It’s a concept that lawyers will be more than familiar with: the existence of a common rule book to enforce the standards and principles that they work to defend. And according to Quentin Peel (right), international affairs editor of the Financial Times and keynote speaker at this year’s opening ceremony, now more than ever a global rule book is what we need.

Peel took on the daunting task of trying to explain to his audience whether a new international order was emerging from the recent financial crisis, and if so, what we could expect it to look like.

Rules, he said, have already helped governments around the world to avoid repeating the terrible mistakes of the 1930s – the last time they faced recession and financial disruption on such a global scale. The work of the World Trade Organisation (WTO) in particular has been crucial in discouraging the worst of the expected protectionism, with the organisation’s rules on trade meaning that offending parties are being “shamed into obeying”. The influence of international organisations like the WTO should even, said Peel, be attributed with “stopping this recession from becoming a depression”.

But now all eyes must turn to the Group of 20 (G20), whose responsibility it will be to develop and implement a universal set of rules that can stabilise economies worldwide and avoid, as far as possible, a repeat of what he called “a classic recession after a classic boom bubble”.

The composition of the G20 perfectly demonstrates the new world order, the needs of which must be met by any regulatory plans. Though it may have initially come together as an ad hoc committee, its subsequent success has depended on it being “a group that brought together not just the old West, but also the newer economies of countries such as China, India and Brazil,” said Peel. The group’s recent work in Pittsburgh, and the declaration that it will radically reform the International Monetary Fund and become the permanent council for international economic cooperation, proves that the expanded assembly is committed to global rule making and implementation.

As Peel put it: “The G20 is the best thing available, and it seems to be doing the trick.”

But as any lawyer will appreciate, developing a set of rules that is fair, applicable and open to everyone is far from easy. And not least because this recession is different in several ways. Never before have there been such open borders, or such globally active financial players moving unprecedented amounts of money around. There is also a huge global imbalance between the deficit of the US economy and the surplus of China. Add to this the increasingly complex and opaque financial instruments that are being developed, and it’s easy to see how this downturn presents challenges that have never been faced before.

The danger, insisted Peel, is that individual countries could be too concerned with domestic worries to take their place as leaders in a new global framework of cooperation and consolidation. Though he now perceives a “real desire around the world to see US leadership again”, the undeniable damage of the “disastrous last eight years of unilateralism and anti-Americanism” caused largely from easy. And not least because this recession is different in several ways. Never before have there been such open borders, or such globally active financial players moving unprecedented amounts of money around. There is also a huge global imbalance between the deficit of the US economy and the surplus of China. Add to this the increasingly complex and opaque financial instruments that are being developed, and it’s easy to see how this downturn presents challenges that have never been faced before.

The danger, insisted Peel, is that individual countries could be too concerned with domestic worries to take their place as leaders in a new global framework of cooperation and consolidation. Though he now perceives a “real desire around the world to see US leadership again”, the undeniable damage of the “disastrous last eight years of unilateralism and anti-Americanism” caused largely

“Rules stopped this recession becoming a depression”
VOX POP

QUESTION: Which sessions are you most looking forward to?

Temple N Ejeckwu

I am looking forward to the business sessions, not any particular session, but the whole section. I am not speaking this year, but I plan to listen in and contribute. I am interested in how new laws will affect Nigeria and this is the place to find answers to my questions.

Carolina Sigwald

Díaz Bobillo Richard & Sigwald

I am looking forward to the construction and arbitration sessions. They were very good in Buenos Aires last year so it will be interesting to hear about the updates and also discuss what will be the hot topics in Vancouver next year. I am also looking forward to the panel on Latin American M&A [Special aspects of M&A deals in Latin America, Auditorium, Tuesday, 3pm].

Geraldine M Clarke

Gleeson McGrath Baldwin Solicitors

I am a speaker, so I am looking forward to the PPI showcase on money corruption tomorrow [Show me the money! Auditorium, lower level -4, Monday, 10am]. Later in the week I am looking forward to hearing about changing relations between lawyers and clients in the new economic climate. All the law firm management sessions on the effect of the recession will be interesting. I am also looking forward to meeting colleagues from all over the world – this is what the IBA is all about.

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L. Papaphilippou & Co. was founded in 1963 by Loukis Papaphilippou. After three mergers, and on the basis of our home grown partner tradition, we have grown to one of the leading international firms in Cyprus, whether this is calculated by size, links and trusted affiliations, clientele or quality of service offered. LP and Co offers legal services to businesses, individuals, public organizations and governments. The firm has a strong litigation team, handling also all forms of commercial dispute resolution and has considerable experience in arbitrations. A number of professional contacts in North America, Europe, Middle East and the Far East are at the firm’s disposal and we are committed to providing a range of legal services to our clients who are active in international business. Our list of clients includes governments, governmental and regulatory bodies, local and international banking and financial institutions, insurance, shipping and listed companies, multinationals and high networth individuals. We invest heavily in our people and take pride in our home-grown partner tradition as a proven medium in offering quality and high standard of service to both our new and long standing clients.

OPENING CEREMONY

Continued from page 1
by foreign wars, has left the previously unchallenged world leader in no position to sustain that preeminence.

But who can replace the US, and is a sole global superpower really the right solution for such a diversified and multipolar world?

China might seem the obvious successor. But, despite being a “rising star” that will undoubtedly become the world’s second largest economy in the next 20 years, it faces an abundance of internal problems that will hinder its ascension to the global stage. Even alongside the US, China “is certainly not ready to become part of a G2”.

And another economy that has grown rapidly in recent years, Russia, faces a similar predicament. It has been badly hit by the economic downturn due to its reliance on oil pricing and failure to diversify, and still suffers from widespread internal corruption and a dependence on foreign lending.

The solution to this balance of powers is multilateralism, a system that relies on a unified and functional set of rules. And the audience of internationally active lawyers can be cautiously optimistic about what this will mean. At the very least, as Peel pointed out: “I don’t think you are going to be out of work”.

Attendees were also honoured to have the conference opened by His Majesty the King of Spain, Juan Carlos I (above), who alluded to the great tradition of legal science and scholarship in the Spanish legal system, before welcoming the audience to the city of Madrid and this annual IBA conference.

WARDYŃSKI & PARTNERS

The only Polish dispute resolution and arbitration portal

www.disputes.wardyinski.com.pl
Guillermo Canalejo
Uria Menendez
Spain
I am looking forward to tax sessions because I specialise as a tax lawyer. There are a number of panels on this topic, but on Friday there is one on intangible migration [A manual for migrating your corporate intangibles. Ontario, 10am] on which I am speaking. So I am focusing on that but I will try to fit in other sessions as well.

Yoshio Shimoda
ILS Shimoda Office
Tokyo, Japan
I'm going to be speaking at a session on Tuesday, an immigration update with other lawyers [Global business immigration update, Tuesday, 3pm]. I practice Japanese immigration law so I'm looking forward to the sessions related to that. Once I have spoken at my session I will be able to relax more and network with friends and colleagues.

Stephen Denyer
Allen & Overy
Frankfurt, Germany
I'm chairing two panels – one on Monday [Successful models for the practice of law in Europe, Paris room, 10am] which is about whether local law firms can compete with global firms. The other is on Tuesday [Alternative business structures, Mexico/Buenos Aires/La Habana rooms, 2.45pm] about external investment in law firms. We're going to put the UK and Australia in the dock for allowing this.

Ejaz Maqbool
Maqbool & Company
India
I'm a litigation lawyer so I'll look to that and other corporate areas. I only just registered and have been too busy to plan my week thoroughly. However, it will all flow once the conference gets going. There are lots of Indian lawyers here and I think I represent them all in saying that the IBA should really hold a conference in India soon.

Laine Skopina
Liepa Skopina Borenius
Latvia
I am a real estate committee officer and am looking forward to all of our sessions. Part of my role is to turn up to them all and make sure that everything goes well. On Wednesday, there is going to be a real estate tour of Madrid. It will be very interesting to see the progress of some of the projects.

Henry S Shyn
Yoon Yang Kim Shin & Yu
Seoul, South Korea
I mostly work on M&A so I am looking out for sessions on that topic. Tomorrow I am co-chair of a session [International sales contracts: how to avoid expensive pitfalls, Montevideo/La Paz rooms, 3pm]. We have lawyers from Russia, Brazil, Japan, India, England, the USA and Germany. My role is also to tell people about the Asia-Pacific Forum. I think our Tuesday lunch is once again sold out.

Richard Naidu
Munro Leys
Fiji
I am a general corporate lawyer – I come from a tiny country so I can’t specialise too much. The Cape Town Convention session tomorrow [Toronto room, lower level -4, Monday, 10am] should be great and hot topics for IP [Lisbon room, 10am] too as I do a lot of trademark work. I also fancy the dispute resolution panel [Madrid room, 10am] so I'm going to be very busy tomorrow morning!

Margery Nicoll
Law Council of Australia
Canberra, Australia
I am an officer on the Bar Issues Commission and on Tuesday we are hosting 'Independence Day' [Mexico/Buenos Aires/La Habana rooms, all day from 9.30am]. We've also just launched a magazine called Bar Executive Exchange to help the bar executives get to know each other. So I'm looking forward to distributing that. I feel the committee is starting to gain momentum on this.

Olajumoke A Okunnu
Professor A B Kasunmu’s Chambers
Nigeria
I plan to attend the session on why women are not in the top positions in the legal profession [Women in law firm and company management, Novotel A, Tuesday, 10am]. I do a lot of office management so am interested in administration and managing people in the law.
Chasing deals in Asia

Rachel Evans analyses the expertise of the leading law firms in Asia across the whole of that region, in rankings exclusive to the IBA Daily News

**Banking**

Tier 1

Allen & Overy
Clifford Chance
Linklaters

Tier 2

Baker & McKenzie
Freshfields Bruckhaus Deringer
Herbert Smith
Lovells
Mallesons Stephen Jaques
Milbank Tweed Hadley & McCloy
Sidley Austin
White & Case

Tier 3

Latham & Watkins
Norton Rose
Paul Hastings Janofsky & Walker
Shearman & Sterling
Skadden Arps Slate Meagher & Flom

Allen & Overy

Despite credit being in short supply over the last 12 months, Allen & Overy maintained its acquisition finance practice this year advising a number of cautious banks on loans to purchasing parties. For example, in November 2008 at the height of the financial crisis in Asia, the firm assisted 10 commercial banks on financing for the acquisition of one of Singapore’s power utilities. While Singapore and Tokyo led the Senoko transaction, Singapore also counselled Bank of India, JP Morgan, State Bank of India, and Punjab National Bank as arrangers of a senior secured term facility for a new subsidiary of Aegis to facilitate the $250 million merger of Aegis with PeopleSupport, a business process outsourcing provider.

Clifford Chance

Clifford Chance also got involved in financing the privatisation of Singapore’s power utilities. The firm advised Bank of China – the arranger – on subordinated loans to Huaxin Group. This allowed Huaxin to acquire Tius Power for $84.2 billion from Temasek. This was the first of three privatisations in Singapore’s power generating sector.

Clifford Chance’s Singapore office also takes the lead on the firm’s India and Indonesia transactions. This year, the firm advised Ballarpur Holdings on a $498 million leveraged facility to fund the acquisition of three Indian companies that had been spun off from Ballarpur’s parent company. And in Indonesia, the firm assisted ABN Amro on a series of financings for Excelcomindo.

Linklaters

One of Linklaters’ strengths is its breadth of expertise across the region. In Hong Kong, the firm counselled Hong Kong Telecommunications on a HK$23.8 billion revolving credit and term loan facility to finance its parent – PCCW – and its existing revolving facility.

The firm’s India practice is run out of Singapore and London. Both offices teamed up on a transaction for Standard Chartered, counselling the bank on a $475 million term facility to Tata Chemicals.

In Indonesia, Linklaters advised Credit Suisse on a loan to finance Northstar Private Equity Partners’ acquisition of Interex Sura and Cakra Bumi Nusantara. And in Korea, the firm assisted Korea Development Bank on a $400 million bridge loan for Cyprus Investments.

**Capital markets – debt**

Tier 1

Allen & Overy
Clifford Chance
Davis Polk & Wardwell
Linklaters
Shearman & Sterling

Tier 2

Baker & McKenzie
Latham & Watkins
Mallesons Stephen Jaques
Milbank Tweed Hadley & McCloy
Sidley Austin

Tier 3

Lovells
Morrison & Foerster
Norton Rose
O’Melvy & Myers
Paul Hastings Janofsky & Walker
Sullivan & Cromwell
White & Case

**Capital markets – equity**

Tier 1

Freshfields Bruckhaus Deringer
Herbert Smith
Simpson Thacher & Bartlett
Skadden Arps Slate Meagher & Flom
Sullivan & Cromwell

Tier 2

Allen & Overy
Baker & McKenzie
Clifford Chance
Davis Polk & Wardwell
Latham & Watkins
Linklaters
Shearman & Sterling
Sidley Austin

Tier 3

Slaughter and May

**Freshfields Bruckhaus Deringer**

Freshfields’ capital markets practice is dominated by its equity work, which is well respected by many clients. In June 2009, the firm advised Goldman Sachs as financial adviser on Chana Resources Power Holdings’ $776 million rights issue. Freshfields also picked up a role on one of Hong Kong’s 2009 IPOs: Whampoa’s $1.5 billion issuance of guaranteed notes, the largest bond offering of the year to date.

The firm’s India practice also has a good reputation and, as a result, Shearman was mandated by the joint lead managers on Vedanta Resources’ $1.25 billion bond offering. The notes were listed on the Singapore exchange and issued under Rule 144A.

**Simpson Thacher & Bartlett**

Simpson Thacher & Bartlett maintains its position in the top tier for equity, following an excellent spread of transactions. The firm’s Tokyo office had a particularly busy year, working on deals for several of the large Japanese banks. In May 2008, for example, the firm counselled the underwriters on Sumitomo Mitsui’s $1.8 billion offering of preferred securities.

Korea has also provided a consistent stream of work for Simpson Thacher. On the equity side, the firm assisted Shinhan Financial Group on its $800 million rights offering in March 2009.

**Skadden Arps Slate Meagher & Flom**

Skadden Arps just hangs on to a place in tier one for its equity capital markets work, thanks to a strong showing by the firm’s fast-developing practice in Australia.

**Linklaters**

“Linklaters provides a high level of service that is more than satisfactory to meet our needs”, says one client. That reputation is particularly strong in debt and structured finance work with the firm securing tier three slots in both as a result.

On the debt side, the firm has worked on a staggering breadth of transactions across Asia-Pacific. In Greater China, it was present on four refinancing-denominated bond offerings worth a total of Rmb12 billion ($1.75 billion). Korea has also brought in several mandates for, what one client describes as “the best securitisation legal team in Asia”.

**Shearman & Sterling**

Shearman & Sterling maintains its reputation as one of Asia’s top US firms for capital markets. On the debt side, the firm has advised on several of the year’s big-ticket deals. In April 2009, it represented Hutchison Whampoa on a $1.5 billion issuance of guaranteed notes, the largest bond offering of the year to date.

The firm’s India practice also has a good reputation and, as a result, Shearman was mandated by the joint lead managers on Vedanta Resources’ $1.25 billion bond offering. The notes were listed on the Singapore exchange and issued under Rule 144A.

**Herbert Smith**

Herbert Smith is “a sophisticated firm that doesn’t have to seek instruction from us – they think about what to do themselves”, says one client. As a result, the firm has had a very successful year in equity capital markets, picking up mandates on many of the few IPOs to get to market in the past 12 months.

In May 2008, the firm assisted the bookrunners and lead managers on Mayore International’s $354 million IPO in Hong Kong. The following month was equally busy, with the firm assisting the banks on Central China Real Estate’s $176 million IPO and Xtep International’s $285 million IPO. Debt work has however been slower, and as a result, the firm moves down a tier in this year’s debt rankings.

**Clifford Chance**

Clifford Chance maintained its reputation for high-quality debt work this year despite the downturn. Adapting to the cautious market, the firm focused its attention on liability management, restructuring troubled debt and equity-linked products.

In May 2008, for example, the firm counselled Macquarie and JP Morgan as the book-tender solicitation agents and dealer manager on Suzlon Energy’s $500 million tender and exchange offer for two series of convertible bonds.

**Davis Polk & Wardwell**

Davis Polk & Wardwell has had an excellent 12 months in equity and debt; as a result it consolidates its position in tier one for debt and moves up the rankings to tier two for equity. Bill Barron, Hong Kong managing partner, has been active on both.

On the equity side, Barron advised DBS Group on its $2.8 billion rights offering in February 2009. Barron again showed his expertise and reputation in April 2009, advising Temasek Holdings throughout Chartered Semiconductor Manufacturing’s $548 million rights offering in the form of American depository shares (ADS).

**Skadden Arps Slate Meagher & Flom**

Skadden Arps just hangs on to a place in tier one for its equity capital markets work, thanks to a strong showing by the firm’s fast-developing practice in Australia.
In September 2008, the firm assisted the underwriters on Gunns’ A$336 million entitlement offering of ordinary shares, while in February 2009, the issuer – Westfield – chose Skadden to advise it on a $1.8 billion 144A placement. Merrill Lynch’s Australian branch has also repeatedly used the firm. The Hong Kong team recently received a boost with the arrival of corporate partner Julie Gao from Latham & Watkins.

Sullivan & Cromwell

Sullivan & Cromwell continues to gain praise from the market for its high calibre equity practice. DE Shaw was one client. The hedge fund turned to Sullivan & Cromwell twice in the past 12 months for guidance on its transactions. In May 2008, the firm assisted it on a private placement by Happy Genius of $350 million exchangeable bonds. DE Shaw entered into a total-return swap with Deutsche Bank regarding $150 million of the notes. A month later, Sullivan advised the other in Korea.

Mergers and acquisitions

Tier 1
Clifford Chance
Freshfields Bruckhaus Deringer
Linklaters
Skadden Arps Slate Meagher & Flom
Tier 2
Herbert Smith
Latham & Watkins
Shearman & Sterling
Simpson Thacher & Bartlett
Slaughter and May
Sullivan & Cromwell
Tier 3
Allen & Overy
Baker & McKenzie
Clarey Gottlieb Stein & Hamilton
Davis Polk & Wardwell
Jones Day
Lovells
Mallesons Stephen Jaques
Milbank Tweed Hadley & McCloy
Morrison & Foerster
Norton Rose
Paul Hastings Janofsky & Walker
Paul Weiss Rifkind Wharton & Garrison
Sidley Austin
White & Case

Private equity

Tier 1
Clarey Gottlieb Stein & Hamilton
Clifford Chance
Paul Weiss Rifkind Wharton & Garrison
Simpson Thacher & Bartlett
Tier 2
Herbert Smith
Latham & Watkins
Morrison & Foerster
O’Melveny & Myers
Skadden Arps Slate Meagher & Flom
Tier 3
DLA Piper
Freshfields Bruckhaus Deringer
Linklaters

Clarey Gottlieb Stein & Hamilton

Korea is the focus for much of Clarey Gottlieb Stein & Hamilton’s work.

For example, in December 2008, the firm led by Sang Jin Han advised Cheil Worldwide on the acquisition of a 49% interest in Beatie McGuiness Bungay, a UK advertising agency. Meanwhile Yong Lee assisted Kookmin Bank on a $500 million investment into JSC Bank CenterCredit to purchase a 23% interest. However, the firm also worked on some innovative transactions in Greater China. For example, Cleary Gottlieb assisted Barclays Capital on its investment into New China Trust in January 2009.

Clifford Chance

Clifford Chance remains in tier one for both M&A and private equity this year, following 12 months of impressive deals and complimentary feedback from peers and clients. As another lawyer at another firm commented: “they’re a strong competitor”; clients agree: “I rate them among the top in HK,” said one.

With many Chinese companies looking to make overseas acquisitions, Clifford Chance was quick to position itself to pick up these mandates. In July 2008, for example, the firm began advising China Oilfield Services on a $2.5 billion tender offer for Awolico, a Norwegian manager of offshore oil drilling rigs. Then in February 2009, Clifford Chance was engaged by Chinalco to acquire a $19.5 billion, 18% stake in Rio Tinto.

Freshfields Bruckhaus Deringer

Freshfields is “very good in China” say peers, and its China practice has certainly had a busy year, filled with mandates. Standout deals include advising Huyanjuon Juice on Coca-Cola’s controversial (and ultimately unsuccessful) $2.5 billion bid for the so-called national champion, and advice on China Unicom’s $23.2 billion merger with China Netcom.

Teresa Ko, China managing partner, led the Unicom transaction. Ko also headed up the Freshfields team on PetroChina’s acquisition of a 45.5% stake in Singapore Petroleum and was involved for Wing Lung Bank during its $4.7 billion takeover by China Merchants Bank.

Freshfields is fast-establishing itself as a player in the private equity sphere. This year, the firm landed a spot in Tier Three of the rankings after picking up mandates from Warburg Pincus and TPG.

Linklaters

Without a doubt, one of the most talked about events of 2008 was the collapse of Lehman Brothers. While this prompted lots of work for insolvency and disputes lawyers, it also provided some mandates for M&A specialists. Linklaters picked up a prime role advising Lehman and KPMG on the disposal of Lehman’s assets – such as a $225 million sale of assets to Nomura.

With clients describing the firm as “amazing”, it’s no surprise that the firm also picked up mandates on several other high profile deals. In October 2008, the firm assisted China Netcom on its $23.8 billion merger with China Unicom and, in November, the firm was hired by RBS Asia Corporate Finance, China Netcom’s financial adviser, regarding the HK$15.9 billion plan to privatise PCCW.

Paul Weiss Rifkind Wharton & Garrison

Paul Weins’ Hong Kong office is a well respected private equity boutique. The firm focuses on what it does best with top partners Jeanette Chan and Jack Lange impressing clients and competitors alike.

Morgan Stanley Private Equity proved a repeat customer, calling on the firm’s expertise on several occasions. Elsewhere, Sumitomo Metals mandated Paul Weiss regarding a joint venture with China Steel Corporation to set up production in Ho Chi Minh City. Microsoft also turned to the firm on a deal in India.

Simpson Thacher & Bartlett

Simpson Thacher & Bartlett’s reputation in the private equity sphere is second to none, with clients praising the firm’s quality and peers unanimous in sanctioning the firm’s position in tier one.

As one client said: “They’re always fantastic to work with across the board as they’re extremely competent and knowledgeable.” This year, Simpson Thacher acted for Blackstone on its acquisition of a 20% stake in China National Blorstar for $600 million. KKR also turned to the firm for assistance on its $576 million acquisition of Unlisted Technology, a take-private transaction.

On the public M&A side, Simpson Thacher assisted Chinalco on its $19.5 billion investment in Rio Tinto and counselled a consortium comprising Changhai Zoumolen, Hony Cipatal, Goldman Sachs and Mandarin Capital Partners on the acquisition of Cifa, an Italian concrete equipment manufacturer, for €376 million.

Skadden Arps Slate Meagher & Flom

“Nick Norris has had a great year thanks to the PCCW relationship and the firm’s been very busy,” says one competitor. PCCW and its attempted privatisation has certainly kept Norris and the firm occupied.

PCRD and China Netcom launched $2.1 billion cash offer in 2008 but the deal is still being picked over by the courts. Allegations of vote rigging plagued the scheme of arrangement and the privatisation was eventually withdrawn. Skadden had ringside seats as the drama unfolded, acting PCDR throughout.

This was not the only controversial, media-friendly and ultimately thwarted deal for Skadden this year: the firm also assisted Coca-Cola on its bid to acquire Huyanjuon Juice which was blocked by China’s merger regulator.

Project finance

Tier 1
Allen & Overy
Clifford Chance
Latham & Watkins
Linklaters
Tier 2
Milbank Tweed Hadley & McCloy
Shearman & Sterling
White & Case
Tier 3
Baker & McKenzie
Freshfields Bruckhaus Deringer
Herbert Smith
Lovells
Tier 4
Ashurst
Fulbright & Jaworski
Mallesons Stephen Jaques
Skadden Arps Slate Meagher & Flom

Allen & Overy

Allen & Overy’s projects team has focused on south-east Asia this year, with developing markets bringing in interesting mandates for the firm. As one client says, the firm provide “pretty detailed advice but has a commercial flair as well.”

One of the firm’s standout transactions was for the mandated lead arrangers on the Thun-Hubunion hydroelectric power project on the Thai-Lao border, which closed in October 2009.

Leading lawyer Thomas Brown, who one client lamented has becoming managing partner of the Hong Kong office taking him away from some projects, still found time to advise the lenders on a $201 million facility to build the Cai Mep International Terminal in Vietnam.

Clifford Chance

Clifford Chance is “useful and professional with a willingness to learn”, producing a high quality of work. As a result, the firm moves up to tier one this year.

The firm has picked up some big-ticket deals across the region. In China, Clifford Chance advised China Development Bank, the lead arranger, on a new pipeline from central China to south-west China.

South-east Asia has also provided some interesting work. In May 2009, the firm represented Bank of China on $455 million financing for Perusahaan Listrik Negara, the Indonesian state power company. Meanwhile Hawaii Jenkins – described by one peer as “well known and a good operator” – is counselling JBlc on two coal-fired thermal power plants in Vietnam, a project worth between $1.2 billion and $1.5 billion.

Latham & Watkins

Latham & Watkins presence in south-east Asia secured it several top roles on Indonesian deals this year, for project companies and lenders alike.

In September 2008, the firm advised Mitsubishi Materials, the sponsor, on $250 million project financing to provide working capital for the Gresik copper smelter and counselled the sponsor and borrower refinancing the Kangean oil and gas field in East Java.

Head of practice Joseph Bevah is well respected by the market. As one peer says: “He’s an impressive guy that gets work on the major mandates”. This was certainly the case in October 2008; Bevah helped the sponsors close the $600 million Thun-Hubunion project to generate hydroelectric power in Laos.

Linklaters

Linklaters’ regional breadth is again evident from in projects work this year. In Thailand, the firm advised the lenders on a $15 billion financing of a residential development in Bangkok in June 2008, and on a $24.5 billion facility for PTT Phenol Company to expand phenol production in January 2009.

Meanwhile, in August 2008, the Singapore office assisted the Institute of Technical Education on the $270 million financing for the ITE West PPP, the first social infrastructure PPP in the jurisdiction.

Linklaters’ Hong Kong office took the lead on two port projects: one in Vietnam, the other in Korea.
Small steps to justice

It's taken a while, but the ICC has taken up its first case and issued a warrant for its first sitting head of state. Small steps in the right direction, says Joel Abraham.

One of the instances of disputed jurisdiction is the decision by the Office of the Prosecutor to investigate alleged war crimes in Gaza. “Objective evidence and reviews suggest that war crimes were committed by both sides,” says Ellis. “The question is whether or not the ICC has the correct jurisdiction. Unfortunately, it hasn’t, simply because the Rome statute was deliberately crafted to give the court a very specific and very limited jurisdiction. However restrictive that jurisdiction is, it is important that the ICC stays within its borders and does not go beyond them.”

For the Prosecutor to suggest that the court has jurisdiction over Gaza would require the court to invalidate the legal status of the territories and effectively recognize a Palestinian state, and there is no basis for that right now. Israel is not a signatory to the Rome statute, and the Palestinian territories do not constitute a state under international law. It is unfortunate, but there is a restriction there.

New definitions of crime

The Rome Statute grants the court jurisdiction over four groups of crimes, which it refers to as the “most serious crimes in international law:” genocide, crimes against humanity, war crimes, and the crime of aggression. The states parties are due to hold a Review Conference in the first half of 2010 to consider amendments to this statute. The aim is to adopt a definition of the crime of aggression, allowing the ICC to exercise jurisdiction over the crime for the first time.

The reason this is complicated is that it goes to the heart of how the court defines the act of aggression, what the conditions are of the exercise of that jurisdiction, and who determines whether a country is acting with aggression. The triggering mechanism is a big issue. And that assumes the case has got over the first hurdle of coming up with an agreed definition for the crime.

“I'm not too optimistic that you’re going to see a movement towards its inclusion,” says Ellis. “I don’t necessarily think that’s a bad thing. Because it’s such a complicated issue, I've always been concerned that it would dilute the focus on the crimes of genocide, crimes against humanity and war crimes. If we shift our focus on tackling the issue of aggression, I’m concerned that we will fail in sufficiently rooting the other three crimes within the mindset of the international community.”

Many states asked to add terrorism and drug trafficking to the list of crimes covered by the Rome Statute, but both were rejected. The states were unable to agree on a definition for terrorism, and the inclusion of drug trafficking would inevitably overwhelm the court’s limited resources. Ellis comments: “The purpose of the conference is to debate these issues, so whether they are in fact adopted is not as important as the fact that they’re being debated. I think that’s a very healthy process for the international community.”

Satisfying the demands of all parties is a thankless task. India lodged to have the use of weapons of mass destruction included as a war crime, but this move was also defeated. India has since expressed concern that “the Statute of the ICC lays down, by clear implication, that the use of weapons of mass destruction is not a war crime. This is an extraordinary message to send to the international community.”

Some commentators have argued that the Rome Statute defines crimes too broadly or too vaguely. For example, China has argued that the definition of war crimes goes beyond that accepted under customary international law. The British television media company ITN, wrote to the UK government in 2007 asking it to support an amendment to the definition of war crimes to include the intentional targeting of journalists.

Another priority is the revision of Article 124, an optional protocol that allows states to not subject their nationals to the jurisdiction of the Court for seven years with regards to war crimes. However, Ellis states that the provision has been less contentious than anticipated. “There was a lot of concern when this was a compromise provision during the Rome conference, and there were many who criticised that compromise. The fact is that only two states have applied the article, France and Colombia. France has already withdrawn its declarations, and Colombia is soon to follow. There will still be a push to remove this article but history shows it has not been as controversial as it was expected to be. If it allows non-signatories to the statute to feel more comfortable in adhering to the Rome statute then it’s worth keeping.”

First warrant for a head of state

In March, the ICC reached a contentious landmark in its decision to issue an arrest warrant for Sudanese President Omar Al-Bashir. This was the first warrant issued for a sitting head of state, a bold step for the Court that has received praise and criticism in equal measure. The controversy of the Al-Bashir case has been due not only to its political implications, but also to fact that genocide charges were included in the warrant, contrary to the recommendations of the United Commission of Inquiry on Darfur. The court ruled that there was insufficient evidence to charge President Al-Bashir with genocide, with Al-Bashir himself predictably denying all charges, describing them as “not worth the ink they are written in.”

The first warrant demonstrates how far the ICC's public perception. There have been allegations of bias against Africa, and some believe that the issue of an arrest warrant has had a negative effect on local peace processes. The Court’s engagement with regional groups has become an urgent priority after the African Union voted to suspend cooperation with the ICC in protest over the indictment.

One of the biggest bones of contention is the compatibility of the ICC with reconciliation processes that grant amnesty to human rights abusers as part of agreements to end conflict. Article 16 of the Rome Statute allows the Security Council to prevent the court from investigating or prosecuting a case, and Article 53 allows the Prosecutor discretion not to initiate an investigation if he or she believes that “an investigation would not serve the interests of justice.” Former ICC President Philippe Kirsch has said that “some limited amnesties may be compatible” with a country’s obligations genuinely to investigate or prosecute under the statute.

It is sometimes argued that amnesties are necessary to allow the peaceful transfer of power from abusive regimes. By denying states the right to offer amnesty to human rights abusers, the International Criminal Court may make it more difficult to negotiate an end to conflict and a transition to democracy. For example, the outstanding arrest warrants for four leaders of the Lord’s Resistance Army in Uganda are regarded by some as an obstacle to ending the insurgency.

Czech politician Marek Benda argues that “the ICC as a deterrent will in our view only mean the worst dictators will try to retain power at all costs”. However, the UN and the International Community of the Red Cross maintain that granting amnesty to those accused of war crimes and other serious crimes is a violation of international law.

Ellis adamantly supports this notion. “The court is premised on the principle of international law that is clear in stating there is no impunity for these crimes. Since that is such a fundamental principle, it should not surprise anybody that the court and the international community would speak out very loudly against any state that would suggest providing impunity for individuals that have committed these crimes. Years down the road, this will be the court’s greatest legacy.”

“This is what governments do: suggest that if we can compromise on the accountability issue then that will make it easier to achieve peace. History simply doesn’t show that. In fact, history is quite clear in stating that there is no lasting peace unless you base that on peace on justice, and there is no justice unless you embrace the concept of accountability. It seems absurd to suggest that it would be better to allow the perpetration of these crimes to negotiate themselves out of being held accountable, since they are the ones who can bring the peace.”
Lessons from Lubanga

To date, the court has opened investigations into four situations: Northern Uganda, the Democratic Republic of the Congo, the Central African Republic and Darfur, indicting 14 people; seven remain free, two have died, and five are in custody. The IBA ICC Programme releases regular reports on the ICC, commenting on proceedings and advocating ways to move forward. However, it is still too early to judge the full impact of the ICC, having not yet completed a full procedural cycle.

The trial of Thomas Lubanga in January 2009 was an historic moment for the ICC: the first trial at the world’s only permanent international criminal court, and the first time that victims had the right to actively participate in such proceedings. Lubanga, former leader of the Union of Congolese Patriots militia in Ituri, became the first person to be arrested under a warrant issued by the court in March 2006, charged with “conscripting and enlisting children under the age of 15 years and using them to participate actively in hostilities”.

The trial was due to begin in June 2008, but halted when the court ruled that the Prosecutor’s refusal to disclose potentially exculpatory material had breached Lubanga’s right to a fair trial. This led to serious concerns about the viability of the ICC, but the court lifted the suspension in November 2008, helping to restore public confidence in its credibility.

The progress made in the trial so far is heartening. Seventeen out of 31 witnesses have testified, and the decisive approach of the Chamber in managing proceedings bodes well. One of the great innovations is the series of rights granted to victims, who have the right to present their views and observations before the Court. The familiarisation process being implemented by the Victims and Witnesses Unit appears to be successful, and victims have been afforded the opportunity to participate in the trial in a meaningful way.

One of the biggest challenges is to fully respect the rights of not only the victims and witnesses, but also the defence. So the Chamber’s decision to allow the Office of Public Counsel for Defence access to the proceedings in real time was greeted with approval. However, there are problems with guaranteeing adequate resources for defence counsel under its legal aid system, with Lubanga’s defence team claiming that it has been given a smaller budget than the Prosecutor.

Another problem with the trial has been that much of the proceedings are held in closed session due to fears for the witnesses’ safety. The number of closed session hearings arguably impinges on Lubanga’s right to open, transparent public proceedings. Other criticisms are the court’s failure to address the issue of self-incrimination, and the late disclosure of the potentially exculpatory material (which initially led to the delay in proceedings) that may have affected the defendant’s ability to prepare his case.

The accuracy of interpretation has also been called into question. International criminal proceedings are understandably complex, involving different languages and cultural nuances. Procedural safeguards are crucial to resolving such issues, and the Chamber has stressed that interpreters must provide full interpretations and not summaries of what was said. The Lubanga trial has revealed many obstacles, but the ICC appears to be adjusting well to the learning curve.

Less is more for the Court

Ellis believes that less is more with regards to the ICC’s activity. “It is important to remember that the ICC is a court of last resort. It will only take jurisdiction over a situation if a country is unwilling or unable to investigate. In the future, hopefully we will see less work being done in The Hague through the ICC, and more focus on the responsibility of all nations to hold accountable those who have committed these crimes. The ICC is now embedded into the international legal scheme as an entity that will uphold the concept that there will be no impunity for those that have committed the most atrocious crimes known to man.”

The progress of the ICC might best be described as slow and steady. The first trial has taken a long time to begin, but the developments bode well. There is a long road ahead, but the small steps so far have certainly been in the right direction.

Mark Ellis, Executive Director, IBA
How to prosecute terrorists

The UK head of counter-terrorism at the Crown Prosecution Service talks about her role in charging terrorists and her expectations of speaking at this year’s conference. By Nicholas Pettifer

Sue Hemming has been Head of counter-terrorism in the Crown Prosecution Service (CPS) in the UK since the division was created in 2005. She manages a team of almost 50, half of which are lawyers prosecuting some of the most dangerous people in the world.

Hemming started her career in the CPS and has never wanted to work anywhere else. Originally she worked in Cambridgeshire before moving to the service’s headquarters near St Paul’s Cathedral after 12 years. But it was her promotion four years ago that provided Hemming with her greatest challenges. From prosecuting Abu Hamza al-Masri to helping charge the fertiliser plotters, she has been at the forefront in pursuing terrorists in the UK. Only last month, three terrorists were convicted for planning to blow up aeroplanes in the UK. Hemming was involved in the charging decision process for all three.

Between 10am and 1pm today, Hemming will be speaking about torture, detention and rendition alongside panel-lists from Buenos Aires, Chicago, The Hague, London and New York. Here, she talks about her plans for the session and recalls some highlights from her career.

IBA Daily News: What are you planning to focus on at the IBA session in Madrid?

Sue Hemming: I have agreed with the chair that I will speak about the prosecutor in the context of the UK system, because we have an international audience. I will also speak about working with the police and the intelligence services on international terrorism and how we actually work in practical terms. About international relations and working with colleagues abroad and the practical issues with obtaining admissible evidence and disclosure. And then, just briefly, how torture and rendition come into the UK prosecutorial system.

We don’t, and I can’t, use any evidence from torture; rendition means that we can’t try a defendant and that we have to have lawful extradition. Then finally, I will mention how we deal with allegations that are made during the course of a criminal prosecution against international agencies that have been holding defendants and where the evidence has come from.

How will the session be structured?

I understand that we are each going to speak on a topic, from different perspectives. There are people from different countries speaking and people from different disciplines as well. Then there is going to be an interactive session with the audience – answering questions and having a discussion around the topics.

What else are you going to particularly focus on in your time?

I will be stressing the amount of work that you have to do with colleagues in different disciplines and different countries in order to successfully prosecute terrorism cases. That is why I want to speak about working with the investigators and the intelligence services and also about international cooperation, because that is crucial when you are dealing with international terrorists.

Will you be using hypothetical case studies or will you talk from your experiences?

I’m going to talk from experience. For example, when we are dealing with rendition I can talk about successful extradition or prosecuting people who have been deported. So I will use a couple of examples of where that has worked. I will also use a couple of case examples for having to deal with allegations.

Cases such as?

The best example of having to do an extradition quickly, and ensure that it was done lawfully before we could go to trial, was Hussain Osman who was one of the 21/7 bombers. We used a European arrest warrant, for the first time in Italy, in relation to him. And he was extradited, I think, within 55 days. That was after having been through all the processes, allowing all the appeals and getting him back to try him with the others.

That sounds extraordinarily quick. What is the typical timeline?

That is quick. There isn’t really a typical time because it depends on the type of extradition that you are working with – whether it is a European arrest warrant, whether it is an old style European or whether it is a full case where it takes a lot, lot longer. That was quick though and that is one of the reasons why I am going to use it as one of my examples: how you can use the lawful process in order to get people back to try them.

You mentioned torture. Is that something that has to be actively investigated by your prosecutors when building a case?

There will be allegations made by the defence during the course of a prosecution. Either that evidence has come as a result of torture, or where the defendant claims that where he was held previously, before he was returned to the UK, he was subject to torture. When we are dealing with those, we have to look at what is alleged and try to find whatever material may be available to support that or show that it is not right. We have to do quite a wide disclosure process as well – making sure that we look through all the materials that may be in the possession of either the investigators or third parties. You don’t just accept or reject it at face value. You have to do an evaluative process in order to be able to proceed.

“…”

I went to the police station fairly early on after the arrest and spent 12 to 14 hours a day working with police.

Is this something that you work on a day-to-day basis on?

I’m the head of the counter-terrorism division, so I oversee all of the cases of prosecution for counter-terrorism in England and Wales. I have a much wider role than a prosecutor dealing with one of those cases. But it does mean that I have experience of knowing about where it has happened in lots of different cases as opposed to one specific one. It does take up part of my role because those types of cases would be so significant that they would come to my notice and I would be involved in working with the prosecutors.

At what stage does your team get involved with a case?

In some criminal charges, the latest that a prosecutor will get involved is at the time of charge. But in this sort of work where we start working with the police at a much earlier stage and we’ve generally been briefed on cases or started working on them before arrest takes place. Not always, because sometimes an arrest is quite fast moving and has to be done because of information received. But if there is an ongoing operation, then generally we will be briefed and working with the police from very early on.

How do the police get in touch?

It differs from case to case. What usually happens is that the police (the senior investigating officer or, in some cases, the senior national coordinator for terrorism investigation) will approach me, or my deputy, and say that they need a prosecutor or they need to speak to us. Then we get briefed on the case and we allocate the appropriate prosecutor to deal with it from there onwards.

You’ve been in your current role a few years now. What have been the highlights?

It is quite difficult when you deal with cases that are so interesting! I worked on the Abu Hamza al-Masri case and that was obviously a really interesting to work on. We were dealing with old offence of soliciting murder. We also charged him with inciting racial hatred and also an offence under section 58 of the Terrorism Act. So it was quite a varied indictment and it was fascinating to deal with the wide range of things that he preached on and the views that he held. He was also being sought for extradition from the US during the course of the domestic prosecution. I didn’t deal with the extradition, but I had to work within that context.

I also dealt with the charging decisions on a number of the high profile cases that we have had over the last few years. I was involved in advising on the fertiliser plot [to blow up nightclubs and other targets such as Bluewater shopping centre in Kent] and in particular in the early stages before charging Omar Khiamy and others. I was also involved in the charging decisions in the trial that has the jury out at the moment on the alleged airline plot. [Since this interview was conducted; three defendants were found guilty of conspiracy to murder thousands.]

How does that process work?

My involvement in each of those was slightly different. In the fertiliser plot I was involved several months beforehand advising as the case went along. I advised right up until the time of arrest. With the alleged airline plot, it was the first use of the 28 day holding power under the terrorism legislation. In that particular case I went to the police station fairly early on after the arrest and spent 12 to 14 hours a day working with police. I was reviewing materials, reviewing each of the suspects and advising on all the aspects of the case right up until the 28th day.

Continued on page 11
MEET OUR IBA TEAM

Dr. Faraj Ahnish  
Managing Partner  
Abu Dhabi

Sadiq Jafar  
Managing Partner  
Dubai

Richard Briggs  
Executive Partner  
Dubai

Sameer Huda  
Partner

Erik Muthow  
Partner

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# TODAY’S SCHEDULE

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<td>BIC welcome meeting</td>
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<td>1000 – 1800</td>
<td>Magna I &amp; II, The Pullman Hotel</td>
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<td>Mock exercise based on a marine casualty case focused on arrest and oil pollution</td>
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<td>Business opportunities and legal framework in the Middle East</td>
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<td>Financing oil and gas projects in Africa</td>
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<td>Successful models for the practice of law in Europe – how can leading European local law firms best compete with international law firms in today’s challenging environment?</td>
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<td>Investing in bricks. Is real estate still a good investment? How is the financial crisis affecting the real estate market and the emergence of new opportunities?</td>
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<td>Private standards – application of antitrust and trade rules</td>
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<td>Liberty, legality and security – the key issues on torture, detention without charge and extraordinary rendition</td>
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<td>Options for the resolution of international commercial disputes, including the drafting of dispute resolution clauses</td>
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<td>Are financial products to blame? Financial insurance products, credit default swaps, financial guarantees and other derivatives</td>
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<td>Doing business in Asia: workplace law survival kit in the changed economy</td>
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<td>The new role of governments in restructuring and workouts of insolvent corporations</td>
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<td>Payment mechanisms in international transactions</td>
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<td>Anatomy of an aboriginal rights/treaty trial</td>
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<td>Cape Town Convention and its implementation: How successful? Recent ratifications?</td>
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<td>A carrot, but not too sweet – compensating executives in the new economic environment</td>
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<td>SHOWCASE – Show me the money! Lawyers, money and conflict</td>
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<td>Young lawyers’ introductory meeting</td>
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<td>Sovereign immunity in international litigation and arbitration</td>
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Meet in Madrid: Rolf Auf der Maur, Benedict Christ, Urs Haegi, David Jenny, Christoph Pestalozzi
“I think some people would think that working in one organisation means that your experience is restricted, but mine certainly hasn’t been”

those 28 days ultimately available to us, you only have until the time that the next warrant runs out. You need to charge at the earliest opportunity, which in fact we did. We charged, I think, 11 suspects on the 10th or 11th day. It was interesting because I was dealing with something for the first time and it was probably one of the biggest and most interesting cases.

You’ve always been within the CPS. Was going into public service always something you had planned?

I enjoy working for the CPS and I think it is a really great organisation to work for. I have been very fortunate that I have had the opportunity to work on almost everything that the organisation does. After working in an area for 12 years doing everything from no-MOT [UK’s Ministry of Transport certificate to prove a car’s road worthiness] to murder and quite a lot of organised crime work, I moved into headquarters. This gave me the opportunity to do everything from no-MOT [UK’s Ministry of Transport certificate to prove a car’s road worthiness] to murder and quite a lot of organised crime work, I moved into headquarters. This gave me the opportunity to do extraditions, Criminal Case Review Commission work and a lot of mutual legal assistance.

I then moved onto this where I have been able to do counterterrorism, crimes against humanity, official secrets and racial and religious hatred. I think some people would think that working in one organisation means that your experience is restricted, but mine certainly hasn’t been. I’ve had the opportunity to do so many different things in my career that I haven’t really had much interest in working anywhere else. Equally, being a public servant is important to me. I haven’t got any interest in going into private practice.

Why we can’t carry liquids

One of the many challenging cases that Hemming has been involved in recently was the prosecution of seven men over a plot to blow up aeroplanes.

Last month, three of the men – Abdulla Ahmed Ali, Tanvir Hussain and Asad Sarwar – were convicted of conspiracy to murder using explosives on an aircraft, and conspiracy to murder persons unknown. Umar Islam was also found guilty of the second charge.

The men planned to explode liquid bombs constructed from chemicals placed in empty drinks bottles on seven flights leaving Heathrow for the US.

The men were arrested in August 2006 after a surveillance operation involving an MI5 intelligence team and over 220 police officers.

Despite an initial trial in 2008 where the jury failed to reach a verdict, the Crown Prosecution Service successfully prosecuted the men on the second attempt. (The trial concluded on September 7 2009.)

The jury at the second trial was able to see coded email evidence in which the British plotters discussed the conspiracy with extremists in Pakistan. Investigators think that the plot also involved Al Qaeda.

Another crucial piece of evidence used to convict the wannabe bombers was a series of martyrdom videos recorded by the plotters in the style of those made by the London tube bombers in 2005.

The discovery of the plot led to restrictions on the amount of liquid that can be taken onboard aeroplanes that are still in place.

Development of a scanner to identify between harmless liquids and those that might be explosives is underway but, until this is finalised, security restrictions – thanks to this plot – will continue.
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