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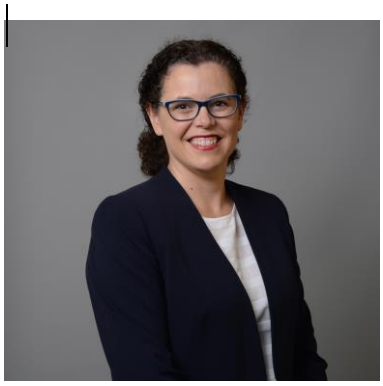

Interview with Natalie Klein

Professor UNSW Sydney, Faculty of Law & Justice
Member of the Presidents' Circle ADI/ILA 2023

Considering your expertise in the law of the sea and maritime security, what are the main challenges the world is facing and will face in that field within the next 10, 20, 30 years?

As the oceans cover more than 70% of the Earth's surface, we have to remember that so much of our way of life is dependent on the oceans. Maritime security extends beyond immediate interests of national defence and encompasses human security. In that regard, we currently have – and will have in the decades ahead – concerns about the protection of human rights at sea (including the treatment of migrants at sea), how we ensure food security in the absence of sufficient conservation and management of fish resources and we need to think about the very survival of some small island States (as well as the people and animals who live there) in the face of rising sea-levels due to climate change.

Any time we look ahead, we also have to think about technology. For the law of the sea and maritime security, we need to protect the submarine cables that transfer nearly all our internet data around the world. There must also be increasing attention given to the use of maritime autonomous vehicles, not only by private companies to ship cargo or by States for intelligence gathering and surveillance, but also by criminals to smuggle illicit goods and for terrorist attacks. Both international and national laws need to catch up with these technological advances.

What regional perspectives are the most salient in your field of law of the sea and maritime security?

For Australia as a large island with a lengthy coastline, we need to think carefully about economic and security interests in the waters around Asia, especially the South China Sea, and also consider the varied contributions we can make to ocean governance in the Pacific, the Antarctic and in the Indian Ocean.

One of the interesting aspects of my area is that we see more direct military confrontations at sea than we usually do on land and so the oceans are a space where military power and State authority are asserted and rebuffed in a variety of contexts. This issue is recurring in the South China Sea at the moment. A difficulty is that there are ambiguities in some of the rules, which were included in the development of the law of the sea because it suited the military powers of the

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time. Now, that ambiguity is being used by other States in ways that thwart those interests. Without sufficient clarity in the law of the sea, we facilitate the so-called grey zone conflicts and allow for tensions to simmer and sometimes escalate in dangerous ways.

What do you hope will stem from the discussions in 2023?

The International Law Association has a long tradition of contributing to the elucidation and clarification of international law. It is a task that we have to continue urgently, especially as a way to push back against the idea of 'grey zones' or against the nebulous and sometimes unhelpful references to the 'rules-based order'. The discussions in 2023 will provide us with a brilliant opportunity to bring a diversity of voices to bear on contemporary and pressing problems and to articulate clearly the mission for international lawyers for the decades ahead.

There is no doubt considerable pride in Australia at the moment with the election of Professor Hilary Charlesworth to the International Court of Justice. How do you perceive the role of women in International Law?

Absolutely, we are so delighted with the election – Hilary is just the fifth woman to be elected in the history of the Court. An excellent appointment given her intellectual prowess and integrity. Plus, she has been a role model and mentor to so many of us. Any time we see a woman appointed to such a prestigious position, it is a mix of 'of course, it's about time!' as well as happiness and relief knowing what may be possible for others down the track.

I have an edited book in press at the moment, Unconventional Lawmaking in the Law of the Sea, which only has women contributors. Part of the reason for that is because back before the International Tribunal for the Law of the Sea had any women judges, I heard a story that an ITLOS judge was asked about this, and he replied, 'but who are the women in the law of the sea?'. There are actually many of us, and many more than those who are in my book. I have met so many enthusiastic and interesting young women at conferences who work in the area now, I hoped it would showcase a little of what was possible.

I do think it is important for women to support each other as much as they can; especially when it is becoming increasingly clear that women academics were particularly disadvantaged during Covid with carer responsibilities. There are great opportunities for women in international law, and in the law of the sea, and sometimes I think we just need to be a bit more brazen in claiming them.

WHITE PAPER – INTELLECTUAL PROPERTY

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4 questions for Nicolas Binctin

1. **1883 marked the introduction of Intellectual Property into international law. Can you put this induction in context for us?**

1883, and 1886, are the hinges that opened the door for the international apprehension of Intellectual property law. The Paris Convention, signed in 1883 and completed three years later by the Berne Convention, laid the foundations for international intellectual property solutions, solutions that are still fully relevant today. Adopted during the Industrial Revolution, when the mechanical, chemical, electric and cultural industries were still at their infancies, these two conventions symbolise the economic and industrial domination of a European continent, triumphant in imposing a model of intellectual property law to the world.

Subject to reciprocity, the main principles of these two conventions are the respect of territoriality and independence of property rights, on the one hand, and the principle of assimilation, on the other hand. The conventions achieve this balance through a parallel construction that reconciles both requirements. The Paris Convention creates a mechanism recognizing the priority right to secure international extensions, through administrative procedure to grand property rights. The Berne Convention enshrines a mechanism that allows for an automatic local recognition of property rights.

It was particularly ambitious to retain a system that eliminated any discrimination in access to property based on nationality. It would have, perhaps, been more difficult to get this model accepted today. There are no foreigners in intellectual property! And this principle of non-discrimination based on nationality remains in spite of the economic stakes attached to foreign held intellectual property rights.

2. What can we learn, today, from that historical moment?

That historical moment offers a line of conduct, an ambition for these matters, at the time emerging, and for which the economic underpinnings were already present but less obvious than today. This model rejects all protectionism, all nationalism, and allows for real international intellectual competition. It leaves an important place for a relationship of trust between States, and imposes the coordination of offices through the mechanism of the right of priority. These choices, made at the end of the 19th century, when the means of communication were far from those we know today, should still guide us in future international cooperation. Traces of this can be found in the cooperation established for the sharing of information between offices in the context of patentability examinations.

3. Does the tension between territoriality and universality still exist?

This tension is stronger than ever. Traditional tensions remain and are compounded with new tensions appear with the rise of technological. The historical tension is still relevant: an intellectual good that has been disclosed is accessible to everyone, factually, and its legal control remains subject to a territorial approach to private property. Thus, the exploitation of my invention remains free in the territories for which I have not applied for a patent. The same is true for all intellectual property rights, and one can recall, for example, that Iran has never been a member of the Berne Convention.

The technological tension adds new difficulties linked in particular to the identification of the territory of creation, an essential point of attachment in the mechanisms of the Paris and the Berne Conventions. The current, and a fortiori the future, digital tools allow creators, in all fields, to work together to create, innovate, etc., without being on the same territory. This historical factual connection is therefore very delicate, if not impossible, to implement, failing a voluntary territorial connection, that is far from forgone conclusion.

We can see the notion of territoriality evolve. While calling into question the notion itself, this evolution suggests that territoriality might no longer be apprehended strictly on a national basis. Intellectual property can, therefore, allow for the existence of transnational, or even regional properties. This phenomenon already exists within the European Union, and the African continent, for example. One can imagine that one of the answers to the criterion of territoriality is an intellectual property linked to spaces that are more coherent, notably from an economic point of view, than national spaces.

4. At the start of your work on the white paper, what are the most challenging points to consider when thinking about the field of International Intellectual property law of tomorrow?

As the group's work stands, several series of factors emerge with regard to international intellectual property law in 2050. In addition to extra-legal tensions, such as environmental considerations, access to health care, and the impact of technology on the maintenance of intellectual property solutions, we also see new legal difficulties emerging. Some of these new difficulties can be non-specific to field intellectual property, such as the maintenance of a proprietary model as we know it today. Others are specific to the field, such as the possibility that geopolitical developments reduce international cooperation in intellectual property. We are also studying whether the retreat of multilateralism could call into question the model used by the conventions at the end of the 19th century and, with it, the functioning of the institutions that support them today, notably WIPO and the WTO.

News : *Closing of COP 26*

Lisa Aerts and Tarek El Ghadban
PhD candidates at Paris I Panthéon-Sorbonne, Members of the Communication Committee ADI/ILA 2023

On 31 October, in Glasgow, the Parties to the United Nations Framework Convention on Climate Change held their 26th annual conference (COP 26). Every year, the issues on the agenda become more pressing. The Intergovernmental Panel on Climate Change (IPCC) has stressed the need to reduce global greenhouse gas emissions by 50% by 2023 to avoid a climate catastrophe. They stressed that this objective requires "*rapid, far-reaching and unprecedented changes in all aspects of society*".

A climate-friendly COP 26?

The Covid pandemic has proven that world governments are capable of taking drastic measures when necessary. However, the same vigour is yet to be seen in the fight against climate change. In addition to the conscious effort of certain Parties to "*water down*" the conference's results, its format and organisation raise doubts as to their coherence with its objective. The arrival of many dignitaries and representatives by private jet, and the scale of the conference, resulted in this year's conference setting a new record in carbon emissions. The importance of informal negotiations notwithstanding, does avoiding a further doubling of the COP's carbon footprint, next year, merit that our diplomats and heads of state rethink their transport methods, as well as the organisation of this type of event?

A diplomacy centred COP 26

The COP26's organisation and negotiations also pose number of questions of a diplomatic nature. From an organisational point of view, the conference's Covid-19 safety measures disproportionately affected the delegations of some states particularly affected by the consequences of global warming, such as Bhutan and Tuvalu. Long and costly quarantines forced these states to scale back their participation in the conference. Nevertheless, civil society and certain states were particularly active, through initiatives on standardisation of benchmarks and reporting, or the creation of the "Beyond Oil & Gas Global Alliance", the "Green Grids Coalition", and the "Global Mindpool", a collective intelligence platform for action against climate change.

Some analyses of the negotiations suggest the 'North-South divide' remains very real. However, this misleading name actually refers to a distinction between the position of 'emerging countries' and that of industrialised countries; particularly with regard to the finances required to accompany the changes required to combat climate change. Is this analysis not too heavy-handed, given that alliances and positions depend on the topic?

A non-binding COP 26.

Despite many attempts, previous iterations of the COP have not resulted in any binding legal obligations on States to reduce their carbon emissions. Although the COP 26 made significant progress on reducing the use of fossil fuels, the final Glasgow Pact also falls short of this objective. Admittedly, the COP26 deals with a subject of crucial importance, in exceptional circumstances in terms of public health and climate change. Nevertheless, it is disappointing, according to some, that this approach has not been rethought. Adaptation is now an existential necessity. Perhaps the balance between what is diplomatically possible and what is scientifically necessary should be re-evaluated.

PARTNERSHIPS

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

https://www.ilaparis2023.org/

The Newsletter ADI/ILA 2023 n° 4 will be released in January 2022