uring Monday’s presidential showcase session on human trafficking, speakers called for tougher sanctions, as well as increased state consciousness of trafficking offences.

Human trafficking, or modern-day slavery, exists in almost every country in the world. Although it’s difficult to quantify the extent of the problem, conservative estimates have valued the industry at $32 billion.

Laurel Bellow, the immediate former president of the American Bar Association, set out five steps to help in the fight against human trafficking.

First was a uniform minimum law to punish the captors. This legislation, she said, should allow for the use of civil law to recoup profits.

“In lobbying for that minimum law we will also be asking for an expansion of the law with tough penalties and resources to help the victims,” said Bellow.

Education of first responders on how to recognise a victim when they initially present themselves was also a key issue. Bellow stressed that these victims, who are often deeply traumatised, will never self-identify.

Third on the list was the promulgation of business conduct standards promoting a zero tolerance approach.

Fourth, Bellow stressed the need to ensure that every employee understands the problem and is able to spot it. This, said Bellow, could take the form of several pages in an employment manual, listing ways to identify victims and an anonymous telephone hotline.

This was followed by a suggestion for a national awareness campaign because, as Bellow said, many people have no idea how deeply slavery permeates lives.

Moving forwards
Following the rape of a young girl in Delhi, a committee was formed of which Gopal Subramaniam, the former Solicitor General of India, was part. One of the committee’s conclusions was that it is not enough to incorporate the Palermo protocol into domestic legislation.

Enacted in 2000, the Palermo protocol stands as the most comprehensive and important international legislation on human trafficking.

“We have to look at this in terms of very strong and compulsory sanctions,” said Subramaniam.

Indeed, following the report’s release, the offence of trafficking was enacted for the first time in India in May 2013. This new offence gives stringent sentences.

“If a public servant or a police officer is involved in trafficking, which [...] is one of the tacit approvals of this state to trafficking, we suggested that he must be punished with life imprisonment at the very minimum,” said Subramaniam.

During his frank address, the top-ranking lawyer also discussed the rehabilitation of victims of trafficking offences.

“I’m very happy to see the instances of rehabilitation,” he said, referring to video footage shown during the showcase. “But please note that for two instances of successful rehabilitation you have a ratio of almost 10,000 cases of non-rehabilitation.”

Further, he warned that the very institutions which are meant to care for trafficked women and children sometimes are predators themselves.

Many people have no idea how deeply slavery permeates lives

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Distress call

Although structuring and legal considerations are obviously integral to completing successful M&A deals involving distressed assets, the biggest issue may be that of timing. Panelists participating in yesterday’s session agreed that companies must begin considering a distressed sale or restructuring at an early stage.

But denial on the company’s side is common, and not only from the company’s executives but also from its advisors—including its lawyers. By the time the distressed company gets around to selling itself or its assets, it may be too late and it may have to resort to a fire sale. Ultimately, timing means flexibility, panelists agreed. The earlier that a company recognizes its issues and goes into the process, the more opportunities there are from a structuring perspective. They referred to the “traditional insolvency death spiral.” This is funnel-shaped: there are a lot of opportunities at the top but smaller players—typically in “buy it to kill it” deals. This is often a strategic decision. Buying a failing company and throwing it away, prevents a private equity fund or another company buying it and possibly turning it around.

But some lawyers said that other practitioners were actually part of the problem. Speaking from the audience, one lawyer from a large firm said it was not unusual for corporate and securities lawyers to fall into exactly the same trap as the client.

Sometimes when lawyers work very closely with the client, the same denial spills over. “By the time [the corporate and securities partners] come down to the insolvency group—which they regard as a bunch of vultures—they reluctantly expose their client to us,” he said. “Often it’s too late.”

Another delegate recommended that insolvency practitioners buy in as early as possible for tax partners. “I find that an important source of income is my tax colleagues,” he said. “They often give good tips.”

Longer timelines

Companies may be in denial about their financial situations, but investors in the competitive distressed M&A space are looking for assets earlier. Panelists agreed that instead of waiting for a company to have a catalyst moment, such as a covenant breach or a liquidity problem, they’re now backing up anywhere between six to 18 months before that event is due to happen.

That expands the pipeline for distressed opportunities. Not every company will end up distressed, however, especially as it has become easier for troubled companies to access the debt markets and delay a restructuring situation.

Regardless, the expansion of the pipeline has affected how lawyers look at restructurings. “The trick is not only to find the right situation but also to back the right horse,” said Slaughter & May’s Miranda Leung.

She explained that today the situations are so complex, with so many layers of different debt and so many stakeholders, that lawyers may easily get approached by one of the stakeholders. Lawyers must now work out whether that party will be a large player in the restructuring situation.

What’s next

Ignacio Pesquera of Galicia Abogados noted a huge difference between the approaches that institutional and private companies now take. Most institutional companies tend to get rid of bad businesses more easily. Private equity funds must dispose of investments that go sour, so it’s easier for them to move into the distressed process than for ordinary private companies.

Further panelists agreed that they’ve recently seen more defensive acquisitions, where an existing operating entity buys troubled smaller players—typically in ‘buy it to kill it’ deals. This is often a strategic decision. Buying a failing company and throwing it away, prevents a private equity fund or another company buying it and potentially turning it around.

But assets that these companies are looking at have also changed. “Oftentimes the most valuable asset is no longer bricks and mortar—it’s often intellectual property rights now,” said Dickinson Wright’s Michael Weinczok.

Avoiding denial

But denial is one of the most difficult things to overcome. Houlihan Lokey’s Adam Dunayer said that this was especially difficult because the parties controlling the entity were perpetually one quarter or one contract away from flying out of the depths of distress.

The person who controls the entity in which a buyer is trying to invest has a call option on the equity. The value of the call is a function of how much time they have, as well as the strike price. But time is all they have, and more often than not they will play it out until the end.

Others on the panel noted that they have had experiences in which they could have made a genuine difference for their clients if they had called early enough.

Denial is one of the most difficult things to overcome
New IBA platform takes shape

The IBA’s public law section yesterday formally launched its new subcommittee dedicated to issues faced by international organisations’ legal counsel.

With significant input and suggestions from present and former legal counsel of international organisations who were in attendance, yesterday’s session explored the recommended agenda, structure and priorities of the newly-formed subcommittee.

The brainchild of the public law section and the OECD, the first-of-its-kind forum creates a platform for the exchange of ideas and dialogue on issues confronting legal directorates around the world.

“There is a lack of international forum for lawyers in international organisations to discuss issues such as immunities and cross-border contracts,” said session co-chair Christo Botha, of the University of Pretoria, South Africa.

As explained by panelist Yaara Alon of the OECD directorate for legal affairs, the understanding that international organisations share the same preoccupations underpins the subcommittee’s formation and operations going forward. “It could be very useful to have a forum with a good exchange on hot topics, and where appropriate, to think about collective and joint action on certain issues,” she said.

Earlier this year, the legal directorates of leading international organisations were asked to identify their key areas of concern and priorities. The issues that came up again and again – including privileges and immunities, governance, anti-bribery and fraud internet regulation and intellectual property, cloud computing and data protection – are the initial topics of interest for the subcommittee.

But the co-chairs and panelists repeated throughout the session that they would like members’ ideas on the topics that should be addressed. It was quite fitting, then, that the morning session proved to be a collaborative one, with significant audience participation and recommendations for the new forum.

Hybrid approach

One audience member, and former international organisation general counsel issued what some may deem a warning to clearly understand and define what the connection between the IBA and international organisations can and should be. “If you are working for an international organisation, you want to be involved in the part of the IBA that is concerned with the substantive issues that you are dealing with,” they said.

Legal counsel from organisations focused on specific areas – maritime law, for example – are facing different issues to more broadly-mandated entities like the OECD. And the OECD has distinct differences from the likes of the World Bank and International Monetary Fund, in that it doesn’t provide countries with financial assistance or loans. But it is the specific substantive issues that general counsel are most likely to be interested in, the audience member said.

Alon agreed with the general proposition that international organisations deal with different issues but noted that they also share some of the same preoccupations. “We interact a lot already with our counterparts in other organisations, and not necessarily those that have the same scope of work,” she said.

She took privileges and immunities as an example. “Even if we implement them differently to the UN, I think they can inspire us and share their experiences. And the exchange and dialogue could be very useful for us,” she said.

Panelist Simon Hannaford, legal support office director of the UN development programme, said he viewed the forum as raising awareness, from a legal point of view, of the type of issues that confront organisations on a daily basis.

In this sense, the subcommittee plans to link up with other committees to facilitate discussions on specific and focused topics to address substantive areas of law being faced by counsel.

“That is the type of hybrid approach we have to aim for,” said co-chair Bernard Bekink, also of the University of Pretoria, South Africa.
Surprising and uncommon forms of prosecution have been pursued by governments around the world to limit the freedom of speech and expression.

The reasons for these limitations include national security, fighting terrorism, preventing hateful or insulting speech and blasphemy. Crackdowns across jurisdictions often prompt a move away from traditional media, as both journalists and their sources increasingly face prosecution.

Panelists from six countries in yesterday’s session noted some signs that governments and judiciaries may be changing their tone, but said increased limitations on free speech were still a cause for concern.

Former New York Times editor Bill Keller addressed these issues in regards to the US, where freedom of speech is a hallmark of the constitution. He explained the current administration has increasingly gone after whistleblowers, using the latest technology to track conversations and compel journalists to divulge their sources.

“The first amendment serves its purpose, protecting serious and important journalism from official reprisals,” Keller told the session. “I wish I could say the story ends there, but things are not quite as simple as they seem. While the government has been unable to prevent publication in these high profile cases, it has brought the full force of the law to bear on our sources. The leaks and whistle blowers who divulge classified information.”

Governments have broadened how they choose to prosecute individuals for their speech. The Obama administration has charged eight individuals under the 1917 espionage act. In 2012, the Russian government demonstrated how laws preventing insults and hate speech could be used, during their prosecution of the band Pussy Riot.

“The charges were interesting because they revealed a certain degree of sophistication on the part of the Russian authorities, in choosing the themes for suppressing free expression,” said Natasha Lisman from Surgarman Rogers Barshak & Cohen.

“The government chose to focus on the application of the Russian version of the anti-hate speech laws that we see in so many European countries,” she explained.

In Turkey, where a crackdown on journalists has been carried out under the guise of protecting against terrorism, many citizens are turning away from mainstream media.

“In a number of occasions journalists were fired after writing openly critical pieces about the government’s policies,” said Zeynep Ozkan Ozeren, an Istanbul-based lawyer from Ozkan Law Office.

She explained self-censorship has become a common phenomenon in Turkey, highlighted during last summer’s protest in Istanbul’s Taksim square.

“As a result the mainstream media completely lost its credibility in Turkey and everyone is turning to social media,” she said.

A number of judicial rulings in France, the US and even Malaysia do offer some hope that limitations on the freedom of expression may have reached a turning point. French courts have ruled that parodies of religious scenes can be shown in public spaces, for example. While, Malaysia is currently awaiting a ruling on use of the word Allah by Christians. A current decision that the word can be used to describe god, not only a Muslim god, is being challenged in the high court. There are hopes that a ruling in favour of the lower court’s decision could increase freedom of expression in the country.
Energy drinks, health products and food supplements are big business now. Consumers from around the globe are scrambling to get their hands on the latest miracle products, hoping for a quick fix.

But while the potential rewards are high, so are the risks. With so much expectation surrounding these wares, manufacturers must be extremely careful to provide the right warnings, not over-promise, and beware of the myriad of (possibly conflicting) rules that can apply to something sold around the globe.

As these industries have become more prominent and successful, so have the number of consumer claims and enforcement actions they face. This IBA conference sees the Healthcare and Life Sciences Law Committee, Leisure Industries Section, and Product Law and Advertising Committee team up for the first time to put these issues under the spotlight.

Titled ‘Gym bunnies and advertising hares – advertising health, food, drinks and supplements – what you can, can’t and must say’, this interactive and timely session will provide delegates with valuable insights on advertising and marketing different products.

The advent of online shopping has taken these issues to another level, and promises a truly international discussion.

“The products are often sold across the world very quickly, which can create issues in many jurisdictions,” says session chair Aoife Gaughan, a partner at DWF Fishburns in Dublin. This is particularly so because different countries often deal with these issues in different ways.

Most jurisdictions’ advertising regimes for these products are looking at three questions: if the claims are true; if the manufacturer has the necessary reports and evidence to satisfy the claims being made.

But while there is a degree of consistency within much of Europe, thanks to EU directives, there are drastic differences between other countries around the world.

“Even in North America, the difference between US and Canadian laws and regulations is vast,” says session co-moderator Brenda Pritchard, a partner at Gowling in Toronto. “It means we have a lot of people cross-border shopping and seeing different advertising for the same product.”

Most jurisdictions distinguish between, and have different regulations for, food and supplements. “But it is not always clear how a product should be categorised – this is something we will be looking at,” says Gaughan.

Red Bull is a prime example. The energy drink is regulated as a natural health product in Canada, which means their ingredients – and recommended dosage – must be stated on its label.

This is not necessarily the situation in the US – which sees many products regulated at state-level. It means someone shopping inter-state could receive mixed messages about what they are buying.

Given these are inherently international topics, it seems fitting that the session includes speakers from the four corners of the globe including India, Australia, Brazil, Japan and Germany.

Co-moderator David Jacoby, a New York-based partner with Schiff Hardin, tells the IBA Daily News that based on what he has seen from the speakers’ materials, the session will prove a group learning exercise.

“It seems like the jurisdictions that are at the forefront aren’t necessarily those that are normally considered the most sophisticated,” he says. “So I think there could be a lot to learn across jurisdictions.”

New problems, old problems

Industry regulators’ to-do list has grown as quickly as health products’ popularity. Issues towards the top of their agenda include tackling overseas shopping designed to advantage from cross-border differences, and the inherent difficulties posed by the internet.

How, for example, can a regulator know exactly what products are being brought into their jurisdiction via the internet, let alone confirm that it satisfies local laws?

Perhaps an even harder problem to tackle, is consumers expecting a product to have a certain effect based on non-verbal advertising techniques. Product placement by sport stars and teams, for example, is becoming more common – particularly for energy drinks.

“When you drill down into it, often these manufacturers aren’t making many claims. But the associations that come with the product can create the impression it will have a certain effect,” says Gaughan. “This is proving a difficult issue for regulators, but it is something they need to look closely at.”

These relatively new tactics, and the problems they create, will be discussed on Tuesday’s session. But this should not overshadow the fact that many problems in this space are steeped in history.

The focus on inaccurate claims, or the absence of warnings, about health products can be traced back for decades, including to the earliest tobacco litigation cases. Appetite suppressant tables, too, were around in the 19th century.

A recent UK case demonstrates how some age-old problems are among those needing the most urgent attention. A young medical student died earlier this year after taking dinitrophenol which she had ordered online. Known as DNP, it is sold as a pesticide, and is illegal for human consumption. However it is used as an unlicensed slimming drug.

“Medical journals show that US congress was being warned about the same chemical 70 years ago – so while some things have changed, some issues have been faced for a long time,” says Jacoby.

The advent of online shopping has taken these issues to another level

All together now...

The importance of the topics being addressed, combined with the fact these products are increasingly becoming part of people’s daily lives, mean the session should appeal to a broad range of delegates.

For some lawyers, it is anyone who has clients that sell essentially anything that is ingested, which has any advertising on why the product might be good for you, is well served to come and pay close attention,” says Jacoby.

The highly interactive session format is another reason to attend. The informative panel session will be followed by audience roundtables, where delegates watch a mock advert and analyse the message on the basis of their own jurisdiction’s advertising regulations.
N otwithstanding the multinational presence of many so-called systemically important financial institutions (SIFIs), effective means of coordinating the cross-border resolution of a SIFI have yet to emerge.

Indeed, the new resolution regimes being created for SIFIs typically operate outside of existing insolvency regimes and are administrative in nature.

Today’s session will address the need that now exists for cross-border coordination and cooperation when resolving SIFIs, and the possible approaches for achieving this.

“Almost all SIFIs have global operations so any failure of a SIFI will inherently involve cross-border issues,” says Dirk Bliesener, session co-chair and Hengler Mueller partner.

Many argue the fact that no mechanism exists for recognising the actions of a foreign resolution authority and making them enforceable in other jurisdictions undermines confidence in the resolution process.

During the recent financial crisis, then Bank of England Governor Mervyn King noted that banks are global in life but national in death. “We’re going to be asking – does that have to be the case, or can a global approach be taken during resolution that would impose losses on shareholders and creditors while also protecting markets and preserving the going-concern viable elements of the SIFI,” says Knox McIlwain, session co-chair and Cleary Gottlieb Steen & Hamilton associate.

Today’s panel will debate the potential approaches to achieve this. These options include building off the UNCITRAL model law to create a model regime where power is delegated to the local resolution authority to recognise and make enforceable the actions of a foreign resolution authority.

The real challenge is that, regardless of the regime put in place, resolution authorities and regulators can only be expected to take actions that are in their own self-interest.

“It can’t be expected that one nation would sacrifice itself or its economy for others,” says Bliesener. “That makes it very important to create resolution strategies that are mutually beneficial to all the key players so that one country isn’t asking another for a favour, but rather is asking that it act in its own self interest.”

One such potential strategy is the so-called single point of entry strategy. It involves resolving a UK bank, for example, on a global basis solely by resolving the UK parent entity. “Coordination and recognition regimes that allow regulators in other countries to defer taking action under their own laws and to support that global resolution could make this approach more effective,” McIlwain says.

“There are certain banks for whom single point of entry is likely to be the best approach to resolution, and that’s where the work needs to be done to enable the relevant resolution authorities to coordinate to support that approach,” Bliesener adds.

Single point of entry contrasts with the so-called multiple points of entry strategy, where each country only resolves the parts of the SIFI in its own jurisdiction.

“That is the best resolution strategy for certain institutions that are structured and funded in a particular way,” says McIlwain. “The focus there is on coordinated action, with regulators exercising powers so that they’re communicating and supporting, rather than impeding, each other.”

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In search of justice

The 2013 IBA conference sees the return of the popular *A conversation with*... series of interviews with leading legal and business experts.

Professor Cherif Bassiouni, often referred to as the father of international criminal law, will take part in the Tuesday afternoon session.

Professor Bassiouni will discuss issues regarding the Middle East and post-Arab Spring period in the context of the shifting balance of global politics and present conditions in the Arab world where, says Professor Bassiouni, there is no pursuit of transitional or post conflict justice.

Speaking on his experience investigating conflicts during a wide-ranging interview at last year's IBA, Professor Bassiouni said that one thing is certain: every conflict is *sui generis*.

"Every conflict has its own characteristic," Bassiouni told the audience. "One thing, however, remains constant: the tragic realisation that human activism doesn’t change, that you see the same type of human reactions – for lack of a better term, I would call ‘evil’ that would come out in a culture like the former Yugoslavia or Afghanistan or Iraq or Libya or Bahrain."

"It seems like the veneer of human civilisation is very thin and, if you scratch that veneer, human activism comes out very fast," the internationally renowned war crimes expert continued.

"On the other hand, human good comes out very fast as well," added Bassiouni. "You see on the other side the number of persons who come out and do the right thing; who save, who try to save victims, who expose their lives in order to do the right thing."

Professor Bassiouni served as Chair of the Bahrain Independent Commission of Inquiry established by Royal Order of the King of Bahrain to investigate and report on the events that took place in Bahrain in February and March 2011, and to determine whether the events involved violations of international human rights law and norms.

Professor Cherif Bassiouni has extensive experience working on Commissions of Inquiry. He chaired the United Nations Independent International Commission of Inquiry for Libya in 2011, was also involved in commissions investigating the human rights situation in Afghanistan between 2004 and 2006, and violations of international humanitarian law in the Former Yugoslavia in 1993. Professor Bassiouni chaired the Security Council Commission on the former Yugoslavia and was the independent expert on human rights for Afghanistan.

Professor Bassiouni was nominated for the Nobel Peace Prize for his work in the field of international criminal justice and for his contribution to the creation of the International Criminal Court. He is the recipient of numerous academic and civic awards. A well-published author, Professor Bassiouni’s works include some of the leading textbooks in international criminal law.

Professor Bassiouni began his education in Egypt where he obtained an LLB from the University of Cairo. He also pursued his legal education in France, Switzerland, and the US where he earned the following degrees: a Doctor of Jurisprudence from Indiana University; LLM from John Marshall Law School; and Doctor of Juridicial Science from George Washington University.

The *A conversation with*... series takes place at lunch-time throughout the week and is open to all delegates.
What to eat in Boston

Although Boston is one of America’s financial centres, college students comprise one-third of its population, meaning that it’s equally easy to find a memorable business lunch venue as it is a quick snack by the conference venue.

**Back Bay**
Back Bay boasts Boston stalwarts such as L’Espalier, located next to the Mandarin Oriental Hotel. It is known for its sophisticated mix of New England and French cuisine, as well as its focus on local ingredients. Mistral also serves French and Mediterranean cuisine, and boasts a long-standing reputation.

For Italian outside the North End, Lucca Back Bay wins rave reviews.

Uni Sashimi Bar and Clio in the Eliot Hotel near the convention is another choice for business lunches and dinners. Both are highly recognised eateries in their own right, but in an area where it can be hard to find late-night snacks, Uni is also known for its midnight ramen on Thursdays, Fridays and Saturdays.

Quicker lunch options near the conference include Flour Bakery + Café, which is famous for its sticky buns but also serves sandwiches. The Parish Café is known for both its sandwiches and its outdoor patio; its Boylston Street location makes for great people watching. For ice cream – oddly popular in a city known for its cold winters – local chain J.P. Licks is a must-visit.

**North End**
Boston’s North End is famous for its cannolis, or ricotta-filled pastry tubes. Locals and tourists alike have debated between those at Mike’s Pastry and Modern Pastry for years – try both. The area is famous for its Italian food, and Giacomo’s Ristorante is especially well-known.

For a taste of ubiquitous Boston chain Legal Sea Foods, the more experimental Legal Test Kitchen is in this neighbourhood. Another destination is Harpoon Brewery, a working brewery specialising in craft beers.

**Fort Point**
This is one of Boston’s up-and-coming areas. It’s seen enormous development in the last few years and is home to many of the city’s new restaurants. Drink, which comprises one crowded, mary bar, is a favourite of cocktail aficionados, and the Dark and Stormy is recommended. Menton, is located nearby; Kristen Kish, the recent winner of the US reality television show Top Chef, was recently promoted as its chef de cuisine.

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**Cambridge**
Cambridge also has an enormous selection of restaurants. Toscanini’s in MIT’s Central Square is famous for its unique ice cream flavours, such as ginger snap molasses. Craigie on Main is nearby, and is known for its roast chicken is a must. Bondir is another highlight, and was named one of the ten Best New Restaurants in America by Bon Appetit in 2011.

For more high-end dining, head to Harvard Square. Sandrine’s Bistro is a choice for French cuisine. Rialto in the Charles Hotel serves both Italian food and New England favourites. Henrietta’s Table, which highlights New England produce, is also in the hotel. If you’re staying over the weekend, it serves one of the best Sunday brunches in Boston.

Another more casual option known for its focus on local ingredients is Clover Food Lab, which began as a food truck that parked in front of MIT. It now has locations in Harvard Square as well as Brookline and on Newbury Street.
or years, corporate executives have wrestled with the issue of a firm’s responsibility to society. Corporate Social Responsibility (CSR) is a requirement that has crept up on organisations worldwide. Defined strategically, it is the ways in which companies manage their economic, social and environmental impacts. Cost-cutting attempts by companies who move operations to countries with lower standards of business conduct precipitated a ‘race to the bottom’. “This initiated a much wider discussion on corporate social responsibility,” says session chair Dentons’ Birgit Spiesshofer. “To this extent it is the child of globalisation.” And it is increasing in scope too.

Data protection increasingly falls under the ambit of CSR. “Programmes such as those of the National Security Agency in the US are designed to create a ‘transparent citizen,’” says Spiesshofer. “We need to discuss whether the role played by companies like Google or Facebook in this was appropriate.”

Supply chain management is also growing in importance. “The internet makes it very easy for a company to ruin its reputation,” Spiesshofer explains. “Ensuring your supply chain is not connected with any exploitative labour issues is an increasing concern for companies.”

Today’s session will show that CSR is developing from voluntary initiatives to more binding rules and that strategic issues are interwoven with soft law and hard law issues. “You have a trickling down effect for example of the UN Guiding Principles, through to the OECD Guidelines for Multinational Enterprises, the European Commission’s Strategy Paper of 2011 and to EU Member States policies, encompassing hard law amendments, soft law guidance and educational and training measures,” says Spiesshofer.

In response to the UN Guiding Principles, the OECD incorporated in 2011 a chapter on human rights into its Guidelines for Multinational Enterprises. The European Commission published a new strategy paper on corporate social responsibility in which it set an action agenda for 2011 to 2014, both for the EU and the Member States, addressing the full range of CSR related aspects. These developments are increasing incentives for firms to invest in CSR to avoid reputational damages and costly litigation.

Indeed, companies need to embed CSR into their business. “Drafting or developing a corporate social responsibility strategy is one way of doing this,” says Spiesshofer. “But this needs to be supervised to make sure the policy is more than just a ‘paper tiger’.”

Today’s session aims to demonstrate in a case study dealing with a new industrial settlement in a sensitive area that such a typical case encompasses a whole range of diverse CSR issues. “We want to show the audience that they cannot just sit back,” says Spiesshofer. “CSR is a core strategic and business issue.”

In recent years, plaintiffs have sued multinational corporations seeking to change their behaviour and enforce CSR norms,” says Morrison & Foerster’s Peter Stern. This type of litigation is at a crossroads due to a recent decision of the US Supreme Court, he adds.

CSR covers a broad array of social, ethical, and legal obligations. Whether and how these norms should be enforced in civil litigation raises complex questions. It is undeniable, however, that litigation has been used effectively to punish perceived violations of CSR, and that many companies have focused on CSR compliance in order to avoid litigation.

Thursday’s panel will examine the landscape of CSR litigation, focusing on current trends. For example, the US Alien Tort Statute, a federal law that has been widely invoked to assert human rights claims against businesses, is under review by the US Supreme Court, and may soon be substantially different in application. Around the world, there is also evidence that ‘soft law’ CSR standards – such as the recently promulgated ‘Guiding Principles’ of the UN Special Representative on Transnational Business and Human Rights, and similar initiatives – are becoming incorporated in statute law.

Additional laws are being imposed to govern data privacy, supply chain management, and other matters that fall under the heading of CSR – all of which may lead to litigation. How can prudent companies fulfill their obligations and seek to minimize litigation risk? And is there a role for alternative dispute resolution in CSR? With input from experienced practitioners, this session will take stock of these developments and look ahead to next steps.

“In recent years, plaintiffs have sued multinational corporations seeking to change their behaviour and enforce CSR norms,” says Morrison & Foerster’s Peter Stern. This type of litigation is at a crossroads due to a recent decision of the US Supreme Court, he adds.
Politicians’ immunity from criminal jurisdiction is an ancient institution, which stands the test of time. But is such protection still in line with the contemporary world’s requirements? Italy’s high profile and ongoing tax fraud case with the country’s former prime minister, Silvio Berlusconi, is perhaps the most recent example of political abuse of power. The case has fuelled the debate that political immunity should now be amended.

Today’s session will compare the rules concerning politicians’ protection in various legal systems, focusing on the consequences these may have on criminal prosecution and on transnational mutual assistance. It will also ascertain where the line is between the legitimate need to protect the institutions and the possibility of the politicians’ abuse of it.

The Berlusconi case explained

In June, Italy’s highest court began hearings to decide whether former prime minister Silvio Berlusconi should be jailed and banned from public office for tax fraud, in a case involving his Mediaset media empire. On August 1st, the court’s ruling threw Italian politics into disarray when it handed Berlusconi his first definitive jail sentence, of four years commuted to one. Under a law passed by Mario Monti’s government last year that conviction means Berlusconi, who sits in the Senate, also faces the risk of expulsion from parliament.

In addition to the tax fraud case, Berlusconi is fighting a seven-year jail sentence issued by a Milan court this year for paying for sex with an under-aged prostitute and abusing his office to cover it up. The case has fuelled the debate that political immunity is a little weaker than that available to ranking officials is normally removal from office, and not a jail term. But penalties vary depending on the charge, and might follow or precede a formal indictment. For example, politicians have some protection for civil matters depending on their office. Delegates attending today’s session will hear the former district attorney and Massachusetts Attorney General Proskauser Rose’s Scott Harshbarger explain how local and national politicians’ protection vary in the US, and assess how politicians’ privileges differ by reason of his or her position.

Emerging markets

But Collora says the session will also give some much-needed consideration to the political protections available in emerging markets. “In some developing jurisdictions, such as Russia or China, people who seemingly challenge the established order are subsequently and suddenly subjected to criminal investigation or indictment simply for being in the opposition,” he says. “It may be that these countries it becomes difficult to oppose the ruling regime in any way for fear of repercussions. Some immunity must therefore be guaranteed to those people.”

In bringing together expert speakers from across the US, Europe and Latin America, today’s event aims to garner some much-needed consensus as to the appropriate immunity for political leaders in the 21st century.

“It is a debate that should be of interest to not only criminal lawyers and those counsel representing politicians but also those focused on public roles, constitutional issues and human rights,” says Cagnola. Additional speakers on today’s session include Maura McGowan QC of the UK’s Bar Council, Sjöcrona Van Stigt Advocaten’s Alexander de Swart, Marc Henzelin of Lalive, and Greg Valenti of Studio Legale Vassalli.
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Ponzi schemes: here to stay

There is a dearth of protections available to the victims of Ponzi schemes at the international and domestic level.

Ponzi schemes are large-scale frauds often spanning multiple jurisdictions. Their thrust for new customers means they often cross borders. They lure customers in with promises of higher returns than other schemes. In reality, these returns are paid using investors’ own money, or money paid in by subsequent investors.

When a Ponzi scheme implodes, it raises a number of difficult issues. These range from regulatory responsibility, a myriad of different proceedings, and the tracing of assets across various jurisdictions.

At the international level there are two regimes designed to provide procedural harmonisation and efficiency in multinational insolvency. These are the UNCITRAL Model Law on Cross Border Insolvency and the EU Insolvency Regulation.

However, reality is more complex. Experience shows that once a Ponzi scheme comes to light, most of the money is gone. There is little for financial regulators and interested parties to recover.

As such, the challenge is preventing Ponzi Schemes, as well as improving relief for interested parties.

In this morning’s session, a panel of speakers from America and Europe will address their direct experiences of how a Ponzi scheme is treated in their jurisdictions, as well as the multinational implications. The Insolvency Section’s Insolvency Legislation Co-Chair, Oscos Abogados’ Dario Oseís Corta tells the IBA Daily News, “we will explore how best we can use the legal tools available to enact effective protection and recovery for the investments of investors”.

Speakers will address their experience in Ponzi scheme cases with multi-national implications. Kenneth Krøys from Køys Global Grand Cayman will talk about the Bernie Madoff, Fairfield $65 USBM investment scandal. Jenner & Block’s Ronald Peterson will outline the cross-border insolvency implications of the US Chapter 15 UNCITRAL Model Law. Ralph Janvey from Krag & Janvey will address the Stanford Ponzi scheme case. McGuireWoods’ Dion Hayes will speak about the Scott Rothstein Ponzi scheme, and Ilona Karppinen from Castren & Snellman will talk on the WinCapita case.

Despite increased regulatory and governmental vigilance Ponzi schemes continue to persist. As RLG’s Ira Nishisato, Vice-Chair of the Litigation Committee explains, no matter how well thought through rules are they are only effective to the extent they are enforced. “Enforcement is very much limited by resources and difficulties in overseeing private financial and transactional relationships,” he says.

Again, this is something that varies from jurisdiction to jurisdiction.

Moreover, the perpetrators of the most creative Ponzi schemes tend to be one step ahead of the regulators. Litigation Committee vice-chair Castren & Snellman’s Ilona Karppinen tells the IBA Daily News, “we will explore how best we can use the legal tools available to enact effective protection and recovery for the investments of investors”.

Private civil remedies are a draw-out process, which can see recoveries diluted by lawyers’ fees and costs.
Check out these ‘New Kids on the Block’

(New Kids on the Block is a boy band that originated in Boston in the 80’s)

OUR IBA TEAM FROM THE TOP: SADIQ JAFAR, MANAGING PARTNER DUBAI, RICHARD BRIGGS, EXECUTIVE PARTNER DUBAI, ALAN RODGERS, PARTNER, MICHAEL LUNJEVICH, PARTNER, SAMEER HUDA, PARTNER, ERIK MUTHOW, PARTNER

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Legal aliens

Solving the problem of illegal immigration will take a comprehensive and global solution. Fragmented and patchwork solutions, seen in various incarnations worldwide, benefit neither immigrants nor their host countries, explains Ezequiel Hernandez, co-chair of today’s panel.

Of course, immigration is not a new issue. Throughout history, waves of immigrants have prompted countries to rethink the policies that govern their borders. But globalisation and growing mobility have increased the ease of migration leading to a doubling of immigrants globally between 2005 and the 50 years preceding it, according to the UN department of economic and social affairs.

Today nearly every economy has some type of undocumented worker. Harnessing the economic power of these groups can help to both replace aging workforces and pay for retirement and government benefits.

“People come because they are fleeing violence, poverty, lack of education and infrastructure,” Hernandez tells the IBA Daily News. “Some are fleeing disasters. After the earthquake in Haiti there was a collapse of infrastructure; people left to survive.”

In the US alone there are an estimated 11 million undocumented immigrants, mainly from Latin American countries, predominately Mexico. Today’s speakers, including Univision Communications senior counsel Armando Olmedo, are expected to address the potential in this market.

Attempts in the US to address issues, and proposed solutions, in relation to illegal immigration have deviated from pathways to citizenship to self-deportation.

Indeed, without a clear federal solution states have proposed and enforced policies of their own. In Arizona — where Hernandez practices — the state restricts immigrants’ ability to obtain government ID by requiring they show work permits or visas. Government IDs are also denied to young people granted deferred deportation status under a programme initiated by President Obama. This initiative aimed to help form a pathway to citizenship for 16-30 year old undocumented immigrants brought to the US illegally as children. It failed to pass into federal law as the DREAM [Development, Relief, and Education for Alien Minors] Act in December 2010.

Hernandez will address this policy directive in today’s panel. “Many people haven’t filed,” he says. “They don’t believe that if they give their information to the government that it will be protected.”

There are other hurdles for the ‘dreamers’ who do choose to apply. They must demonstrate they came into the country before they were 16, for example, and that can prove difficult for children who were not enrolled in schools. Applicants must also demonstrate they have been present in the US for the last five years, have a good moral character, and were present in the country on June 15 2012.

What’s more, as Hernandez explains, since it is a directive there is no set processing time so some are waiting six months others 11 and if you get denied there is no appeal.

Next steps

“Whether you are in Germany or you are in Canada, you need a solution that relies on the rule of law,” says Hernandez.

He believes the continued fragmentation of policies is set to continue, until truly comprehensive and likely global solutions can be formed.

One of the biggest problems is politics. “It’s polarising to talk about immigration,” he says. The second issue is fear of cultural and economic change in terms of jobs and fear of foreign populations. “Every wave of immigration in the history of the US has gone through this, from the Irish, the Italians, the Chinese and now Hispanic people,” says Hernandez.

Anti-money laundering laws assessed

Lawyers and bar associations rallied against anti-money laundering laws inspired by the Financial Action Task Force’s (FATF) recommendations, arguing they jeopardise their independence. Instead bar associations must take the lead.

Panelists stressed that lawyers who knowingly involved in money laundering transactions should be prosecuted, but they questioned whether FATF’s recommendations were well-suited to the needs of the legal profession.

What is required

FATF recommendations extend only to certain activities carried out by lawyers, such as buying and selling real estate or companies. They require that lawyers perform thorough client due diligence, adhere to record-keeping requirements and, most controversially, report clients to law enforcement authorities when they suspect that the money involved is the proceeds of a crime.

These recommendations were originally designed to regulate the banking system. They focused on preventing unwitting actors from mistakenly becoming involved in money laundering. In 2008 guidance was adopted for legal professionals to act as ‘gatekeepers’ to the financial system. The need for thorough client due diligence or record-keeping requirements was undisputed. But there were concerns raised as to who would have access to the records.

The requirement to report clients to law enforcement if they suspected that money involved consisted of criminal proceeds was, many said, a troubling breakdown of attorney-client privilege. At an extreme, it requires lawyers to lie to their clients as if they do report them, they are unable to inform them due to a tipping-off provision.

Lawyers agreed that the whistleblowing requirement raises issues around the sanctity of the lawyer-client relationship, as well as more fundamental constitutional issues.

Although the American Bar Association is still in the process of creating its self-regulation approach, Canada’s Federation of Law Societies has been a leader in this regard. The Federation has also been successful in cases against the Canadian government regarding a 2008 law requiring lawyers to comply with FATF recommendations. The Federation’s Ronald MacDonald, QC, described this law as a serious encroachment into solicitor-client privilege area and the independence of the bar.

The Federation won both the initial case and the appeal, and the government will find whether it has leave to take this case to the Supreme Court on October 10. Court decisions so far have supported the notion that the independence of the bar is a constitutionally-protected principle of fundamental justice. They have also stated that the bar association is best-suited to regulate lawyers.

However MacDonald emphasised that these have not been victories for lawyers. Instead, he said this is a victory for lawyers’ clients, who can still rely on objective lawyers that are independently regulated. Panelists urged other bar associations to follow Canada’s example, particularly those that have been ignoring the issue.
Question: What do you enjoy most about the IBA conference?

**Charles Mkokweza**
Corpus Legal Practitioners
Zambia

“I think first and foremost the sessions are top quality. It’s also a great event to foster external relationships, and it’s time away from the office, so it’s a good mix of business and pleasure.”

**Abiola Soladoye**
Lagos State Judiciary
Nigeria

“This is my constituency. The legal profession is my first love. Attending the conference not only allows me to keep abreast of the changes in the law profession, but also on key developments across the industry globally. It’s also a good chance to network with my colleagues.”

**Alison Ashford**
Seyfarth & Shaw
US

“This is the first time I’ve attended the IBA annual conference. I’m an Australian-trained lawyer, and moved to New York only very recently. Coming to this event enables me to meet local counsel I might otherwise have not had the opportunity to meet. As I’m new to the area, and my firm, it’s also a chance to introduce myself to colleagues.”

**Dr. Gerhard Wegen**
Gleiss Lutz
Germany

“I expect to meet my good friends and have lots of good interactions with those friends during the conference. Attending this event enables you to develop friendships from all over the world. It’s a really great networking opportunity.”

**Claudio Undurraga A. Prieto Y Cia Abogados**
Chile

“This conference is the best place to meet a huge number of colleagues who have the same interests as you. If you attend the conference for a significant length of time you make extraordinary friends from across the world. It also provides an opportunity for the profession to debate key areas of interest that we, as lawyers, can have a direct impact on.”

**Emi Omura**
Japan Federation of Bar Associations
Japan

“It’s my first time at the IBA annual conference. I really like the diversity of people that come to the conference. It’s a very sophisticated, very impressive event. You meet a great cross-section of people here with a high-level of expertise across a broad array of topics.”

**Jose Maria Eyzaquiere B. Claro & CIA**
Chile

“This is the most prominent gathering of lawyers worldwide. It is therefore instrumental in enabling those attending to interact with other lawyers on key issues. You come away with fresh ideas that can be implemented both in your day-to-day life and in services to clients.”

**John Sotos**
Sotos
Canada

“The IBA annual conference is a great networking opportunity. My focus is international franchising so attending this event allows me to meet a variety of people also specialising in this area. I really enjoy the variety of sessions and networking events on offer at the conference.”

**Cecilia M. Maira**
Marval O’Farrell & Maira
Argentina

“I like to meet lawyers from other parts of the world who practice the same type of law that I do. I specialise in securities law and I’m senior vice-chair of the IBA securities law committee. My involvement in this committee allows me to meet my colleagues in other parts of the world.”

**Emi O. Omura**
Japan Federation of Bar Associations
Japan

“Don’t you think that the state is involved in some sort of a nebulous way with trafficking?” he asked. “The fact that a state for 50 or 60 years simply silently looks over this problem, I think is primary proof that the state is actively collaborating in this industry.”

According to Subramaniam, human trafficking can be placed within the same category as poverty because the state dismisses the concept of eradicating both as utopian ideals.

**Cecilia M. Maira**
Marval O’Farrell & Maira
Argentina

“At the end of the session, the IBA announced the creation of a Presidential Task Force on Human Trafficking, and a concrete project for the IBA to carry out in the next years.”

**Charles Mkokweza**
Corpus Legal Practitioners
Zambia

“A lively and polarising debate on whether pre-trial publicity threatens the possibility of a fair trial opened yesterday afternoon’s session.”

Panellists’ descriptions of their home-country approach to press coverage of criminal trials reinforced this as an area defined by transatlantic differences.

The US view of journalists acting as the fourth estate is evident in the country’s tradition of not suppressing information, and its strong culture of media and lawyers interacting before trials begin. “In the US we have two trials—one in the courtroom and one out of the courtroom—and I’m not at all convinced that the one out of the courtroom necessarily determines the verdict of the one in the courtroom,” said former federal prosecutor Laurie Levenson.

In stark contrast is the UK’s approach to ensuring an impartial and objective jury. “If that means restraining the media before a jury trial, then so be it,” said Brian Spiro of BCL Burton Copeland.

Acknowledging that differences regarding, inter alia, jury selection and sequestration might in part explain differences between the two countries’ systems, “To a UK defence lawyer I find the US system rather frightening in many ways,” Spiro said.

US-based panelists cited cases where prejudicial evidence had been leaked to the press before a trial, yet the defendant was acquitted. A number of studies done in an effort to change trial venue have actually showed that a surprising number of jurors had never heard of the defendant. This, one panelist said, suggests that the impact of media coverage could be overstated.

**MONDAY HIGHLIGHT**

**SESSION NAME**
Journalism, the media and criminality

**Key takeaways**
- UK panelists defended their country’s strict approach to pre-trial coverage,
- US panelists denied any connection between press coverage and trial outcomes.

**Human trafficking**

Continued from page 1

**High-level responsibility**
According to Bellows, human trafficking would not exist without the complicity or approval of governments, at some level. Bellows called on lawyers to make certain that law enforcement agencies are enforcing the legislation that exists in many countries.

Subramaniam argued that, although India has enacted a first-class constitution that expressly prohibits trafficking, the issue was never seriously addressed by governments or by the state. Indeed, according to Subramaniam, human trafficking is not simply a criminal offence, but a constitutional abrogation.

“Don’t you think that the state is participating in some sort of a nebulous way with trafficking?” he asked. “The fact that a state for 50 years simply silently looks over this problem, I think is primary proof that the state is actively collaborating in this industry.”

According to Subramaniam, human trafficking can be placed within the same category as poverty because the state dismisses the concept of eradicating both as utopian ideals.

“That myth needs to be punctured and it needs to be punctured with a certain degree of force,” he said.

Any state that fails to honour these protocols and permits trafficking needs to be visited with economic and political sanctions, said India’s former Solicitor General.

At the end of the session, the IBA announced the creation of a Presidential Task Force on Human Trafficking, and a concrete project for the IBA to carry out in the next years.
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