NEWSLETTER SUMMER 2008

Register charity (No209425)



Director's Notes



Listening to the news over the past few months highlights the importance of the activities of the Institute. From issues about the legality of the actions of Russia and Georgia to the struggles within the European Union to work out its institutional order after the Irish vote on the Treaty of Lisbon; from proposals about collective/group actions on consumer issues to anti-competitive practices by airlines; and the collapse of the latest world trade negotiation round to international criminal court procedures; to name but a very few. For many of these issues, the Institute has a vital role, especially that of researcher and educator, seeking to clarify and apply the relevant international and comparative law to the situation.

The Institute has had this role for nearly 50 years. It is 50 years of the promotion of the rule of law in international affairs by the Institute. The rule of law is distinct from the rule by power and the rule by law, and it is universally accepted that it is an essential part of the development of effective and sustainable national and international systems. The importance of this principle to the Institute is shown in the topic of the annual Grotius Lecture this year, which is on 'The Rule of Law in the International Order'. We are delighted that Lord Bingham, the Chairman of the Institute, will deliver this Lecture, which is to be held on the very day, 50 years ago, that the Institute was established: 17 November.

Before this, the Annual Conference will be held on 17 October. It is on the theme of climate change and its challenges to international law. This is an issue that affects many aspects of international and comparative law and we will have speakers from within and outside the law to discuss it, as well as many younger scholars. I invite you to join us on both occasions.

In the meantime, the Institute continues to offer a range of excellent, interesting and practically relevant events and continues its high quality research and publications. In this Newsletter we show just some of the activities that we have undertaken in the past few months. We also hope that you will be able to offer us some financial support during our 50th anniversary that will enable us to continue our important work as a charity.

Professor Robert McCorquodale Institute Director



Quick links

- Research
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- Events
- People



50th Anniversary Campaign



"The diversity of the Institute's membership and its ability to engage with a wide variety of international and comparative issues ensure that it remains a relevant and essential institution. It provides an excellent environment for valuable and helpful discussions between those advising governments, corporations and others, and with the academic community. It works with some of the leading scholars, judges and practitioners in their fields, and its research ensures that many contemporary issues are carefully examined and analyzed.

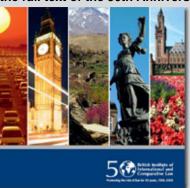
Over the last 50 years, the Institute has been promoting the rule of law through all its activities. The same core principle will continue to inspire and inform the work of the Institute in the years ahead."

The Rt Hon Lord Bingham of Cornhill KG Chairman, British Institute of International and Comparative law



Helen Bright Development Director

Please click here to view the full text of the 50th Anniversary Campaign Brochure









The Institute Announces Annual Conference 2008 will focus on Climate Change



Anna Riddell.

This year's Annual Conference, which takes place on 17 October 2008 will focus on the pressing contemporary question of climate change and the challenges it presents for the international legal system. BIICL is uniquely placed to examine the subject from an international and comparative perspective, providing insights from around the world and from disciplines outside the law, as well as from those leading the international efforts to mitigate the effects of climate change, and to prevent its further escalation.

The Conference features some 30 of the top scholars and practitioners concerned with the subject speaking on issues ranging from the Bali Road Map to the regulation of biofuels, and the protection of intellectual property to the problems facing environmental refugees. We are delighted to have Sir Crispin Tickell, former advisor to successive Prime Ministers on the subject of climate change, delivering a keynote address at the Conference, and Professor Sir Brian Hoskins giving a speech following the evening Dinner at the Hotel Russell.

Research Fellow Public International Law For the full programme of the event, and to book your place at the Conference and Dinner, please click here.

Investment Treaty Forum

Lisbon Treaty Raises Questions of Investment Treaty Making and Arbitration in Europe

On 8 July 2008, the Investment Treaty Forum held a small members-only seminar on the 'Lisbon Treaty and the Future of EU BITs', kindly hosted by the School of International Arbitration, Queen Mary, University of London. There was a lively discussion on the provisions in the Lisbon Treaty that give the European Union exclusive competence in the field of foreign direct investment (Article 188C).

The seminar started by discussing the prospects of the Lisbon Treaty after the Irish 'No' vote. It appeared likely that, regardless of the Lisbon Treaty's fate, the provision found in Article 188C would reappear in any new treaty, even one less comprehensive in its reforms than Lisbon.

The seminar examined what the transfer of competence meant for Member States' existing BITs and considered the obligation on Member States under Article 307 of the EC Treaty to 'take appropriate steps' to 'eliminate any incompatibilities' between Member States' obligations under other international agreements and the EC Treaty. A primary concern was to ensure that European investors did not end up in a worse position than they were in before the transfer of competence. It was concluded that under the rules of international law, the transfer of competence would not lead to the derogation of the existing BITs between EU Member States and third countries, and that Article 307 was a 'best efforts' clause only.

Participants discussed a number of practical questions that are likely to arise after the transfer of competence. A hypothetical scenario of an investor from a non-EU state commencing arbitral proceedings against the European Union under an EU BIT and relating to conduct of one of the Member States raised interesting questions such as:

- Who would be respondent in the claim the EU alone or the Member State also?
- Who should appoint the arbitrator and would the Commission have to consult with the Member State against whom the allegations were being made?
- Could the Commission, in practice, negotiate a settlement agreement with the claimant without the Member State's consent? And if so, who would pay the agreed amount?
- If the arbitration proceeded and damages were awarded against the EU, from whose budget would the funds come? If the Member State could not be a co-respondent or third party, what was the potential for its status as amicus curiae in the arbitration between the claimant and the EU?

These and other difficulties in managing such disputes may result in the removal of investor-state arbitration as an option in any investment treaty negotiated by the EU, which would be a grave concern for European investors who may engage in treaty shopping to secure a right to arbitration. In this connection, the investment law community should take active part in formulating an eventual EU Model BIT.

Given the acute interest in the topic, the British Institute and Lovells are organizing a broader conference entitled 'European Law and Bilateral Investment Treaties: Exploring the Grey Areas' [hyperlink to the event's page] on 4 December 2008 in London. This conference will further explore various aspects of the interaction between the EU law and BITs.

EU-CHINA INVESTMENT FRAMEWORK





The Institute has been commissioned to prepare a comparative study of bilateral investment treaties concluded by China with the Member States of the European Union. The study focuses on the approaches taken in these treaties on such issues as definitions of investor and investment, admission and establishment of investments, national treatment, most-favoured-nation treatment, absolute standards of protection such as fair and equitable treatment and full protection and security, expropriation, umbrella clauses and dispute settlement. The approaches taken in the EU-China BITs are then contrasted against wider treaty practices existing in the world including the latest trends in investment treaty-making. Finally, the study looks at the relationship between the provisions in EU-China BITs and the commitments of relevant countries under the WTO TRIMs and GATS agreements. Norah Gallagher and Sergey Ripinsky carried out the work.

Project: Human Rights, International Law and Muslim States



Dr Nisrine Abiad Research Fellow, Iran project

As part of its project on 'Human Rights in International Law and Iran' and of its objective to facilitate a better understanding of international law and human rights between Europe and the Muslim world in general, the British Institute of International and Comparative Law recently held a conference in June entitled: Islam, the Application of Sharia, and Human Rights.

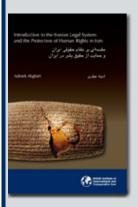
The Institute invited Islamic and international law experts from a range of countries and backgrounds to exchange ideas and experiences on important issues such as the potential of human rights discourse within Islamic jurisprudence and the implementation of human rights in Muslim jurisdictions. More specifically, the experts were invited to discuss the conclusions reached by the Iran Project's forthcoming publication, *Sharia, Muslim States and International Human Rights Treaty Obligations: A Comparative Study.* The study sought to identify patterns among Muslim states in their ratification and implementation of international human rights treaties with the added objective of assessing the impact of Sharia on State practices. The results were illuminating and the conclusions were well received and enthusiastically discussed by participants.

Along with the above publication, the Iran Project is also set to publish two other studies in the form of manuals, both of which are aimed at increasing awareness and understanding of international law, human rights and Iran. The manuals provide access to necessary legal information on international human rights law as well as an introduction to the Iranian legal system. The two publications are entitled:

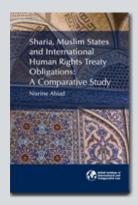
- A Sourcebook on International Human Rights Materials
- 2. An Introduction to the Iranian Legal System and the Protection of Human Rights in Iran

Forthcoming activities: Scholarships Programme in Public International Law for young Iranian scholars

As part of the Institute's endeavour to improve the understanding of international law through education, the Institute has invited three young Iranian scholars to London for a one-month scholarship programme in International Law. During the course of the programme, the scholars will receive training in vital research skills, instruction in areas of international law from climate change to human rights, and the opportunity to publish their own short paper in the Bulletin of International Legal Developments.







Dr Nisrine Abiad Research Fellow, Iran project

My Internship at the British Institute of International and Comparative Law (BIICL)



An internship at BIICL offers students a unique and invaluable opportunity to develop, through first-hand experience of collaborative research, the knowledge and skills necessary to pursue a career in international law. Each internship at the Institute differs, depending on the subject-matter of the projects underway and the nature of the work required, but each provides the possibility to engage meaningfully with an interesting and diverse team of committed researchers.

My internship at the Institute took place over three months during the summer of 2006, while I was working towards the completion of my Master's dissertation at the London School of Economics nearby. After a year spent studying the framework and case law of international law, my internship gave me a welcome chance to observe how the theories and debates I had learnt about were being tested and stretched in the circumstances of contemporary events. Indeed, during my time as an intern, the conflict between Israel and Hizbollah flared up in Lebanon, and this provided an urgent and real stimulus to consider the

Brendan Plant Research Fellow principles of international humanitarian law which I had studied in previous years.

During my time as an intern, I primarily conducted research for the Evidence before International Courts and Tribunals project, but I also published a piece in the Institute's Bulletin of International Legal Developments (BILD), I attended a number of interesting conferences and events hosted by the Institute, and I was able to sit in on research staff meetings.

My favourite aspect of the internship experience was spending time in such a collegial environment. I was continually excited by the prospect of being part of a team of researchers who, despite the broad diversity of their backgrounds and expertise, were united by a shared interest in and enthusiasm for international law. I relished the opportunity not only to observe but also to take part in the vigorous exchange of ideas which occurs daily at the Institute. Working alongside accomplished research fellows and other curious and committed interns (many of whom had travelled from overseas to spend their summer as an intern at the Institute), I gained insight into the most recent developments in international law, I learnt about areas of international law which were new to me, I expanded my knowledge about more familiar branches of the law, and I sharpened my use and understanding of research techniques. Above all, I felt that I was making a contribution to innovative research whose significance I recognized and whose underlying values I shared.

At the conclusion of my internship, I was especially fortunate to be successful in applying to join the Institute's research staff on a full-time basis, and I attribute much of my good fortune to the vital experience I gained as an intern at BIICL, collaborating and communicating with the dynamic and dedicated individuals I met there.

Brendan Plant Research Fellow

News from the Board of Trustees



Rt. Hon. Lady Justice Arden

Rt. Hon. Lady Justice Arden assumes role as Visitor to Royal Holloway, University of London

The distinguished Court of Appeal judge, the Rt. Hon. Lady Justice Arden DBE, has assumed the role of Visitor to Royal Holloway, University of London. She was appointed a Justice of the High Court of Justice of England and Wales in 1993, being the first woman judge to be assigned to the Chancery Division; and in 2000 she became only the third woman to be appointed to the Court of Appeal. She has served as chair and member of numerous legal committees, including: first female chair of the Law Commission; chair of the Working Party of the Judges' Council on the Constitutional Reform Act 2005 and the UK ad hoc judge on a number of cases in the European Court of Human Rights.

In April 2005 Lady Justice Arden was appointed Judge in charge of International Judicial Relations. She has travelled extensively to help promote the rule of law and to further her personal interest in meeting judges in other jurisdictions and in comparative human rights and constitutional law.

Lady Justice Arden will primarily be a figurehead and ambassador for Royal Holloway, promoting its interests wherever and whenever possible. It is anticipated that she will also lead some of the ceremonial activities within the College. The traditional role of Visitor was to represent the wishes of the Founder in settling disputes. Nowadays, these are more normally settled in an employment tribunal or by the Office of the Independent Adjudicator. These are a few areas where the Visitor might still be expected to consider disputes, mainly relating to public law. Lady Justice Arden has supported the College for many years, regularly attending events such as Honorary Fellowships Award Ceremonies and Graduation Ceremonies. A Doctor of Laws, Honoris Causa, was conferred upon her by HRH The Princess Royal, Chancellor of the University of London, in 1999.



Sir Michael Wood

On 8 August, Sir Michael Wood was appointed as a member of the United Nations International Law Commission.

He was Legal Adviser to the Foreign and Commonwealth Office between 1999 and 2006. After joining the FCO in 1970, he attended many international conferences, including most sessions of the Third United Nations Conference on the Law of the Sea, the Lancaster House Conference on Rhodesia, the Two-plus-Four negotiations on German Unification, the Cambodia Peace Conference at Paris and the Dayton and Rambouillet Conferences on the former Yugoslavia. His postings included three years (1981 to 1984) at the British Embassy in Bonn and three years (1991 to 1994) at the United Kingdom Mission to the United Nations in New York, dealing chiefly with Security Council matters. He was Agent for the United Kingdom for a number of years before the European Commission and Court of Human Rights, and was Agent in the Lockerbie and Legality of Use of Force cases before the International Court of Justice, as well as in the Sellafield proceedings before the International Tribunal for the Law of the Sea and two international arbitral tribunals.

Visiting Fellows Board

We would like to Welcome the following people to the Institute:

- Professor Don Greig of the Australian National University, Honorary Fellow
- Wisam Abboud, Visiting Fellow started on 5th August. He is a practising lawyer and is working on a project for the Leverhulme Trust entitled 'The role of national EU and international law in the development of the EU biofuel industry'



Marcin Kaldunski, Visiting Fellow who started on the 2nd of July. He is from the Nicolaus Copernicus University in Poland

At the beginning of 2008 I decided to apply for a Visiting Research Fellowship to conduct my own research concerning the protection of legitimate expectations in international investment law. The legitimate expectations are an important factor which has emerged recently in the process of identifying both an expropriation and a breach of the fair and equitable standard. The very basic principle is that if an investor demonstrates before a tribunal that actions of a host State interfere with distinct, reasonable investment-backed expectations, it may lead the tribunal to a decision in favour of the investor. The concept of legitimate expectations requires host States to "provide to international investments treatment that does not affect the basic expectations that were taken into account by the foreign investor to make the investment" (Tecmed Award, 2003).

The important point in the research will focus on finding an answer to the question whether a State may frustrate legitimately foreign investment-backed expectations and, if so, under what conditions and in what circumstances. The project will also focus on the issue of non-compensation in situations where the use of police powers might justify non-compensation where there is a frustration of legitimate expectations. Therefore, the projects aims to find an adequate line between the regulatory powers of host States and legitimate expectations of investors seeking protection over their investments. However, if such a line cannot be established, the project will try to find where the line might be placed and will focus on reducing the concomitant uncertainty and ambiguity as regards the introducing of new regulation allegedly hindering the investment. On the one hand, protection of investment is not unconditional and ever-lasting. However, regulation of a host State has to fullfil the rules of transparency, clarity and predictability in order to enable better investment planning.

My personal research interests cover public international law, WTO law and international investment law. I am an Assistant Professor in the International Law Department at the Faculty of Law at the Nicolaus Copernicus University and I am also a member of the EU-China Research Unit on Human Rights which is an Associate Member of the EU-China Human Rights Network. In the framework of this project, the overall objective is to strengthen the realisation of both the rule of law and human rights in China in line with the EU's human rights policy and to help China in its effort to align its human right policy with international norms.

The Visiting Fellowship Programme is a great opportunity both to carry out research in a friendly environment and to benefit from working in proximity with the Institute's permanent research staff. The BIICL has a good library and also has access to the Institute of Advanced Legal Studies Library. Thus, the research may be carried out in a very efficient manner. The Fellowship allows me to foster my abilities as an international lawyer and benefit from being in a place with excellent research staff. I am currently working on a monograph on antidumping in the WTO as well as two

articles on China issues and the role of precedent in WTO law. My visit to BIICL gives me an opportunity to carry out research work in a few areas and it is one of the most exceptional advantages of the Institute.



Professor Martha Bailey, Faculty of Law, Queen's University Kingston, Canada baileym@queensu.ca
Visiting Fellow, July 2008

My research project at the British Institute of International and Comparative Law (BIICL) was a comparison of the treatment of religious diversity in Western family law regimes. The controversial nature of this subject in Western countries, particularly in regard to Muslims, is evinced by the protests over faith-based arbitration of family law disputes in my home province of Ontario, Canada. Part of my research has focused on identifying and correcting the misinformation and misunderstandings surrounding that controversy.



Beyond this, my research identifies and assesses policy options for moving forward. While at BIICL, I examined the ongoing debates in England relating to the accommodation of religious diversity in family law. The lecture by the Archbishop of Canterbury, Dr Rowan Williams in February 2008, titled "Civil and Religious Law in England: a Religious Perspective," had generated renewed attention to the issue, and my time at BIICL was particularly fruitful because of the current interest and activity (thank you, Archbishop!).

My other project while at BIICL was the creation of a Comparative Law programme at Queen's University's International Study Centre, which is located at the Herstmonceux Castle estate in East Sussex (pictured below). Each Spring, law students have the opportunity to study International Business Law or Public International law at the Centre, and, beginning in Spring 2009, the additional option of studying Comparative Law. Detailed information is available from Gillian Ready, Assistant Dean of International Programs, Faculty of Law, Queen's University gillian.ready@queensu.ca.

My visit to BIICL, though brief, was highly productive, and I am very grateful for the thoughtful support provided.

Programme of Events

The Eleventh Investment Treaty Forum Public Conference

DAY 1 & 2

THE ENERGY CHARTER TREATY

Energy security, investment protection and future developments

Thursday 18 September 2008 14:00 to Friday 19 September 2008 15:45

Location

Day 1 - British Institute of International and Comparative Law, Council Chamber, Charles Clore House, 17 Russell Square, London, WC1B 5JP

Day 2 -The Royal College of Physicians, The Wolfson Theatre, 11 St Andrews Place, Regent's Park, London NW1 4LE

Energy security is at the top of today's global agenda, and protection of investments is key to building energy security in today's increasingly international world. The Energy Charter Treaty, with its 51 member states, plays a major role in guaranteeing energy security in the Eurasian region. Since the Treaty came into force 10 years ago, at least 18 investment arbitration cases – including the noted Yukos and Libananco claims – have been initiated on the basis of the Treaty's powerful investment promotion and protection provisions. This conference is therefore a timely occasion to review the Treaty's achievements, its strong points and its limitations.

Innovation in Life Sciences

Thursday 25 September 2008 09:30 to 17:45

Location

Clifford Chance, 10 Upper Bank Street, Canary Wharf, London E14 5JJ

This event is kindly sponsored by:



FOUR NEW SQUARE



The Annual Grotius Lecture

THE RULE OF LAW IN THE INTERNATIONAL ORDER



Monday 17 November 2008 18:00 to 19:30 Location: The Great Hall, The Honourable Society of Lincoln's Inn, The Treasury Office, Lincoln's Inn, London WC2A 3TL

The Rt Hon Lord Bingham of Cornhill KG, Chairman of the British Institute of International and Comparative Law

The Annual Grotius Dinner
Monday 17 November 2008 20:00 to 22:30

Location

The Old Hall, the Great Hall, the Honourable Society of Lincoln's Inn, London, WC2A 3TL

Speaker:

The Rt Hon Jack Straw, Lord Chancellor and Secretary of State for Justice

This event is kindly sponsored by:



From Samengo-Turner to Duarte: Jurisdiction and Applicable Law in the Context of Employment
Herbert Smith LLP, Exchange House, Primrose Street, London, EC2A 2HS
Thursday 25 September 2008 17:30 to 19:30

Annual Conference 2008

Climate Change and its Challenges for the International Legal System

Brunei Gallery, SOAS, University of London, Thornhaugh Street, Russell Square, London,
WC1H 0XG British Institute of International and Comparative Law, Charles Clore House, 17 Russell Square, London,
WC1B 5JP

Friday 17 October 2008 09:30 to 18:00

Dealing with International Terrorism and Regional Security: Constitutional status and legal framework to the tribal areas in Pakistan and Afghanistan

British Institute of International and Comparative Law, Charles lore House, 17 Russell Square, London, WC1B 5JP

Tuesday 21 October 2008 09:30 to 18:00

32nd Annual FA Mann Lecture
The Old Hall, Lincoln's Inn, London WC2
Monday 3 November 2008 17:00 to 20:00

7th Annual Merger Conference
The Law Society, 113 Chancery Lane, London, WC2A 1PL
Thursday 13 November 2008 09:30 to 17:00

The Annual Grotius Lecture

The Great Hall, The Honourable Society of Lincoln's Inn, The Treasury Office, Lincoln's Inn, London WC2A 3TL Monday 17 November 2008 18:00 to 19:30 The Annual Grotius Dinner

The Old Hall, the Great Hall, the Honourable Society of Lincoln's Inn, London, WC2A 3TL Monday 17 November 2008 20:00 to 22:30

European Law and Bilateral Investment Treaties: Exploring the Grey Areas
Lovells LP, Atlantic House, Holborn Viaduct, London, EC1A 2FG
Thursday 4 December 2008 10:30 to 17:00

Staff News



We are very pleased to announce that Sarah Williams has joined the Institute as the new Dorset Fellow. Sarah was previously at Durham University, where her teaching and research interests included public international law, international criminal law, legal responses to terrorism and international human rights. During 2006, Sarah was a Legal Researcher at the Foreign and Commonwealth Office. In this role Sarah appeared before various United Nations committees and commissions, and advised the British Government on issues of international, foreign and domestic law. From January to March 2008 Sarah was a Visiting Fellow at the Sydney Centre for International Law.



Orsolya Deák has joined the Institute on June 23rd 2008 as Administrative Coordinator previously Orsi worked in the European Parliament for the Hungarian MEP .



Mick Belson has retired from the Institute due to ill-health. Mick has been Publications Consultant for seven years and his vast experience of all aspects of the publishing industry has been a key factor in helping us to develop the Institute's publishing programme. We would like to thank him for his invaluable contribution and we all wish him well.



Jane Welch has decided to stand down as Senior Research Fellow at the Institute and become a Visiting Fellow from 1 July 2008. Jane has made a very significant, important and unique contribution to the Institute for many years. Her research remains innovative and of the highest quality, and her wisdom, insight and mentoring has been of real benefit across the Institute. Her continuing close involvement with the Institute is warmly welcomed.



The Institute congratulates Brendan Plant, Research Fellow on the Institute's Evidence Project, who has been accepted into the PhD programme at the University of Cambridge, where he will commence research into dispute settlement in the World Trade Organization in October 2008.



Gemma Parsons has left the Institute to take up a new position with Hodder Education. Gemma was Publications and Marketing Assistant since October 2005 and made an exceptional contribution to the publishing department and to the Institute in general. We wish her every success in her new role.



Dr Nisrine Abiad, project manager of the institute's project on Human Rights in International Law was invited by the Protection Project, a human rights research institute at The Johns Hopkins University School of Advanced International Studies (SAIS) to participate at a workshop on the topic of "Islam, CEDAW, and the Human Rights of Women: Reservations to the Convention on the Elimination of All Forms of Violence Against Women'. She made a presentation on 'The Role of Islamic Considerations on the Ratification of International Human Rights Treaties'. Nisrine has also been awarded a full scholarship to participate in the First EURASIA-Net Summer School on 'Supernational (Regional) Policies and Instruments for the Promotion of Human Rights and the Management of Minority Issues' scheduled to take place from 25 August till 5 September 2008 in Bozen (Italy).

New Publications



For details on how to purchase any of the three Iran project books mentioned above, for details of our other titles, or for information on how to submit a book proposal, visit www.biicl.org/publications or contact the publisher, Orla Fee, o.fee@biicl.org; Tel:02078625154.

External Events

CONFERENCE: "THE PINOCHET CASE AND ITS CONSEQUENCES TEN YEARS ON".

Organized by:

BRITISH INSTITUTE OF INTERNATIONAL AND COMPARATIVE LAW, CENTRE FOR LAW AND SOCIETY AT LANCASTER UNIVERSITY and INSTITUTE OF ADVANCED LEGAL STUDIES, LONDON UNIVERSITY.

Tuesday 11 November 2008 09:30 to 18:00

Location:

Institute of Advanced Legal Studies, Charles Clore House, 17 Russell Square, London, WC1B 5JP

Participants include:

Sir Geoffrey Bindman (the solicitor who acted for Amnesty International and others in the Pinochet case) Members of the institute will receive a 40% for this event.

To register please email, Belinda Crothers, IALS

Produced by Jane Nicholson-Biss and Bart Kolerski Edited by Orla Fee

Questions and comments? Email us at newsletter@biicl.org

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