

ILA NEWSLETTER

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C o n t e n t s

FROM THE EDITOR: Professor Christopher Greenwood

As this newsletter was going to press we received the terrible news of the bombings in Madrid. I am sure that all members of the ILA join me in expressing our sympathy to our Spanish colleagues.

News from the EXECUTIVE COUNCIL

A meeting of the Executive Council was held on Saturday 15 November in London.

Tributes were paid to two former members of the ILA: Ambassador Geraldo Eulalio do Nascimento e Silva, former President of the Brazilian Branch by the Chairman, Lord Slynn, and by a representative of the Brazilian Embassy in London, Minister Facchini; and Professor Joan M Fitzpatrick of the American Branch by Lord Slynn and Professor Cynthia Lichtenstein on behalf of the American Branch.

In addition to these two Members, Mrs Clarissa Lada had also passed away. In 1980, Mrs Lada had come to the assistance of Mr John Churchill, who was then running the secretariat alone. She had stayed for many years, and her voluntary contribution to the ILA was remembered with gratitude.

Recent awards and appointments were announced by the Chairman: Professor A H A Soons had been elected an Honorary Member of the Netherlands Branch. Professor Maureen Williams had been awarded the 2003 National Prize from the Ministry of Education, Science and Technology of the Argentine Republic for her contribution to the development of international law, international relations and political science. Professor Juliane Kokott had been appointed Advocate General at the European Court of Justice. Lindsay Burn, well known to ILA members and others as a regular reporter at ILA Conferences had been appointed a judge.

The Treasurer, Mr Willem Hamel presented the various financial reports to the EC.

He drew attention to the records of certain branches which were regularly in arrears and stressed the importance of receiving the budgeted branch contributions in good time. He pointed out that the Berlin Report is unlikely to be circulated

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before the end of 2004. He highlighted the fact that unfortunately there was no longer any sponsorship for the Newsletter and that consideration should be given to the viability of sending any future editions or other items by post to individual members of the ILA.

The Treasurer announced that in future, new arrangements would apply to the provision of pre-conference reports. (Full details appear under **Biennial Conferences**). The Director of Studies presented his report. The appointment of several new Committee Officers was made. *See under: **Committee News***

He reported that 19 of the existing committees are expected to report at Berlin with four further committees (the most recently established ones) holding workshops. Final Reports are expected from **Arms Control and Disarmament Law, Water Resources Law and Accountability of International Organisations**.

Professor Soons reported that the UN International Law Commission had held a meeting in Geneva in July which he attended together with Sir Franklin Berman (British Branch, Chair of the Committee on Accountability of International Organisations) and Juliane Kokott (German Branch, Co-Rapporteur of the Committee on Diplomatic Protection of Persons and Property).

At this meeting, the ILA had been invited to suggest suitable topics for consideration by the ILC to the Commission. Professor Soons intends to circulate all Committee Officers for suggestions as requested before the next ILC meeting in Spring 2004. He intends to attend the next meeting in Geneva in July 2004 with the new DoS and a number of Committee Officers. He expressed his gratitude to Professor Yamada (Japan Branch) who had been instrumental in arranging the invitation to the ILA.

Forum: The Director of Studies reported that issues 2 and 3 of Volume 5 have now been published and are available on the ILA Website. Members of ILA are informed individually of each new issue's availability by email circulation.

The Editor, Professor Katherine Kessedjian, announced that issue 4 of Volume 5 which will feature international law post Iraq and is already available on the Brill website. Volumes 6 & 7 are under way with subject matters selected which include: challenges to international law making; critical appraisal of law and economics; the making of an international community and State immunities (subject to editorial board decision).

APPOINTMENT OF NEW DIRECTOR OF STUDIES

Professor Christine Chinkin, (British Branch) was unanimously appointed as successor to Professor Soons. Professor Chinkin joined the meeting where she was warmly greeted.

The Chairman acknowledged the enormous contribution Professor Soons had made to the ILA during his tenure.

Professor Soons has agreed to stay on until after the Berlin Conference and will hand over at a date to be announced. Professor Chinkin will work with Professor Soons on ILA matters in the interim.

REVISED CONSTITUTION

The Secretary General presented his suggested amendments to the Constitution which would be made at the Berlin Conference.

It was agreed that the recommendation of the ad hoc committee on the future of the ILA had been accepted and that it was correct therefore to proceed accordingly to revise the aims and objectives clause 3.1 to read: "The objectives of the Association are the study, clarification and development of international law, both public and private, and the furtherance of international under-

standing and respect for international law"

It was also agreed that the terms of office of the Officers should be limited to a maximum of three full four-year terms and that this ruling should apply from the date of the adoption of the revised Constitution in Berlin.

Austrian Branch

On 12 November 2003, on the occasion of the General Assembly of the Austrian Branch a discussion was held on the issue of accountability of international organisations. Professor Reinisch, member of the ILA Committee on the Accountability of International Organisations, presented the recent report of this Committee in a summarized form. In the course of the following discussion it was raised whether the objective of this topic was to limit, and to put under surveillance, the activities of international organisations and whether a regime of accountability was a surrogate for the inability of international organisations to become party to most of the universal normative conventions. Although the importance of the discussion of this topic was emphasised, general doubts were nevertheless raised with regard to the broad scope of this topic, its simultaneous dealing with secondary and primary norms as well as the use of certain undefined key terms. A view according to which international organisations, or at least some of them like the United Nations, were not bound by international law was generally rejected. States cannot escape the obligations under international law by conferring certain powers to international organisations so that the relevant activities would be imputable to the organisations instead of the States.

Chinese (Taiwan) Branch

The following item is from a press release dated 24 October 2003:

ILA Chinese (Taiwan) Branch: A Big Success of World Trade Law Association's First Asian Pacific Regional Conference held in Taipei, Taiwan ROC

Sponsored by The Chinese Society of International Law (concurrently the Chinese (Taiwan) Branch of the

International Law Association), the First Asian Pacific Regional Conference of the World Trade Law Association (WTLA) held in Taipei, Taiwan from October 17 to 19 has been a tremendous success. The Conference has been kindly cosponsored by Clyde & Co., Taipei Bar Association, National Taiwan University law school as well as Institute of International Relations, National Chengchi University.

... The Conference has attracted a heavy crowd of some 288 attendees, comprising of scholars, practitioners, diplomatic officials ...

A unique Welcome Reception has been held at the ground floor of Taipei City Hall, with the opening remarks of Dr. Ying-jeou Ma, President of the Chinese (Taiwan) Branch of the ILA and keynote speech of Mr. Vincent C. Siew, former Primer of Taiwan. Opening Ceremony has been announced by the Honorable Lord Slynn of Hadley, President of the World Trade Law Association, Dr. Ying-jeou Ma, and keynote address by Honorable Douglas H. Paal, Director of the Taipei Office of American Institute in Taiwan, followed by luncheon keynote speech by Mr. Ruey-long Chen, Vice Minister of Economic Affairs, while the Conference was closed by the kind addresses of Mr. Francis K. H. Liang, Deputy Director General, Taiwan Board of Foreign Trade, Dr. Ying-jeou MA, and Mr. Philip Ruttley, Secretary General of the WTLA.

During the sessions of the 2-day conference chaired by Professor Chia-jiu Cheng, former Dean of Soochow law school, Professor Young-Gil Park, President of Korean Branch of the ILA, and Professor Andy Y. Sun, Executive

Director of Asia Pacific Legal Institute, Washington D.C. respectively, the topics of Bilateral Trade Relations and the WTO Legal System, The WTO System and Dispute Settlement and Trade-related Aspects of Intellectual Property Protection – The aftermath of Cancún Ministerial Conference have undergone in-depth discussions. Presentations have been made by Mr. Marc Weisberger, Clyde & Co, Dean Changfa Lo, National Taiwan University, Professor Hui-wan Cho, National Chung-shing University, Mr. Philippe Ruttley, Professor James J. Patton, University of Maryland law school, Dr. Arthur Appleton, White & Case (Geneva) and Mr. Mark A. Cohen, Attorney Advisor to United States Patent & Trademark Office, along with the discussants of Mr. Philip Ong, Mission of Taiwan KPM to the WTO, Mr. Leo Palma, Senior Counsel to Advisory Centre for WTO Law, Mr. Eric White, WTO Coordinator of The Commission Legal Service (European Union), Professor Connie G. H. Yang, National Chengchi University, Mr. Jack W. Lu, Deputy Director General of Taiwan Intellectual Property Office, Professor Yin-chin Chen, Chung Yuan Christian University and so on.

The Conference has attracted a heavy crowd of some 288 attendees, comprising of scholars, practitioners, diplomatic officials, industry, domestic and foreign, civil servants from various braches of governments et al., including members of British Council, American Chamber of Commerce, bar associations, After the Conference, excursions to the gorgeous landscape of Toroko Gorge and the charitable Tzu Chi Foundation have left the participants with utmost impression. Thereafter, with warmest reception Lord Slynn and Professor Patton have lectured at National Chengchi University law school while Dr. Appleton has enjoyed a wonderful talk at National Taiwan University law school. In addition, before departure Messrs. Appleton, Patton and White have cordially paid a visit to Chien Yeh Law Office, Taiwan KPMG's affiliate, among other activities.

Taking this opportunity, the ILA Chinese (Taiwan) Branch would love to thank everyone for taking part in this Conference and make it a so successful event; in particular, to all cosponsors, paper presenters and discussants.

Hellenic Branch

The year 2003 was a particularly interesting one for the Hellenic Branch, which is now run by a (mostly female) younger generation of international scholars!

Early on during the Iraq crisis, on 18 April 2003, we organised in Athens, in association with the Hellenic Society of International Law and International Relations, a conference on *The Iraq crisis and International Law*. Under the general title: *Ius ad bellum*, Professor Linos-Alexandre Sicilianos presented the relevant UN Security Council resolutions and Professor Antonis Bredimas discussed the legality issues of the Iraq intervention. In the second part under the general title: *Ius in bello*, Professor Photini Pazartzis talked about the application of international humanitarian law in the Iraqi conflict; Professor Angelos Yokaris presented the restrictions imposed by international law in the conduct of hostilities and Professor Stelios Perrakis debated issues on the application of the law of occupation. Professor A.A. Fatouros presented, in his usual elegant manner, the conclusions of the very well-attended and interesting debate that followed. The papers presented in this Conference, along with the interventions made by other participants, are currently being published (in Greek) with care of the Hellenic Branch.

On 18-19 July 2003 we organised in Rhodes, in association with the Aegean Institute on the Law of the Sea and Maritime Law, an international conference under the title: *Time before and time after. Unresolved issues and new challenges to the Law of the Sea*, the complete programme of which may

be found in the ILA website. The Conference brought together judges from the International Tribunal on the Law of the Sea, academics and Law of the Sea experts, such as Judge Budislav Vukas, Vice-President, ITLOS and Judge Alexander Yankov, ITLOS; Professor R.R. Churchill, University of Cardiff; Professor Tullio Scovazzi, University of Milano-Bicocca; Professor John Norton Moore, University of Virginia; Professor A.A. Fatouros, University of Athens; Professor Haritini Dipla, University of Athens; as well as Dr. Anastasia Strati, MFA; Dr. Maria Gavouneli, University of Athens; Dr. Angelos Syrigos, Panteion University; Dr. Petros Liakouras, University of Pireaus. The participants were able to discuss in detail new aspects of old issues as well as contemporary developments in the Law of the Sea. It was such a success that it was suggested we make it an annual event, that could provide the forum for an in-depth debate of current problems. The Hellenic Branch would be glad to host such an event, if not annually, at least every second year, perhaps in cooperation with other learned societies. The papers presented in this Conference will also be published in English, so that they may be made available to all ILA members. The Hellenic Branch is happy to have suggested a number of our members for participation in the international committees working towards the Berlin Conference. We have also taken the initiative to organise working groups on the domestic level, which may eventually present the outcome of their work to the international committees. Thus we have established a Working Group on Human Rights, which shall endeavour to dissect the *Right to Education*. The first results of this research project will be presented in a brain-storming conference in Athens, with separate papers being published in Greek legal journals. The conclusions of this work will be presented to the Committee on Human Rights Law and Practice in due course.

We are working towards our very own website, which could be accessed via

the ILA website as well. In this way we hope to make information on our members and our research projects available to the wider public in a language more easily accessible than Greek. **Watch this space! There's gonna be more!**

One final word: The Hellenic Branch grieves on the passing on 25 November 2003 of Nicolas Valticos, Secretary-General adjunct of the International Labour Organisation, Professor at the University of Geneva, Judge *ad hoc* at the International Court of Justice, Judge at the European Court of Human Rights, President of the Curatorium of the Hague Academy of International Law, Secretary-General of the *Institut de droit international*. He was the doyen of Greek international lawyers, a true gentleman of the old kind, a brave man, a lively spirit, a ferocious intellect, a warm heart, a great Greek in the truest meaning of the word. His memory will be honoured on 16 January 2004 in a ceremony jointly organised by the international law departments of the Greek Universities, the Hellenic Society of International Law and International Relations and the Hellenic Branch of the International Law Association. He will be greatly missed by his peers and the many younger colleagues he supported and encouraged in his long and fruitful life.

Submitted by: Photini Pazartzis, Anastasia Strati, Maria Gavouneli

Portuguese Branch

An article entitled: Law of the New International Order has been received from the Vice President Portuguese Branch and appears on pages: 7-10.

Serbia & Montenegro Branch

The Yugoslavia Branch had informed HQ that they wish to be known as the Serbia & Montenegro Branch.

The following appointments were agreed at the Executive Council meeting on 15 November 2003:

New co-rapporteurs to the **International Law on Foreign Investment** committee, Professor Peter Muchlinski (British Branch) and Dr Amazu A Asouzu (British Branch).

Professor Shuichi Furaya (Japan Branch) to serve as co-rapporteur on the **Compensation for Victims of War** committee.

Professor Flavia Lattanzi had resigned as co-rapporteur of the committee on International Criminal Court. Dr Goran Sluiter (Netherlands Branch) had been nominated to replace her.

NOMINATIONS TO ILA INTERNATIONAL COMMITTEES: (Agreed at the EC 15 November 2003)

Accountability Of International Organisations

Ms Treasa Dunworth	New Zealand	Member
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Compensation for Victims of War

Dr Roland Bank	German	Member
Dr Andre de Carvalho Ramos	Brazilian	Member
Dr Ruth Donner	Finnish	Member
Professor Jose H Fischel de Andrade	Brazilian	Alternate to Andre Ramos
Dr Dieter Fleck	German	Member
Professor Julian R Moti	Pacific Islands	Member
Professor James A R Nafziger	American	Member
Professor Kazuhiro Nakatani	Japan	Member
Professor Myong Joon Roe	Korean	Member
Elke Schwager	German	Alternate to Dieter Fleck
Professor Jerzy Sztucki	Swedish	Member
Professor Liesbeth Zegveld	Netherlands	Member

International Commercial Arbitration

Professor Louise Ellen Teitz	American	Alternate to Philip O'Neill
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International Law on Biotechnology

Dr Emmanuel Opoku Awuku	Headquarters	Member
Dr Fernando de Faria Tabet	Brazilian	Member
Professor Naoki Koizumi	Japan	Member
Antonio Carlo Lins	Brazilian	Alternate to Fernando Tabet
Professor Han Somsen	Netherlands	Member

International Law on Foreign Investment

Mr Stefan Amarasinha	Danish	Alternate to Mr Ole Spiermann
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BIENNIAL CONFERENCES

Berlin 2004 Conference, 16-20 August 2004

Professor Torsten Stein (German Branch) announced that a preliminary programme will be available on the conference website (www.ila2004.org) by the end of December.

He drew attention to the low price offered by the conference venue, Hotel Berlin, to those who registered by 15 May. He stressed the importance of booking by this date as prices would rise considerably after that.

The fees will be €450 for ILA members before 15 May (€550 after that date); €550 for non members (€650 after 15 May); €250 for participants under 30 years of age (€350 after 15 May) and €250 for accompanying persons (€350 after 15 May). The fee includes the welcome reception, the trip to Potsdam and the Gala Dinner.

A colloquium with German Institution of Arbitration on International Dispute Settlement will take place on the Friday afternoon.

As Headquarters now makes the pre-conference reports available on the ILA website, it has been agreed that printed copies of these reports will no longer be provided to all delegates free of charge. In the past this has led to a large volume of wasted paper and is now prohibitively expensive. Delegates will be advised that they should download and print off the reports of any committee whose meeting they wish to attend. If anyone wishes to order a limited number to be available for them at the conference venue, they may do so when registering and will be charged a small

Dr Vladimir Balas	Czech	Member
Mr Milos Barutciski	Canadian	Member
Professor Kaj Hober	Swedish	Member
Professor Akira Kotera	Japan	Member
Professor Jose Carlos de Magalhaes	Brazilian	Member
Mr P H Parekh	Indian	Member
Mr Hilmar Raeschke-Kessler	German	Member
Professor August Reinisch	Austrian	Member
Dr Maria Regina Ribeiro Do Magalhaes	Brazilian	Alternate to Jose Carlos de Valle
Professor Nicolaas J Schrijver	Netherlands	Member
Mr Audley Sheppard	British	Member
Mr Ole Spiermann	Danish	Member
Dr Pavel Sturma	Czech	Alternate to Dr Vladimir Balas
Dr J J barones van Haersolte-van Hof	Netherlands	Member
Mr Robert Volterra	British	Member
T Waelde	British	Member
Todd Weiler	Canadian	Member
Mr David Williams QC	New Zealand	Member

International Law on Sustainable Development

Dr Karin Arts	Netherlands	Member
Hermenegildo Manuel Avelino	Brazilian	Alternate to Susana Camargo Vieira
Dr Federico Hugo Benedini	Argentine	Member
Professor Susana Camargo Vieira	Brazilian	Member
Professor P J I M de Waart	Netherlands	Member
Professor Joyeeta Gupta	Netherlands	Member
Professor Jang Hie Lee	Korean	Member
Professor Maki Nishiumi	Japan	Member
Professor Surya P Subedi	British	Member
Professor Jae Ho Sung	Korean	Member

International Monetary Law

Dr Christos Gortsos	Hellenic	Member
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International Trade Law

Locknie Hsu	Headquarters	Member
Professor Constantinos Stephanou	Hellenic	Alternate to Prof Fatouros

Outer Continental Shelf

Professor Clive Symmons	Irish	Member
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Transnational Enforcement Of Environmental Law

Mr Steven Freeland	Australian	Member
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fee to cover the costs. The reports will then be printed to order by the conference organiser. A small number may also be available at each committee meeting.

Dr Kamal Hossain had discussed the possibility of a one-day (or a half-day) seminar with ITLOS and some of its members in Hamburg to follow the Conference in Berlin. Details of this event will also be posted to the Berlin Conference website.

Toronto 2006 5-9 June

The new President of the Canadian Branch, Mr Milos Barutciski reported that progress was already well under way with the arrangements for the Conference in Toronto in 2006.

The dates agreed are 5-9 June 2006, which breaks with the tradition of August dates in order to accommodate the requirements of North American academics and practitioners. Mr Barutciski apologised to the European academics and judges who may face difficulties with these dates.

A website for this conference will also be available shortly (www.ila2006.org)

Brazil 2008

It was confirmed that the Brazilian Branch would host the 2008 Conference.

Next EC Meetings

The next Executive Council meeting will be held in London on Saturday 8 May 2004.

The following one will be held either at the Berlin Conference in August OR on Saturday 20 November 2004 in London.

Professor Manuel de Almeida Ribeiro
Vice President, Portuguese Branch

It is generally accepted that the fall of the Berlin Wall and the collapse of the Soviet Union marked the end of the International Order as we knew it. Curiously, although many books and articles contain in their titles the expression "International Order", these same texts frequently refrain from formulating a notion of International Order.

What I specifically intend to discuss are the political determinants that put an end to the International Order resulting from World War II and those that currently appear to be the determinants of the so-called New International Order.

In a recent interview, a known specialist in International Relations, when asked whether there really was a New International Order, answered that it was the result of the simple observation that in the World of today there was no generalised conflict between States.

International Order would thus be the state of international society in which, without affecting social dynamics, the mechanisms for regulation of conflicts and power relations between the subjects of that society make it possible for generalised conflicts not to emerge and for the maintenance of a level of security acceptable for those subjects.

International Law is a set of mandatory rules that within International Society regulate the relationships and conflicts between the respective subjects, being manifestly insufficient to ensure the international order.

International Politics is defined as an activity carried out by the subjects of international law with a view to, in the context of their own and other power relations, achieving their own objectives.

Having defined these three concepts, with the restricted objective of limiting the matters to which I refer to, I also believe it to be essential to make a brief reference to the problem of the relationships between them.

International Law, particularly conventional law, but also customary law, is on the one hand, the result of International Politics and, on the other hand, once it has been constituted, a determining factor in International Politics.

... "capitalism without capitalists", a phenomenon that has raised questions that far exceed the borders of management and attract the attention of Political Science.

As there is no legislative authority that creates law, the very formation of International Law depends on International Politics, although the latter, once the law has been created through conventional or customary channels, then becomes conditioned by the former. This does not prevent, however, the break with positive international law through political acts that are contrary to it from eventually creating precedents liable to threaten the subsistence of the international standards that have been violated. It can be said, therefore, that the international order has a legal dimension and a political dimension. The legal dimension, which corresponds to the international legal order, is part of positive International Law; the political dimension corresponds to the international political commitments arising from international negotiation, or international political activity. Both interact, in the sense that International Law is the result of international political negotiation and International Politics tend to develop essentially (although not necessarily) within the international legal framework.

It is to be noted that this interaction does not occur only in the sense of the formation of International Law but also the alteration or termination of existing rules of International Law.

What characterises the end of a particular international order and the onset of a new order is a sudden alteration in the balance of power that characterises an order that is coming to an end. This does not mean that alterations in the balance of power do not occur, and they certainly do occur, throughout the lifespan of each international order as a consequence of the dynamics of International Society itself. However, whilst in the evolutionary process of an international order, the alterations in balances of power occur progressively, when there is an abrupt alteration in the balance of power we are led to conclude that a New International Order has arisen.

As the process of creation of International Law is a lengthy and complex process, each international order starts off with the international law of the previous order but its own regulatory frameworks immediately begin to be formed.

The collapse of the Soviet Union altered the existing balance of power so significantly that it gave rise to a new international order, but we still live essentially with the legal-international framework of the past international order. I believe that it is therefore essential to raise the question of knowing what balance of power, what powers will influence the law of this newly-formed international order.

The origins of the New International Order are clearly different from those of previous orders. Whilst those had what we could call a founding moment - the end of a war with winners and losers in which the winners outline in an International Conference or within the scope of process of negotiation the initial framework of the balance of power - the New Order did not arise from a military defeat and thus did not have that founding moment.

Meanwhile, the collapse of the Soviet Union, being the immediate cause of the end of the post-war international order coincided in some cases and interacted in others with facts that occurred simultaneously or almost simultaneously which conferred on the subsequent transformations a dimension far beyond the mere political dimension.

The late 1980s and the early 1990s were marked by a series of events and by the culmination of the evolution of various processes which had a cause and effect relationship with the international political developments and which triggered the phenomenon known as globalisation.

On the one hand, the technological revolution, with the advance in the practical application of information technologies and of production methods clearly accentuated a superiority of the Western capitalist model over the collectivist models of Eastern Europe and China.

On the other hand, the expansion of the market economy model, recognised as the most appropriate to promote the economic development of States, profoundly altered the relationships between transnational economic agents, transnational companies, States becoming largely hostage to their decisions with regard to the success of their development policies. We have witnessed, thus, a clear restriction on the economic sovereignty of States.

A brief listing of some of the more important aspects of this dramatic evolution over such a short period of time should include, on an economic level:

- The increasing sophistication of industrial production that led to the concentration of fundamental sectors of the economy in the hands of few economic agents on an international level, particularly in the automotive, oil, energy, chemicals and telecommunications industries.
- The need for enormous amounts of investment in essential economic sectors as the only way to ensure international competitiveness and product quality, associated with the sophistication of production methods led to the decadence of exclusively national major industries.
- The emergence of institutional investors as the main holders of the capital of major transnational companies and the significant dispersal of their capital among the major world financial markets, dissolving the bond between the

capitalist and the State, which raised complex questions, yet to be resolved, such as the problem of the “Governance” of companies.

- The increase in the flow of capital movements and of all forms of speculation on financial and commodity markets.
- The creation of the World Trade Organisation, presented as a way of promoting the joint growth of all economies, but whose reach is limited in sectors that are essential for the Southern countries, mainly in agricultural trade.

These circumstances repositioned the role of the State, on both internal and international levels.

On an internal level, although present day States absorb in some cases up to fifty per cent of the resources generated by their economies, in a sharp contrast with States at the beginning of the 20th century, which did not absorb more than ten per cent of those resources, they are confronted with a new fact: the need to develop economic and social policies and even purely legislative policies on a competitive basis, on penalty of being unable to attract foreign investment, an indispensable element of the development process.

Internal policies became strongly aimed at the creation of infrastructures to enable investments to be set up, at training the labour required by these investments, and at achieving trust-inducing exchange rate stability.

On an external level, States were confronted with centrifugal forces, which accentuated regionalisms, and fragmentary identities in search of a legal rendering that had been long missing, and centripetal forces, inducing the enlargement of markets, imposing international commitments that erode national sovereignties. In some cases, particularly in Europe, national identities confronted transnational desiderata, with the simultaneous emergence of cross-boundary regional phenomena. One of the questions raised is whether the Nation-State, even when confronted with the greater rationality of economic integration, will preserve

its political identity or whether, on the contrary, it will founder as a significant entity, at least in current terms.

This whole complex web of causes and consequences does not affect all States equally. Globalisation has, like all historical processes, winners and losers. If the United States apparently emerges as a unipolar power without adversaries on the political, economic, technological, military and cultural level, in a relative position without parallel in History, the other winners and losers of the New International Order have yet to be defined.

As I mentioned above, it seems to me that the unfolding of events in the period that I consider to be already part of the New International Order, in other words from 1989 until now, have strongly affected the institution of the Nation-State, whose universalisation is one of the most notable results of the preceding historical period.

In the Knowledge-based Society in which we live and in which we will be increasingly involved, it seems, at the risk of oversimplifying matters, that the world tends to become stratified between States that produce and hold knowledge, those that attract production based on knowledge and those that will remain on the sidelines of future economic fluxes.

Raw materials and natural resources tend to lose importance, with an increasing tendency for their markets to become purchaser markets rather than seller markets. The capacity to attract investments depends on political stability, on the existence of efficient judicial systems, on trustworthy public administrations, on internal security, on qualified labour, and on appropriate infrastructures. The much-touted concept of “Governance” is only this after all and the State tends, at least in most cases, to become what I usually call a “local authority state”.

Paradoxically, when the State on an internal level devours up to half the national wealth, it almost completely loses economic sovereignty on an external level, becoming a hostage to external forces to conduct its development policy.

In a world in which the main value in the production process is Know-how, this know-how is held and developed by business entities for which tangible assets are of reduced relative value and which are capable of easily relocating production, depending on financial compensation, proximity of markets, available infrastructure and even negotiated legislative adaptations. On the other hand, the vast accumulation of capital at their disposal allows them to spread risk, investing on various fronts world-wide, in some cases even sharing risk, as is today frequent and necessary, for example, in off-shore oil fields.

Another characteristic transformation of our time related to the major transnationals is that their capital is now so dispersed that the traditional figure of the capitalist has become obscured. Major shareholders are, indeed, themselves institutional investors, particularly pensions funds set up to guarantee support during old age of the ageing populations of the developed countries.

As a result of these transformations, transnational companies have lost their identification with a particular location or State and are now governed by technostructures within which one rises through power acquisition phenomena that have nothing to do with the personal trust of the capital owner.

This has given rise to what Peter Drucker calls "capitalism without capitalists", a phenomenon that has raised questions that far exceed the borders of management and attract the attention of Political Science. We encounter a new phenomenon: that of the conquest of a form of power which, despite its exercise being able to influence the life of entire populations, is openly profit oriented.

But, despite the power they hold, transnationals continue to be being treated, as indeed suits them, as if they were entities of a parochial dimension, being allowed to choose the most convenient jurisdictions, to opt for the law by which they would prefer their business to be governed, and also seeking when in their interest the protective mantle of the States with

which they identify, at least for this purpose.

To properly situate these entities within the framework of international law, in other words to create the legal international instruments that regulate their activity or, quite to the contrary, to maintain the current state of affairs is, in my opinion and as I will say later, one of the quandaries of International Law.

My reference to the actors in the New International Order led to the conclusion that power in International Relations, which until the end of the 1980s was still based fundamentally on States, shifted partially onto new actors, specially the transnational companies.

The emergency of the Knowledge-Based Society implied a manifest lack of adaptation of various branches of knowledge that address these entities in many different ways: from accounting to Political Science, from International Relations to taxation, from Labour Law to International Law.

Transnational companies are the recipients of the economic sovereignty lost by States and there they are, almost States without territory, governed by Boards of Directors, whose power was captured by methods that resulted from cultural practices of technostructures little known outside their organisations, with shareholders as its People and its only target the earning of profits.

One of the characteristics of the transition stage that we are crossing is the ideological vacuum. Protests are made against globalisation but no alternative can be drawn up; appeals are made to establish global rules for global phenomena, but difficulties are faced in identifying who will be their legislator.

The more lucid thinkers have made great efforts at analysis, many colloquiums on the phenomenon of globalisation have been organised on its many different aspects, religious, cultural, civilizational etc., but the world organisation at our disposal continues firmly anchored in a intergovernmentality that no longer appears to be of this era.

This state of affairs leads to a loss of faith among the masses, which oscillate between inertia, lack of interest in politics and politicians and rebellion without a cause. We seek, after all, to understand our times with mental categories from a time that is no longer ours.

It seems to me that the main challenges to International Law will be those of both responding to the new international political realities and creating the global rules required by globalisation.

The fundamental question raised is to know who is going to make or, possibly, between whom will be established the consensuses that will result in International Law of the New International Order.

Never before has there been more justification for the emergence of a true transnational law that covers all the subjects of international law, institutionalising appropriate means of jurisdiction to settle disputes between them, that unifies the rules delimiting the competences of legal orders, thus covering the DIP, and that regulates the action of transnational companies, enabling reconciliation between the interests that move them and the public interest of the regions in which they operate.

As always we come up against the intrinsic difficulty of International Law: the lack of sufficient institutionalisation of International society to create this law.

Given this difficulty, will the makeshift solution of intergovernmentality and the essential role played by the United Nations in the preceding period be maintained?

It appears to us that the answer cannot be univocal. In certain fields of International Law, such as International Environmental Law, the Law of the Sea and the codification of rules on generic questions, such as international liability, intergovernmentality, at least on a formal level, it will apparently tend to persist, as will the catalyst role of the United Nations.

In the field of strictly political International Law and in the field of

economic international law there will be a tendency, in my opinion, for a preponderance of directorates groups, more or less extensive, depending essentially on the issues in question. These are directorates of “variable geometry”, the following being currently detectable: the G8, the OECD and the permanent members of the United Nations Security Council.

The G8 is an extremely interesting case of an informal Directorate, consisting of the seven richest countries in the world and Russia. It is possible that the number of States participating in the meetings may be extended, although the character of highly restricted core reserved for States with considerable critical mass is maintained.

The much larger OECD, with 30 member States, is an organisation that includes the richest countries in the world, and it is probable that it will take on an important role in the process of forming international economic law. The case of the MAI (Multilateral Agreement on Investment), which I will present later, is a typical example.

The group of members who are permanent members of the Security Council, given the legitimating role that international practice attributes to this body, will presumably continue to be a political directorate of major importance in international life. Permanent member status, by granting to those with this status a possibility of denying this legitimization, involves a capacity for considerable influence on international life, so it is unlikely that the recommended reform of the Security Council shall take place.

Within a framework of preponderance of directorates, the major economic interests will find their margin of influence through lobbying the governments of the States where they are located. It may seem contradictory that, while we witness a reduction in the identification of transnational companies with States, these channels of influence are maintained and even reinforced. The fact is that it is in the countries of the various directorate that we can find the diffuse mass of shareholders, where the profits of the

major companies are channelled and where the capital of knowledge that constitutes its source of power is developed. It is not thus necessary for the company to have a head office in a particular State for its interests to be identifiable with that State.

The initiative of preparing an international convention on investments which was developed within the framework of the OECD from 1995 to 1998 is an example of new International Economic Law which, in my opinion will take shape over the next few years.

Although the initiative has been suspended - not interrupted - as the OECD has announced, essentially due to the withdrawal of France from the process, mainly as a result of the strong reaction of various non-governmental organisations that ran a campaign on the Internet and in the press against the project, it appears to us that the mere fact that an almost final text was drawn up clearly demonstrates the new trends of International Law with regard to the protection of investments.

The text of the MAI aimed to regulate matters as diverse as the treatment of investors and of investments, expropriations, privatisations, the transfer of funds abroad, demands to obtain results, investment incentives and dispute settlement.

Very strong limitations were introduced to the sovereignty of investment receiving States that supported the agreement, the remaining states being left out of the circuits of international capitalism.

It is to be noted that many of the rules of the MAI are laid down in the models of bilateral agreements signed between developed States and the recipients of investments. Under the façade of an apparent bilateralism, it aimed to protect the interests of investors in the developed countries.

A specific mention should be made that States would be bound to renounce their privileges of sovereignty in the event of a dispute to be resolved through arbitration mechanisms, in particular the ICSID.

As I mentioned above, sovereignty is today increasingly limited by restrictions of various types: sometimes by the transfer of competences to international political decision centres, always because of the need to develop “competitive” policies on an internal level, without which economic development would be harmed.

The International Law of the New International Order will be, I believe, drawn up by directorates of more developed countries, situated always in the Political North. The East/West confrontation, in which the South held some negotiating power, from the international order of the Cold War, has thus been replaced by the domination of the political North over the South, which today appears increasingly less important.

It is clear that in the North one must distinguish between the major States and the States which, being less powerful in political and economic terms, share with the former the same interests and tend to develop with them a patronage type relationship. This would be the case of the smaller European States, and of some Asian or Latin American States that have managed to overcome the restrictions of “governance” and enjoy the favourable side of globalisation.

In the longer term, however, it is impossible not to raise doubts about the sustainability of an international model of this type. Will it be possible to contain indefinitely the frustration of a South with an exploding population and submerged in poverty, faced with an ageing North that is reluctant to share its wealth? Will Migrations be the answer to reset the balance?

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OTHER ITEMS

Members will be interested to see that Lord Wilberforce's son Sam has sent the following announcement:

Reflections of my Life is the partial autobiography of Lord Wilberforce. A descendant of the anti-slavery campaigner William Wilberforce, Richard Wilberforce was born in India in 1907, and rose to become Britain's senior Law Lord 1976-1982. He was Chairman of the executive council of the ILA for some twenty years (1964-1986), during which it changed from a tourist club to become a serious force in international law.

These memoirs cover his formative years at Winchester and Oxford, his early career at the Bar, and a fascinating account of the social life of the 1930s. There follows a chapter, taken from his contemporaneous diaries, on the build-up to war. His WWII was an unconventional one, leading to service under Paget, Monty and Ike, ending up as Brigadier. The book contains transcripts of diaries covering the abortive Norway campaign, and the occupation and denazification of Germany in Berlin 1945 in which he played a major role.

Further chapters deal with the strong part music has played in his life, the advance of science in the twentieth century, and the work and aftermath of the Wilberforce Commission into miners' pay, set up under the Heath government in 1973.

Law Lord, Brigadier, Undersecretary, Oxford fellow, anti-slavery campaigner, aficionado of opera and the arts, golfer and follower of the turf, Richard Wilberforce has been described as a twentieth century Renaissance man. *Reflections* is both a personal account of a gifted man, and a historical record of the first half of the twentieth century.

Copies of this book may be obtained from The Hon. Sam Wilberforce,
71 Birdhurst Rise,
Croydon,
CR2 7EJ,

price £10 plus p&p: £1.50 for UK addresses, £2.50 for Europe, £5 for the rest of the world. Please make cheques payable to S. Wilberforce (preferably sterling or euro).

Contact: samwilberforce@blueyonder.co.uk,
website: www.wilberforce.info

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Also:

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