

ILA NEWSLETTER

ADI - ACTUALITES

2001 • No 15

INTERNATIONAL
LAW
ASSOCIATION

ASSOCIATION
DE DROIT
INTERNATIONAL

C o n t e n t s

TERRORIST ATTACKS on September 11 2001

All members of the ILA will have been shocked by the terrorist attacks in New York, Washington and Pennsylvania on 11 September 2001 and the terrible loss of life which they occasioned. We send our sympathy to our colleagues in the American Branch and, in particular, to those who lost relatives or friends in the attacks.

International terrorism will be the subject of the plenary session at the New Delhi Conference, where the question whether the ILA should establish a new committee or study group on this issue will be considered. An ILA committee on terrorism reported in 1984.

Editor's note

This issue of the Newsletter marks several changes. Most obviously, there is a change in the format and presentation which it is hoped will enhance the appearance of the Newsletter. I realise that any editor who changes the appearance of a publication runs the risk of offending readers for whom that publication is a much-loved friend but I felt that the risk was one worth taking in this case. Juliet Fussell and our printers, Cambrian Press, have laboured long and hard to produce a format which we hope is both more inviting and easier on the eye.

The second change is that of editor. This is the first Newsletter for several years not to be edited by Peter Nygh and I would like to begin my term as editor by paying tribute to all that Peter did over the term of his editorship. The ILA owes him a great debt and I am well aware that his will be a hard act to follow.

The third change is in the date of publication – that is purely a transient phenomenon for which I apologise. For a variety of reasons

we were not able to produce the Newsletter at its usual time in the summer. Next year we will revert to two issues a year. More fundamentally, however, it is clear that this is a time when international law itself is undergoing considerable change. A biannual newsletter cannot compete with the electronic media and the large, more frequent publications in drawing attention to these changes but it is planned to include in each issue notice of some recent developments and occasional comments thereon. The present issue contains, for example, the decision of the High Representative for Bosnia-Herzegovina on the mandate for the Independent Judicial Commission and a thought-provoking piece by Alfred Rubin of the American Branch on the incident involving a US surveillance aircraft off the coast of China.

Contributions in the same vein will be welcome for the next Newsletter. Members will, of course, be aware that comments express the views of the author and do not purport to represent a corporate view on the part of the ILA.

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70th CONFERENCE: New Delhi 2002

The 70th Biennial Conference will take place in New Delhi, India on 2 – 7 April 2002.

We are delighted to publish below the latest information from the Indian Branch about this event. Full details of the excellent programme being offered are now available on the special conference website: www.ila2002.org

The President of India will inaugurate the conference at 5.30pm on 2 April 2002.

Programme

Tuesday 2 April 2002

- 17.30-18.30** Inaugural session.
19.30 Welcome reception and Dinner.

Wednesday 3 April 2002

- 09.30-12.30** Parallel Working sessions:
1. International Monetary Law
 2. Space Law
 3. Diplomatic Protection of Persons & Property
 4. Feminism and International Law
- 12.30-14.00** Lunch

- 14.00-17.00** Parallel Working sessions:
5. Regional Economic Development Law
 6. Water Resources Law
 7. International Commercial arbitration
 8. WORKSHOP

Evening Embassy Reception

Thursday 4 April 2002

- 09.30-12.30** Parallel Working sessions:
9. To be announced
 10. International Civil and Commercial Litigation
 11. Refugee Procedures
 12. Legal Aspects of Sustainable Developments
- 12.30-14.00** Lunch.

- 14.00-17.00** Plenary Session
International Terrorism

Dinner Home Hospitality

Friday 5 April 2002

- 09.30-12.30** Parallel Working sessions :
13. International Human rights Law and Practice
 14. International Family Law
 15. Aspects of the Law of State Succession
 16. International Securities Regulation
- 12.30-14.00** Lunch

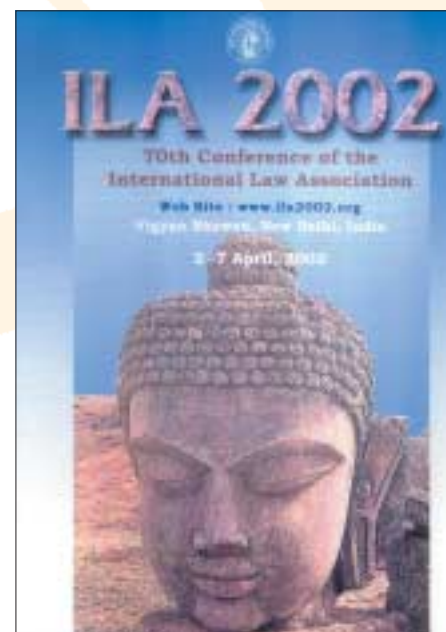
- 14.00-17.00** Parallel Working sessions:
17. International Trade Law
 18. Teaching of International Law
 19. Legal issues of the Outer Continental Shelf
 20. WORKSHOP

Dinner Hosted by the Attorney General for India

Saturday 6 April 2002

- 09.30-12.30** Parallel Working sessions:
21. Accountability of International Organisations
 22. Cultural Heritage Law
 23. Transnational Enforcement of Environmental Law
 24. Islamic Law and International Law
- 12.30-14.00** Lunch hosted by Solicitor General of India
- 17.30-18.30** Closing Ceremony

20.00 Banquet



Sunday 7 April 2002

Excursion tour to Agra for all the registered delegates and accompanying persons. This tour is included in the registration fee.

The registration fees will be:

	before 15. 2. 2002	after 15. 2. 2002
(i) ILA members	400 US\$	475 US\$
(ii) Non-members	600 US\$	675 US\$
(iii) Accompanying persons	250 US\$	325 US\$
(iv) Academics	450 US\$	525 US\$
(v) Students	100 US\$	150 US\$

Air India is appointed as the official carrier of the conference

There is a hyperlink from the ILA website www.ila-hq.org to the conference website or you can find it directly on: www.ila2002.org

For more information and full conference details contact Mr Pravin H Parekh, Advocate, Supreme Court and Hon Organising Secretary of the Indian Branch tel: + 91 3311282, 3311553; fax: + 91 3311951, 3318315, email: phparekh@mantraonline.com or Ms Minakshi Bindra of International Travel House, tel: + 91 6017808; fax: + 91 6011543; email address minakshibindra@ith.co.in.

Air India is appointed as the official carrier of the conference. Details of flights and ticket arrangements are available from your nearest Air India office.

BRANCH NEWS

Bulgarian Branch

Le 18 novembre 2000 branche bulgare de l'ADI a effectué son assemblée générale annuelle. La réunion fut ouverte par le président M. le Professeur Alexander YANKOV. M. le Dr. Margarit GANEV, secrétaire général de la branche a lu un report sur les activités pendant la période 1997 - 2000. Entre les principaux événements figuraient la conférence solennelle, dédiée au 50e anniversaire de la Déclaration universelle des droits de l'homme, organisée conjointement avec l'Université libre de Bourgas le 9 - 10 mai 1998 à la ville de Bourgas et qui fut objet d'un message personnel du Président de

Bulgarie M. STOYANOV; la parution des mélanges dédiés au 90e anniversaire du grand spécialiste et chercheur bulgare dans le domaine du droit international public et privé le Professeur Alexander KOUTIKOV; la parution du sixième volume du recueil "Etudes de droit international", dédié au 75e anniversaire du président de l'Association bulgare de droit international le Professeur Alexander YANKOV, qui contenait également des félicitations de la part du Ministre des affaires étrangères de Bulgarie Mme MIHAYLOVA, du Président de l'ADI le Professeur Huyndah CHYU, du Président du Tribunal international de droit maritime M. Thomas MENSA etc. L'assemblée a approuvé à l'unanimité la proposition de l'Association bulgare de droit international de se porter candidat

pour accueillir la session régulière de l'Institut de droit international en 2003. L'assemblée a élu une nouvelle direction: président - le Professeur Alexander YANKOV, vice-présidents: Mme le Professeur Yordanka ZIDAROVA et le Professeur Todor TODOROV - membre de la Cour constitutionnelle de Bulgarie, secrétaire général - le Dr. Margarit GANEV et trésorier - Atanas SEMOV. La branche s'est réunie également le 23 janvier 2001 et a adopté un programme des activités pour la période 2001 - 2003 et le plan pour 2001. Les membres ont aussi entendu le report du Maître de conférences Nikolay NATOV sur la 69e conférence de l'ADI qui a eu lieu en juillet 2000 à Londres.

Canadian News

In February, Claude-Armand Sheppard and Daniel Turp debated the question whether international law permitted Quebec to secede from Canada. The debate took place at the American Regional Conference on Secession and International Law organised by Prof. Jiri Toman at Santa Clara University in California.

In April the Canadian Branch welcomed the Right Honourable Lord Slynn of Hadley. Lord Slynn's visit began with a presentation at Convocation Hall in Osgoode Hall in Toronto before academics, students and practitioners. This was followed by an intimate dinner at the University Club of Toronto at which there was a lively discussion of the future and role of the International Law Association in Canada. The next day saw a series of successful presentations at various law firms, where Lord Slynn spoke to their departments of international practice, outside counsel and clients. Breakfast was hosted by McCarthy Tétrault, lunch by Blake Cassels & Graydon, tea by Davies Ward Phillips & Vineberg and dinner by Torys. In addition, Lord Slynn was welcomed by Bob Armstrong and invited to meet the Benchers of the Law Society of Upper Canada. The benchers govern the affairs of the Law Society, including admission to practice as

lawyers within their Society, the setting of professional standards for the legal profession, professional liability insurance, and the discipline of their members.

Lord Slynn then travelled to Montreal where a luncheon was held with members of the Canadian Executive. Roy Heenan and the firm Heenan Blaikie hosted a presentation by Lord Slynn at the University Club of Montreal which included faculty members from McGill University and Université de Montréal. In Ottawa, Lord Slynn spoke at a luncheon organized by Brian A. Crane and hosted by Gowlings Lafleur Henderson. In addition to ILA and law firm participants, the luncheon included members of the Canadian Council on International Law, the Supreme Court of Canada and the International Court of Justice. In the afternoon, there was a roundtable discussion at the federal Ministry of Justice.

Lord Slynn's visit was capped by a reception at, and tour of, the Supreme Court of Canada organised by The Hon. Mr. Justice W. Ian C. Binnie. The Right Hon. Beverley McLachlin, P.C. Chief Justice of Canada led the tour of the court and chambers. This event was followed by dinner at the Rideau Club with guests including the Supreme Court

of Canada and Sir Andrew Burns, British High Commissioner to Canada.

Many thanks to all the law firms and participants.

In May, the Canadian Branch co-hosted Prof. Weiler of Harvard University with the Harvard Club of Quebec at McGill University. His well-attended lecture and question period was entitled "Government Subsidies in an International World of Sports and Entertainment" addressing, among other issues, the politics and law of municipal and state competitions for professional sports teams and construction of new stadia.

The Canadian Branch is pleased to launch its new website at www.ila-canada.ca. The website contains past and future events of the branch's activities and many links to law resources both in Canada and abroad. In the near future, the site will operate in two languages, English and French. We invite all ILA members worldwide to explore the site. You are strongly encouraged to send suggestions and comments to ila@fieldbloom.com.

We are encouraging all of our members to attend the 70th Conference of the ILA in New Delhi on April 2 – 7, 2002.

French Branch

La Branche française de l'Association de Droit International a entendu depuis juin 2000 M. le Professeur Jean-Yves de Cara de l'Université de Lyon III sur l'affaire Pinochet le 3 juillet 2000, puis le 6 décembre 2000, M. le Professeur Patrick Juilliard de l'Université de Paris I sur le thème de la révision des instruments de l'OCDE du 21 juin 1976 sur les investissements internationaux et les entreprises multinationales. Pour l'exercice 2001, M. le Professeur William Schabas de l'Université nationale d'Irlande à Galway, Directeur du Centre Irlandais pour les Droits de l'Homme a présenté une communication sur la Convention sur le génocide de 1948 : nouvelles interprétations des tribunaux ad hoc et de la Cour internationale de Justice. Le 18 juin 2001, M. le Professeur Emmanuel Decaux, de l'Université de Paris X, présentera la Charte des Droits Fondamentaux.

Guatemalan Branch

Several members of the Guatemalan Branch are currently involved in the service of their country. One of our members is currently the Minister of Foreign Affairs of Guatemala; another has recently been appointed as Ambassador to the Netherlands. Amongst the judiciary, one member of the Branch was elected Member of the Supreme Court; another has been elected recently by the Congress of the Republic as Member (Magistrate) and President of the High Constitutional Court of Guatemala.

Indian Branch

The Indian Branch held a very successful All India Seminar on 28th April, 2001 on International Commercial Arbitration as well as on Recognition and Enforcement of Interim Orders in International Litigation. The Seminar was inaugurated by the Hon. Dr. Justice A.S. Anand, the Chief Justice of India and President of Indian Branch. The Introductory Address was delivered by the Hon. Mr. Justice Anil Dev Singh, a judge of Delhi High Court and Honorary Secretary of the Indian Branch. Mr. Harish N. Salve, Solicitor General of India, delivered the keynote address. Mr. P.H. Parekh, Organizing Secretary delivered the closing remarks.

The first working session on International Commercial Arbitration was chaired by the Hon. Mr. Justice S.P. Bharucha, Judge, Supreme Court of India. The speakers were Mr. Dipankar Gupta, former Solicitor General of India and Mr. S.K. Dholakia, Senior Advocate. Hon'ble Mr. Justice B.N.

Kirpal, chaired the second working session on recognition and Enforcement of Interim Orders in International Litigation. The two speakers were Dr. Abhishek M. Singhvi, Senior Advocate and Mr. Sameer Parekh, Advocate.

Thereafter a well attended General Body meeting was held. It was presided over by the Hon. Dr. Justice A.S. Anand. The members heard reports by the officers of the Branch on developments within ILA and its bodies as well as on activities on the national level, in particular with respect to the planning for the 70th Biennial conference being held from 2 – 7 April, 2002 in New Delhi. Participants appreciated the work being undertaken by the Organizing Committee in connection with the Biennial conference. The Centres of the Indian Branch also presented their reports. The General Body unanimously decided to make the 70th Biennial conference a very successful occasion and one which will be unique in its history and each member will work wholeheartedly to achieve this objective.

Pacific Islands Branch

Pacific Islands Branch President Julian Moti was awarded the Cross of Solomon Islands (CSI) for his "contribution to the law and development of indigenous business enterprise in Solomon Islands". The award was announced by the Prime

Minister on July 7, 2000 (Solomon Islands independence anniversary day) and presented by the Governor General at the investiture ceremony held at Government House in Honiara on October 30, 2001.

NEW BRANCHES

A new branch has been established in Costa Rica.

The former Czecho-Slovak Branch has been disbanded and a Czech Branch has now been formed.

ILA COMMITTEES' NEWS

New Committees

The new committee established in November 2000 to deal with implementation issues of the new International Criminal Court is to be chaired by Professor Torsten Stein (German Branch), the co-Rapporteurs are to be Professor Flavia Lattanzi (applying to the Italian Branch) and Professor William Schabas (formerly of the Canadian Branch now applying to the Irish Branch).

It has been agreed in principle to establish four other new committees:-

- (1) International Insolvency
- (2) International Intellectual Property Law Relating to Bio-technology
- (3) Trans-boundary Data Transfer and Protection of Privacy
- (4) International Law on Foreign Investments

It is hoped that these committees will formally be established at the New Delhi Conference, where their mandates and the appointment of officers will be announced.

APPOINTMENT OF COMMITTEE OFFICERS

After many years leading the Space Law Committee so successfully, Professor Dr Karl-Heinz Böckstiegel has indicated his wish to resign. The Director of Studies and the Executive Council expressed deep regret at this decision and extended warm thanks to Professor Böckstiegel for his untiring work in this capacity. Professor

Maureen Williams (current Rapporteur) will succeed Professor Böckstiegel and Professor Stephan Hobe will be the new Rapporteur. The presentation of a festchrift to Professor Böckstiegel on the occasion of his retirement from his Chair is noted below.

Professor David Bederman has succeeded Professor Francisco Orrego

Viçuna as co-Rapporteur of the Committee for Diplomatic Protection of Persons & Property.

The Co-Rapporteur of the Committee on Islamic and International Law, Dr. Ameur Zemmali is unable to continue in this position due to a new role and consequent move within the UN. The position of Chair is also still vacant. The Committee will not be reporting for New Delhi but it is hoped that an open meeting may be held so that the viability of such a committee may be assessed.

STUDY GROUPS

The Study Group on the Law of State Responsibility, chaired by Professor Malanczuk, does not intend to submit a report for the time being.

Two new study groups have been approved. They are:

1. Practice and Procedure of International Tribunals.

Co-Chairs: Dr Campbell McLachlan;
Professor Philippe Sands

2. UNCITRAL

Chair: Professor Paul Volken

Contributions from committees:

GENEVA EXPERT WORKSHOP REPORT

The Committee on Arms Control and Disarmament Law held an expert workshop under the title: Small Arms and Light Weapons: Legal Aspects of National and International Regulations. It was organised by the Committee Chairman, Dr. Julie Dahlitz, of the Australian Branch and Rapporteur, Col. G.S. Dr. Erwin Dahinden, of the Swiss Branch. Participants from 35 countries and 10 international NGOs, including the ICRC, attended the Workshop.

The goal of the Workshop was to review existing regulations and processes dealing with the SALW issue and to foreshadow improvements. One method to achieve those ends was to examine precedents from other arms control and disarmament regimes, as well as from regimes where comparable issues arise, such as in the export and transport of dangerous goods and of

endangered species. By those means the Workshop framed recommended future legal measures intended to control the spread of small arms. The Workshop made significant progress toward the overall aim to arrive at the definition of coherent principles, leading to efficient action, so as to give effect to the collective wishes of States in the matters under consideration. It was agreed that this should be achieved not by way of extraneous short-term inducements but because States perceive the proposed measures to be in the best interests of their own populations and of the world community in general, including for the benefit of future generations.

The Workshop had four sessions, each dedicated to a special topic:

Session ONE demonstrated the complexity of the topic with aspects having economic, developmental,

humanitarian, law enforcement and arms control dimensions. Existing measures, such as those contained in the OSCE Document, in the Firearms Protocol and in the Wassenaar Arrangement, were analysed and discussed. Practical measures of implementation were also debated, together with the lessons that can be drawn for the adaptation of national and international legislation.

Session TWO examined other control regimes, such as the Convention on the Physical Protection of Nuclear Material and legislation and practice regarding dangerous goods and endangered species. It was found that some lessons could be drawn from those regimes and could be integrated into the SALW process. For instance: ways of interaction with brokers; with transportation agents; and the way to conduct trade with States that are not parties to the control regime in question. The harmonization of the various national legislations was deemed to be

an important measure for preventing brokers from taking improper advantage of any loopholes.

Session THREE covered norm setting and implementation issues. The crucial role of law enforcement agencies was noted, with the need to implement proactive measures by States instead of only reactive ones. The necessity of information exchanges and mutual legal assistance was also emphasized, as well as the need for an effective early warning system.

Session FOUR was conducted in the form of a working group and was dedicated to the elaboration of model legislation. Participants debated the key aspects to be regulated at the national level, the elements that should be harmonized at the international level and a possible check-list to evaluate national laws and to identify loopholes. Some of the salient conclusions were as follows:-

There is a double problem: first, in most countries there are several laws embracing only one part or another of a given problem area. Secondly, as a direct consequence of the multiplicity of laws and aspects touched upon, there is no unique central agency in charge of the control of SALW. So priority must be given to the evaluation of the existing national laws with respect to SALW-objectives to be reached.

- It is important to direct attention to the practical implementation of agreed measures, be they “legally” or “politically” binding. Legal considerations are extremely important as far as detailed implementation is concerned. Successful implementations under somewhat similar regimes provide useful precedents and models for the field of SALW.

- Since problems related to the accumulation of SALW is so multifaceted, the regulations to be developed have to be comprehensive. For instance, the regulation process has to include bottom up and top down approaches; legally binding as well as politically binding commitments and regional and global measures. The effectiveness of a control regime would be maximized through the regulation of activities rather than regulation of goods, although the latter should also not be neglected,

There were also several topics that were identified for further work:

- First, that there is still a need for a better, more precise and more operational definition of SALW. Similarly, the scope of what is to be accomplished still has to be more fully defined.
- Secondly, some issues were identified as key factors, including the brokering

issue, the marking issue and, generally speaking, all efforts intended to increase the responsibility of States. It was considered that States should have the capacity to ensure effective control, not only over their own holdings but also over all small arms on their territories. That includes measures such as stockpile safety, effective control over their armed forces, over security forces, over police forces, etc, eradication of corruption, prevention of all possible diversions of legitimate consignments, as well as control over purchase and sale of small arms by any type of non-State actors.

States should have the capacity to ensure effective control over all small arms on their territories

The challenge of regulating the international trade in small arms considered at an expert workshop

CONTRIBUTIONS FROM MEMBERS

International Colloquium on Conclusions of 'Project 2001: Legal Framework for the Commercial Use of Outer Space' and presentation of Liber Amicorum on Air and Space Law to Prof. Karl-Heinz Böckstiegel

Conclusions of an extensive five-year research project 'Project 2001: Legal Framework for the Commercial Use of Outer Space' jointly conducted under the directorship of Professor Karl-Heinz Böckstiegel by the Institute of Air and Space Law, Cologne University, and the German Aerospace Center (DLR) were presented and discussed in an

international colloquium on 29-31 May 2001, Cologne, Germany.

Almost 200 participants from 18 different nations attended the event. It featured reports on the recommendations of six international expert Working Groups (WGs), who had examined the status quo and possible further development of space law in view of increased private and commercial space activities in the areas of 'Privatisation', 'Launch and Associated Services', 'Remote Sensing', 'Telecommunication', 'Space Stations', and 'National Space Legislation'. The colloquium also included a panel with special reports from representatives of institutions active in the development of

space law (UNCOPUOS, IISL, UNOOSA, ECSL, and ILA) and a 'Panel on International Law Making and Harmonisation of National Laws' looking into perspectives for the future. Thanks to the 42 renowned and outstanding experts who acted as speakers and chairmen, and the active participation of the other participants, there was an active exchange of information and views during the presentations and discussions. Among the recommendations and proposals of the Working Groups' reports as well as the discussions, the following topics may briefly be highlighted:

- There was a recognised need for national legislatures to take action in order to establish as soon as possible clear national legal frameworks for private space activities, including proper authorisation procedures and insurance requirements in the interest of potential victims – but to do so without suffocating private space activities by overwhelming regulations;
- Harmonisation of national laws in certain areas with a very strong need for harmonisation on the level of European laws, in particular with regard to existing and future national frameworks for licensing space activities, is clearly important. In addition, there was a need for a fully harmonised regime for telecommunication frequencies licensing on the European level;
- The further development of existing intellectual property rights regimes (by different means) with respect to (harmonised) patents in outer space, the protection of remotely sensed data, and inventions made by commercial users of the ISS were all considered important;
- Careful consideration is needed of competition issues and competition laws, weighing the need for harmonisation to achieve a level playing field for private investors and the possible contents of such a harmonised playing field; the need to promote those activities which are less feasible; as well as national particularities of support for space activities;

- The consideration and preservation, where needed, of public services concerns within privatised structures by regulatory or other public services provisos is of significance.

Following the colloquium sessions, the presentation of a very special Liber Amicorum entitled 'Air and Space Law in the 21st Century', dedicated to Professor Karl-Heinz Böckstiegel took place. In August 2001, Prof. Böckstiegel became emeritus at Cologne University after more than a quarter of a century of activity as Director of the Institute of Air and Space Law and head and founder of the Chair for International Business Law. At this remarkable occasion, Prof. Dr. Kröll, Chairman of the Board of DLR, Prof. Dr. Tettinger, Dean of the Faculty of Law at Cologne University, Dr. Benkö, Attorney-at-Law, University of Cologne, Dr. Münz, German Federal of Ministry of Transport, Building and Housing, as well as Dr. Schmidt-Tedd, DLR, highlighted the numerous achievements of Prof. Böckstiegel. During his time as director of the Cologne University Institute of Air and Space Law and holder of the Chair for International Business Law since the year 1975, as well as in his many publications and various other functions and positions he has initiated major developments in air and space law. In view of his exceptional foresight and proactivity, speakers and contributors looked forward to the next twenty-five years with their honoured friend and colleague in order to achieve

further developments and discussions in air and space law as well as in international business law. In the latter field, a second Liber Amicorum was presented to Prof. Böckstiegel a few days later in a separate celebration.

The speakers' written statements and papers at the colloquium and presentation of the Liber Amicorum on Air and Space Law as well as the six extensive Working Group Reports which resulted from the recent research project will be published in a volume of proceedings to be announced separately. To receive information at the time of publication of these proceedings please contact: 2001-com-use-ous@uni-koeln.de.

Controversy surrounding US surveillance flight near China

Sense and Surveillance

**by Alfred P. Rubin
Distinguished Professor of International Law
The Fletcher School of Law & Diplomacy
Tufts University**

There seem to be many who regard the interception and detention by China of an American military surveillance aircraft in Hainan Island as a violation of international law. It is very hard to understand that argument and harder still to understand why it was in the interest of the United States to claim that its surveillance flights over the high seas near the Chinese coast are entirely permissible as a matter of law. First it should be noted that the United

States itself maintains an "Air Defense Identification Zone" (ADIZ) all along its coasts extending seaward as far as 200 miles in some places. Indeed, the fuss a few years ago about Cuba shooting down a "Brothers" aircraft probably a bit more than 12 miles from Cuba's coastline seems more polemic than sense when it is remembered that the United States ADIZ in the Florida Straits extends about 45 miles seaward. But, it might be objected, the United States'

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Alfred P. Rubin, Chair of the Executive
Committee of the American Branch of
the International Law Association

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International Law of Water Resources

Contribution of the International Law Association (1954-2000)

By Slavko Bogdanovic

NEW PUBLICATION

Effectively managing increasingly scarce transboundary water resources in many parts of the world may become one of the most critical challenges facing the international community in the 21st century.

Global warming is expected to exacerbate the existing problems of water scarcity in Africa, the Middle East and Central Asia, and threatens to affect even relatively water-secure regions and countries. Global freshwater resources are shrinking at an increasing pace. Forty percent of the world's population depends on transboundary water resources, a situation that raises serious concerns at the international level.

Unresolved issues of water resource use and allocation may create the potential for serious interstate conflicts and undermine regional stability. It is imperative that existing and potential disputes over access to shared water resources are resolved through peaceful means within the framework of legal principles and norms provided by international law. While not yet in force, the 1997 UN Convention on the Law of the Non-Navigational Uses of International Watercourses codifies a number of rules of customary law that apply to international watercourses. However, even in the absence of a universally ratified instrument there is a body of international rules widely acknowledged as an authoritative statement of international law governing international watercourses – the International Law Association (ILA) rules on the law of international water resources.

The present book, which contains the complete collection of the ILA rules on international water resources, together with comments, explanatory notes and other supporting materials, will be of significant academic and practical value to the range of experts working in this field. There is no doubt that legal scholars and researchers will find this book very helpful in discovering the conceptual underpinings and the evolution of international water law. For the practitioners, this collection will serve as a useful reference tool containing a wealth of 'black letter' normative material.

Kluwer Law International, The Hague
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Vessel-Source Pollution and Coastal State Jurisdiction

The Work of the ILA Committee on Coastal State Jurisdiction Relating to Marine Pollution (1991-2000)

edited by Erik Franckx

NEW PUBLICATION

After seven years of work, the Committee on Coastal State Jurisdiction Relating to Marine Pollution of the International Law Association concluded its work by submitting its final report for discussion at the occasion of the London conference, July 25-29, 2000. This book brings together the different official reports submitted by this Committee at the 1996 Helsinki, 1998 Taipei, and 2000 London conferences, as well as some preparatory documents necessary for the correct understanding of these just-mentioned reports.

The Committee concentrated its work on vessel-source pollution and made it a central objective of its work to produce results which could facilitate the interpretation of the 1982 United Nations Convention on the Law of the Sea. During its work, it became moreover apparent that an accurate assessment of state practice proved more than once problematic either because of problems relating to interpretation or simply because the basic information was missing. For that reason, the present book contains a special section where different members of the Committee prepared detailed national reports, written according to a strict outline worked out for this purpose, in order to shed additional light on the specific issues dealt with by the Committee. Together with the conclusions arrived at by the Committee these additional national reports represent a valuable statement of the present-day *status inris questionis*.

Contents and Contributors

Foreword; K. Hakapää. List of Contributors. List of Abbreviations. Introduction; E. Franckx. I. First Report (May 1996) – Helsinki Conference (1996). II. Second Report – Taipei Conference (1998). III. Final Report – London Conference (2000). IV. Australia; M. White. V. Belgium; T. De Bondt, E. Franckx. VI. Chile; M.T. Infante. VII. China; H. Yu. VIII. Denmark; K. Bangert. XI. Finland; K. Hakapää. X. France; P. Dailhier. XI. Germany; R. Lagoni. XII. Greece; A. Strati. XIII. Italy; A. Merialdi. XIV. The Netherlands; E.J. Molemaar, H.M. Dottinga. XV. Sweden; S. Mahmoudi. XVI. Taiwan; L. Kuen-chen Fu. XVII. The United Kingdom; D. Anderson. XVIII. The United States; J.E. Noyes.

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“If all sovereigns are equal, it is hard to see how China cannot do what the US has been doing”

ADIZ is openly proclaimed. Cuba's and, indeed, China's is not. The response is clear. Legally, the United States' ADIZ rests not on any open declarations, but on permission given as a "condition of entry" into its territorial airspace, and "self defense.". These rationales are clearly not applicable in the Hainan case. The United States argues that it might be sufficiently frightened by foreign aircraft, acknowledgedly military or not, flying off its coasts that it might shoot them down, and that the areas it has claimed as its ADIZ merely identifies areas in which all aircraft not reporting in to its air traffic system will be regarded as potentially hostile. If all

sovereigns are equal, it is hard to see how China cannot do what the United States has been doing for at least forty-five years (that I know of). And since the United States' rationale for intercepting foreign military aircraft in that area rests not upon the publication of a protected area but on the omnipresent law of self-defense, it is open to all to do what it has been doing. The United States publishing the areas in which it claims to have a special interest may place it on a higher moral plane, but it is hard to understand how it affects matters legally. If all that is necessary for a moral claim to be made a legal claim is publicity, then the United States can expect a rash of ADIZ claims from friends and potential foes alike in the near future.

Second, it is very hard to understand why the United States has been having difficulty negotiating a reasonable settlement that would involve some limitation of its asserted "right" to fly military aircraft surveillance flights freely over the high seas. As a matter of international law in a world in which all "sovereigns" are equal before the law, whatever the United States claims can be claimed by China. Is it not expected that China will want to fly its own surveillance missions off the coasts of Japan, South Korea, The Philippines, Russia and perhaps even the Aleutian Islands or other parts of the United States? If military flights are truly free over the high seas, including exclusive

eco-nomic zones, as the United States apparently asserted, then not only are its own ADIZ's illegal, but it will be very difficult for it or its allies to claim any right to limit Chinese surveillance flights near its or its allies' territory.

Surely, some other source of information regarding Chinese military capabilities, perhaps gained from satellites, would be available to the United States. If so, to agree to curtail surveillance flights makes much more sense than to assert the legality of surveillance flights that China will be tempted to imitate in areas of concern to it and of anxiety to the United States and its allies.

Assertions have been made also about the alleged unreasonableness, hence illegality, of China detaining the crew for eleven days. Leaving aside the question of whether all that is "unreasonable" is necessarily also "illegal," there is a serious question as to whether eleven days detention in these circumstances was "unreasonable" at all. If it took the United States three days to "debrief" the crew, and it knew who were the aircraft crew and who the technicians, what gear was in the aircraft and what the capabilities were of both the aircraft and its surveillance gear, and it had no language problem either with technical jargon or with simple grammar, eleven days for China does not seem so unreasonable. In a world of sovereign equals, it is necessary to ask whether the United

States would have detained a Chinese crew for eleven days in similar circumstances.

All this leads to a question about negotiation. Now that the release of the aircraft has been achieved, and the United States has not yielded to a Chinese demand for an “apology” for the incident nor have the Chinese yielded to the United States demand for an immediate and unconditional return of the aircraft, it becomes clear that the initial posturing on both sides was a play for the sympathy of internal constituencies whose ignorance was presumed. Since it is likely that the leadership on both sides were well aware of the ADIZ situation and Chinese ambitions, this gambit, now revealed as empty, seems insulting. But constituencies have often been insulted by their own governments.

Finally, it is possible to argue that great powers have great responsibilities, thus

great authority, and that sovereigns are not as “equal” internationally as they might seem. The implication is that the United States has more authority than China in the “real” world. Aside from the major attack on the very notion of sovereign equality and “law” that seems to be implicit in this argument, it should be remembered that the argument is not new. It has been urged by just about every major power in the history of the world, from the days of ancient Athens and Rome through the days of the British dominance in the nineteenth century. It has always failed. Perhaps today is different; perhaps the United States has no need of allies who respect it, or that force is the bottom line in international affairs, not morality, politics, economics, and authority under some sense of order. Perhaps. But I am not sure that the United States would survive long in such a world, or that we international lawyers, American, NATO members or not, would want such a world to be our gift to the next generation.

Independent judicial commission established in Bosnia - Herzegovina

and considering in particular Article II.1.(d) of the last said Agreement, according to the terms of which the High Representative shall "facilitate, as the High Representative judges necessary, the resolution of any difficulties arising in connection with civilian implementation"; Recalling Article II, 8 of the last said Agreement according to the terms of which the High Representative may, in addition to the Civilian Commissions referred to specifically in Article II thereof, establish other civilian commissions to facilitate the execution of his mandate; Recalling further paragraph XI.2 of the Conclusions of the Peace Implementation Conference held in Bonn on 9 and 10 December 1997, in which the Peace Implementation Council welcomed the

Bosnia-Herzegovina:

HIGH REPRESENTATIVE'S DECISION (FROM SARAJEVO MARCH 2001) Decision providing the Independent Judicial Commission (IJC) with a comprehensive mandate

In the exercise of the powers vested in me by Article V of Annex 10 (Agreement on Civilian Implementation of the Peace Settlement) to the General Framework Agreement for Peace in Bosnia and

Herzegovina, according to which the High Representative is the final authority in theatre regarding interpretation of the said Agreement on the Civilian Implementation of the Peace Settlement;

It is for the High Representative to further develop a comprehensive judicial reform strategic plan

High Representative's intention to use his final authority in theatre regarding interpretation of the Agreement on the Civilian implementation of the Peace Settlement in order to facilitate the resolution of any difficulties as aforesaid "by making binding decisions, as he judges necessary" on certain issues including (under sub-paragraph (c) thereof) measures to ensure the Peace Agreement throughout Bosnia and Herzegovina and its Entities;

Mindful of paragraph 1.2.a. of the Conclusions of the said Bonn Conference which recognised "that an impartial and independent judiciary" was "essential to the rule of law and reconciliation within Bosnia and Herzegovina", that the

judicial appointment process must be based on merit, that a judicial training facility must be established, and that the monitoring of the judicial system was an essential element of the aforesaid process;

Guided by paragraph II.2 of the Annex to the Declaration of the Peace Implementation Council (Madrid, 16 December 1998) which "emphasize[d] the importance of intensified judicial reform efforts, co-ordinated by the High Representative, to support the efforts of the authorities in BiH [Bosnia and Herzegovina]" and "urge[d] the High Representative to further develop a comprehensive judicial reform strategic plan, identifying short and longer-term priorities, in consultation with the authorities, the Council of Europe, OSCE, UNMIBH and other organizations";

Considering the Declaration of the Peace Implementation Council (Brussels, 23/24 May 2000) calling for a truly independent and impartial judiciary to ensure the Rule of Law in all criminal, civil and commercial matters and noting "the continued need for an international oversight institution for judicial reform pending OHR's solution of the Judicial Reform programme" and that the Council "supports the continuing efforts of the High Representative to lead the Judicial Reform effort and co-ordinate the efforts of the international community on the issue";

Taking into account the Communiqué of the Steering Board of the Peace Implementation Council (Sarajevo, 13 July 2000) where the "Steering Board and the High Representative agreed that the issue of judicial reform and the promotion of the rule of law needed a sustained effort by the International Community. To this end, the High Representative will establish the Independent Judicial Commission which will be tasked with the supervision of the entity and cantonal commissions/council responsible for selecting and disciplining judges and prosecutors and to continue the monitoring and assessment of courts and prosecutor's offices in line with the closing mandate of JSAP";

Having considered the foregoing matters, I hereby issue the following

DECISION On the Establishment of the Independent Judicial Commission

1. This Decision establishes and vests the Independent Judicial Commission with responsibilities and authorities in line with its mandate.

2. The mandate of the Independent Judicial Commission shall embrace matters regarding promotion of the rule of law and judicial reform. The responsibilities of the Independent Judicial Commission shall be in line with this mandate and include:

- to provide assistance and evaluations to the judicial, prosecutorial and governmental institutions, and to the

professional legal organizations, including ensuring that the judicial and prosecutorial commissions enforce high standards of ethics and professionalism;

- to guide and coordinate reforms affecting the judiciary, the prosecutor's office, professional associations, and related structures, procedures or institutions, including assisting in or facilitating the development of new legislation;

- to advise, assist, and oversee domestic judicial training bodies and other related institutions;

- to provide advice and information to domestic and international bodies, development agencies, and non

- governmental agencies on judicial reform initiatives, including issuing reports documenting or analyzing the work of the judiciary, the prosecutor's office, the bar association, ministries of justices, and the criminal and civil justice systems; and to advise the High Representative on a regular basis on matters concerning the above mandate.

3. In carrying out of its mandate and responsibilities, the Independent Judicial Commission shall have the following authorities:

- to initiate contacts with international organizations and domestic bodies, agencies, institutions, or organizations to promote rule of law projects such as professional training, institution and capacity building, and related projects;

- to ensure that the judicial and prosecutorial commissions and councils comply with their legal obligations. To that end, the IJC will have the right to intervene in the proceedings of the commissions and councils and, alternatively, to request the suspension of the process until the High Representative takes a final decision on the matter; and

- to propose to the High Representative the exercise of his power under the Dayton Peace Agreement or the terms of its implementation;

4. All judges, prosecutors, officials in the Ministries of Interior, Finance and Justice, and members of judicial/prosecutorial commissions and councils have an obligation to disclose information needed for the IJC to carry out its responsibilities under article 2 of this decision.

5. The Independent Judicial Commission shall have a Director, who shall oversee its operations and report to the High Representative. The Director shall be responsible for making proposals to the High Representative as to the Commission's budget and staffing, preparing a six monthly action plan for its work, and for submitting to him periodic reports on the Commission's activities.

6. The High Representative reserves the right to provide additional responsibilities to the Independent Judicial Commission, as may be required to carry out its mandate.

7. The mandate of the Independent

“The mandate of the Independent judicial commission shall embrace promotion of the rule of law and judicial reform”

Judicial Commission shall expire on 31 December 2002. The High Representative retains the authority to decide on the principles and timeframes, including the authority and number of remaining international staff, for a possible continuation of the Independent Judicial Commission.

8. This Decision shall enter into force on the day of its signature and shall be published without delay in the Official Gazettes of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina and its Cantons, and of Republika Srpska.

Sarajevo, 14 March 2001

Wolfgang Petritsch

High Representative

FROM THE EXECUTIVE COUNCIL

The Executive Council have met twice since the last Newsletter, on 19 May and 10 November 2001. We are pleased to report on their deliberations below.

ILA Finances

The Annual Accounts for 2000 were presented in May and for a second year, a positive balance was recorded. This had been achieved through a combination of the sale of antiquarian books and the administration of the ILA Library project.

Branch contributions during 2001 are improving on those made during 2000, but there are still a number of branches who, for several years, have made no or only partial payments.

It is anticipated that there will be a positive balance at the end of 2001.

The proposed budget presented for 2002 shows a probable deficit as costs for the production of the pre-conference report as well as a proportion of the distribution costs for the final report for New Delhi are included.

SIDA/ILA Project

This project was first suggested by Ambassador Hans Corell, Legal Adviser to the Swedish Ministry of Foreign Affairs and Chair of the Swedish Branch of the ILA. It was intended to offer some practical assistance to newly independent states and some third world states with the legal and technical questions associated with the conduct of international relations under the framework of the United Nations Decade of International Law.

The project sought to identify and supply a small core of suitable legal works via the Ministry of Foreign Affairs or the Legal Representative of a country to UN. The Swedish International Development Fund provided a subsidy to enable the ILA to collect and donate these materials. These were selected by Professor James Crawford, then Director of Studies and the initial work was undertaken by Barbara Osorio and Edward Helgeson. In total, 35 sets of books were sent to countries who expressed in interest and the project was completed in December 2000.

Adoption of Resolutions at Conferences

At the EC meeting in November 2000, an ad-hoc committee was established to consider how resolutions should be adopted at conferences in the future. This committee reported to the EC in November.

The main points were that only substantive resolutions should be adopted at the final session of the conference and that procedural recommendations be presented to the EC.

The importance of the substantive resolutions in the ILA's relationship to other organisations was pointed out. It was agreed that such resolutions should be communicated as widely as possible.

Future of the ILA

An interim report was presented by the ad hoc working group to the EC in May and then circulated to all branches.

In November, the Chairman of the working group, Professor E-U Petersmann reported that there had been a very disappointing response to this report with only five branches making any comment. It was agreed that the Council should make certain recommendations to the working group who will consider matters further and report back again in November 2002. Branches and individual members are encouraged to send comments, suggestions and topics for discussion by the working group to Ms Juliet Fussell at ILA HQ: info@ila-hq.org.

Amongst the decisions reached were that an Advisory Committee on Research is to be established as soon as possible to assist the Director of Studies in his ever-increasing workload.

A fundraising committee is also to be established by the Treasurer to explore possible ways in which the ILA can fund an expansion in its activities and support for international committees in future.

The German Branch will host the biennial conference in 2004. This will take place in Berlin from 16-21 August.

The report presented to the EC in November 2001 is available on the members' page of the ILA website.

Future Conferences

The Executive Council accepted an invitation extended by Mr Harry Bloomfield on behalf of the Canadian Branch for 2006. Dates and location will be announced.

A regional conference is planned in the Caribbean to be hosted by the University of the West Indies from 26-29 March 2003. Full details are to be available at the 2002 Conference in New Delhi.

Conferences in Germany, Canada and the West Indies

Reports from ILA Observers at other organisations

Report on Fifth Meeting of Governmental Experts from Landlocked and Transit Developing Countries and Representatives of Donor countries and Developmental Institutions at United Nations Headquarters
by Dr Martin Glassner

First, the Group of Land-locked Developing Countries, after a dozen or

*The break-up
of the Soviet
Union and the
end of the Cold
War have
loosened up
international
relations
dramatically,*

so years of torpor, has come alive under the leadership first of Mongolia and now of Laos, and is now generating serious interest in the subject both in UNCTAD and in the UN General Assembly. This has coincided with the astounding growth in both world trade and trade facilitation efforts, including economic liberalization worldwide and the application of new technologies to trade, making access to and from the sea for land-locked States both more necessary and more feasible.

Second, sub-regional organizations, especially in Africa and Asia, have moved transit for land-locked States higher up on their priority lists and, with considerable help from the United Nations regional commissions, the World Bank, the European Union and other intergovernmental organizations, have been developing numerous treaties and other international agreements designed to expedite transit both through construction, rehabilitation and maintenance of infrastructure (railways, ports, communications, etc), and simplified and harmonized customs procedures and documentation. Perhaps at least as important, sub-regional organizations are beginning to cooperate with one another and coordinate their activities, at least in this field. All of this activity is seen most dramatically, perhaps, in the various efforts to link together ever more strongly Europe with Central Asia through the Caucasus region.

Third, private enterprise has become a major factor in constructing and administering transit transport facilities as governments gradually decentralize, privatise and liberalize, and as "globalisation" proceeds apace. Moribund railways in Africa, for example, have been revived and Central Asia is experiencing the greatest boom in railway construction in generations with the active participation of private corporations, now often seen

as partners rather than as enemies.

How can all this be explained? I have neither conducted nor seen anywhere a careful analysis of this new situation, but my impression is that it is probably due to three principal factors, to wit:

1) The break-up of the Soviet Union and the end of the Cold War have loosened up international relations dramatically, making feasible many activities which had been simply forbidden for at least two generations.

2) The advent of democratic government in South Africa has had similar effects throughout southern and even eastern Africa, the area of greatest economic and possibly political potential in the continent - and perhaps far beyond Africa.

3) The accumulated experience in political, legal, administrative and economic matters in the generation since decolonisation has demonstrated clearly the advantages of cooperation over confrontation. Although we all - developed and developing countries, land-locked and transit countries, on every continent - still have very far to go, the progress evidenced at this meeting in New York is heartening to this observer who, it must be admitted, was becoming jaded and even just a trifle cynical after working on the subject of land-lockedness since 1962.

Two developments in particular symbolize for me the significant improvement in the climate surrounding transit transport in the developing world:

First, China, Mongolia and the Russian Federation are actively pursuing negotiations for a transit traffic framework agreement among themselves (which may be opened to other countries as well) to facilitate the movement of goods throughout Northeast Asia. This is the first time in history that these three countries have ever formally agreed on anything! As a consultant to UNCTAD at the inception of this project, I was in the area twice in 1997 and strongly endorsed the concept. It is gratifying to see it moving forward, even though formal entry into force of such an agreement is likely several years away.

Second, this year's meeting formally agreed on a proposal advanced at the last one, in 1999, to hold a meeting on the subject at the ministerial level in 2003 and accepted the offer of Kazakhstan to host the meeting. This is likely to be endorsed by the General Assembly at its forthcoming session. The question of access to and from the sea for land-locked States will thus achieve a level of recognition by the international community not seen since early in the Third United Nations Conference on the Law of the Sea, in 1976. We may hope that the ministerial meeting will produce important agreements that will lead to greatly

improved transit transport around the world.

Obituaries

Mr Yoshinori, former Treasurer of the Japan Branch, passed away on 5 December 2000 at the age of 92. He was President of the Nagoya and Hiroshima High Courts and was also Vice Secretary-General of the Supreme Court of Japan. He served our Branch as Treasurer for some twenty years, making untiring efforts for maintaining the sound financial foundation of the Branch. We are deeply grateful for his contribution.

Professor Shigejiro Tabata, Professor Emeritus of Kyoto University and former President of the Japan Branch (1995-2000) passed away on 8 March 2001. Professor Tabata was Japan's leading authority of international law, and taught at Kyoto University from 1936 to 1974, publishing numerous books and articles during his academic career. He was President of the Japanese Association of International Law between 1970 and 1981. He also served as President of several academic associations including the Japanese Association of World Law, the Japanese Association of Peace Studies and the Kyoto Human Rights Research Institute. Professor Tabata was a member of the Japan Academy and was designated as "a Distinguished Person of Cultural Merits" in 1997. He was also a member of the Permanent Court of Arbitration.

Dr. Julie Dahlitz, Chairman of the Committee on Arms Control and

First, China, Mongolia and the Russian Federation are actively pursuing negotiations for a transit traffic framework agreement

Disarmament Law since its establishment in 1990, died in London on 4th December 2001.

Born in Hungary, Julie Dahlitz emigrated to Australia after the Second World War and started a legal career which included several years' service in the United Nations Headquarters. In recognition of her extraordinary expertise in arms control matters she was invited to chair the new ILA Committee on Arms Control and Disarmament Law which due to her unfailing initiative and highly professional diligence was influential in both assessing and supporting legal developments in the field ever since. This work has found its expression in the Committee's Reports to the ILA Conferences held in Cairo, Buenos Aires, Helsinki, Taipei and London, but also in various workshops which had been organised or substantially supported by Dr.

Dahlitz in New York and Geneva as well as in Moscow, London and Budapest. She was widely published on various aspects of arms control and disarmament and has edited, under the auspices of the United Nations, a series of influential collections of articles on the matter which were contributed upon her initiative by leading international experts.

Her courage, discipline and commitment, as an international lawyer, has impressed and greatly influenced those who had the privilege of closely working with her. Julie Dahlitz very distinctly contributed to understand and advance the process of arms control and disarmament as an important part of public international law today.

Dieter Fleck

whose branches have made their HQ contributions for the last year should have received a password allowing access to this section. Any member who has not received the password should contact the Secretary.

Notes to Contributors

Contributions from individual members and Branches are greatly welcomed. They may be submitted in either of the two official languages of the Association: French and English. The next issue is planned for June 2002 and the deadline for contributions to that

issue is 15 May 2002. Any contributions should be sent to ILA Headquarters|: info@ila-hq.org or directly to the Editor: cjgqc@aol.com

To assist us maintain our database and to allow the delivery of this Newsletter we would be very grateful if you would inform us of any changes to your address and other details. ***In particular, we would like to know when any members acquire email addresses as more and more items are circulated electronically.*** Please use the form printed below and return it to us by post or fax (+ 44 20 7323 3580) or email your details to us on: info@ila-hq.org

From Headquarters

WEBSITE

The ILA website www.ila-hq.org is attracting an average of 1800 hits per day now! We are receiving an increasing number of requests for membership details and hope to see our membership numbers increase as a result. Several branches have a hyperlink from this site to their own and we hope others will do so too. Please let us know at HQ if you would like us to arrange this.

One of the benefits of membership of the ILA is that FORUM may be accessed from the website. All members for whom we hold email addresses and

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