Delegates sat in stunned silence after watching an air crash simulation tape at a session yesterday morning. George Tompkins, an aviation partner at Schnader Harrison Segal & Lewis in New York, presented the new simulation programme to his audience, noting at the end that they looked “a bit shell-shocked.”

Tompkins commissioned the simulation programme for a case about a plane crash in New York in 1990. The crash happened after an Avianca aircraft ran out of fuel after flying in a holding pattern for several hours and missing its first attempt at landing at New York’s John F Kennedy airport in adverse weather conditions. Avianca is Colombia’s national airline.

The Federal Aviation Authority (FAA) investigation placed responsibility on the captain, saying that he failed to adequately notify air traffic control of the seriousness of his fuel shortage. The FAA often blames the captain as “the last guy to make a decision,” Tompkins told IBA Daily News. “But the real issue is how the captain got into that situation,” he said.

The FAA often blames the captain as “the last guy to make a decision,” Tompkins told IBA Daily News. “But the real issue is how the captain got into that situation,” he said.

The simulation programme consists of time-sequenced air traffic control tapes from all aviation facilities in the US, combined with radar tracking of all aircraft in US airspace, which is updated every 15 to 30 seconds. It is a reconstruction, in real time, of what air traffic controllers in US airspace would have seen that day. Tompkins commissioned the simulation from Canadian company Accident Investigation Research, with the backing of the Canadian government, which was using the Avianca crash as a test case for the new programme.

The simulation shows that the captain was lulled into a false sense of security after receiving insufficient service and support from the air traffic controllers at one point even being put into an illegal holding pattern.

In the event, the new simulation wasn’t needed - other evidence of negligence by the air traffic controllers was so strong the case was settled after only three days. The US government agreed out of court to share liability for the crash with the airline, contributing $62 million towards damages.

While crashes are commonly caused by fuel shortages, this was a unique case in that the defence hinged on the sequence of events leading up to the captain’s decision, rather than assessing the appropriateness of the decision itself. Tompkins said that the use of the simulation in future will be limited to similar cases, but will be “outstandingly useful” in cases with an air traffic control element, such as mid-air collisions and landing accidents.

Discussion in the second half of the session focused on the admissibility of these types of programmes in court, especially programmes that use animation. Tompkins said that he had no problem admitting the tape as evidence in the US courts because he was using the government’s own information, so the defendants could not question the data’s authenticity.

Also, because the programme uses factual data in real time it is a reconstruction rather than animation, he said. Animation is seldom admissible as evidence because it can be manipulated to prove a point. “The tape shows what the air traffic controllers were looking at – what actually happened,” said Tompkins.

The lack of regulation could become a bigger problem, with some commentators predicting that space tourism will be worth $700 million within 15 years. Up to 15,000 passengers a year could be visiting space by 2020, they say. In July, UK entrepreneur Richard Branson signed an agreement with US company Scaled Composites to build commercial spacecraft for tourists.

“When there is no possibility to change or amend the treaty,” said Ka’u-Uwe Shrogl, head of corporate development at the German Aerospace Centre. “Instead we are looking at creating codes of conduct to close some of the loopholes.”

The UN Committee for Peaceful Uses of Outer-Space has set up a working group to propose ways in which national space agencies might use legislation to rein in private companies.

In 1999, satellite company Sea Launch (a consortium of companies from the US, Russia, Ukraine, and Norway) set up a launch pad in the Pacific Ocean. Registered in a non-treaty nation, it is able to evade treaty rules. Companies operating manned tourist flights would be able to do the same.

The session featured Sigmund Jähn, the first East-German cosmonaut and now a trainer for the European Space Agency (ESA).

Continued on page 2, column 1.
Rule of law resolution approved with near unanimous majority

The IBA Council yesterday approved a resolution on the rule of law that will be the first step in a campaign president Francis N. N. eate's campaign to raise awareness of the issue worldwide.

The Council, which represents all of the member organizations of the IBA, approved the resolution overwhelmingly, with a small number of member organizations, the Israeli Bar Association among them, declining to support the resolution. The IBA will now press release a statement to the international media, and N. eate encouraged local bar associations to alert their local media to the resolution.

"If there is one thing to come out of this conference I would like it to be a sense of how important and how valuable the rule of law is," said N. eate.

The resolution begins by saying: "The International Bar Association, the global voice of the legal profession, decries the increasing erosion around the world of the rule of law." It goes on to identify the rule of law as the cornerstone of a civilized society and to set down the basic principles on which the judicial system should be based (see below for the full text of the resolution).

N. eate, who announced his intention to launch a campaign on the issue during his speech at the conference opening ceremony on Monday morning, says he will begin by writing letters to heads of state asking them to support the resolution. He hopes that by doing so he will attract media attention and mobilize local bar associations to action, creating pressure in those countries that have not upheld the rule of law to do so.

The next step in his campaign, which depends on how much funding the IBA is able to attract, would see the launch of a series of regional seminars to create a forum to discuss the importance of the issue. N. eate has already spoken to some possible speakers and hopes to hold the first seminar in connection with the American Bar Association before next year's IBA annual conference in Chicago.

He estimates that the total cost of the campaign will be about £250,000.

The IBA hopes to raise the funding by approaching multinational corporates and local bar associations and asking them to support the campaign. One possible difficulty that N. eate accepts is that the campaign might be seen as anti-American because of the U.S. administration's controversial stance on issues such as the treatment of terrorist suspects at Guantanamo Bay.

But he is keen to emphasize the opposite. "We are incredibly lucky to live in the countries we live in," he said. "I admire the U.S. judicial system. The disappointing thing over the last few years is that U.S. politicians have failed to live up their own standards."

IBA Rule of Law Resolution

The International Bar Association (IBA), the global voice of the legal profession, decries the increasing erosion around the world of the rule of law. The IBA welcomes recent decisions of courts in some countries that reiterate the principles underlying the rule of law. These decisions reflect the fundamental role of an independent judiciary and legal profession in upholding these principles. The IBA also welcomes and supports the efforts of its member bar associations to draw attention to and seek adherence to these principles.

An independent, impartial judiciary; the presumption of innocence; the right to a fair and public trial without undue delay; a rational and proportionate approach to punishment; a strong and independent legal profession; strict protection of confidential communications between lawyer and client; equality of all before the law; these are all fundamental principles of the rule of law.

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Around the conference

[Image of Space law (continued from page 1)]

[Image of Sigmund Jäehn in space]

Space tourists. Despite training Denis Tito and Mark Shuttleworth, the first two space tourists, he expressed doubts about how accessible this leisure activity would be in the future. "It remains a business for rich people," said Jäehn. "It will get cheaper, but not that cheap."

The Russian Space Agency charges $100 million for a two-week trip to the moon, Branson’s cheaper alternative costs just $190,000 but does not go as far out into space. The treaty defines outer-space as 100 kilometres above the Earth’s surface, and Branson’s craft will go to 103 kilometres for no more than 30 minutes before returning.

A 2002 survey found that 63% of people said seeing Earth was the most attractive aspect of space tourism. Jäehn, who went into space in 1978, said: “For the first time in your life you can see the Earth as just a planet, hanging in space. You know how high you are and what the Earth is round but to see it, you can’t describe the feeling.”
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Health

Fighting disease will mean curtailting rights, say experts

Governments will be forced to interfere with basic freedoms in order to prevent and control dangerous diseases, a session at the conference heard this week.

At the Medicine and the Law Committee session Amin, Sars and biowarfare: is globalisation bad for your health? speakers warned that freedom of movement and personal liberty must be curtailed if authorities are to respond effectively to disease outbreaks. “People must accept some interference in their lives when public health is at stake,” said Zuzanna Jakub, director of the European Centre for Disease Control and Prevention.

Session leader Demetrius Vryonis was keen to stress the value of lawyers’ help with the fight against disease. “Political leadership has to deliver the right policy, but lawyers must involve themselves in the process to guard against clumsy and unhelpful regulation,” said Vryonis. “Smart regulation is a vital social policy tool. Lawyers must find ways to better protect societal interests.”

Continuing on the role of lawyers in public health, panellist David Byrne, a former EU commissioner and special envoy to the World Health Organization, said lawyers have proved helpful in the past. Citing the example of increasingly strict regulation of tobacco products in Europe, Byrne drew the effectiveness of the law in addressing health concerns, saying: “Public health practitioners are often surprised at the power of the law to bring about change.”

Byrne, who is now a senior counsel at Wilmer Cutler Pickering Hale and Dorr in Brussels, also warned that state reactions to bioterrorism have been inappropriate and disproportionate. Resources have been allocated to security measures that domes in order to prevent and control dangerous diseases to the detriment of health preparedness. Greater investment in public health is essential and will pay dividends in the long run.”

Panelists used the session to emphasize the need for a coordinated international approach to health concerns with speakers viewing globalization both as a threat and an opportunity. Modern, interconnected economies and transport systems allow the spread of disease across borders more rapidly than ever. But, at the same time, communication technologies mean states have better tools for fighting disease. “This is an exciting and challenging time for everyone involved in public health,” said Byrne. “Recent outbreaks of avian influenza and Sars show diseases spread more quickly than ever. But so does information.”

Byrne concluded his speech by telegraphing that the more the world’s economic order converges the greater the need for a world legal order and consensus on how to deal with issues of public health. “Sars served as a short sharp shock to the public health community and resulted in the revision of the international health regulations,” Byrne said. The regulations, adopted by the World Health Assembly in June of this year, provide a framework for detecting, identifying and dealing with potential public health risks.

The example of the process of negotiating the regulations was offered to delegates as a model of how nations should handle health concerns. “It is about building consensus,” said Byrne. “States are beginning to accept that an element of pooled sovereignty is beneficial.”

A formal investigation may also require the suspension of management’s time and auditors will have to be involved. A practical expectation is the importance of an investigation will prove costly and potentially disruptive. Demands may be made on senior personnel and perhaps unearth unforeseen and unrelated problems. But failing to address issues and adopting a head-in-the-sand approach could be more costly. “Burying a problem and hoping it will go away could prove to be disastrous,” said Jospin. “It could raise the spectre of a cover up.”

Outside counsel best placed to handle tricky investigations

Outside counsel are ideally placed to handle the situation. “Somebody needs to synchronize dealing with the different regulators,” said Rober Joffe, partner at Cravath Swaine & Moore. “Each regulator has to be handled sensitively.”

The panel presented delegates with a hypothetical case study of an investigation conducted at a German company listed in Frankfurt and New York. The panel’s advice extended to international matters as well as dealings with regulatory bodies. Particular reference was made to the Sarbanes-Oxley regime and the expectations of the US Securities & Exchange Commission.

But the panel stressed that different regulators have different expectations and operate under different codes of law. Practical advice was delivered on the handling of interviews, the control and preservation of documents, and the importance of an appropriate initial reaction. “These things will be seen through a prism of 20-20 vision in hindsight,” said Jospin. “Action must not be delayed.”

Companies face a difficult decision when deciding whether to launch an internal investigation. For a large company operating in multiple jurisdictions an investigation will prove costly and potentially disruptive. Demands may be made on senior management’s time and auditors will have to be involved.

A formal investigation may also require the supervision of vital personnel and perhaps unearth unforeseen and unrelated problems. But failing to address issues and adopting a head-in-the-sand approach could be more costly. “Burying a problem and hoping it will go away could prove to be disastrous,” said Jospin. “It could raise the spectre of a cover up.”

Mediation

First session for Mediation Committee

A packed room ushered in the inaugural session of the IBA Mediation Committee with applause on Wednesday, as speakers from five different jurisdictions shared their experiences of mediation.

John Townsend, chair of the newly formed committee, said: “We’ve had a tremendous response since the group split off from the arbitration and litigation committee this year.”

The committee has more than 1,100 members and delegates had to bring extra chairs to join the session in club D, which attracted mediators, in-house counsel and private practice lawyers.

Thierry Garby, partner at Garby Villars Dupuis, led the first part of the session, which featured speakers from the US, France, Argentina, the Czech Republic and the UK. They discussed different codes of mediation practice with delegates.

Then Petrit Mcdonell, vice-chair of the Mediation Committee, shared a session on the draft EU Directive on Alternative Dispute Resolution.

Some of the initial debate centered on whether mediators should expect a cut of the settlement if the mediation process succeeds.

In the US, a mediator’s fee is often linked to success, leading one in-house counsel to comment: “Let me express revulsion about this success fee. You will not be my mediator if you ask for this. Why should I pay something like twice the London rate?”

On the benefits of mediation over other approaches to settling disputes, Eric van Ginkel, of Hughes Hubbard & Reed in the US, said mediators in California have been successful in more than 21,000 cases since the 1970s, estimating that this figure represents a success rate of 90%. Rberto Fortunati, of Fortunati & Lucero Abogados in Argentina, calculated that around 70% of commercial mediations succeed in his jurisdiction.

Attendees at the session also discussed levels of training in different jurisdictions. A 2004 survey of European jurisdictions found that average training for mediators ranged from three days in Finland to 200 hours in Austria and Germany.

Speaker Jon Lang from England said that courts were considering imposing a minimum training requirement on mediators: “In theory anyone can hang up a shingle outside their office claiming to be a moderator,” said Lang.

Delegates from Germany, Ireland, Belgium and Switzerland also shared views and experiences of mediated cases from their jurisdictions.

Meanwhile, the draft EU Directive on Alternative Dispute Resolution might eventually put an end to differences in civil and commercial mediation practices among member states.

The directive aims to provide a minimal code of conduct for all mediators throughout the EU, making any mediated settlement valid in all EU jurisdictions. Bankruptcy and family law disputes will be excluded because most jurisdictions already have well-developed mediation protocols for such cases.

The European Parliament adopted the draft directive in October 2004. No speaker wished to estimate when a final version would be passed.
A survey of law firm office openings over the past two years shows how the opportunistic, the pioneering and the conservative among law firms are trying to grow. James Rice reports

When Allen & Overy decided last year that it wanted to hand over its office in Albania, it could have expected a long wait for takers. Not so: Austrian firm Wolf Theiss snapped up the chance, and has since acquired offices in Bucharest and Sarajevo. It seems few places are now off-limits for firms looking to grow.

A survey of office openings reveals that, over the past two years, as many as 74 new offices were opened in 32 countries, from China to the Cayman Islands. There is little overall consistency: while Slaughter and May has closed two international offices in this period and opened none, Orrick Herrington & Sutcliffe has branched into six new cities in Europe and Asia. But the disparities say much about the contrasting strategies of firms' managing partners.

Hotspots

Four cities in particular stand out as today's hotspots: Shanghai, with at least seven new offices in the past two years; Munich, with five; Dubai, with five; and Taipei, with four. Each has its own reason to be popular, mainly with opportunistic firms looking to capitalize on specific areas of economic growth.

Shanghai's appeal, for example, is owed to its rapid expansion as a financial centre in the fastest-growing economy in the world. The city's estimated growth rate of 10.8% outstrips even that of China overall, where GDP is expected to increase by 9.3% in 2005. Investment in the city's infrastructure has been considerable, including a new international airport and port developments, making it more accessible both for trade and for business.

With service industries (such as finance, insurance and real estate) now accounting for more than half of Shanghai's gross output, the city looks set to become a global financial centre. The Shanghai Stock Exchange, established in 1990, is now mainland China's most important in terms of shares listed and total market value, and has over 37 million investor accounts. As a result, firms opening in Shanghai are expecting to work on finance deals rather than corporate M&A work. US west-coast firm Latham & Watkins, for example, opened a Shanghai office this year with an eye to advising in particular on debt and equity-linked offerings by Chinese issuers.

In Munich, meanwhile, the booming private equity industry has attracted firms such as Kirkland & Ellis, Skadden Arps Slate Meagher & Flom, Reed Smith and Hogan & Hartson, who have all moved to city in the past two years. Munich is a hub for modern companies in industries such as information technology, aerospace and biotech, many looking to match the success of local industrial corporates such as Siemens and BMW. Germany is Europe's second biggest market for private equity investment after the UK.

In Dubai, firms have flocked to take advantage of the creation of the Dubai International Finance Exchange (DIFX), which this month begins trading securities using the US dollar. DIFX will not feature the stock purchase or IPO listing restrictions that investors face on the local exchange in Dubai. Partly because of this, the Dubai financial market has more than tripled its value in the past 12 months. Simmons & Simmons moved to the city in July and Linklaters, DLA, Akin Gump, Freshfields Bruckhaus Deringer and Ashurst are all considering a move. Firms are attracted by the depth of capital in the region as well as the growth in real estate and international energy projects. Projects such as the Burj Dubai, which will be the world's tallest building when it is completed in 2009, and OGD-2, a $1 billion onshore natural gas programme, have accelerated the emirate's economy. But firms will need a full team on the ground to advise on such large transactions.

Meanwhile, Taiwan's economy continues to strengthen thanks to a thriving technology market. US firm Pillsbury Winthrop describes Taipei as the world's latest and most significant intellectual property battleground. Other firms with a strong intellectual property practice have also been attracted in particular by the patent litigation work generated by the technology industry and semiconductor manufacturers in the city. Orrick, for example, was driven to open a Taipei office in 2005 in direct response to client demand for intellectual property advice.

More than half of all new office openings in the past two years have taken place in just these four markets. But not all firms are happy to follow the prevailing fashion in global expansion. The pioneering aim to win business from multina-
tional investors in jurisdictions or regions where the competition from other international firms is not a concern.

Austrian firm Wolf Theiss, for example, has focused its expansion on emerging markets in central and eastern Europe. "We choose small countries where the major international firms don't have a presence and are unlikely to have a presence in the foreseeable future," explains partner Markus Heldinger. Within the region, the firm is opportunistic in its approach. It has no wish to become a leading firm in the major centres rather than more peripheral jurisdictions. Heidinger believes, will make Wolf Theiss more attractive to international banks and corporations looking to invest there.

French firm Gide Loyrette Nouel has followed a similar approach, opening offices in Belgrade in 2004 and in Algiers and Casablanca in 2003, and was also early into Tunis, Hanoi and Istanbul, where few firms have followed. Senior partner Gerard Tavernier says that the firm's expansion strategy has been to select three discrete emerging markets (eastern Europe, Asia and north Africa) and within them countries that have good relations with France and a legal system similar to French law. The over-riding concern has been that Gide is able to spread itself internationally without losing its identity. "To continue its initial practice and remain itself, Gide had to go into markets where it had the same chance as everyone else," says Tavernier.

Gide is not alone in worrying about loss of identity. A number of firms (such as Wachtell Lipton Rosen & Katz, Slaughter and May, and Cravath Swaine & Moore) have been famously reluctant to open overseas offices, fearing worst about the effect on profitability. The difficulty of recruiting, the problems of imposing standards of quality and the administrative drag created by managing a more diverse organization. "Our competitors would recognize that in some of their international offices the quality isn't as good," says David Frank, partner at Slaughter and May. "Hiring your own capacity means you have to start small and you lack strength in depth and specialist skills."

The consensus among these more conservative firms is that the best form of quality control is to handpick local firms to provide local advice. At the same time, Slaughter and May and Wachtell make most of their revenue from domestic M&A advice so it makes sense for their partners to focus on that area. As both firms have high partner profits compared to gross revenues, the diluting effect on profitability of expanding into new jurisdictions would be unwelcome.

The pattern of new office openings shows that most international firms toe a conservative line in their approach to opening offices. The firm's recent activity reflects the broader economic strength that has driven expansion among various US west coast firms rather than a change in thinking. Of those firms, Latham & Watkins opened five European offices between 2001 and 2002 and a Shanghai office in 2005. O'Melveny &
Myers recently opened in Beijing and Shanghai, while Orrick has opened 10 international offices over the past seven years. This year Orrick opened a Moscow office to provide a base for advising clients on mergers and acquisitions, oil and gas law and private equity deals. The firm’s capacity in Asia was also bolstered by a Taipei office in January 2005, and then the takeover in August of Coudert’s Hong Kong and Shanghai offices, as well as part of the Beijing practice.

Growing together

The well-documented proliferation of successful start-up companies on the US west coast over the past two decades, many of which have expanded their businesses abroad, has been the main motivation for much of the expansion. Because start-ups have few entrenched relationships with local law firms in other jurisdictions, it is easy for west coast firms who already provide them with domestic counsel to continue advising them through international offices.

West coast firms also feel competitive pressures in their home market. “There are basically two ways to grow,” says structured finance partner Cameron Cowan at Orrick. “Either you go to where your clients say you should go, or you think strategically about where you should be.” Orrick’s speed of expansion is the result of a blend of both approaches. The firm has a strategy team that devises a roadmap for new office openings, but it has also opened some offices (such as Paris and Taipei) earlier than expected, as a response to client requests.

Of course, not all international offices are a success, and some are shut down or handed over to other firms. In terms of recent closures, however, Singapore stands out as a special case. There has been a steady rate of departures from the city, including Orrick and Simpson Thacher & Bartlett in 2003, and Slaughter and May this year. Everheds is also to end its interest in its current Singapore office and subsequently open a different office in the city.

Reasons for the closures vary. Slaughter and May’s David Frank says his firm’s Singapore exit was “a question of allocation and resource”. The firm felt it could provide as good a service through its best friends network as it could with a team on the ground. Alan Jenkins, head of international at Everheds, cites “differences of opinion in Everheds’ direction” for the change of office.

Behind these explanations lies a more general disillusionment. Many firms see the joint ventures imposed by the Singapore bar as unduly restrictive. Singapore is also dependent on its neighbouring economies, which are not growing at anything like the speed of China. Due to structural problems in the so-called tiger economies, there has been a long-term slowdown in deal flow. Those firms that have prospered in Singapore have usually done so either through working with outstanding local partners (in the case of Linklaters) or through sheer persistence. “We hung in there and didn’t look at it as a short-term proposition,” says one lawyer of his firm’s office in Singapore.

There are many exotic locations available to pioneering law firms, but it is difficult to assess where the next hot markets will be and where will turn out to be an unwise investment. Central and southern Africa offers few prospects given the slow rate of economic growth and political instability. India is growing rapidly but bar rules remain restrictive and so the market is closed to international firms, while lower fees would make local offices uneconomical.

Instead, the most likely locations for further new office openings are former Soviet countries such as Bulgaria and Ukraine, with burgeoning real estate and project finance opportunities. Turkey is another country on Europe’s frontier with a developing economy, but the political stability of the country is not entirely certain. China and Dubai will remain the latest locations of choice for some years to come, but US firms may also look to expand in Europe with offices in secondary financial centres such as Madrid and Lisbon.

Meanwhile, the same opportunistic streak that has seen law firms open in unlikely locations from Ankara to Zambia as well as in Bergen, Botswana and Baku, will no doubt continue.
Diversity is essential for a just and legitimate judicial system, panelists agreed at a session on gender and ethnicity on Wednesday. Lack of diversity undermines the legitimacy of a judicial system both in terms of public perception and the quality of its judges, they said.

Speakers said that, in their experience, appointments are rarely made solely on merit. The Honorable Justice Roslyn Atkinson of the Supreme Court of Queensland, Australia, said: “A system based purely on merit would be likely to see men and women thriving equally,” she said. It is also wrong to assume that a diverse judiciary is not an elite judiciary, she argued. “In fact, widening the pool ensures the best people are considered for appointment.”

Scott Wenner of Schnader Harrison Segal & Lewis in New York referred to the Rodney King case in Los Angeles, saying that the legitimacy of the judiciary was damaged by the public’s perception that the outcome of the case was affected by racial bias. He also related his experience living in California during the high-profile O J Simpson case, when he noted that the reaction of people around him could be distinguished directly on racial lines.

“Life experience shapes the way in which we look at the world,” he said. “That must carry over, not only into how the justice system is perceived, but also into what goes on inside the system as well. We need a microcosm of our community in the courthouse.”

A research recently commissioned by The Netherlands Council of Judiciary into the extent to which ethnic diversity is still some way off. Leny de Groot van Leewen of Radboud University in The Netherlands, who took part in the research, presented her findings at the session.

The project covered France, The Netherlands, Germany, England, the U S and Canada – all countries in which immigration is common and that have predominately multicultural societies. The findings show that there is little ethnic and religious diversity in the judicial system and that post-war immigrants are under-represented in the judiciary.

In the UK, immigrants make up 9% of the population but only 4% of the judiciary. In the other European countries surveyed this ratio of judges to ethnic population was even lower. In the U S, immigrants make up 31% of the population but only 19% of the federal judiciary and 5% of the state judiciary.

De Groot van Leewen stressed that diversity is not about focusing on a particular race, gender, culture or religion. Judges as individuals are expected to be impartial, and so their race or gender should not be an issue. Instead it is important that the culture of a judiciary as a whole supports diversity, representing as wide a range of groups as possible.

Justice Atkinson believes that diversity will have a positive effect on the rights of all people, not just women and ethnic minorities. In the U S, research covering decisions by women judges in obscenity and death penalty sentencing showed that female judges were more likely to make liberal decisions to uphold individual rights in both areas. The presence of women in the court system also tended to increase the probability that male judges would adopt similar decisions.

Panelists agreed that it was up to judges to actively promote judicial diversity. “R responsibility for diversity is an institutional affair,” said De Groot van Leewen. “But all institutions consist of individuals.” High-profile judges have a responsibility to build public confidence in the system.

Lastly, Justice Atkinson warned against being complacent about the rights of women and minorities in today’s context. “One assumes that all right-thinking people support the notion of gender and ethnic diversity in judges to ensure that the widest pool is available so that appointments can be made of the best people. But unfortunately my experience tells me that this is not necessarily the case,” she said.

Barrocas Sarmento Neves has recognised expertise in the areas of shipping and insurance law and advises on all aspects of commercial dispute resolution and international arbitration.

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IBA Daily News - Friday, September 30 2005

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Revised IBA ethics code announced

The IBA has announced the revision of its 1956 code of ethics and after this week's conference will invite member organizations to evaluate the new draft code. Emilio González de Castilla, from Mexico, Ramon Mullerat, from Spain, and Helge Jakob Kolrud, from Norway, drew up the new code of which this is the fifth draft.

Speaking at a session this week to discuss the new draft, González de Castilla said the IBA cannot proceed without member organizations to evaluate the new draft code and after this week's conference will invite them to participate. Mullerat said that the revision did not attempt to harmonize all ethical concepts, nor provide singular solutions to ethical problems worldwide, but he assured delegates that we have a global code of conduct, if by this we understand a code with detailed rules and commentaries aimed at resolving all ethical issues of the various legal traditions and systems, he said. “The world is too diverse, and the bar’s structures and functions remain dissimilar.”

But Mullerat does believe that a universal code of ethics will emerge at some point in the future. “As the Roman jurists pointed, it is set in aeternum quod – it will certainly happen, but it is not certain when,” he said.

He pointed to the progress of the CCBE (the Council of Bars and Law Societies of the European Union), in which all 28 member states have now adopted an individual code of ethical rules. At present this does not apply to cross-border activities, although the CCBE is reviewing its code in this regard. Additionally, the Ethics 2000 Commission reviewed the American Bar Association code of ethical rules in 2002, and the Law Society of England and Wales will shortly release its own rules of professional conduct.

The growth of these codes has been spurred by the increase in law firm mergers and cross-border deals which have created more conflicts of interest. Law firms’ more business-like approach has also led to the likelihood that they will be treated more as businesses rather than defenders of justice, according to Hans Jurgen Helling.

Helge Kolrud said law firms are facing a crossroads: either they have to incorporate a business ethos and develop as commercial consultancies, or they need to apply core values more rigorously.

Alejandro Ogarrio, officer of the IBA’s Bar Issues Commission, added: “A general code of ethics is difficult and quite remote. Any proposal must be kept to the level of very general concepts. An attempt to harmonize all ethical concepts would always be doomed to failure.”

The session was run by the Professional Ethics Division and the Bar Issues Commission.
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Human rights

Human rights court overwhelmed by cases

A judge at the European Court of Human Rights said yesterday that the institution risks being transformed into a complaints body unless governments improve the efficiency of their national courts.

The European Court has a backlog of 80,000 cases, with over 22,000 applications lodged in 2005. So far this year the court has managed to hand out nearly 600 judgments. The danger, Judge Elisabet Fura-Sandström said, is that the judges have to sift through a number of ‘manifestly ill-founded cases’ when they know that numerous cases of serious human rights violations are among the backlog. Over 13,000 applications have been disposed of this year alone.

Eastern European states account for most of the applications. Russia, Turkey, Poland and Romania are responsible for over half of all applications sent to the court from January to June this year. “Governments know what they have to do, and how to do it,” she said. “All the case law is already there.”

A new protocol on the criteria for admissibility of cases to the European Court has been ratified. In the meantime, some governments have taken it upon themselves to improve the efficiency of their national courts. While the Human Rights Convention at present forbids state interference in the private sector, many multinational corporations have voluntarily drafted their own corporate social responsibility codes. Fura-Sandström sees this as more effective than a mandate for minimum responsibilities. Any top-down measures would have to set minimum standards, she said, adding that it was better for companies to develop individual programmes more suited to their businesses.

A recent example was the case of Hatton v. U.K., when residents and property owners near Heathrow airport brought a case to the European Court on the grounds that the volume of night flights was in breach of their right to family life. The court ruled that states must minimize infringements on human rights whenever possible, thereby setting strict limits on the activities of governments in cases where potential for human rights violations exists.

Spieshofer pointed out that signatory states were only liable if the conduct of the corporation could be attributed to the state in some way. “If there is no involvement by the state in a corporate social responsibility complaint, then the road to Strasbourg is barred,” she said.

The European Court is also restricted to the territory of the signatory states, and does not have jurisdiction in cases where potential for human rights violations exists.
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