Through a series of anecdotes, insights and a rare question and answer session, the message of Bob Woodward’s keynote address at this year’s opening ceremony was clear: greater transparency is needed in government administrations.

“What we should worry about the most is secrecy in government,” Woodward said. “That is what will do democracies in.”

The associate editor of the Washington Post, bestselling author and investigative journalist, used a combination of candid revelations and humour to make his case clear. But his point was a serious one: we need to shed light on the dark corners that exist in all governments around the world.

Answering a series of questions from conference participants, he addressed issues ranging from torture to 9/11 to the future of the news industry. Woodward related this last question back to his theme of transparency.

“If information systems are clogged up in all our countries – particularly our democracies – then our democracies won’t work,” he said.

Woodward is best known for his work with fellow Washington Post reporter Carl Bernstein. The pair linked the Watergate break-in to the top of the American government’s executive branch, earning the paper a Pulitzer Prize in 1973. Since then, Woodward has covered the Supreme Court, CIA and presidents Bill Clinton, George W Bush and Barack Obama in a series of critical and often controversial books.

While Woodward’s professional experience lies mainly in the realm of American politics, his experience with the law began with his father, Alfred Woodward, a lawyer and chief circuit court judge in Illinois during the 1970s. At the start of his address Woodward recalled advice his father gave him as a child.

Quoting his father, Woodward told the audience:

“He said, ‘Pay attention to what lawyers say: they have the most profound and meaningful things to say, unless you listen very carefully.’” The quote drew a round of laughter and nods of recognition from the audience.

Woodward then related an experience he had in the 1980s while investigating then CIA director William Casey. He told of how he went to see his lawyer, Edward Bennett Williams, to discuss some legal aspects of his research. Williams told him that as well representing both him and the Washington Post, he was also general counsel to President Reagan’s foreign intelligence advisory board as well as William Casey himself.

“I asked Ed whether there was a conflict in all these representations,” Woodward recalled, “and he...”
VOX POP

QUESTION: Which social events are you most looking forward to?

Teresa Walsh
Ogilvy Renault, Toronto, Canada
I don’t have any set plans yet, so hopefully I’ll just find out where everyone else is going and join in with them. I’m speaking in one of the sessions tomorrow but once that is finished I’ll be able to relax more and enjoy the cocktail receptions and dinners.

Danny Kafer
Heenan Blaikie, Montreal, Canada
I’m only going to one official function – the Employment Dinner. This is my first IBA conference so I’m not sure who’s here yet but I’m sure I’ll see some faces I know. The dinner is being held at The Bridges restaurant, and though I’ve been to Vancouver many times before I’ve never tried it. But this is a great city so I’m sure it’ll be good.

Danny Kaufer
Heenan Blaikie, Montreal, Canada
I’m going to attend the Banking and Securities Law lunch and the Capital Markets Forum lunch, to catch up with many other lawyers that work in the same practice area as me. I’ll also be going to the Banking Law officers dinner, and I’ve been invited to a number of others. Unfortunately I don’t think I’ll be able to make them all.

Juliet Madubuze
Portia Law Office, Nigeria
Well be attending a lot of lunches, for the Women Lawyers’ Interest Group, the African Regional Forum, the Corporate Counsel Forum and the Legal Practice Division. We’re from Nigeria and we’re hoping to meet lawyers from other parts of Africa.

Iqbal Ganil
Law Society of South Africa
I’m going to attend a whole lot of events - the opening party, the African regional forum lunch and the Public and Professional Interest Division lunch. I am an IBA Council Member, so I’ll be attending the officers’ dinner on Wednesday. It’s a great opportunity for us to thank them for all their hard work. I’m also going on a tour of local law courts, which should be very interesting.

Giuseppe Schiavello
Macchi di Celliere Gangemi, Italy
I will be attending the Banking and Securities Law lunch, and the Capital Markets Forum dinner, to catch up with many other lawyers that work in the same practice area as me. I’ll also be going to the Banking Law officers dinner, and I’ve been invited to a number of others. Unfortunately I don’t think I’ll be able to make them all.

OPENING CEREMONY

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leamed over and he said: ‘Bobby, I like to represent the situation’ – every lawyers dream.’

Much of Woodward’s time was spent on American presidents – both past and present. He told of a 2005 conference dinner where he was seated next to Al Gore (“Dinner with Al Gore is taxing. In fact, dinner with Al Gore is unpleasant.”) Woodward asked Gore how much was actually known about the Clinton years, to which the former vice president replied: “one percent.”

The ceremony was opened by Robert Nicholson, minister of justice and attorney general of Canada. He was followed by short speeches from Legal Practice Division chair Hendrik Haag and Public and Professional Interest Division chair Robert Stein. A prayer was delivered by Tdeil-Waunth Nation representative Leah George-Wilson (above) in her native language of Halkomelem.

Lastly, Woodward was introduced by Mark Ellis, executive director of the IIA. Ellis recalled watching the Watergate scandal and subsequent toppling of the Nixon Administration unfold on TV as a high school student.

“Mr Woodward is someone who helped define my generation,” Ellis said.
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The realities of sustainability

Over his 22-year career Howard Mann has watched the world slowly wake up to the threat of climate change and plight of indigenous communities. From his role as counsel to the Canadian Department of Justice in the 1980s Mann helped draft some of the world’s first effective environmental laws, and participated in negotiations on ecological considerations for the NAFTA articles.

But Mann found his greatest opportunity to affect policy change worldwide through a decade spent with the International Institute for Sustainable Development (IISD). In the past five years alone he advised over 70 governments in the developing world on investment treaty negotiations, and was instrumental in giving local communities a voice in arbitration proceedings with the UN and ICSID.

Today Mann faces perhaps the most difficult task of his career: convincing private investors that sustainable investment policy is not only in their best interest but is the only tenable means of securing access to foreign resources in the long run.

The mining law committee, in concert with the African regional and indigenous peoples’ forum will unveil a first-ever model mining development agreement today. (Model mining development agreement and community concerns: Room 202, Level 2)

What will be discussed in the joint session?

Peter Leon, who chairs the mining law committee, and Bob Bassett are going to present the reasoning behind the need for a model mining development agreement. This includes the orientation, the thinking and basic principles that went into it, and the key content areas for the text. The text will then actually be put on a public website for comments from the general public as well as other IBA members.

What's going to be your focus in that discussion?

My focus is the sustainable development issues and the shift from negotiating just hard rock mining licences to negotiating the social licence to operate at the same time, and what that means for business, for governments and for the local communities. It’s that shift to understanding that the social licence to operate isn’t a given anymore – it has to be negotiated as part of a package, within the local community and the state where the project is taking place.

How does that shift take place?

It starts with creating a different mindset. There has to be a shift from seeing a mining contract as a zero-sum game, where I win or you win, I get more or you get more, to seeing the negotiation as structuring a mutually beneficial relationship.

Then it’s a question of looking for what kinds of solutions will lead to long-term sustainability for the mining company and medium and long-term development benefits for the community.

Is there an example in the past where a company has got it right?

I’m not sure there is one perfect model yet. I think there are very constructive elements in a growing number of cases and in a number of emerging practices around revenue sharing.

There are certainly extremely important elements when we talk about transparency of revenues, transparency of the contract, publish-what-you-pay initiatives and so on. All of these elements are now coming together. The work of John Ruggie and his team on business and human rights is providing more information to deal with the relationship of mining companies to the human rights issues they may face in operating a mine.

What would you hope attendees take away from this session?

We hope they think through carefully the underpinnings we’re talking about, the need to change the historic model from one about rents only to a sustainable development context. We hope they will look carefully at the text, which is going to be available for consultation over the October to December period. A final text will appear at the end of December. And we hope they provide constructive comments based on the kinds of directions we’re talking about.

Assuming all goes well, we’ll have to deal with the issue of how to make developing country governments, stakeholders and industry groups aware of the model text, but that’s going to be part of the process that will be launched in October as well.

Is there a particular experience that led you down the path of sustainable policy development?

I actually started off doing my PhD thesis on arms control and disarmament, and when I joined the Canadian government and had the opportunity to take on the environmental issues I just jumped at it. For a young lawyer in 1988 just starting a government career it was as if Mann had dropped from heaven for me to take on the international environmental files within the government of Canada.

The development of the biodiversity convention, the first UN convention on climate change in 1992, all of the work around the Rio Summit in 1992 – that was as cutting-edge as you could get for an international lawyer at that time, and probably in many ways still is.

As often happens, a senior lawyer who first had those files thought it was all just a passing fad and not worth very much of his time, and I volunteered to take it up. I’ve been doing it ever since,

“There has to be a shift from seeing a mining contract as a zero-sum game”
from climate change negotiations to the NAFTA environmental agreement to other international trade and environment issues and now the investment and sustainable development issues.

**Did you have a defining moment that shaped your mindset?**

One of those happened in 2003 with my colleagues at IISD, in particular a gentleman named Konrad von Molke from Germany and lately of the US (he passed away five years ago). We were discussing what to do with the investment issue and realised that sustainable development is an investment problem. As much as I hate short formulas and perfect clichés and things, this one really is true.

Whatever sector of the economy you look at, the only way we’re going to move from unsustainable practices and technologies is with new investment. We’re simply not going to throw hundreds of millions of people out of work because the technology and processes they’re using are unsustainable. The only way forward is with new investment that replaces those technologies and processes, and that investment inherently has to come from the private sector.

The government can set cues, give directions, provide signals and prohibit old activities, but the government can’t actually replace them. It requires research and development; it requires new investments to replace old factories – bricks and mortar investments. It also relies on technology transfer, which is part of the investment strategies, and so on.

**Is there an overarching crisis of sustainability facing the world in the 21st century?**

Yes – water. Certainly climate change is a critical issue, and the consequences of our already changing climate help propel the water issue to become what will to my mind unquestionably be the major global environmental crisis that hits first. We’re already seeing critical elements of responding to it and planning to it.

Look at the issue of so-called land grabs – the rush by a number of countries and companies to invest in agricultural lands in Africa in particular and a few other developing regions. That issue is not about land.

Although it’s phrased as land grabs and is often seen as access to farmlands, the real issue there is water. Without water the land isn’t worth anything to those investors. They want to secure long-term rights to water resources for agricultural purposes. That’s what that game is about even if that doesn’t get the attention it deserves right now, or doesn’t capture the public imagination as much as the title of land grabs does.

We’ve already seen skirmishes in a number of countries, and between a number of them, over water rights. Those are going to increase. We’ve seen in the mining sector all kinds of issues related to the need for water for operating mines and the competing need for clean water in the communities neighbouring mines and down stream from the mine. Those issues are only going to increase as water shortages worsen.

**How does that reshape the discussion?**

It is off the radar because much of the discussion is being framed in terms of land rights of the investor (how to secure proper tenure and so on) as opposed to all of the other elements that come with it.

The original World Bank documentation and related advisory work was all about setting up proper registry systems for the transfers and valuing land, but in effect the water resources were never valued – as if they ought to be free in this context, as if they have no value.
Ben Dimatteo previews today’s sessions on the global automotive industry – from GM’s bankruptcy to long life renewable power

The simultaneous bankruptcies of General Motors and Chrysler thrust US automakers into the legal limelight last year, but a host of issues facing vehicle manufacturers and dealers worldwide make up today’s all-day session on the state of the global automotive industry. Divided into four mini-sessions, the day will explore not only the US restructuring but also regulatory and environmental issues, as well as developments in the distribution network model.

The joint programme is sponsored by the Asian, European and North American regional forums, though the latter is taking the lead owing to the US market’s relevance in each of the topics covered.

Session chairs Laura Christa and Bruce Thelen share a wealth of experience in the automotive industry. As a partner of Christa & Jackson, Christa has defended vehicle dealerships in several class-action suits in California, while Thelen spent several years in-house at Chrysler.

Palmer Prize-winning journalist Paul Ingrassia, author of Crash Course: The American Auto Industry’s Road from Glory to Disaster, provides star power as the lunch speaker.

Morning mini-sessions, 10am to 1pm

In the first mini-session panellists will discuss the unprecedented US bankruptcies, which took place in the space of 30 days with strong government involvement. Logan Robinson, of the University of Detroit Mercy Law School, spent over 30 years in the industry for companies including Chrysler and Delphi. He will present a background of the industry and what brought GM and Chrysler to the brink of insolvency.

University of Michigan Law School professor and bankruptcy expert John Pottow will provide insights into the restructuring process and the specific mechanisms that sped it through the US court system.

For international reaction Shearman & Sterling partner Harald Selzner, who represented the German government in GM’s proposed sale of subsidiary Opel, considers the European perspective. The panel then turns to King & Wood partner Susan Ning for the unique role China played in the bankruptcy process.

“Unlike Europe, there was no consideration of GM selling its profitable Chinese joint ventures,” explains Thelen. He says that the panel will discuss the possibility of the Shanghai Automotive Industry Corporation’s participation in GM’s approaching IPO.

“We want to highlight it so our audience is aware as it unfolds,” Thelen says, “but that will be a political hot potato.”

The second session examines the varying nature of distribution networks through a hypothetical case study. Christa and Thelen will portray staff counsellors of an American Auto Industry’s Road from Glory to Disaster, provides star power as the lunch speaker.

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“The case study approach is something you use when it seems to fit the circumstance,” says Thelen, “and this seemed to be an example that was out there in the marketplace.”

Bingham McCutchen antitrust partner Bill Berkowitz has represented auto manufacturers, importers and trade associations in disputes with distributors, and represents the US side of the hypothetical case. He says the highly legislated nature of the US vehicle distribution industry on the state level sets it apart from many models in the rest of the world.

“These laws are by-product of very powerful local dealer lobbies that have influenced state legislatures to afford them protections often not found elsewhere in the world,” Berkowitz says, “but the US market remains to my mind the most attractive for automotive distribution.”

Afternoon mini-sessions, 3pm to 5pm

The third and fourth round of discussions focus on the future of the industry through the lens of greater regulation and evolving fuel sources. The first afternoon mini-session looks at the diverse scope of safety, environmental and fuel efficiency standards around the world and the challenges automakers face in developing vehicles for a global market.

Ellen Gleberman is vice president and general counsel of the Association of International Automobile Manufacturers, and will discuss the increasing regulatory concerns of the industry.

“Unlike pollution control issues, where you could put a catalytic converter in a vehicle, the only way to eliminate greenhouse gas emissions is through a carbon-free technology,” she says. “The question is how the industry will approach this.”

One particular concern Gleberman will address is the rise of nuisance lawsuits, meant to expose regulatory deficiencies through massive litigation. One instance involved a group of Mississippi homeowners suing 33 energy companies for the climate change that aggravated Hurricane Katrina.

Gleberman says the first nuisance lawsuit was a case brought against the top six automakers by the California attorney general to highlight the lack of federal regulation over the industry.

“It’s understandable in light of the frustration created by inaction,” notes Gleberman, “but it’s opened up tremendous exposure for major emitters like auto companies.”

The technology issue is raised in the last session, which features some of the most cutting-edge players in the renewable fuel market. David Kennedy, general counsel of Better Place, will discuss his company’s experience developing rechargeable electric taxi networks in Japan and China.

Andreas Truckenbrodt of Automotive Fuel Cell Cooperation will explain the technology behind fuel cells, which currently stand as the future of long-life renewable power in the automotive industry.

Finally, the director of sustainable business strategies at Ford, John Viera, will talk about what route automakers may ultimately take in bringing emissions to the zero level.

“There’s a big choice between batteries or fuel cells,” says Christa. “You have to bet on technology to some extent because no one has a crystal ball.”
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How to enforce human rights

M&A lawyer Martin Solc explains to Nicholas Pettifer the importance of balancing corporate law and promoting the Rule of Law

M artin Solc is an M&A partner in the Czech Republic. He is a busy man, but like many IBA members he understands the importance of balancing his workload with more charitable endeavours. Indeed, he has been involved with the IBA for almost 20 years and after a stint as chair of the PPI division, he is coming to the end of his two-year tenure as co-chair of the IBA’s Human Rights Institute (IBAHRI).

Here, Solc reflects on the work he has overseen with Juan Méndez and looks forward to the IBAHRI sessions in Vancouver. In particular, he highlights the showcase session, which will take place today at 3pm. The session will examine the processes by which judges are appointed to the International Criminal Court and other international courts and tribunals.

How did you become the co-chair of the IBAHRI?

I have been in the role almost two years. Before I started in this office I was chairing one of the two divisions of the IBA, the PPI – Public and Professional Interest. And even at that time, I was an ex officio member of the counsel of the IBAHRI and I therefore had a knowledge of and interest in its work. After I finished as the chair of the PPI, I was asked by Fernando Páez-Pier the IBA President whether I would be willing to serve with Juan Méndez as co-chair. I said it would be a with great honour and pleasure.

You are coming to the end of your term. What are the highlights?

It is very difficult to speak about highlights. What I admire with the IBAHRI is that there is a lot of good work. Not every piece of work is seen from the outside. Not each piece of work is released to the media. It is hard work for a very good cause. There are a lot of things around the globe that we are trying to influence and that’s the fantastic thing about the IBAHRI. There are things that the IBA puts into the limelight, but they are not necessarily the most important or the only important things we are doing. We have to keep quiet about some things.

So is there anything that you have been particularly proud of that hasn’t received publicity?

It is hard to isolate only one or two examples that are visible. But as an example, the smallest area we work in is publications of the IBAHRI. During my time of office we have updated something called the Human Rights Manual. It is a loose leaf that we put together in our office and we have updated something called the Human Rights Manual. It is a loose leaf that we put together in our office and it is very difficult to speak about highlights. What I admire with the IBAHRI is that there is a lot of good work. Not every piece of work is seen from the outside. Not each piece of work is released to the media.

What other IBAHRI activities do you believe are vital?

Turning to trial observations, I think we are the only non-governmental organisation that is continuously monitoring Mikhail Khodorkovsky’s trial in Russia. [The trial Russian oligarch was previously the head of Yukos and who is campaigning for Vladimir Putin to face him in court.] And that is a very long-standing process, lasting for a number of months. We have a day-to-day observer going to the court and writing a report, which will no doubt be of interest to many.

We’ve done a lot of capacity building work. IBAHRI assisted Afghan lawyers to set up their bar. There was nothing like that in Afghanistan before, so it was starting from scratch. We had someone on the spot for a number of months and they built up from where there had been nothing.

We have also done missions to various parts of the world. Just looking at the latest report, I see Kenya, Kenya, Syria and West Africa. So there have been numerous missions to investigate the state of the Rule of Law in individual countries. Sometimes this can be in very complicated and complex countries.

Then there are interventional aspects of our work. We try to write intervention letters to presidents and prime ministers to try to put an argument forward for fair trials. We’ve also started a campaign against the death penalty around the globe. So we are regularly writing letters to heads of state. We constantly repeat our arguments to abolish the death penalty. But even if it is not completely abolished, we have tried to make sure that it has been reserved to a very few crimes.

How is that campaign going?

You never know. You write letters and sometimes you are surprised because some of the governments respond in quite an elaborate way. They are trying to put together their argument. Some of them stay quiet and we have no possibility of getting a response. We hope that, step-by-step, we are helping things change in the attitude of governments regarding the death penalty.

Is there anything else you do on that front?

Absolutely. Whether it is through informal publications, we are trying to participate in various educational programmes like the Westminster Consortium for Parliaments and Democracy. It is a project to help developing parliaments set up centres of learning as far as human rights are concerned. There is, for example, concern in Macedonia, Georgia, Uganda, Lebanon, and Mozambique. There we are trying to explain the concept of human rights and when we speak of human rights we should also mention the Rule of Law, because those concepts are very hard to separate when teaching the parliaments and organising governments.

What sessions are you excited about this week?

The ICC judge appointment sessions today at 3pm is going to be a fantastic session. Let me give an example. There was a situation in which IBAHRI found itself a couple of years ago. We received complaints that a particular judge in one of the international courts had actually received a significant property from a government in relatively suspicious circumstances. We were trying to investigate into that and trying to make that particular court and its President aware that that situation had occurred. [The IBAHRI was concerned at the appointment of Zimbabwean Judge Elizabeth Gwaunza as an ad litem judge in the trial of General Gotovina. It raised these concerns with the President of the International Criminal Tribunal for the Former Yugoslavia Judge Fausto Pocar.]

This is not a picture of what can happen. And we used it as an inspiration for a session on the topic. How are these people elected? And are they the best people for the job?

Do you have a role in the Rule of Law symposium?

Absolutely, and during the Rule of Law day we will be presenting the Human Rights Practitioner Award. This should add some excitement for those who are probably tired after four days of an exhausting conference.

How long have you been involved with the IBA?

My first acquaintance with the IBA was in the beginning of the 1990s because of the change in my country. I became vice president and then president of the Czech Bar. Since then, I have been participating at all of the IBA conferences. I have always had two lines of interest. One of them is my bread and butter, which is mergers and acquisitions. Then, something that seems to be, at first sight, incompatible with M&A and it is the rule of law and wider public and professional interest. I believe that one cannot exist without the other.

You have been to Vancouver before. Is there anything you particularly recommend for the new traveller?

It is a place they will simply find amazing from both perspectives. Vancouver is a reasonable sized place, but not too big. So it’s probably a more friendly host for the conference than some of the bigger cities. It will be more personable.
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Is your in-house advice privileged?

European lawyers disagree over what the ECJ’s competition ruling really means for them

“I hate this decision.” There was no hiding lawyers’ disappointment over the European Court of Justice’s (ECJ) refusal last month to protect in-house communications in competition investigations. The European profession isadamant that the Akzo Nobel Chemicals and Akcros Chemicals v European Commission ruling is out of touch with commercial realities and is a missed opportunity to overturn the Court’s outdated 1982 precedent.

Less clear, however, is the ruling’s implications further afield.

IFLR magazine posed this question to in-house and private practice counsel as October’s Big Question, and the results reveal a topic with little consensus. It seems the decision has sparked speculation over its underlying principles, the powers of the EU’s proposed financial regulators, and the longevity of the prevailing legal position.

Competition and beyond

In the short term, the precedent applies only to a narrow set of circumstances: EC-led antitrust investigations. The European profession areadamant that the ECJ’s restriction on in-house privilege have an impact beyond competition investigations.

The European Securities and Markets Authority’s (Esma) oversight of credit rating agencies is set to allow dawn raids, information requests, and mandatory access to employees and documents. This, according to some, should have credit rating agencies concerned.

“There’s nothing in the Akzo judgment that turns on it being a competition enforcement issue,” said one private practice partner. “I suspect if there’s a similar structure it would apply there too.”

It’s suggested that the principles underlying the decision have little or no bearing on the competition element of the case. The crux of the decision is that in-house counsel are not sufficiently independent from their client (employer) to justify the benefit of legal professional privilege. They simply don’t have the independence to be ‘collaborating in the administration of justice’ the way a private practitioner does.

According to a number of respondents this sends a clear message about how the ECJ will interpret robust enforcement regimes – which should be “hugely worrying” for in-house counsel generally. And in light of the latest draft Esma proposal, it should be particularly worrying for those of the European subsidiaries of Fitch, Moody’s and Standard & Poor’s.

“The ruling is based on the Court’s view of in-house lawyers’ situation, and so there is every reason to believe that it would adopt the same approach in the context of non-competition investigations by EU institutions and agencies,” said one practitioner. “Aside from Esma, the most cited example of this ruling’s relevance is international trade proceedings. The Commission is empowered to investigate anti-dumping and anti-subsidy activities by gathering information and performing on-site inspections. This makes it another forum where the privilege point may arise.

But despite some strongly held opinions, the overarching view is that Akzo should not be mistaken as anything more than a competition ruling. All respondents concede it is undeniably a blow to the legal profession; but for most, there’s no need to panic.

“This is not going to be an oil spot on the water that will spread out and affect other areas,” said a European competition specialist.

The majority of respondents say the judgment does not demonstrate an intention to apply beyond the scope of the case in question. They point out that Akzo’s in-house counsel’s duties extended beyond that of a normal legal advisor to include those of ‘competition law coordinator’, something the Court said strengthens the ties between lawyer and client. As this situation is unique to competition in-house counsel, the ECJ has not used the case as a forum to expound general principles of law.

“The judgment itself is very specific to antitrust advice and the extent to which privilege applies to antitrust investigations in EU law,” said one partner.

Looking beyond the text of the judgment, it’s proposed the Court’s position reflects a wider hard-line policy not on internal advice, but on cartels. With no EU crime agency, there are limited ways this objective can be expressed.

This raises the question of how the ruling would compare if it involved a different investigation. According to one partner, “Likely to be less tough.”

For one in-house counsel though the answer is simpler: This has been the ECJ’s position for long time. If it hasn’t crept into other areas yet, why would it do so now?
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Thursday 7 October - 1pm
Friday 8 October - 1pm

For further information or to claim your prize please email events@tamimi.com

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**About Al Tamimi & Company**

Established in 1989, Al Tamimi & Company is the largest law firm in the Middle East region today. We employ more than 360 staff, with offices throughout the UAE in Dubai, Abu Dhabi and Sharjah as well as offices in Iraq, Jordan, Kuwait, The Kingdom of Saudi Arabia and Qatar.

Al Tamimi & Company specialises in Banking & Finance, Construction & Engineering, Corporate Commercial, Dispute Resolution, Family Business & Private Client Practice, Information Technology, Intellectual Property, Maritime, Aviation & Insurance, Media, Property, and Telecommunications. An international team of high calibre lawyers ably serves clients from the United Kingdom, North America, Europe, the United Arab Emirates and several other Arab countries. Each member of our team of professionals and qualified administrative staff is fully committed to providing our clients with accurate, thorough and cost effective advice.

We pride ourselves on our complete knowledge of the laws and regulations applicable to our home jurisdiction and the commercial community abroad. Throughout the Middle East we regularly confer with government ministries and departments. The firm assists multinational companies and family owned businesses in establishing operations in the Region independently, or in association with local partners. Our local clients, many of whom have business interests outside the United Arab Emirates, and the international organisations who we work with, rely on our global perspective. We subscribe to the belief that the world of opportunity does not recognise national boundaries.
Why lawyers need anti-corruption training

Many lawyers are worryingly ignorant of key international anti-corruption conventions, according to a global survey released by the IBA today.

The poll revealed that 40% of respondents had never heard of major anti-corruption instruments such as the United Nations Convention against Corruption and the OECD Anti-Bribery Convention. Both of these conventions directly impact the work of private practice lawyers.

The survey also found that in many countries over half of those polled viewed corruption as an issue in their home legal sector. More than one in five had been approached to take part in what they believed could be a corrupt transaction. Worse still, one in three said they had lost business to corrupt law firms or individuals.

“The survey results are disappointing, so we need to do more to raise awareness of these instruments,” said Nicola Bonucci, director for legal affairs at the OECD.

In anticipation of these findings, the IBA launched the Anti-Corruption Strategy for the Legal Profession in April this year. The strategy has already held training sessions for 50 managing and senior partners at the largest firms in Santiago and Buenos Aires. The events will continue in South America this year and are then expected to visit Ukraine, Poland, Japan, South Korea, Indonesia and Malaysia.

The workshops aim to raise awareness of corruption among lawyers, especially in areas such as the US Foreign Corrupt Practices Act (FCPA) and the UK Bribery Act.

Younger respondents (aged 20 to 30) in the survey were, on average, less aware of international anti-corruption laws and national legislation than older respondents. “That doesn’t surprise me,” said Gonzalo Guzman, senior staff lawyer of the IBA Legal Projects team. “Most universities and law schools don’t include anti-corruption in their curricula.”

Because of this, the group is inviting law deans from the two largest universities in each city it visits.

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Gonzalo Guzman

Nicola Bonucci

This approach has already had been successful: one university in Chile has established a research centre in the area following the workshop in Santiago.

Guzman also wants to approach national bar associations about anti-corruption training for lawyers on a domestic level. “I don’t expect many will have schemes in place yet,” he said. Lawyers are all very fluent in general corruption advice but surprisingly few know how they could be liable themselves,” he added.

The survey, which was conducted by the IBA in cooperation with the OECD and the United Nations Office on Drugs and Crime, contains responses from 642 legal professionals in 95 jurisdictions.

This was the first survey of its kind by the IBA, but Guzman expects it to be repeated every two to three years. “This can be followed up on and is certainly something we should do again,” he said.
<table>
<thead>
<tr>
<th>Time</th>
<th>Session</th>
</tr>
</thead>
<tbody>
<tr>
<td>1000</td>
<td>North American Regional Forum: The state of the automotive industry</td>
</tr>
<tr>
<td>1000-1300</td>
<td>1000-1030: Directions for international taxation in a world of fiscal challenges</td>
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<td>Successful investment in Arab Middle East countries</td>
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<td>General counsel and antitrust enforcer round table</td>
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<td>Advising the entrepreneur who seeks to raise capital - interviews and term sheet negotiation</td>
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<td>Dissecting the deal</td>
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<td>Competing jurisdictions and international prosecution policy in criminal cases – where are the guidelines to decide which country prosecutes?</td>
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<td>The art and science of persuasion</td>
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<tr>
<td></td>
<td>Delivering PPPs after the global financial crisis – do they have a future?</td>
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<td>Model mining development agreement and community concerns</td>
</tr>
<tr>
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<td>Overcoming the problems with transmission – reliability and capacity</td>
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<td>The increasing risks which companies/directors and officers face, focusing on reputational risk and the difficulties of local insurance requirements for a global business</td>
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<td>Clearing and settlement – a systemic risk for capital market lawyers?</td>
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<tr>
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<td>Global business immigration update</td>
</tr>
<tr>
<td></td>
<td>Demystifying financial products</td>
</tr>
<tr>
<td></td>
<td>Round the tables – a degustation menu of hot topics in the Intellectual Property, Communications and Technology Section</td>
</tr>
<tr>
<td></td>
<td>Hot topics in international sale of goods, product law and international franchising</td>
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<tr>
<td></td>
<td>Honour-based violence, child brides and forced marriage – protection of human rights</td>
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<tr>
<td></td>
<td>Mediation of complex aviation accident wrongful death claims</td>
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<tr>
<td></td>
<td>Logistics in the supply chain</td>
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<td>Sectoral tribunals, due process and facts: do the non-lawyers have too much say?</td>
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<tr>
<td></td>
<td>Taxes Transfer pricing and attribution of profits: current challenges and future trends</td>
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<tr>
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<td>‘Skid row’: poverty law and pro bono work by lawyers</td>
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<td>Risks and threats of corruption and the legal profession</td>
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<td>What’s next for law firms I – profitable pricing of legal services in the 2010s</td>
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<td></td>
<td>Hot topics in professional ethics</td>
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<tr>
<td></td>
<td>Succession – thinking harder</td>
</tr>
<tr>
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<td>How firms and corporations can retain female talents – is affirmative action necessary?</td>
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<tr>
<td></td>
<td>Young lawyers’ introductory meeting</td>
</tr>
<tr>
<td>1500</td>
<td>Adding value to the bottom line: how corporate legal departments demonstrate value</td>
</tr>
<tr>
<td></td>
<td>Workshop on Canadian investments and disinvestments in Latin America: lessons to learn</td>
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<tr>
<td></td>
<td>Unilateral Conduct – The law of discounts and loyalty rebates</td>
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<tr>
<td></td>
<td>The modern trade lawyer: what clients want from their counsel</td>
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<td></td>
<td>Emerging trends</td>
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<td>Developing trial and advocacy tactics and techniques</td>
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<td>Arbitration and insolvency</td>
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<td>Mediation – pushing the boundaries</td>
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<td>Damages for medical malpractice</td>
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<td>Defects in construction projects</td>
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<tr>
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<td>Decommissioning</td>
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<tr>
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<td>Regulatory convergence of asset classes – Europe, the US and globally</td>
</tr>
<tr>
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<td>Mobile payment – the next generation of financial services: challenge for market participants, protection for customers</td>
</tr>
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<td></td>
<td>Sport and intellectual property rights</td>
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<tr>
<td></td>
<td>Procurement in major space and other technology projects: approaches taken in the EU and European Space Agency and learning from the rest of the world</td>
</tr>
<tr>
<td></td>
<td>Human Genome Project</td>
</tr>
<tr>
<td></td>
<td>Managing underperforming assets of closely held enterprises: when is it time to sell?</td>
</tr>
<tr>
<td></td>
<td>The growth of the aboriginal tourism industry</td>
</tr>
<tr>
<td></td>
<td>Rotterdam Rules – a new regime for liability for carriage of goods</td>
</tr>
<tr>
<td></td>
<td>Coming and going I: focus on coming – preimmigration strategies for the private client</td>
</tr>
<tr>
<td></td>
<td>Holding companies under attack</td>
</tr>
<tr>
<td></td>
<td>Where did the money come from? What should be the lawyers’ role in the fight against money laundering?</td>
</tr>
<tr>
<td></td>
<td>SHOWCASE – The appointment of judges to international courts and tribunals – competence, pragmatism, reprisal?</td>
</tr>
<tr>
<td></td>
<td>What’s next for law firms II – profitability and capitalisation in the 2010s</td>
</tr>
<tr>
<td></td>
<td>Unique Art of the Northwest Coast</td>
</tr>
<tr>
<td></td>
<td>Winning more work – turn contacts into clients and referrers: Pippa’s COPACABANA approach to international networking</td>
</tr>
</tbody>
</table>

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**YOUR TEAM FOR SWISS LAW**

Meet in Vancouver: Urs Haegi, Christoph Pestalozzi, David Jenny, Benedict F. Christ
We hope it will become extremely informative to the debate. I think more and more people are beginning to understand the nature of the water issues. The most recent World Bank report deals a little bit more with the water issues than previous reports, though still not as much as it should.

With water becoming scarcer, how do we avoid commoditisation of water resources?

This is one of the concerns I've had with investment treaties for a long time. There needs to be a greater awareness among the business-oriented international organisations of the relationship of foreign investment to water issues. These organisations need to ensure that advice to developing countries has the balanced use of water resources as a key dimension, and the ability of government to ensure the protection of all users of water in the event of shortfalls.

Industry as a whole – not just the natural resources, energy and mining sectors – must understand the need to reduce demand, to ensure full treatment of water before it is returned to waterways. The need to reduce water use and fund proper research and development to do this is going to be critical in the longer term.

You can’t assume that through investment contracts or investment treaties you have guaranteed long-term ownership of water rights in the face of declining water levels for other users, especially local communities. That’s a recipe for conflict.

So making sure that investor rights are properly squared with the rights of other users to my mind is going to be much more critical and much more supportive of long-term water management than trying to create iron-clad long-term rights that simply lead to conflict.

What are some of the greatest challenges in assessing sustainable practices?

It starts from the proposition that there isn’t a one-size-fits-all model, and that different situations will lead to different results. The main question is whether there is a real proper consideration of long-term sustainable development interests when we talk about investment today.

These are long-term investments in most cases that we’re talking about – infrastructure, power, major mining sites, major manufacturing facilities, and so on. If we don’t get those investments right today, then there’s little chance of securing a sustainable planet in 30 years. We can’t wait 30 years to get those investments right.

The history of international investment law and policy is one of ignoring that equation, of looking at investment simply as a numbers game – as if the quantity of investment completely determines whether development is taking place or not, as opposed to the qualities of the investments being made.

That’s the fundamental shift that needs to be made within the investment frameworks and agreements, as well as within governments themselves who in many cases are afraid to lose an investment because they insist on certain quality dimensions.

You have cited the South Korea Daewoo-Madagascar land deal as an example of how a land-rights agreement can play a role in the destabilisation of an entire national government. What should investors learn from a case like this?

I hope a few things. First, the 1990s or early 2000s paradigm of being able to get what you want through corruption is coming to an end. This is due to growing transparency within communities, the internet and because arbitration rights under investment treaties and contracts are removed if the investment is achieved through corruption.

Second is the need to be aware of the relationship between the investment being made and the communities where those investments are going. That relationship and the footprint of that investment are increasingly critical.

Simply saying that you are making jobs for that community doesn’t answer the question.

Is there a way transparency can be incentivised, like with the OECD’s coloured lists of tax information disclosure?

The reality that agreements will be made public in one way or another is growing today. It’s very hard to keep secrets as the internet grows and communications grows, as communications between civil society organisations spread around the world.

Transparency in the relations between the community and the government become part and parcel in creating positive relations where suspicion would otherwise reign.

How do you incentivise that? I think OECD countries have a responsibility to do so. Certainly the enforcement of anti-enforcement legislation that is growing in OECD countries is extremely important. The best response in many cases to potential issues of corruption is sunshine.

That doesn’t mean the disclosure of every detail of confidential business information – but the principle of transparency as the default position is the one that has the greatest long-term benefit for the company as well as the government involved.
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