A n expert on one of yesterday’s panels emphasised the need for continuing financial support of the International Criminal Court (ICC), whose remit is set to expand in the coming years.

The ICC is an intergovernmental tribunal that sits in The Hague. It has the jurisdiction to prosecute individuals for the international crimes of genocide, crimes against humanity and war crimes.

However, while the ICC is supposed to be a world court, it has just three court rooms, 18 judges and a limited budget. This means it can only deal with the most egregious cases, said judge Howard Morrison, an international judge of the UK at the International Criminal Tribunal for the former Yugoslavia (ICTY) and ICC.

By contrast, Birmingham, a city in the UK, has 20 courts and 20 judges.

“There is always going to be a scrap over the budget,” said Morrison, citing Canada’s call for a zero growth budget this year. “You get what you pay for, or to be more exact, you get what you don’t pay for,” he told delegates yesterday. “A zero growth budget means just that: zero growth.”

“IT’s very difficult to take on new cases or new situations if you don’t have the money to pay the people to do it,” he said.

Morrison acknowledged that the ICC is expensive to run, with total expenditure over $1 billion during its 12 years. However, he argued that its budget is less than half the cost of one F35 fighter jet.

“IT’s very difficult to take on new cases or new situations if you don’t have the money to pay the people to do it,” he said.

Morrison noted that the budget for all of the international courts and tribunals in the world and all the international organisations that support them for one year is the equivalent of 42 minutes of annual global military spending.

“We spend so much more money on military solutions than we do on judicial and human rights solutions,” he said. “My view is that is wholly disproportionate and we have to do something about it.”

Morrison refuted the need to draw comparisons between the ICC and United Nations’ (UN) ad hoc tribunals, arguing that the exercise is like comparing apples with oranges.

Each trial at the ICC is going to be distinct and will require appreciation and determination of cultural differences, he said. “Whereas at the ICTY and ICTR [the International Criminal Tribunal for Rwanda] the trials have been essentially similar to each other, and there is an enormous commonality of evidence.”

“My view is that the ICC should be seen as being effectively a series of ad hoc tribunals,” he concluded.

In addition, while the ICC has a broad mandate, the ICTY and ICTR have very specific targets. The complaint that the ICTY and ICTR have done so many more cases than the ICC is a false comparison, Morrison noted.

“Both the ad hoc tribunals started off with a very identifiable list of potential accused, but the ICC started off from zero,” he said. “It would have been outrageous if the ad hoc tribunals had not got through the caseload that they did in the time that they did – 161 indictments at ICTY for instance.”

“It will be decades before the ICC has done 161 cases, but that’s inevitable. The ICC should not be perceived as some super-national domestic court, it’s a court of last resort.”

An expanding remit

Morrison also said that international criminal law will, in the foreseeable future, expand beyond war crimes, crimes against humanity and genocide.

“The biggest problem for international law and international courts is overpopulation,” he told delegates. “As the pressure on resources and land use grows, people are going to be in conflict.”

“Those conflicts are going to have to be resolved, either by force or some sort of international judicial process.”
Stop US police militarisation

A former US police officer has called for a reversal in policing policy and training, arguing that the country’s law enforcers have become overly aggressive.

Speaking at yesterday’s session ‘Death at the hands of the state’, Professor Arthur Rizer, now a lecturer at West Virginia University School of Law, insisted that officers are acquiring both the mindset and equipment of their military counterparts.

“Training in the US police force is focusing purely on how to shoot properly,” said Rizer. “There is no emotional, psychological or physiological training. Departments need to spend time on this. These are the people carrying guns around – it’s crazy.”

The legal basis for the shift in policy appears to stem from a widening of the definition of ‘deadly force’. In the US, it is defined as the force which a person uses that causes – or could justifiably cause – death, serious bodily harm or injury. In most jurisdictions the use of deadly force is justified only under conditions of extreme necessity as a last resort.

This appears to be slipping in the US, with two cases, Tennessee v Garner (1985) and then Graham v Connor (1989) widening its scope. The latter case expanded its definition to include the ‘objection reasonableness’ standard, being judged from the perspective of a reasonable officer at the scene.

But the practical result has been a huge growth in shootings. In Germany, 85 rounds were fired in 2012. In April of the same year, the Los Angeles Police Department shot 90 rounds at a single person.

The rise of militaristic police forces is also linked to the growth in SWAT teams, police units that are trained in methods similar to those used by the special forces in the military. The country’s first official SWAT team started in the late 1960s in LA. According to surveys conducted by the criminologist Peter Kraska of Eastern Kentucky University, just 13% of towns had a SWAT team in 1983. By 2005, the figure was up to 80%.

In an impassioned presentation, Professor Rizer offered his perspectives from his time in the US Army and in the police force. Citing examples of the wrong turn police policy had taken in its willingness to shoot, Rizer recalled his own time in the forces.

“When I was 22, in my early days of police work, I was driving in my patrol car, alone. I saw a shirtless man, walking the street. He had a knife on him. I stopped the car, got out and asked him to put it down. He walked towards me, waving the knife. Unwilling to shoot him, but in grave danger myself, I jumped back in the car, and ran him over. The perfect result, you’d think: he was not badly harmed, but was no longer a threat, and I’d avoided shooting him. Big mistake. I was sued for using a weapon (the car) which I was not licensed to use. My senior officer told me that I should have simply shot him.”

Rizer believes the problem is cultural, too. Two friends of his recently interviewed to be police officers in the US. They were given IQ and personality tests, which they failed and were refused entry. “One failed the IQ test because he scored too highly. The other failed the personality test because it showed he wasn’t ‘aggressive enough’,” said Rizer.
Jury out on activism’s benefits

There is mounting evidence that shareholder activism is gaining traction across the world.

But there is little consensus on whether it is good policy to encourage the behaviour, and whether it actually creates shareholder value.

An increasing number of governments are promoting shareholder engagement, with activist campaigns and activity up 62% globally since 2009. In light of these developments, a panel yesterday asked the hard – and often overlooked – question: is this a good thing?

Statistics presented by Stanford Law School Professor Robert Daines back up activists’ claims that they create shareholder value. Between 2009 and 2013, activist target companies gained on average 48%, beating the S&P 500 index by 17 percentage points.

One of the common arguments against activists’ claims that they improve shareholder value is what happens after they sell their stake. Share prices are thought to mirror their short-termist approach to their investments. But Daines presented evidence suggesting that after activists sell their stake, the stock price is still up between three and seven percent.

“The weight of the evidence is that shareholders like what is going on,” he added. Cohen contended that if the activists’ changes aren’t the cause of the stock price increases, then they aren’t adding any real value.

The follow-on effects of activism also play into the debate. “The board has to adopt a short-term mentality as the activists are so successful in persuading shareholders to look at the company in that way,” said Cohen.

An indirect benefit, however, is that other management pay attention to activist campaigns against other companies. “It’s possible that the threat of potential accountability makes people work harder,” said Daines.
Negotiating styles in disputes are dictated both by cultural norms and cultural stereotypes about the other side. That was the judgment of the 11-member panel at the ‘Disputes resolution showcase’ yesterday.

Despite cultural homogenisation over the last decade, differences persist in both the ways people react to certain statements or gestures and in the interpretation of the law. Negotiators who assume their style will work globally are themselves and their clients at a disadvantage.

“We have to take cultural differences seriously – it does matter in negotiation,” said William Burke-White, deputy dean at the University of Pennsylvania Law School. He added that culture can be used as a weapon when one side understands its counterparty better, or as a bridge to create trust and form a relationship.

Contracts are often the starting-point for disputes and writing styles have continued to differ despite growing overlaps in legal frameworks.

English law contracts, as one panelist described, can reach hundreds of pages and are the result of weeks or months of drafting, taking into consideration every eventuality. Alternatively, Japanese contracts are typically a single page, due to long-standing relationships between the parties and the trust in the Japanese courts to settle any issues.

“Often in cross-border deals English law is applied,” said Hiroshi Oda, a professor at University College London. “And in English law the contract is everything so you won’t have the opportunity to bring in the court,” he added, explaining that for Japanese counterparties it can be disconcerting when the courts do not intervene.

A Western mistake
Learning the identity of the ultimate decision-maker can also be a cultural hurdle. One common western mistake is viewing Asian cultures as strictly hierarchical.

This had led negotiators to focus on the person with the highest title in the room. But such individuals may have delegated negotiating powers to a subordinate such as a project manager.

“In any negotiation or mediation it’s important to try to match power with power, not title with title,” said Danny McFadden, managing director of CEDR Asia Pacific. “In a western company, a title may be given to someone with real power, but in a Chinese entity it may have no power whatsoever,” he added.

Beyond thinking about the point of view of those sitting across the table, negotiators should also consider the audience to a dispute. The company board or chief executive officer may be watching to see the outcome, or have input of the final decision. These observers may not have the same cultural standpoint as those in the room. Lawyers, for example, might understand one another, but the final decision-makers do not always have the same global legal understanding.

If the negotiations are being watched by a public audience this could affect the outcome and style too.

Two panelists gave the example of US-Japanese trade negotiations in the 1960s. The terms of the deal were deliberately left vague in order to give both side the opportunity to tell constituencies back home they had won the trade talks.

“I believe that saving face is universal and saving face while not making your counterpart lose face is important in all cultures,” said Eliane Karsaklian of Ubi & Orbi in Paris.
Upholding independence

Dr Mark Ellis, executive director of the IBA, discusses the importance of maintaining vigilance on human rights and why we need to assist local bar associations.

Since its establishment in 1947 the International Bar Association (IBA) has sought to protect and expand the administration of justice worldwide. Throughout his career Dr Mark Ellis, executive director of the IBA, has committed himself to do the same. He has worked with the Americas Bar Association (ABA) in former soviet countries, as legal advisor to the Independent International Commission on Kosovo and as a consultant for the World Bank.

The hosting of this year’s annual conference in Tokyo is an opportunity to expand the presence of the IBA and tackle issues in the region, including the impact of massive economic growth, the effect of human rights abuses and the development of local bar associations. As globalisation brings societies closer together, the need for cross-border interaction between justice systems will grow as well. Here, Ellis discusses his expectation for the conference and the role of the IBA in addressing some of the world’s most pressing legal developments.

Q What is the best way for the IBA and the international community to assist local bars? How can they ensure they offer help through the best international practice while respecting local law?

Within the IBA the Bar Issues Committee (BIC) was created with the sole purpose of focusing on issues that are important to bar associations throughout the world. Therefore, together with the IBA’s Human Rights Institute (IBAHRI), the IBA assists bar associations in upholding the independence of the legal profession in their own jurisdictions and often intervenes where governments try to interfere with the independence of lawyers and judges. A number of bars continue to struggle with issues around their independence and ability to engage with the larger community in supporting human rights and the rule of law, but the IBA is steadfast in assisting bars in fulfilling their responsibilities in these areas.

Undoubtedly, the IBA provides a unique platform for bar associations from all jurisdictions to engage with counterparts and debate issues relevant to them. It is the only association in the world that offers this, allowing for the important exchange of diverse opinions and experiences. There is not a quick and easy way to conflate international practice and local law where there is conflict. However, the IBA endorses international standards and principles, and recognises discussion is key.

Q What do you see as the most pressing global issue at the moment?

There are many, but I think one of the biggest challenges facing the world today is ensuring that international human rights and rule of principles that have emerged over the past 70 years are sustained. These principles reflected shared values of the international community and should be protected. However, I believe we can see a cascading weakness among states in protecting and advocating for these principles. It should be a paramount goal of the international legal community to reassert these principles. As lawyers, we need to speak with a unified voice to uphold these international principles and, when need be, criticise those states who fail to enforce and adhere to these principles.

Q How do you do this with so many opinions?

The interpretation of these principles is what often creates conflict. Consequently, resolving these conflicts require discussion and debate. That is exactly what the IBA does. It acts as a UN-type setting for lawyers, bringing together these different, and often contradictory, voices to address these issues.

There are, of course, international principles that have risen to a level that are inviolable. It is incumbent on states to uphold these human rights principles, as these are compelling legal principles and, thus, cannot be abnegated, subverted or weakened by any unilateral state action. There is a general consensus that these principles are so fundamental that no state is allowed to disregard them. These principles bind all nations; a nation’s breach of any one is unlawful. Nor can states claim exemption on the basis of national, cultural or religious differences. These norms must be viewed as transcending specific law traditions, such as common law, civil law or Islamic law. The very fact that we speak of international human rights norms suggests to me that these norms are meaningful if appreciated, invoked or viewed as relative to cultural or religious norms. Thus, when states do violate any of these principles, the international legal profession has an obligation to speak out. I think this is a role for the IBA, for which we are uniquely placed to undertake.

Unfortunately, I think you can look at all regions of the world and see challenges to adhering to these principles. Whether in the US, UK, China, Zimbabwe, Singapore, Russia or Iraq there are numerous examples where these very fundamental principles are being ignored. No country has a perfect record in this regard. This in turn, has given the IBA an opportunity to discuss and engage these and other countries in reversing this trend.

Q What are the legal professions’ biggest challenges in the coming decade?

I think ever IBA committee would answer this question differently. Each has its own view, which of course adds to the richness of the Association and this Annual Conference. Each committee will have its own discussions on what it sees as the profession’s biggest challenges over the next decade. Consequently, we can get a great pick of specific issues. When we combine all these discussion threads over this week, we actually see an exceptional and comprehensive matrix of international law. This is yet another aspect of the IBA that is exciting and that will be enhanced by this week’s Conference.
There are over 400 million Spanish speakers in the world, who are broadly distributed among the continents and particularly in South and Central America, Europe and parts of North America. Importantly, emerging democracies of Latin America continue to struggle to put a truly democratic rule of law into effect.

Their deficiencies have been compounded by the financial crisis. With this in mind, it is timely that the IBA book, Poverty, Justice and The Rule of Law is being released today in Spanish. Highly praised internationally since its release just a year ago in Boston, it addresses the effect of the crisis on those living in poverty and austerity. It is otherwise known as ‘the Report of the Second Phase of the IBA Presidential Taskforce on the Global Financial Crisis’ commissioned by the then IBA President Akira Kawamura.

This volume raises several themes: that the crisis had its worst effects on the most vulnerable people – the poor – exacerbating a global human rights crisis; that we have tools to achieve long-term sustainable solutions to poverty; that we must exercise the will to use them and rethink the concepts of justice and the rule of law; and that lawyers have important roles, not only in the boardroom and shaping corporate social responsibility, but also in other spheres dealt with by four Nobel Laureates, Amartya Sen, James Heckman, Muhammad Yunus and Joseph Stiglitz, other renowned experts, and leading lawyers.

In 14 chapters, agenda-setting thinkers, academics and leading lawyers contributed analysis and opinions. They come from a broad range of practice areas such as labour law, pro bono, access to justice, anti money laundering and human rights. The Taskforce participants and authors selected by them also represented a wide geographical diversity, with contributors from each region of the world. But the focus of the report goes beyond poverty in developing countries, to austerity measures taken during the global financial crisis in more developed economies.

Understanding poverty, austerity and the aftermath of the crisis is now a part of the day job of international business lawyers. They meet these challenges to professional values and explain them to clients whose interests should converge with improving the wellbeing of their communities and markets.

After all, more than a billion people worldwide still live in poverty. Since the start of the crisis in 2008, many more middle and working class families have fallen into poverty. Regarding the Spanish translation, Martin Böhmer (who contributed a chapter on the response of the legal profession to the Argentine social crisis), the translator Paula Arturo also of Argentina, Tim Licence, Hannah Caddick and the IBA team, and the PPID Activity Fund that provided the funding were all invaluable.

It’s very gratifying that this volume has reached so many people around the world in hard copy and also electronically over the IBA website. The book is a bold first step. We have received positive reports of its contents from southern Africa to the Asia-Pacific to the Spanish-speaking world. Therefore it is a great honour to have this volume translated into Spanish so that it can reach even more people around the world. This Spanish translation is a testament to the success and value of the report.

The Book can be downloaded free of charge from the IBA website www.ibanet.org in English and now in Spanish.

This first foreign language translation of the book will be launched today, on Tuesday, October 21st, at 9.10am in the session Alleviating Poverty: What can lawyers do? and at 12.30pm at the lunch of the Latin American Regional Forum.

The global language of poverty

Peter D Maynard and Neil Gold, co-editors of the book Poverty, Justice and The Rule of Law, explain the importance of its new Spanish translation
Don’t take the gift

Most governments across the Asia-Pacific are now taking a far more active stance against corruption, finally recognising that its proliferation affects their legitimacy and credibility. But anti-corruption regulations tend to be focused on those giving the bribes, rather than those taking them.

Today’s session, ‘Corruption – the problem is the givers, not the takers (or is it?)’ is intended to turn attention to those who solicit or receive inappropriate favours, and begin a discussion around their accountability. It will be particularly focused on Asia, featuring speakers from Transparency International Australia, Ernst & Young Tokyo, Fairfax Media and Itochu. Prosecutors Joos Gy Kim, retired prosecutor general for the Republic of Korea, and Alain Sham, deputy director of public prosecutions in the Hong Kong Department of Justice, will also participate in the panel, along with Bishop Peter Selby of the St. Paul’s Institute in London.

Robert Wyld, partner at Johnson Winter & Slattery and vice-chair of the International Bar Association’s Anti-Corruption Committee, told IBA Daily News that the discussion will highlight some of the cultural and social issues in the Asia-Pacific that address corruption.

“We’re hoping that attendees gain a better understanding associated with why bribery and corruption occurs and the type of ethical dilemmas and commercial issues that conflict – and some that don’t,” he says. “The purpose of the debate is to generate intellectual awareness of those issues, and to better understand how make the payments or for those who take the payments,” he says.

Anti-bribery across the region

This session is especially timely as jurisdictions globally have begun to crack down on corruption. The UK began its first prosecution under its Anti-Bribery Law in September 2013, while Brazil enacted its new anti-bribery law in January of this year.

In Asia, China’s high-profile anti-corruption campaign SmithKline £297 million ($478 million) following a 15-month investigation into the bribing of doctors. That fine is the largest-ever anti-bribery penalty for a company in China.

Preventing corruption has also been a focus in India, where new Prime Minister Narendra Modi was elected this May on an anti-corruption platform.

Indonesia’s regulator, the Komisi Pemberantasan Korupsi (KPK) has also been more active. Last October the chief justice of Indonesia’s Constitutional Court was arrested by anti-corruption investigators and received a life sentence for graft this June. On a grassroots level, only this month the regulator released a mobile application to educate the public and officials about bribery.

Corruption is even becoming a focus in Asia’s frontier markets. Although corruption remains a top concern for businesses in Myanmar, its Parliament appointed an Anti-Corruption Commission in April of this year to implement its anti-corruption law, which was passed in April 2013.

And this trend is likely to continue. “Governments and public opinion are demanding that corruption should not be tolerated, and as they start prosecuting people, culture will start to change,” says Wyld.

Lawyers must begin discussing the implications of evolving anti-corruption regulations in the Asia-Pacific. Wyld believes that this session will be of great interest to delegates involved in international law and trade – anyone who deals outside one country.

“In the global economy, corruption touches everyone: bankers, lawyers, accountants, local businesses and governments,” he says. “Everyone is at risk when corruption happens, especially now that regulators are increasingly looking at not only buyers and sellers, but also facilitators.”

In the global economy, corruption touches everyone: bankers, lawyers, accountants, local businesses and governments

SESSION
LPD showcase: Corruption – the problem is the givers, not the takers (or is it?)

COMMITTEE
The Anti-Corruption Committee

TIME/VENUE
Tuesday, 9.30am – 12.30pm, Hall B5-2

Key takeaways
• This session will consider the role of those taking bribes or inappropriate favours in anti-corruption regimes
• Although most laws focus on those giving bribes, this session hopes to spark debate over the role of bribe-takers in facilitating corruption
• The session will have an Asia focus, which follows increased activity from anti-corruption regulators in key jurisdictions across the region
A trip to Tokyo wouldn’t be complete without sampling some of the culinary delights on offer in Japan’s capital and there’s no better place to start than one of the city’s most notable sushi bars.

Hidden in the basement of a building in Ginza, Sushi Kanesaka seems tiny, unassuming and nondescript. But don’t be fooled by first impressions – this restaurant produces some of the most exquisite sushi and top-quality sashimi on the planet. World-renowned chef and owner of the restaurant, Shinji Kanesaka, has received an assortment of accolades for his masterful work, including two Michelin stars. Only a handful of establishments can claim to produce sushi of a comparable standard to Sushi Kanesaka, even by Japanese standards. The menu is simple and prices are steep, but with only 14 places, reservations are recommended.

Alternatively, for delegates in search of a cheap yet cheerful alternative to Michelin star sushi, Rokurinsha Tokyo is renowned for being very special. Located in level B1 of the First Avenue Tokyo station on Tokyo Ramen Street, this restaurant is a firm favourite amongst locals and tourists alike. The restaurant produces what is considered to be the best tsukemen in the city, making it one of the top spots to eat authentic Japanese cuisine. Rokurinsha’s value for money is no secret, so watch out for long queues, particularly in peak hours.

Those with a preference for European cuisine should head to the Italian restaurant at the Shangri-La hotel. Meaning ‘pleasure’ in Italian, Piacere succeeds in delighting the palates of the even the most discernible diners with its views over the Imperial Gardens and excellent service. The restaurant provides an elegant atmosphere along with a wide-ranging menu and wine list, available both in English and Japanese.

The Barbacoa Grill Aoyama is the perfect place to enjoy a genuine Brazilian-style barbecue, comprising of top-quality meats and an extensive salad bar to suit all tastes. The restaurant is located next to Tokyo’s world famous Omotesano, a tree-lined avenue whose beauty is often compared to that of the Champs Élysées in Paris. This authentic Churrascaria style restaurant employs native Brazilian staff that provide customers with service true to Brazilian style.

For those in search of upscale, fine dining with sophisticated ambience, the Korae restaurant at the prestigious Park Hyatt Hotel is the perfect place. This restaurant provides clientele with superb Japanese fusion haute cuisine and, on a clear day, an incredible view of Mount Fuji. The menu, available in both English and Japanese, features uniquely presented, hearty, home-style dishes, along with an extensive sake and cocktail list for the perfect accompaniment to any meal.

Priya restaurant is one of Tokyo’s best kept secrets. Conveniently located less than 2 minutes’ walk from Hiroo station, this Indian restaurant is well known for showcasing a great variety of choice, particularly amongst vegetarians. Those in search of a top-notch curry at a reasonable price will not be disappointed with the quality and generous portions served here.

Café Byron Bay also happens to be a firm favourite with vegetarians and vegans, offering great value and a relaxed atmosphere. The restaurant was created as a community space where Tokyo natives and foreign travellers could come together and enjoy one another’s company. So, whether you’re looking for a chin wag with the locals, or wonderful veggie delights, this Aussie surf themed restaurant is the place to be. Don’t forget to try out their delicious Aussie-style coffee!
Many have heard stories about the horror, merciless brutality and suffering instigated by the Japanese military during WWII. The Tokyo Charter of 1946 stipulated that Japanese agents accused of committing similar crimes against humanity would be held accountable for such atrocities.

Despite this, Japanese authorities have often been accused of white-washing human rights violations committed during the war, due to the country’s inherent reluctance to admit national accountability for past war crimes and violations of human rights. Japan is not the only state accused of lacking accountability for previous morally questionable actions. Other developed nations such as the US and the UK have too been criticised for hushing previous violations of international law, whilst vehemently supporting the propulsion of national accountability.

The session scheduled today will question the equality of international accountability for the past and international accountability for the present. It will address the issue of international accountability and discuss whether it has been equally reflected between nation states.

In light of the conference held in Tokyo, Japan’s reluctance to acknowledge certain crimes committed during WWII is particularly relevant. Japan’s treatment of the nation’s so-called comfort women is a significant example demonstrating the nation’s historical amnesia towards such crimes.

Comfort women is a term used to describe young women and, in some cases, pre-pubescent girls that were forced into a service of sexual slavery for the use of the Imperial Japanese Army during World War II. Shrouded in mystery even to this day, it is estimated that hundreds of thousands of women forcibly worked in Japan’s military brothels. These innocent young women were incarcerated and subject to horrendous acts of brutality at the hands of the military.

Victims were coerced by third parties, or even the military themselves, with the promise of work in factories, restaurants and hospitals. Instead, they found themselves stationed in army reserves in foreign lands, forced to serve as prostitutes in military brothels where physical torture and beatings were common. According to the testimony of survivors, many were left infertile due to sexual trauma or venereal disease. An estimated three quarters of comfort women trafficked into slavery lost their lives in such conditions.

State hypocrisy
Most former comfort women still alive today feel they have not received adequate recognition, apology or compensation from the Japanese government for having supported such crimes.

The scheduled session today will discuss this issue in detail, along with the implications of the lack of national accountability in this instance.

The session will concentrate on the negative implications for international accountability caused by supporters of international law who display a degree of state hypocrisy. In particular, the session will question the equality surrounding the current selection of international situations for trial, and whether there is truly accountability for all international crimes committed.

Presented by the War Crimes Committee and the Criminal Law Committee, the session will include expert speakers from different backgrounds. Steven Kay QC, session moderator, believes the range of speakers will enable those attending the session to examine the issue in detail from a multitude of angles. “It will be interesting to hear the academic view, the judicial view, the activist view and the lawyers’ view on the subject,” he says. “It is my intention that those who attend will come away with a balanced and broad picture of what the issues are and what the verdict is.”
For many, the term slavery evokes images of the transatlantic slave trade or even of classical antiquity, when the ancient Romans enslaved whole populations. But the world has a long way to go before slavery’s more insidious modern-day incarnation – human trafficking – is consigned to the pages of history books.

The International Labor Organization estimates that 20.9 million men, women, and children are held in servitude around the globe. Despite this, in 2012, there were just 7,705 prosecutions around the world.

Today’s IBA showcase session will build on the success of last year’s showcase on the same topic, focussing on initiatives aimed at eliminating human trafficking. Experts will discuss concrete responses to the problem and legal remedies designed to end trafficking.

“One of the strongest messages we’re trying to communicate is that human trafficking is not a problem that’s confined to third world countries or far-flung places away from civilised society,” says Gillian Rivers, chair of the IBA Family Law Committee, and a speaker at today’s session. “Human trafficking exists everywhere, in every town and country in the world.”

Indeed, the issue of human trafficking is beset by numerous misconceptions. Notably, many see it as an issue that only affects women that are sold into prostitution.

“We want to raise awareness about the issue of human trafficking with the individuals that have power and authority in these countries, we don’t just want to run a poster campaign,” says Rivers. “This means training the judges and law enforcement agencies, and border control officials.”

“There is a belief that some people in positions of authority don’t really understand what trafficking is and therefore don’t know how to recognise and combat it,” Rivers continued.

Highlighting another common misconception associated with human trafficking, Williamson says that she would like one of the three countries they visit for training to be in the European Union (EU).

“Most people think that trafficking is not a problem in the EU,” she says. “But during our work on this project we have learned that many west European countries have a problem with human trafficking.”

Rethinking attitudes towards victims

While the process by which victims of international human trafficking, are moved between countries is ruthless and barren, there is a general misconception that victims can escape their traffickers, notes Rivers during an interview with the IBA Daily News.

“They absolutely can’t get away,” she says. “The traffickers are sophisticated and very clever. They work out where the victims come from and will harm and kill their families if the victims try to escape.”

We want to raise awareness about the issue of human trafficking with the individuals that have power and authority in these countries

There is also a need for ongoing support for victims of trafficking. Williamson and Rivers questioned what happens to a victim who has been encouraged to take their case to court, once the litigation is over.

“Victims need a support system after this, they need to be integrated into society,” says Williamson.

As well as Williamson, Rivers and Nagle, speakers at today’s session will include: Andrew Caplen, president of the Law Society of England and Wales; Lynda Dorman senior vice-president of human resources at Coca Cola Japan; US district court judge Virginia Kendall; Vichuta Ly, director of Legal Support for Children and Women; Ian McDougall, executive vice-president and general counsel at Lexis Nexis; Ippie Torii, secretary general for Solidarity Network with Migrants Japan; and George Arbuthnot, an investigative journalist with The Sunday Times in London.
Meet our IBA team at today’s Arab Regional Forum panel session

The topic is “Arab region: enhancing your clients’ market” and the session will be held in room G701 from 09:30.

www.hadefpartners.com
The rules of social media

A s the most popular activity online, engaging in social media is no longer reserved for teens and young adults. Most delegates will be aware of the IBAs recent adoption of international principals on social media conduct for the legal profession, making today’s scheduled session particularly relevant.

Over the course of the past few years, social media has instigated rapid change in the way individuals’ interact with one another both on and offline. Changes in legislation are now required to follow in suit, which is no easy feat. David Jacoby, co-moderator of today’s session, explains: “Technology, like social media, moves at the speed of light. Our profession moves at the speed of law, which is a good deal slower,” says Jacoby. “In consequence, there is a lot of uncertainty amongst our colleagues about how to deal with this new-fangled thing. In this respect, our session will prove to be very helpful.”

Since the issue of social media was addressed at last year’s IBA conference in Boston, there have been substantial changes in the regulation and legislation relating to this area. The first part of this year’s two part session will focus on the emerging web post law issues, in particular, the right to be forgotten, employer recruitment strategies, employee freedom of speech and the impact on employees of employee communications online.

Leading international employment lawyer and session co-moderator, Johan Lubbe, was driven to produce a session that would appeal to a wide spectrum of delegates. “We wanted to create a session that would resonate with both younger and older lawyers,” Lubbe states, “Not only is this a hot topic from an employment perspective, but also a marketing and political perspective too.”

The second half of the session will look at the challenges of recent changes in legislation from an employment perspective, followed by a focus on the marketing and political aspects relating to engagement in social media. Attendees will gain a first-hand insight as to how this platform can be used and is being used as a marketing tool in the industry both for law firms and lawyers, whilst also examining how in-house counsel may be using social media in their role as advisors to companies.

Chrisie Lightfoot is a lawyer, writer and social media strategist scheduled to speak at the session. She believes that “being a successful lawyer in the 21st century requires being sociable in 21st century media.”

According to Garrett Miller, co-moderator of the session, the geographical spread of panelists scheduled to speak will also ensure a vast range of viewpoints and a truly global outlook on the issue. “We have different experiences in different markets as to how the employment side views integration and how the industrial relations side works,” says Miller. “But we also have speakers from China, to the US, to Africa, Brazil and Europe. It’s unbelievable.”

Long live PPPs

P retty on paper, poor in practice. This is how the European Bank for Reconstruction and Development (EBRD) described public-private partnerships (PPP) in relation to eastern Europe just over a year ago. A flexible arrangement whereby the private sector builds, owns and operates public projects – with the government backing the revenue streams – seems like a win-win situation.

But the shortage and failure of PPPs in recent years suggests the EBRD could be correct. In fact, the statement could apply to the continent as a whole. Despite some strong markets, notably the Netherlands and UK, the model has arisen in fits and starts across much of the region.

This sparked us to poll the market in September on whether Europe’s PPP model is flawed, the findings should interest members of the IBAs Energy, Environment, Natural Resources and Infrastructure Law Section (SEERIL).

Almost every source agreed the sector needs to improve. “Five out of 10 for continental Europe. Six out of 10 for the UK,” is one London-based partner’s rating of the asset class’s recent performance. But opinion is sharply divided on whether the fundamentals of PPP need to change. 52% of those polled have faith that the model is an effective way of delivering public infrastructure. Common criticisms of its recent performance can, they say, be explained with reference to economics.

The first criticism is the lack of deals coming to market. Those in the ‘no’ camp note that the lead time needed to bring a PPP to market means the sector is still hampered by the global and eurozone crises. “If you are a government today with austerity issues, a few years ago you would have analysed the benefits of launching a PPP programme and probably thought it wasn’t the right time,” notes one respondent. Banks had refrenched and developers were wary of governments’ priorities.

Today, however, the debt market is awash with liquidity. “I’m sure that governments are deciding that now is the time to be launching new projects,” the respondent continues. “It’s just that you don’t make decisions and then have them on the market tomorrow – it can take months and even years.”

The second criticism is the large number of projects that fall over either before or after completion. But PPP proponents highlight that the model is better suited to smaller projects where the risks are clearly defined. Complex, large-scale developments – London Underground being a prime example – are often the PPPs that collapse. These deals simply show that not all risks can be transferred to the private sector, and that governments must be selective. Even lawyers in Portugal, where a large number of overambitious PPPs are partially to blame for the country’s international bailout, are in favour of the structure. “It isn’t an issue with the model, but rather a problem with the government and its choice to use it for certain projects,” says one Lisbon-based partner.

These examples serve important lessons for governments thinking of launching new programmes. “The idea is to start small, work out how it works and go from there,” says one emerging markets-focused partner. “Don’t put in place some massive projects to start.”

Other factors that suggest the model is working are its liquid and active secondary market, and the fact governments aren’t, as a rule, unravelling historic PPPs.

Debt versus equity

One thing governments may have to do is deleverage projects. “The mindset of previous PPPs is such that they were very closely linked to very aggressive debt to equity ratios,” says one partner. “That is the only problem I associate with the model – it works better in a leveraged environment.”

Governments have found ways to use PPPs in situations where, even at the outset, they can’t afford what they will need to deliver under the agreement. It’s hoped that the process of deleveraging these legacy deals is a warning to not repeat the mistake in today’s liquid debt market. “That aspect of the model should be revisited and addressed,” the partner adds.

This article originally appeared in the October issue of IFLR.
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VOX POPS: What should the IBA’s priorities be in 2015?

Andrew Maclay
BDO
UK
The IBA should continue prioritising deepening contacts with bar associations in the emerging markets. It should also continue its sponsorship of young lawyers from emerging markets; it’s a fantastic initiative.

Alexandra M Monteiro
Barbosa Müssnich & Aragão
Brazil
Sponsoring the rule of law is a very hot topic. I was very impressed with Sunday’s speeches about how the IBA should continue to be a global voice to help shape institutions.

Alejandro Torres Rivero
Chevez Ruiz Zamarripa
Mexico
One topic that must be focused on is the role of the judiciary. Authorities judiciaries around the world are pressuring and frustrating the rule of law by participating in judicial decisions.

Donald L Ridge
Morris Polich & Purdy
US
I think that the IBA should focus on not only educating lawyers about the world’s legal market but also on building relationships among lawyers internationally.

Hamidul Haq
Rajah & Tann
Singapore
I would like to see the IBA focus on a network database system that will allow lawyers to interact and meet over and above meeting in the physical presence.

Rajiv Luthra
Luthra & Luthra
India
I think a priority should be to internationalise the legal practice. We somehow need to figure out a way to regulate it worldwide.

Marco Cozza
CTM Avvocati
Italy
A fantastic initiative would be to focus on rebuilding independent judiciaries in countries where they don’t currently exist, such as in Syria and Fiji.

Glen Mcleod
Glen Mcleod Legal
Australia
I think the biggest priority is to encourage cross-fertilisation between sections and committees, and facilitate distribution of information so that people see the real opportunities that the IBA can offer.

The long road to CRA liability

Despite recent advances in holding credit rating agencies (CRA) to account, claimants in most jurisdictions will find it difficult to bring a successful lawsuit.

Lack of a direct relationship between CRAs and investors has been the biggest stumbling block. Since the financial crisis, courts and regulators have been more open to recognising that agencies have obligations towards those that buy the products they rate.

But panellists at yesterday’s session ‘Liability of intermediaries and rating agencies’ stressed that these changes will not lead to a wave of wins for disgruntled investors.

Europe’s CRA3 Regulation creates a duty of care between agencies and investors, but it is only breached if the CRA acted with negligence or recklessness. “It’s a very high threshold…almost a fraudulence test,” said London-based Macfarlanes partner Robert Boyle. “I think there will be problems on causation and remoteness,” he said, adding that there have been no actions to-date and querying if there will ever be any.

The Australian ruling ABN Amro Bank v Bathurst Regional Council (2014) made S&P the first CRA held liable for its rating of poor-performing structured products. But the judgment does not bind foreign courts, and the judge focused on the vulnerability of the investors – an argument not necessarily supported by fact patterns in other cases.

Nevertheless, it’s understood that there have been claims in Italy. And even in the US, where CRAs have traditionally relied on the constitutional right to freedom of speech, courts are softening their stance.

“It seems like there is a bit of a trend that way, chipping away at first amendment protections,” said Christopher Cutler, a partner with Foley & Lardner in Florida. “And who knows, it may lead to more Bathurst-like situations. Although I agree there would be so many other hurdles in place for that to occur.”

Argentina has seen action taken against CRAs, but in the form of regulators fining agencies for not complying with their own procedures and manuals. “We now have rules that require the CRAs to continue reviewing the company for which they have given a rating,” said Cecilia Mairal, of Marval O’Farrell & Mairal in Buenos Aires. “But to bring a claim you need to show causation, and it will be hard to prove that the investor had such reliance on the rating.”

After the country’s 2002 crisis consumer organisations brought claims against banks that placed government bonds, arguing that they knew the government was about to default. The ruling in these cases is still pending.

Asia thinks long-term with LatAm

Close government-to-government ties have been the hallmark of the Latin American-Asian trade and investment relationships. This has been particularly clear in long term investments such as mining and infrastructure projects.

Over the past 13 years global mining investing has increased tenfold; 30% of that growth has been directed to Latin America where an increasing number of Asian investors are leaving their mark.

“Not all relationships though are equal, as Monday’s panel on mining and infrastructure in Latin America revealed. Japan’s long-standing presence in many Latin American countries is a product of their commitment to human resource and infrastructure development.

Many Japanese companies operating in the region, as well as Japan’s government through its own investments, have helped to train human capital needed for projects and build the roads, rail and other infrastructure necessary to get those projects running.

“The approach of Asian companies to the government and to the rule of law is different to the West’s”

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“These are clearly not short-term decisions, but they’re also clearly business decisions,” said Matthew Starnes, counsel for Sumitomo’s Mineral Resources Division. “The overall concern for Sumitomo are really the business concerns that any investor would have, except there’s a preference for flexibility even at the cost of slightly higher prices and a long term look at the business case.”

Chinese investors do not take the same approach. While Chinese companies make long term investments, they can also be aggressive, knowing they have the support of their own government behind them.

The growing number of Chinese, Korean and Indian companies has changed the way many Latin American counterparties view Asian investors.

“The approach of Asian companies to the government and to the rule of law is different to the West’s,” said Juan Sonoda, a partner with Beretta Godoy in Buenos Aires. Most view the ability to be flexible and work closely with governments as essential, he explained.

Sonoda gave the example of Toyota in Argentina. Despite strikes and protests throughout the country, the Toyota plant continued to operate, partly as a result of the companies’ good relationship with the government.
Asia’s struggle with CSR

Corporate social responsibility (CSR) is a relatively new concept for most Asian jurisdictions. And because it tends to be governed by domestic regulations and corporate law, approaches across jurisdictions can differ drastically.

Yesterday’s panel brought lawyers from across Asia together to discuss the development of CSR in their respective jurisdictions, and revealed enormous diversity across the region.

That’s likely because there is not one source for CSR regulation globally – or even nationally.

Most laws that apply to companies and other business enterprises aren’t international, explained Bryan Horrigan, dean of the faculty of law at Monash University. Instead they’re national and subnational.

And on the international level, there are conventions on anti-bribery and anti-corruption as well as human rights standards. “Those are the kinds of standards operating in the international domain, but we don’t have one master controlling corporate law internationally,” said Horrigan.

Locally it becomes more convoluted. While corporate law is a place to look for CSR regulation, stock exchange listing rules, investment decisions for managed and investment funds and corporate governance standards are also important.

Moving to human rights issues, consumer laws, environmental laws and workplace safety laws begin to apply, as do corporate Codes of Conduct.

Asian CSR efforts

In Australia, corporate law plays catch-up in CSR matters; investment and superannuation funds have taken the lead. The conversation has moved from changing corporate law to changing corporate governance standards.

Domestic Japanese companies have not yet caught on. Ernst & Young Institute’s Keiichi Ushijima believed that their lack of participation was due to strictly siloed corporate structures, as well as executives’ generational views towards CSR.

In China, efforts are primarily government-led, with most regulations and principles published are heavily focused on environmental issues. Labour issues, however, are becoming more common.

Chinese corporate efforts are focused on philanthropy such as building hospitals, schools and infrastructure. CSR is expected to become more sophisticated as companies – especially state-owned enterprises – go abroad.

“I believe this will be a key driver for Chinese companies to consider CSR issues quite seriously,” Herbert Smith Freehills’ Monica Sun said.
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