([click here for faculty bios](#)).

The Institute was created to support an important charity, the Canadian Centre for International Justice (CCIJ), to which its profits will flow. CCIJ helps survivors of war trauma and torture seek redress against their abusers as part of a global movement to end impunity for the most serious violations of international human rights.

The Philippe Kirsch Institute has recently launched its fall course series, combining webinars and in-person workshops that engage lawyers in an online learning environment while also giving participants the opportunity to engage face to face with leading lawyers, professors and judges. Course topics range from Global Corporate Liability (with The Hon. Ian Binnie) to Working with Clients who have Suffered Psychosocial Trauma (with Lorne Waldman and Avvy Go), offering participants a wide gamut of choice.

Location: Regent Taipei Hotel in Taipei, Taiwan, ROC  
About: The Research Forum will provide a forum for academics, practitioners, and policy-makers to examine a wide range of international and transnational law issues confronting the Asia-Pacific.

A call for papers is now underway!

[Conference Details](#)

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If you have any questions or comments, please feel free to contact the Directors on the Board and Communications Committee Co-Chairs, Andrew Lanouette and Adrienne Jarabek, at [manager@ccil-ccdi.ca](mailto:manager@ccil-ccdi.ca)



[WWW.CCIL-CCDI.CA](http://WWW.CCIL-CCDI.CA)

For Francophone professionals, the Institute is building several series and is currently offering "Droit à l'égalité, discrimination et le fonctionnement des tribunaux québécois", with Justices Juanita Westmoreland-Traoré and Michèle Rivet who will speak to equality, minorities and criminal law practice. The most recent French course on transnational class action litigation brings together Justice Pierre Dalphond, Sylvain Lussier and Bruce Johnston for a moderated debate on class action litigation in Canada and the international arena.

The Kirsch Institute also hosts an impressive Speaker's Bureau, presenting inspiring and powerful thought leaders who tell powerful stories, raising awareness about an array of socially relevant issues and influencing public and political discussion. With the Speaker's Bureau, we aim to uncover effective ways to inspire people and provide meaningful change through the power of communication.

The Philippe Kirsch Institute is an amazing network where legal minds grow, adopt new perspectives and develop the necessary tools for an innovative global practice. You can read more about the Institute and its courses at [www.kirschinstitute.ca](http://www.kirschinstitute.ca)

## ARTICLES

### JUSTICE FOR VICTIMS AT THE INTERNATIONAL CRIMINAL COURT AND IN CANADA

**By Prof. Benjamin Perrin & Angela Lee**

Victims of genocide, war crimes, and crimes against humanity have historically been excluded from the international trials of their perpetrators. Only a handful were seen and heard as witnesses - most others were silenced and received no redress for the devastating harm they and their families suffered. The founders of the International Criminal Court (ICC) set out to change this state of affairs by adopting a wide range of substantive and procedural rights for victims, including the ability to receive reparations. However, a decade after the ICC officially opened its doors, a debate rages about whether it has failed in its promise to victims or has gone too far in implementing victims' rights by impinging upon the rights of the accused to a fair trial.

[Read more...](#)

**LE RETRAIT D'UN ÉTAT DU STATUT DE LA COUR PÉNALE INTERNATIONALE (CPI): MÉCANISMES ET INCIDENCES DE DROIT**

## **By Willy Tshibombi**

La Cour Pénale Internationale (CPI) est une juridiction pénale internationale à caractère permanent. Pour agir, elle n'exerce sa compétence que si la personne mise en accusation est un citoyen d'un État membre à la CPI ou si le crime supposé a été commis sur le territoire d'un État membre. Le Statut qui la crée est un traité de codification de droit pénal international et un instrument de protection des droits de l'homme. Partant de sa nature, ce Statut a un régime juridique particulier.

Par ailleurs, la communauté internationale a déclaré à maintes reprises qu'« il n'y aurait pas d'impunité pour les crimes les plus graves au regard du droit international et que les auteurs de ces crimes devraient rendre des comptes ». Malgré cette détermination, le Statut de la CPI concède aux États la possibilité de se retirer.

Cette réflexion répond à la question de savoir si la possibilité de retrait du Statut offerte aux États garantit la protection des droits de l'homme ; en particulier, le droit à un procès équitable.

À son article 127, le Statut dispose : « tout État Partie peut, par voie de notification écrite adressée au Secrétaire général de l'ONU, se retirer du présent Statut .»

À titre de conséquence, le retrait :

- N'affecte pas l'examen des affaires que la Cour avait déjà commencé avant la date à laquelle il a pris effet;

- N'affecte pas la coopération établie avec la Cour à l'occasion des enquêtes et procédures pénales déjà commencées avant la date à laquelle le retrait a pris effet.

Ce mécanisme garantit donc les règles d'un procès équitable. Il est aussi renforcé par le cadre de coopération établi entre la CPI et l'Organisation des Nations Unies (ONU). Il permet au Conseil de sécurité de déférer devant la CPI des situations de crimes internationaux des États non parties au Statut.

**[Read more...](#)**

## **A SEA OF TROUBLE? THE CANADA-FRANCE EXTENDED CONTINENTAL SHELF CLAIM DISPUTE**

### **By JJP Smith**

Two decades after coming into effect, the 1982 United Nations Convention on the Law of the Sea has ensured the stable resolution of maritime territorial claims among the world's coastal states. A wide-

ranging consensus has emerged in this era of ocean boundary-making, illustrated by the readiness of states to turn to courts and tribunals to resolve overlapping claims to maritime areas, and to uniformly adopt state practice in the making of such territorial areas. That has been true for Canada, with its accession to the LOS Convention in 2003 and submission of a claim for an extended continental shelf (an ECS) area to the United Nations Commission on the Limits of the Continental Shelf (the CLCS) in late 2013. The legal framework for the pursuit of maritime spaces seems durable, including a settled regime for formal dispute resolution under the LOS Convention, a shared understanding of the nature of sovereign rights (mostly to natural resources) in ocean areas, and objective principles of how competing claims are to be apportioned.

[Read more...](#)



If you would like to get involved with and/or sponsor the CCIL Annual Conference, please feel free to contact us and [read our Sponsorship Package](#).

Si vous désirez vous impliquer dans la Conférence annuelle du CCIL, ou en devenir commanditaire, n'hésitez pas de nous contacter. [Cliquez ici pour plus d'infos concernant la commandite](#).

Disclaimer: The views and opinions expressed in this newsletter are those of the authors and do not necessarily reflect the official policies or positions of the CCIL.

## CONTACT US | POUR NOUS JOINDRE

[manager@ccil-ccdi.ca](mailto:manager@ccil-ccdi.ca)

CCIL | CCIL  
275 rue Bay Street, Ottawa ON K1R 5Z5  
Tel | Tél. : 613-235-0442  
Fax | Téléc. : 613-238-3805



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