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Interview with Christine Chinkin, FBA, CMG.



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On November 14, 2021, you were elected as the new Chair of the ILA World Wide Executive Committee. Could you tell us what thoughts you have as you take the leadership of the Organisation?

It is an honour to have been elected Chair of the Executive Committee of the ILA at this propitious moment as it heads toward the 150th year since its foundation in Brussels in 1873. It is a great privilege and challenge to follow in the footsteps of such illustrious predecessors as Lord Wilberforce, Lord Slynn, who was the Chair when I was Director of Studies, and most recently Lord Mance whom I thank for handing over the Association in such good health and spirits.

The international lawyers who gathered together in Brussels in 1873 and founded an Association dedicated to peace and justice through the study, clarification, and development of international law would be astonished if they could see the Association today. They could never have envisaged the seismic changes in the world order reflected in the ongoing evolution of the substance, procedures and institutions of international law, nor the corresponding spread of the ILA, which has grown from its European roots to become a global body with branches in every continent except (unsurprisingly) Antarctica.

The unique structures of the ILA combine to enhance its capacity to demonstrate the potential of international law as an instrument for advancing peace and justice, comprising: its membership comprising international legal practitioners, judges, academics, international institutions and NGOs; its range of international committees and study groups across public and private international law; the development of new committees and study groups, as well as new work programmes in those already existing to keep abreast (and ahead) of topical trends in international law; the high quality research and carefully thought through recommendations; the important work at the local level by its branches; and, of course, the biannual conferences.

But as an Association with promotion of international law at its heart, we should not ignore that it has another, darker side. Contemporary international law has its roots in colonialism, it has too often legitimated rather than prevented violence,

and has been used by the powerful to further their interests. The Association has not shied away from examining subjects outside the 'mainstream' of international law that recognise the part it has played in upholding

Newsletter

N°4, January 2022

In this Issue

Interview
with Christine Chinkin

Digital Challenges

Partnerships



injustice. For instance, I was chair of the Feminism and International Law Committee for a number of years, a Committee set up by an earlier Director of Studies, Professor James Crawford whose death earlier this year we mourn. It worked to expose the gender biases of international law and offered ways toward thinking how international law might look if it took into account the lived experiences of women around the globe. Another example is the Committee on the Rights of Indigenous Persons that investigated the denial of the rights – the very personhood – of indigenous persons. At a time of growing inequalities between and within states, of the abuse and denial of human rights to so many, and, indeed, of blatant rejection of the international rule of law, the Association's foundational goals retain their significance. And internal critique of our discipline, acknowledgement that it can and has been used for counter purposes can only strengthen its substance and reinforce the pledge of peace and justice through international law for all, including for those previously marginalised or excluded.

You are the first woman in almost 150 years to hold the position. How significant is that for the Organisation and International Law as a whole?

It's a challenge – my leadership represents a difference for the Association in that I am not only the first woman to hold this position but also an academic rather than a practitioner or Judge. This is a visible change in line with the Executive Committee's commitment to enhancing diversity both within the Association and across its many activities. Within international law overall? I have, of course, been arguing for many years for women's wider participation in international institutions and for substantive change in accordance feminist critique. Progress is slow and we have to push back against resistance but the recent election of Professor Hilary Charlesworth to the ICJ and of a number of women to the ILC is encouraging.

In 2023 we will celebrate the 150th anniversary of the Organisation. We are all preparing an ambitious programme that will put International Law at the forefront of discussions during the entire year 2023. What are your hopes for 2023 and beyond?

The year long series of events in 2023 will offer many opportunities for furthering diversity and equality in substance and process. As well as reflecting upon the history of the Association and of international law more generally, it will allow for progressive thinking about tomorrow. Lawyers who believe in international law - both those who have populated the discipline for many years and those more recently coming to it – will grapple with and discuss the many and complex subjects of the proposed [white papers](#) and webinars that will complement the ongoing important work of the committees and study groups. And in addition to specific topics where cooperation in legal regulation is needed for a stable and secure future such as global health, Anthropocene, migration, corruption and steps toward achievement of the Sustainable Development Goals, I hope there will be an opportunity for rethinking some foundational principles of international law. For instance, is the methodology for determining customary international law appropriate for a legal system populated with international institutions and NGOs, commercial enterprises, militias and terrorists and their interactions with each other and with states? Or how can the theories and methodologies of post-colonial, feminist and critical race thinking enrich the international rule of law? And perhaps most importantly given the original objectives of the Association: how can it realistically become a genuine regime for the furtherance of peace? I look forward to the events of the 150th anniversary year and to the many conversations around these and other subjects that will ensue.

WHITE PAPER – DIGITAL CHALLENGES FOR INTERNATIONAL LAW

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3 questions for Anne-Thida Norodom, Aude Géry and François Delerue

1. Why talk about digital for the 150th anniversary of the ADI/ILA?

The theme of ADI/ILA 2023's anniversary is "Building Tomorrow" and it seemed obvious to deal with digital technology, which, by its very nature, is forward-looking given the rapid evolution of technologies in this field. Moreover, we are witnessing an increasing dependence of our societies on digital activities. Digital technology is certainly omnipresent, but we are all not equal in front of these technologies, be it in terms of access, their use, or facing the threats they induce. Questioning our future and the place of international law, therefore, necessarily includes a digital dimension. However, we must agree on what we mean by "digital", a term that has been preferred to that of the Internet or Cyberspace.

The Internet, understood as a network of networks, is only one dimension of the digital world, which designates the representation of information by means of numbers or signals of discrete value. To speak of cyberspace would have led us to presuppose that there exists a particular spatial dimension, alongside those that we already know in law: land, sea, air, and outer space. The question of a new digital space, and not a territory, necessarily arises for jurists whose reflection is part of a territorial logic. Even if the questioning of this logic is indispensable, we have chosen not to limit our debates to this approach.

Talking about digital technology and the challenges it poses will allow us to address several issues that we feel are fundamental to thinking about the international law of tomorrow: data, cybersecurity and artificial intelligence, the three themes being intrinsically linked.

2. What questions should international law ask itself in the face of digital challenges?

When digital issues are discussed from the perspective of international law, two questions are often asked: should new rules of international law be created, because this law is supposedly unsuited to these new

technological challenges, and should a new treaty be adopted? However, this is not the level at which the reflection should take place. Today, there is a consensus among States on the applicability of international law to digital activities. We therefore have a multitude of rules of international law to apply to digital activities, even if the reflection can focus on their adaptation and implementation in a digital context. The question of a treaty is not relevant today either, firstly because international negotiations are currently difficult on the norms of international law applicable to the digital environment, particularly in the field of cybersecurity; and secondly because the treaty instrument, beyond the fact that it is the result of a long process of drafting, is not necessarily adapted to the digital environment, which is rapidly evolving and whose governance is based on a multi-stakeholder model.

Several themes of international law are at the heart of this steering committee's reflections. First of all, the question of the relationship between public and private actors, whether digital companies or the technical community. Can we speak of the "platformisation" of international law? What are the consequences of this privatization on international law? The problem of the territorialisation of law in the face of digital virtuality is also addressed. Reflections remain to be carried out on sovereignty in the digital age and the "extraterritoriality" of the law of digital activities, the meaning of which must be clarified. The protection of human rights occupies an important place in our debates, as well as the responsibility of digital actors, whether it be the attribution of illicit activities or the appropriate liability regime when decisions are increasingly automated.

3. What are the committee's expectations of the White Paper?

The Digital Challenges for International Law Committee has several objectives. First and foremost, it wishes to contribute to the advancement of doctrinal, but also and perhaps especially interstate and multi-stakeholder debates on international law. To do so, the questioning is twofold. Firstly, to identify the rules on which there is a consensus on the part of the States. Secondly, to study the rules that are subject to debate, particularly with regard to their implementation, in order to highlight the areas of research to be explored.

It will also be necessary to imagine the good and bad scenarios that digital technology will lead us to in the future. One thinks for example of the beneficial uses of AI and data, which can also contribute to the improvement of the application of international law, but also of the digital divide, the control of the private sector, the erosion of human rights due to disinformation or surveillance technologies. One thinks also to the evolutions to be expected, or not, due to the Metaverse.

Digital technologies continue to evolve for better or for worse and we must ask ourselves about the kind of society we want in the future. What is the place of international law in building this society? Can international law make a difference? Do we want to use international law for this purpose? What can digital technology bring to international law?

PARTNERSHIPS

An updated list of the institutions having entered into a partnership with the French Branch of the International Law Association to participate in the preparatory work and discussions that will take place on the occasion of the 150th anniversary of the International Law Association (ILA) in 2023, is available at the following link:

<https://www.ilaparis2023.org/>

The Newsletter ADI/ILA 2023 n°5 will be released in March 2022.