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INTERNATIONAL ARBITRATION AND THE ARGENTINE CASES: AN EVALUATION OF 10 YEARS OF ARBITRATION – INSTITUTIONAL ASPECTS

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I. INTRODUCTORY REMARKS

Mesdames, gentlemen, it is a privilege for me to be here with you today as part of this prestigious faculty of speakers and, in particular, to share this panel with Professor Alvarez. We have collectively been presented with a very challenging task. The sovereign debt crisis experienced by Argentina over a decade ago has given rise to serious questions concerning the adequacy of the institutions and norms that govern the resolution of international investment disputes, to address disputes such as those that have arisen from Argentina's management of its financial crisis. These questions are all the more urgent in our present global financial climate. Indeed, the financial woes that most Western States have experienced over the past several years are far from over. I am thinking, in particular, of Greece, Spain, Portugal, Ireland, and Italy, each one of which may act to stabilize its economy, cause damage to international investors and add to ICSID's docket. The past is therefore prologue, and the implications of our "stock-taking" exercise today are potentially more far-reaching than the Argentina cases.

My colleagues "laid the brickwork" earlier this morning for our discussion of the Argentine cases and their handling within the ICSID system, with an exposition of several arbitral mechanisms employed over the past century to manage economic and political disruptions. That exposition, not surprisingly, anticipated some of the issues that I propose to address in my comments to you regarding "institutional aspects" of this approach to managing economic and political disruption to the international legal order. The success or failure of the international arbitral system and, in particular, ICSID, in managing disputes arising from Argentina's handling of its sovereign debt crisis cannot be fully

assessed without understanding both ICSID and the comparators against which we propose to measure its performance. I therefore propose to begin with a few words about my personal experience with the United Nations Compensation Commission (UNCC) before turning to an assessment of how ICSID has fared in managing the Argentina cases.

II. MANAGING LEGAL CHANGE IN TIMES OF CRISIS

A. *Special Purpose Institutions and Ad Hoc Commissions*

The first Gulf War, which led to the creation of the UNCC, occurred during my tenure as Canada's ambassador and permanent representative to the United Nations and while Canada had a seat on the Security Council. As Professor Payne has traversed the purpose and functioning of the UNCC, I shall not recover this ground much as I would like to tell you about those exciting months in New York when the trial lawyer that I had been for more than 30 years suddenly became an international diplomat.

The context to the UNCC's creation is, however, important to understand what it and other international tribunals like it can offer to assess the performance of ICSID and other international arbitral institutions in handling claims arising out of financial crises such as the one which occurred in Argentina in 2001.

The Security Council's primary responsibility is the maintenance of international peace and security, and it is empowered to decide any measure necessary to maintain or restore international peace and security, within the scope of the UN Charter.¹ Iraq's invasion of Kuwait in August 1990 was unquestionably a breach of international peace and security; therefore, the Security Council's mandate was engaged. We issued a number of resolutions in the ensuing period, beginning with Resolution 660, which condemned the invasion as a breach of international peace and security, followed by a series of resolutions authorizing escalated measures to bring about a final and unconditional withdrawal of Iraqi troops from Kuwait. Our final resolution on the matter, Resolution 687, established, among

¹ See U.N. Charter, arts. 24, 39.

other things, a dispute resolution process to deal with claims arising out of the invasion. Thus, the Security Council:

16. Reaffirms that Iraq, without prejudice to the debts and obligations of Iraq arising prior to 2 August 1990, which will be addressed through the normal mechanisms, *is liable under international law for any direct loss, damage, including environmental damage and the depletion of natural resources, or injury to foreign Governments, nationals and corporations, as a result of Iraq's unlawful invasion and occupation of Kuwait;*

...

18. Decides also to *create a fund to pay compensation for claims that fall within paragraph 16 above and to establish a Commission that will administer the fund.*[.]²

It is important to note that the terms of this Resolution were accepted by Iraq. There was, therefore, no question under the UNCC process of Iraq's liability, nor was there any question of making good on the payment of claims. Compensation, not culpability, was the focus of the UNCC program. The risks of inconsistent decision-making with precedential implications (*i.e.*, decision on matters of law) and refusal to pay were therefore non-issues.

Much was said earlier today by Professor Payne about the UNCC process. I chaired Panels "C" and "F3" of the UNCC, and I can confirm that the process worked. Yes, for the low value Category A, B, and C claims, we developed some exotic techniques, *i.e.*, data matching, sampling, computerized decision trees, etc., but for the larger claims we used procedures very much like those used in arbitration. And, as Cymie writes, the contribution of the secretariat was absolutely essential to the UNCC's processing of claims.

The Iran-United States Claims Tribunal also emerged from a political process, brokered by a third state, culminating in the Algiers Accords. These agreements effectively put an end to the hostilities between Iran and the United States which had begun

² S.C. Res. 687, U.N. Doc. S/22559 (May 2, 1991) (emphasis added).

with the hostage taking of United States (U.S.) embassy personnel in Tehran. Although neither the Algiers Accords nor the Claims Settlement Declaration, which formally created the Tribunal, established Iran's liability for any claim, the States parties carefully circumscribed the claims process by defining the Tribunal's jurisdiction, prescribing rules of procedure, establishing the finality of any awards rendered, and agreeing to their enforceability. The Algiers Accords also provided for the release of Iranian State assets that were frozen during the hostilities, thereby ensuring the State's liquidity to satisfy any eventual adverse awards rendered through the claims process. So, as with the UNCC, the table was set so to speak.

Similar observations may be made – and have been made this morning – with regard to other arbitral mechanisms established in the past to deal with political and economic crises, such as the U.S.-Mexican Claims Commission. In those cases, a dispute resolution framework was imposed or negotiated by the States involved in order to contain a situation that threatened the international legal order or peace between those States. In other words, redress for those who suffered a loss as a result of the crisis was orchestrated as part of a multilateral political process.

I open a brief parenthesis at this point to mention the Claims Resolution Tribunal for Dormant Accounts, on which I served as an arbitrator and then a Senior Claims Judge. This tribunal was also created as a result of a political process. To be perfectly frank, the political process may have been driven by shame on the part of Switzerland and its many banks for their behaviour during the Nazi regime, but it did, on the ground, create a dispute resolution framework that depended very much on a large, competent and very dedicated secretariat. Again, as with the UNCC, the secretariat was the key.

The absence of a coordinated political response to manage claims arising from Argentina's handling of its financial crisis is consistent both with traditional notions of territorial sovereignty, which generally exclude foreign intervention in a State's economic policy, and the depoliticized environment in which investor-State disputes are sought to be resolved today. The practical result, however, has been to condemn Argentina to what

one author describes as a “sovereign debtor’s prison.”³ Indeed, regardless of whether one agrees with the *ratio* of the arbitral awards rendered against Argentina to date, they presently constitute real liabilities in the hundreds of millions of dollars. The total *potential* liability facing Argentina through pending investment claims is enormous and could exceed its ability to pay without placing additional hardship on the Argentine people.

This is one aspect of the crisis of faith that has rocked the ICSID system over the past several years. Is the system, as presently constituted, capable of providing meaningful redress for investors in the context of a sovereign debt crisis? Is it inevitable in such cases that the system will be reduced, in effect, to a sovereign bankruptcy process? As cases make their way through the system, the ICSID model of dispute resolution, which privileges finality of result in much the same way as commercial arbitration disputes, is also being tested. A question with much more profound implications therefore arises: is it time to reconsider the model? Before we drill down into these questions, context needs to be recalled. I will therefore spend a few minutes on how and why ICSID was created.

B. *ICSID’s Role in Managing Legal Change in Times of Crisis*

ICSID was not established in response to a political or economic crisis, nor was the Washington Convention, which gave life to the Centre, intended to legislate every detail of ICSID’s functioning. The purpose of ICSID is modestly stated in Article 1(2) of the Convention to:

. . . provide facilities for conciliation and arbitration of investment disputes between Contracting States and nationals of other Contracting States in accordance with the provisions of [the Washington] Convention.⁴

³ See Robert Ziff, *The Sovereign Debtor’s Prison: Analysis of the Argentine Crisis Arbitrations and the Implications for Investment Treaty Law*, 10 RICH. J. GLOBAL L. & Bus. 345 (2011).

⁴ Convention on the Settlement of Investment Disputes Between States and Nationals of Other States, *opened for signature* Mar. 18, 1965, 17 U.S.T. 1270, 575 U.N.T.S. 159, art. 1(2) (entered in force Oct. 14, 1996) [hereinafter ICSID Convention].

The Convention seeks, in general terms, to strike a balance between the interest of investors in having a neutral forum in which investment disputes may be aired and resolved, and the interest of host States in attracting greater inflows of foreign capital. This balance is evidenced by several provisions which determine access to the ICSID system.

Article 36(3) bestows gate-keeping powers on the Secretary-General of ICSID, who is entitled to refuse registration of a request relating to a dispute “manifestly outside the jurisdiction of the Centre.” This is a low bar, but it is nevertheless an important one. It establishes, firstly, that not all investment disputes may come to ICSID. Secondly, it provides some protection to Contracting States from pursuit in respect of matters manifestly beyond their consent to arbitrate. In our present context, registration of the request for arbitration filed by Italian bondholders against Argentina in the *Abaclat* case⁵ illustrates that group or “mass” claims, for example, are not, in the view of the Secretary-General, manifestly beyond the jurisdiction of ICSID.

The second provision, Article 25(1), is a cornerstone of the Convention and requires a deeper inquiry than Article 36(3), one made by the arbitral tribunal appointed to hear the case. Article 25(1) establishes the Centre’s jurisdiction in the most general – and broadest – of terms: “any legal dispute arising directly out of an investment, between a Contracting State . . . and a national of another Contracting State.” The crux of this provision is to establish a State’s consent to arbitrate a given dispute, the investor’s consent generally having been communicated through the initiation of arbitral proceedings. As illustrated again by the *Abaclat* case, intelligent minds can disagree on the elasticity of the consent provided by States in this provision when faced with new circumstances not previously tested within the ICSID system. Through their interpretation of this provision, arbitral tribunals determine which claims shall gain admittance to the ICSID system and, in particular, the Convention’s current promise of finality. This is precisely why “getting it right” out of the gate is of crucial importance to both States and investors.

⁵ See *Abaclat and Others v. The Argentine Republic*, ICSID Case No. ARB/07/5, Decision on Jurisdiction and Admissibility, at 51-53 (Aug. 4, 2011) [hereinafter *Abaclat*].

Article 25(1) is not, however, the end of the story in terms of a State's consent to arbitrate investment disputes. In keeping with the balance struck by the Washington Convention between the interests of States and investors, Article 25(4) offers Contracting States the means to tailor their consent by specifying the class or classes of disputes which they consent or do not consent to submit to the jurisdiction of the Centre. Most of the notifications made under Article 25(4) establish carve-outs for specific economic activity, such as mining or the exploitation of natural resources.⁶ This need not, however, be the case. Papua New Guinea,⁷ for instance, has notified that:

... it will only consider submitting those disputes to the Centre which are *fundamental to the investment itself*.⁸

This qualification offers an important example of how States may, within the regime established by the Convention, adapt the otherwise broad consent to arbitrate investment disputes to their particular needs and circumstances. Moreover, such an adaptation may be made "*at any time*" following a State's ratification, acceptance or approval of the Convention. In the context of the crisis of faith that I alluded to earlier, this mechanism deserves deeper study as a tool to assist States in managing their investment commitments *within the ICSID system*. Its potential relevance is further underscored by concerns expressed over the decision of several States to denounce the Convention and manage their investment commitments *outside of the ICSID system* (*i.e.*, Bolivia, Ecuador and Venezuela).

These "gate-keeping" provisions are complemented by what I loosely term "policy" provisions, *i.e.*, provisions which specifically

⁶ See Notifications Concerning Classes Of Disputes Considered Suitable Or Unsuitable For Submission to the Centre, ICSID/8-D, art. 25(4) (May 2011), available at <https://icsid.worldbank.org/ICSID/FrontServlet?requestType=ICSIDDocRH&actionVal>ShowDocument&Measures=True&language=English>.

⁷ The only arbitration registered with ICSID involving Papua New Guinea was discontinued shortly after it began. See *Misima Mines Pty. Ltd. v. Independent State of Papua New Guinea*, ICSID Case No. ARB/96/2.

⁸ Notifications Concerning Classes of Disputes Considered Suitable or Unsuitable for Submission to the Centre, ICSID/8-D, art. 25(4) (May 2011) (emphasis added).

contemplate the development of rules and regulations for the good functioning of the system. Article 6(1) of the Convention, for example, provides that the Administrative Council, which is composed of a representative of each Contracting State, shall adopt rules of procedure for the institution and conduct of conciliation and arbitration proceedings, administrative and financial regulations and an annual budget of revenues and expenditures, among other instruments. Article 6(3) of the Convention further provides that:

[t]he Administrative Council shall also exercise such other powers and perform such other functions as it shall determine to be necessary for the implementation of the provisions of this Convention.⁹

Taking a broad view of this provision and the purposes of the Washington Convention, the Administrative Council is entrusted not only with the strict implementation of the Convention's terms but also, arguably, with ensuring the continued relevance and legitimacy of the system put into place by the Convention in the face of change. This is in fact borne out by the Administrative Council's exercise of its powers under the Convention.

The Additional Facility Rules, which govern disputes falling outside of the jurisdiction of the Centre, offer an excellent example of the Centre's response to demands for greater access to the Centre's services. Additional Facility cases now account for 9-10% of ICSID's caseload.¹⁰ Although the Rules were not adopted in response to a crisis as such, it seems to me that they offer guidance in terms of the kind of rules that may be adopted by the Administrative Council to accommodate the need for specialized procedures. I note that, in addition to arbitration and conciliation proceedings, the Additional Facility Rules establish procedures for fact-finding proceedings. In the wake of the *Abaclat* decision, could this precedent not provide a useful tool to deal, in an innovative way, with mass proceedings?

⁹ ICSID Convention, *supra* note 4, art. 6(3).

¹⁰ See ICSID, THE ICSID CASELOAD – STATISTICS, ISSUE 2012-1, at 9 (2012) [hereinafter The ICSID Caseload].

III. Is ICSID WORKING?

With the foregoing in mind, I am asked to adjudge whether ICSID is working. My short answer, and here I agree fully with my colleague José Alvarez, is “yes.” The strident criticism by the authors of the Osgoode Hall Statement is not justified.

This does not mean that ICSID is working perfectly or that improvements are not needed, both to its functioning and potentially to the framework within which it is confined to function. Nassib Ziadé, when he was Deputy Secretary-General of ICSID, observed that the most important factors in the continued vitality of institutional arbitration are efficiency and legitimacy.¹¹ He predicted that the single biggest challenge to arbitral institutions would be threats to their legitimacy.¹² To the extent the challenges raised by the Argentine cases undermine ICSID’s legitimacy, a nuanced answer to the question “is ICSID working” requires consideration of whether ICSID is constitutionally capable of addressing these challenges and, if not, whether its legitimacy may nonetheless be preserved.

As I stated earlier, one challenge is whether ICSID can deal coherently with a sudden onslaught of similar claims. From a practical perspective, ICSID has proven adept at adjusting to increases in its caseload. ICSID’s caseload trebled from 1997 to 2007, as cases against Argentina gained momentum,¹³ and its staff and resources have expanded and continue to expand to accommodate the growing caseload, although I deplore that the Centre has all too often been off the radar screen of the World Bank managers.

Argentina has faced more investment treaty claims than any other State (*i.e.*, 49), with the bulk of those cases relating to measures taken in response to its financial crisis.¹⁴ No other State

¹¹ Nassib Ziadé, *Reflections on the Role of Institutional Arbitration between the Present and the Future*, 25 ARB. INT'L. 427 (2009).

¹² See *id.* at 427.

¹³ See The ICSID Caseload, *supra* note 10, at 7.

¹⁴ Marcia Vicien-Milburn & Yulia Andreeva, *Testing the Procedural Limits of the ICSID Annulment Regime in Cases against Argentina*, in YEARBOOK ON INTERNATIONAL INVESTMENT LAW & POLICY 2009-2010 at 291, 294 (Karl Sauvant ed., 2010).

even comes close as a Respondent at ICSID, although Venezuela is closing in rapidly with 27 cases and with several months yet to go before its denunciation of the Washington Convention takes effect. While the cumulative value of the Argentina cases raises the very real solvency concerns that I alluded to earlier, their total number did not situate us in the realm of “mass claims” on a par with the dispute resolution processes canvassed earlier this morning. Nor has it been patently obvious that the cases share an identical factual matrix, such that their collective consideration or consolidation, even in hindsight, is a foregone conclusion. This is in part because the particular facts of each case are not necessarily transcended by the common landscape of Argentina’s default.

The majority decision in *Abaclat*, which has paved the way for thousands – approximately 180,000 when the claim was registered (now reduced to 60,000) – of Italian bondholders to pursue their claims against Argentina, is a game changer. It is unprecedented. The *Abaclat* claim was registered by the ICSID Secretariat in 2007 over the objections of the Argentine government. A majority of the tribunal rendered its decision on jurisdiction and admissibility in August of last year, finding that the bondholders’ claims are admissible and that the tribunal has jurisdiction over the bondholders and their claims. In October 2011, Professor Georges Abi-Saab, a co-arbitrator on the panel, issued his dissenting opinion and subsequently resigned from the panel.¹⁵ Prior to circulation of the dissent, Argentina brought a Request for the Disqualification of the President of the Tribunal and the co-arbitrator who joined in the majority decision.¹⁶ This has been, to say the least, a very busy proceeding!

Whether we agree or not with the decision of the majority, it is the decision of the ICSID tribunal, from which there is presently no appeal. The arbitration will now proceed to the merits phase which, the tribunal has decided, will be split in two phases:

¹⁵ *Abaclat and Others v. The Argentine Republic*, ICSID Case No. ARB/07/5, Dissenting Opinion (Oct. 28, 2011).

¹⁶ See *Abaclat and Others v. The Argentine Republic*, ICSID Case No. ARB/07/5, Request for the Disqualification of President Pierre Tercier and Arbitrator Albert Jan van den Berg (Sept. 15, 2011).

The first phase will be a general phase aimed at determining the core issues regarding the merits of the case, and in particular establishing what conditions must be fulfilled for further resolving Claimants' claims and determining the best method to examine these issues and conditions. A second phase during which the Tribunal will rule on how to examine the relevant issues and conditions, will put in place an appropriate mechanism of examination and will proceed with such examination.¹⁷

This is very much work in progress. Managing the procedure of the merits phase will test the mettle of the tribunal and the ICSID Secretariat, but I believe that it can be done. Looking at the precedents of the UNCC and the Claims Resolution Tribunal for Dormant Accounts, both of which I know well, the Secretariat will make the difference. This is where some political will may be necessary to ensure the institution has the human and technical resources necessary to support large, complex cases, such as *Abaclat*.

In the wake of cases already decided, I am asked to consider whether the annulment system is breaking down. However trite, it bears noting that the fact of recourse to the annulment system is not evidence of its disrepair. In my view, where it has been triggered to consider matters within the scope of its jurisdiction, it has generally functioned well. The better question is whether the annulment provisions of the Convention are adequate to address the kinds of challenges parties are seeking to bring in respect of ICSID awards. Where parties are dissatisfied with the substantive outcome of a case, annulment offers little consolation. The finality offered by Convention arbitration under the ICSID system is appealing from the perspective of efficiency, but where the public interest is engaged it may, in certain cases, be more important for parties to have some recourse to challenge an award that is viewed to be wrong at law. The perception of error may be enough in these cases to warrant further consideration so that erroneous awards are not allowed to stand and awards that ought to be paid are paid and the cloud of doubt concerning their payment is lifted.

¹⁷ *Abaclat*, *supra* note 5, at ¶ 671.

Proposals for an international appellate mechanism to review investment awards pre-date the wave of claims lodged against Argentina at ICSID,¹⁸ and resurface perennially in response to concerns over consistency and coherence in international investment law – the so-called problem of fragmentation. ICSID itself circulated a proposal in 2004 for the creation of an appeal facility.¹⁹ It was determined at that time, however, that such a proposal was premature, particularly in view of the technical and policy issues surrounding such an endeavour.²⁰ The OECD has also studied the subject of an appeal mechanism.²¹ Countless luminaries in the field have offered their views on the matter, considering its potential benefits and drawbacks.²² Several States have cut through the debate and concluded agreements providing, at least in theory, for appellate review of investment awards under an *ad hoc* appeal mechanism.²³

Spring is upon us once again, and calls for an international appellate mechanism have been renewed in the wake of several awards rendered by ICSID tribunals in the Argentine cases with conflicting outcomes. The ICSID Secretariat has been tasked by the Administrative Council to prepare a paper on the annulment

¹⁸ See e.g., Stephen Schwebel, *The Creation and Operation of an International Court of Arbitral Awards*, in THE INTERNATIONALISATION OF INTERNATIONAL ARBITRATION (Martin Hunter, Arthur L. Marriott & V.V. Veeder eds., 1995); William Knoll III & Noah Rubins, *Betting the Farm on International Arbitration: Is It Time to Offer an Appeal Option*, 11 AM. REV. INT'L ARB. 531 (2000).

¹⁹ See Antonio R. Parra, *Possible Improvements of the Framework for ICSID Arbitration*, ICSID Discussion Paper (Oct. 22, 2004), available at https://icsid.worldbank.org/ICSID/FrontServlet?requestType=CasesRH&actionVal=OpenPage&PageType=AnnouncementsFrame&FromPage=NewsReleases&pageName=Archive_%20Announcement14.

²⁰ See *Possible Improvements of the Framework For ICSID Arbitration*, NEWS FROM ICSID, Vol. 21, No. 2, 2004, at 1, 13.

²¹ See OECD, *Improving the System of Investor-State Dispute Settlement: An overview*, Working Paper on International Investment No. 2006/1 (Feb. 2006).

²² See e.g., David Gantz, *An Appellate Mechanism for Review of Arbitral Decisions in Investor-State Disputes: Prospects and Challenges*, bepress Legal Series, Paper 703 (2005), available at <http://law.bepress.com/expreso/eps/703>.

²³ The 2004 U.S. Model BIT provides, for example, for the establishment of such a mechanism, as do several U.S. Free Trade Agreements.

process, which may or may not consider the role of an appellate process, with a view to proposing possible changes.²⁴ It is far from clear, however, whether an appeal mechanism will resolve the problems of what some critics see as inconsistency and incoherence in international investment law. One author asks whether the justification for an appellate system on the basis of consistency and coherence in judicial outcomes is not really an argument for incorporating consistency and coherence into “the disorganized international investment system.”²⁵ In other words, is this not really a call for normative uniformity long after the grave of the once much-touted Multilateral Agreement on Investment (MAI) has grown cold? As with ICSID’s management of mass investment claims, such as the *Abaclat* case, it may take an injection of political will to set aside the *rhetoric* of “consistency and coherence” and focus the discussion among stakeholders in the ICSID system on *concrete* steps that may be taken now and in the future by ICSID to preserve the legitimacy of the system and investor-State arbitration generally.

Finally, I am asked to consider whether the mechanisms in place are failing the ultimate test because awards are not being paid? Again, I say “no.” The vast majority of awards are paid. Argentina’s failure to pay outstanding awards against it must be considered in the context of the entire ICSID system, and in the particular context discussed earlier of a sovereign debtor facing potential total liability exceeding its ability to pay. It may well be, in this sense, a bellwether with respect to claims arising out of financial crises, one that must be considered carefully in view of the present global financial debacle.

I note that earlier this week the U.S. suspended trade benefits for Argentina due to its failure to pay two ICSID awards. This demonstrates in spades that if the system is not capable of

²⁴ The paper in question indeed was published after the delivery of these remarks. See ICSID, *Background Paper on Annulment for the Administrative Council of ICSID* (Aug. 10, 2012), available at <https://icsid.worldbank.org/ICSID/FrontServlet?requestType=ICSIDNewsLettersRH&actionVal>ShowDocument&DocId=DCEVENTS11>.

²⁵ Asif Qureshi, *An Appellate System in International Investment Arbitration?*, in THE OXFORD HANDBOOK OF INTERNATIONAL INVESTMENT LAW 1154, 1168 (Peter Muchlinski, Federico Ortino & Christoph Schreuer eds., 2008).

addressing difficult problems, such as the failure to pay, politics will intervene. Politics must not be allowed to trump the international investment system.

IV. CONCLUSION

ICSID today represents an entire system dedicated to the resolution of investor-State disputes, both within the Washington Convention and beyond the confines of the Convention, and has become virtually synonymous with investor-State arbitration. There is, in my view, a great deal of room for innovation within this system. The irony, of course, is that having achieved the de-politicization of investor-State arbitration, it may still be necessary to inject some political will into the system in order to accomplish the kind of change required to resolve the legitimacy concerns sparked by the debt crisis cases. The Administrative Council of the Centre is an obvious starting place. The Centre is supported by a lean yet very talented Secretariat. Both entities are supported more broadly by a community of stakeholders, including many individuals in this room. The table may not yet be set to address all of the concerns raised in connection with the debt crisis cases, but there are tools available now to improve the functioning of the system and growing support for greater resources to innovate longer-term strategies to preserve the legitimacy of the system.



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He has served as Chairman or party-appointed arbitrator on more than 100 arbitral tribunals, either *ad hoc* or constituted by different arbitral institutions, including the International Court of Arbitration of the International Chamber of Commerce (Paris), the London Court of International Arbitration (LCIA), the American Arbitration Association (AAA/ICDR), the Court of Arbitration for Sport (CAS), and the International Centre for

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From July 1988 until January 1992, Mr. Fortier took leave from his law practice to take up an appointment as Canada's Ambassador and Permanent Representative to the United Nations in New York. From January 1989 to December 1990, Mr. Fortier served as Canada's Representative on the Security Council of the United Nations and in 1989 he was President of the Council.

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