

26TH LEGAL ADVISERS MEETING

Informal Discussions on International Law

For over 25 years, the Legal Advisers of the Member States of the UN have gathered to discuss, in an informal setting, broad issues of international law that concern the international community. These discussions are held in the margin of the meetings of the Sixth Committee of the United Nations General Assembly, within the framework of the International Law Week. The Government of Canada will be responsible for organizing the informal discussions during the afternoons of November 2-3. NB – the presence of Legal Advisers in New York during International Law Week provides an opportunity for delegations and other stakeholders to hold side events, receptions and social events. The Permanent Mission of Canada will not be playing a role regarding events beyond the informal discussions on the afternoons of November 2-3.

For further details or information regarding this event please visit <http://www.un.org/law/counsel/meetings2015.html>

Introduction and Purpose

This concept paper proposes one overarching theme to guide discussion at the upcoming UN Legal Advisers' meetings on 2-3 November 2015: *Globalization: international law and the global citizen*. Globalization poses challenges to practitioners of both private and public international law. An increasingly mobile global population is putting growing demands on the international legal system to respond to the needs of a world in which individuals expect to access justice abroad as much as they would at home. Additionally, the emergence of non-state actors in the geo-political arena is becoming increasingly significant to international law and diplomatic practise. The Foreign Ministry Legal Adviser is often required to deal with increasingly complex issues including providing services and protections, handling state to state intercourse as well as creating redress mechanisms that are not dependent on national systems. We propose to consider the issue through two lenses. On one hand, we will consider *Modern Challenges for the Vienna Convention on Consular Relations in an era of Globalization*. On the other hand, we will consider *International Tribunals: Criminal matters and investor state* (over the course of two panels, one on each day). In addition to the proposed theme, Canada would also highlight diversity of participation, as well as interactivity of participants and panelists as key objectives for this year's Legal Adviser meetings.

Day 1

1500 – 1520 *Introduction by William Crosbie, Legal Adviser and Assistant Deputy Minister – Consular, Security and Legal Affairs for Foreign Affairs, Trade and Development Canada*

1520 – 1545 *Keynote Address – Under-Secretary-General for Legal Affairs and United Nations Legal Counsel Miguel de Serpa Soares*

1545 – 1800 *Panel - International Criminal Tribunals*

- Moderator: Stephen Mathias, UN Assistant Secretary-General for Legal Affairs
- Panelists: Silvia Fernandez de Gurmendi, President of the International Criminal Court
Clint Williamson, Senior Director for Law and National Security, The McCain Institute for International Leadership
Ambassador Vandi Chidi Minah, Permanent Representative of Sierra Leone to the United Nations

The number of international criminal tribunals has increased significantly in the past two decades. These tribunals have become a regular feature of international diplomacy. Whenever a new conflict erupts or an existing one sees an increase in violence and civilians are impacted, there are calls for accountability from political leaders, civil society and other actors to bring perpetrators to account and to ensure justice for victims. Expectations amongst victims and political leaders are high and the demand for international criminal tribunals has increased as the number and intensity of conflicts increases. The response of the international community has not been consistent. This session will look at international criminal tribunals from a big picture perspective, not focussing on any particular tribunal or situation but drawing from lessons learned and past experiences.

Discussion points:

- How can the international community balance increasing calls for accountability and rising expectations and challenges in securing the necessary resources and support?
- How can we avoid the politicization of justice?
- Is there the need for a more consistent and systematic approach? If so, what would be the elements of such an approach?

Day 2

1500 – 1515 *Keynote Address – Secretary-General of the Hague Conference on Private International Law Christophe Bernasconi*

1515 – 1630 *Panel 1 – The Vienna Convention on Consular Relations*

- Moderator: William Crosbie, Legal Adviser and Assistant Deputy Minister – Consular, Security and Legal Affairs for Foreign Affairs, Trade and Development Canada
- Panelists: Katrina Cooper, Senior Legal Adviser, Department of Foreign Affairs and Trade Australia
Ambassador Reyna Torres Mendivil, Director General for the Protection of Mexicans Abroad

Anver Emon, Professor & Canada Research Chair in Religion, Pluralism and the Rule of Law, University of Toronto, Faculty of Law
Christophe Bernasconi, Secretary-General of the Hague Conference on Private International Law

The VCCR deals more directly with the relationship of the sending state with its citizens abroad. With increased globalization and mobility, individuals are dealing with multiple jurisdictions as they try to regulate their private affairs. These can include commercial and trade relations (including the relationship between private investors/companies and public institutions); personal relations between individuals (including family law issues, social security, child custody, adoption among others) and employment and educational opportunities (which may engage the need for notarial services from foreign missions). There is also an existing body of private international law that creates a further nexus between sending state, receiving state and the private individual. This session will focus on examining the links between the VCCR and private international law in dealing with increasingly mobile and globalized citizens.

Discussion points:

- New challenges in meeting the needs of the increasingly mobile citizen;
- Consular implications of greater mobility: detention issues (including notification rights and obligations for detainees); dealing with dual nationality; family issues (including adoption, child custody); notarial services (e.g. professional and academic credentials recognition);
- The interaction between the VCCR and existing private international law infrastructure such as the conventions under the Hague Conference;
- Gaps in the international law architecture that facilitate consular services;
- Can the VCCR accommodate these issues going forward?

1630 – 1800 Panel 2 – Individuals and International Law – Investor-State Tribunals

- Moderator: Don McRae, Hyman Soloway Chair and Full Professor, University of Ottawa, Faculty of Law
- Panelists: Danielle Yeow, Senior State Counsel, International Affairs Division, Attorney-General's Chambers, Singapore
August Reinisch, Vice Dean of the Law Faculty, University of Vienna
Chester Brown, Professor of International Law and International Arbitration, Associate Dean (International), The University of Sydney Law School

Thousands of treaties (bilateral investment agreements, free trade agreements, the Energy Charter Treaty, etc.) permit investors to bring disputes against a state for violation of certain core obligations, such as national treatment, expropriation without compensation, or violation of customary international law minimum standards of treatment. While few of those treaties have been used by investors to bring claims, the number of those disputes has been rising in recent years. The availability of these Investor-State Dispute Settlement (ISDS) procedures in bilateral and multilateral trade treaties recently concluded or under negotiation have featured prominently in critiques of those agreements. Proponents consider ISDS an effective way to allow investment obligations between states to be enforced without the need for political involvement, and that their availability provides investors with

additional incentives to invest in countries that have those agreements in place. Opponents suggest they are inappropriate because they allow investors to challenge governmental decisions outside of national court systems, and say that the evidence that the agreements increase investment is weak. There are also detailed debates over questions of procedure, notably questions such as transparency. Many of those procedural questions are being addressed in some of those agreements and through initiatives such as the recently signed UN Mauritius Convention on Transparency in ISDS. This session will look at the treaty provisions and practice of investor-state disputes to better understand their nature.

Discussion points:

- Is there any difference of substance between state-state and investor-state disputes in terms of the nature of state sovereignty and regulatory autonomy?
- Is investor-state dispute settlement potentially a model for other mechanisms allowing individuals to assert violations of international law obligations?
- To what extent is the “secrecy” of these disputes the main concern, and are there effective ways to reduce that concern?