The template for justice

High-profile barrister Michael Mansfield QC has called for a permanent truth and reconciliation commission to be established in Britain. “We need this. The established mechanisms have not done the job,” he said.

Speaking at yesterday’s Human Rights Institute showcase session, Mansfield used the Hillsborough disaster in 1989, when 96 Liverpool Football Club supporters died at a match, to illustrate the struggle for transparent investigations.

In that instance, after 23 years of calls from the families of the victims, an Independent Hillsborough Panel was established to sift through 400,000 released statements from the police, emergency services and politicians.

The panel discovered a cover-up on an unprecedented scale in the UK. Police accusations of drunk and violent behaviour among fans had been a smear campaign to deflect from poor policing.

“The panel was an interesting model, not used before,” said Mansfield.

“Crucially, it was independent of the law,” he added. Because the commission was not run by a judge, and with only one lawyer on the panel, no one party was represented. “The panel just got on with its job of overseeing disclosure. It had credibility,” he said.

Mansfield said that the search for, and acknowledgment of the truth is the biggest motivation for victims. “The search for truth actually submerges those primal urges for revenge,” he said. “Instead, what the victims want is for the world to recognise what has gone wrong.”

Mansfield argued that a desire to establish credible mechanisms exists internationally too. “The mechanisms we have are undermined by states that refuse to recognise their authority. There has to be a willingness to recognise a consensus so that in future the UN is in a position to establish commissions,” he said.

Victims want the public to know

Throughout the session, a series of other high-profile speakers outlined their template for peace processes and reconciliation. Justice Richard Goldstone, past Justice of the South African Constitutional Court, relayed his experiences from reconciliation in post-apartheid South Africa.

Goldstone led the commission during reconciliation, when a series of violent attacks within the country threatened to destabilise the process. “We decided that enquiries should be informal,” he said. “They took place as near as possible to where the crimes were committed, so the people affected could see with their own eyes what the evidence was.”

Goldstone’s enquiries (he led over 40) were also held within two weeks of the incidents taking place, satisfying victims’ need for a swift response. Goldstone echoed Mansfield’s sentiment as to the reason for such enquiries. “Victims know what happened,” he said. “They just want the public to know too.”

Trust the process

The Irish Peace Process dominated the session, with a keynote address from Martin McGuinness, deputy first minister of Northern Ireland, and one of the key negotiators in the historic Good Friday agreement.

McGuinness insisted that any reconciliation between groups must maintain momentum if it is to succeed. “Peace processes are like bicycles, they always need to be moving forward,” he said. “If they are allowed to stall, as the Irish process did during John Major’s tenure [as prime minister] in Britain, then it’s incredibly damaging,” he said.

McGuinness also recognised the role of lawyers in the Irish Peace Process, specifically Pat Finucane, a Belfast solicitor killed by loyalist paramilitaries in 1989.

Two public investigations concluded that elements of the British state apparatus colluded in Finucane’s murder, resulting in high-profile calls for a public inquiry. However, in October 2011, it was announced that a planned public inquiry would be replaced by a less wide-ranging review.

“If you want to make peace, you don’t talk to your friends. You talk to your enemies.”

White argued that for peace processes to be sustainable they must not simply be inclusive, but pro-actively so. “You must find reluctant parties and encourage them to participate,” he said.

Finally, White insisted that peace processes are never logical, linear or scientific. “Instead, the value is in deep dialogue,” he said. “Most parties in Ireland know the political standpoints of all their opponents, but they rarely know the reasons for them. Deep dialogue helps you understand these reasons.”

“The British system has resisted calls for such an enquiry because the facts of Pat’s murder highlight the extent of collusion between British forces, Unionist paramilitaries and the British political establishment,” he said.

The panel, chaired by Juan E Mendez, UN Special Rapporteur on Torture, also featured Ian White of the Glencree Centre for Reconciliation in Ireland. White, who was a key figure in the Irish Peace Process, outlined the lessons he had learned during the period.

He insisted that groups working for reconciliation did not need to trust one another, just the process itself. “That’s still probably true in Ireland,” he said.

According to White, peace processes must also be inclusive. Quoting Moshe Dayan, former Israeli politician, White said: “If you want to make peace, you don’t talk to your friends. You talk to your enemies.”

“The British system has resisted calls for such an enquiry because the facts of Pat’s murder highlight the extent of collusion between British forces, Unionist paramilitaries and the British political establishment,” he said.

Published and prepared for the IBA by IFLR

Ireland’s legal system struggle

Interview: Bernard Kouchner on the rule of law

Vox pop: What is the IBA’s most important role today?
Iflamic society doesn’t find a proper way of approaching women, its top female talent will leave for another country that will offer them more opportunities.

This was the view of Omar Al-Rasheed, of Omar Al Rasheed Partners in Saudi Arabia, who called for lawyers to look through all the religious phrases in the Quran that are arguably against women and either neutralize them or provide adequate explanations for such phrases.

“Smart individuals, whether they are male or female, will not be sustained in a society that doesn’t treat them equally,” said Al-Rasheed, who himself has recently hired the first Saudi female lawyer.

Some believe that the will to change must come from the women themselves. “If women want to know how to change their lives they need to understand what their religion says, they need to read the Quran, and they need to understand what this faith is all about,” said Diana Hamade of International Advocates and Legal Services in Dubai.

But there remains a lack of clarity around the rules. Although the harsh penalties that can be imposed in the sharia system attract media attention, Saudi Arabia doesn’t have a written penal code. This makes it difficult for women to understand what they can and can’t do.

“The sad thing about Saudi women is there is a lot of potential that isn’t being used,” said Sara Koja of Clyde & Co in Dubai. “Women who are not able to achieve their potential, that’s where the focus and improvements have to come.”

According to Koja, she has succeeded in her career because she left Saudi Arabia. But there are signs of a movement towards change. “Now I see a new generation of women who are staying and trying to make professional lives,” added the Saudi-born lawyer.

Also speaking on yesterday’s panel, ‘women and Islam: the challenges and opportunities’, Hamade said the interpretation of the Quran is responsible for the mistreatment of women, not the Quran itself.

Hamade called for an end to the abuse of women, which she attributed in part to the misinterpretation of a particularly controversial verse in the Quran.

Verse 34 of Surat AN-Nesaa refers to men beating women who are guilty of lewd or indecent behaviour. But, said Hamade, the beating up of women, which is usually seen as something that the Quran has allowed, is down to a misinterpretation of the language used.

Hamade argued that the words are not necessarily what they may mean to a lay person, but were carefully chosen to give guidance into certain practices. The word ‘beat’ was meant to indicate psychologically hurting a woman by not dealing with her as a man may otherwise do on a daily basis.

The purpose of this is to hurt that woman and make her more obedient, said Hamade.

Practices such as women inheriting half of the man’s property on his death, girls marrying at an early age in Islam, and two women being equal to one man when giving evidence, have also contributed to the belief among some that Islam can be oppressive to women.

But, said Hamade, the reason that women in today’s Muslim society are often considered less valuable than property is not because of anything the book of God teaches: it’s a man-made cultural crime.

Differentiation between the sexes was not supposed to be an advantage for men. Rather, the word of God specifically states that men and women are from the same soil and one sex is not meant to be enslaved to the other. “The Quran is very clear and direct on this,” said Hamade.

### RELIGION

**Rethinking women in Islam**

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**KEYNOTE INTERVIEW**

**UN’s O’Brien promises justice for Syria**

Despite the state of paralysis in the Security Council, UN legal counsel and undersecretary—general for legal affairs Patricia O’Brien has warned that the day of reckoning will come for the perpetrators of violence in Syria.

Following Russia and China’s veto of the “paralysis” of the Security Council was a reminder everyone that what might be considered a legitimate use of force, is not necessarily what they may mean to a lay person.

“Terrorism rarely comes to the attention of the Security Council,” she said, “It truly believe the shadow of justice is hanging over the perpetrators... there will be a day of reckoning.”

Answering questions from CNN’s Todd Benjamin yesterday afternoon, O’Brien said the paralysis of the Security Council was a problem in this situation, and that she “doesn’t see any light at the end of that tunnel”.

But when Todd asked if this meant the Security Council was fit for purpose, she sprung to its defence. She warned not to underestimate its role, and referenced its affirmative action in the Libyan violence.

Syria dominated discussion in last week’s General Assembly Session, and O’Brien assured the audience that Syria is “at the heart and centre of everything the UN is discussing.

When Benjamin asked the audience whether there should be a military intervention in Syria, the split was 50-50. O’Brien reminded everyone that what might be considered a legitimate use of force, is not necessarily a legal use of force.

She also reflected on how far the Council has come. She gave the 1982 example of Hafiz al-Assad, then president of Syria, ordering the slaughter of 30,000 people to quell an anti-government revolt.

“The Hama massacre never came to the attention of the Security Council,” she said, and it barely came up in the other UN organs. She added that there is not a single note on the massacre in her office.

Now the entire international community is focused on what is happening in Syria, and we are now talking about stopping a single death, she said.
Investors must be redefined

Regulators must rethink the definition of sophisticated investor. The major stock exchanges have become increasingly focused on protecting the minority and retail investor-base post-crisis.

But lawyers on yesterday’s ‘Corporate governance standards: differences between stock exchanges and consequence for disclosure’ panel argued the financial crisis had proved sophisticated investors were equally capable of misunderstanding the risks of certain investments.

Wong Partnership’s Singapore partner and panel co-chair, Rachel Eng, said the time had come to reconsider how the term ‘sophisticated investor’ is applied.

Under the majority of regimes, a retiree who had invested all his savings into structured products would be considered a sophisticated investor but a 23-year old economics graduate with no practical investment experience would not. “The retiree has the money to invest, but possibly not the understanding,” said Eng, who is also co-chair of the IBA Capital Markets Forum.

An audience member agreed, but said the problem went much further than that. “Think of all the subprime-related structured products sold to the various banking institutions in the years pre-crisis,” he said. “They were as sophisticated as you can get and it’s since become known that they didn’t understand a word of what they invested in.”

This prompted criticism in 2010 when the regulator allowed only sophisticated investors, or those willing to invest HKD1 million ($130,000), to subscribe to the Hong Kong listing of Rusal, a Russian aluminium firm, in a bid to protect retail and minority investors from various risks associated with the deal.

Hong Kong shareholder activist, David Webb, argued at the time the SFC had been wrong to assume the man on the street would not fully fathom what the real risks associated with the transaction. “The poor do not have a monopoly on ignorance,” he wrote in a 2009 commentary on the move.

Eng said in Singapore’s disclosure-based regime, there was also a feeling that minority investors could not take care of themselves. “The onus is therefore on potential ListCos to disclose as much as possible,” she said. “Even so, the regulator will still read through the possible risk factors during the prospectus process to make sure that these are made clear and disclosure is sufficient.”

But McCann Fitzgerald’s David Byers believed the regulatory focus on less sophisticated investors was changing. Recent European legislation, such as the Alternative Investment Management Directive (AIFMD), clearly recognised the need to protect everybody within the financial system, he said.

“The AIFMD targets those typically viewed as sophisticated investors, such as private equity firms,” he said. “The exchanges are also growing increasingly aware of the need to protect as many investors as possible,” he said.

“Why only let the big institutions make more money on these good investments?”
Kate Ashton, Debevoise & Plimpton

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**Dublin’s Four Courts**

The development of Ireland’s legal system mirrors the country’s struggle with English rule. It now has a justice system to be proud of, says Bryony Bates.

Dublin’s Four Courts are the centre of the Irish legal profession. The name may now be inaccurate since criminal cases moved to the new Criminal Court of Justice in 2010, but it is still vital for barristers to meet, mingle and share knowledge under the neo-classical dome of the Round Hall. The oldest law in the Irish statute books dates from 1204, and the sense of tradition in the courts is strong. However, the building’s proud and venerable facade conceals a turbulent history.

Until the 17th century, two systems of law operated in Ireland. Within ‘the Pale’, the fortified area encompassing Dublin and its environs which was under English jurisdiction, English common law was used. The current name of the Four Courts actually refers to the medieval system of the courts of Exchequer, Common Pleas, King’s Bench and Chancery. From 1297, Ireland also had its own legislature in the form of the Irish Parliament, although like the courts, it only held sway within the Pale. Most of Ireland was governed instead by Brehon law. Existing as an oral tradition from the first century AD, and written down in the seventh century, this was a civil system which was based on compensation for the victim rather than punishment for the guilty party. The Brehons themselves were judges, successors to the Celtic druids.

When the Tudor conquest of Ireland came to a conclusion in 1603, English common law was instituted throughout the whole of Ireland. This development placed strain on both Parliament and the Four Courts in Dublin, neither of which had ever had a permanent home, although primarily held in Dublin Castle. The courts were brought to Christ Church Lane. Surrounded by a warren of alleyways, entrants to the courts had to pass through ‘Hell’, a small lane presided over by a carved demon.

These cramped conditions could not last forever, and construction started in 1776 on the current building, which was largely completed by 1776. The late-18th century was a flourishing time for the Irish legal profession. 711 barristers practised in Ireland in 1793, compared to 604 for the whole of England and Wales, and the quality of rhetoric and quick-witted exchanges in the courts made them a public spectacle as well as a place for serious deliberation. Following the repeal of the repressive Poyning’s Law in 1783, the Irish Parliament introduced several Acts which restored the rights of Roman Catholics, including the right to practise at the bar with the Roman Catholic Relief Act of 1793. Ireland’s relative legal autonomy came to an end in the wake of the Irish Rebellion of 1798. This attempt to throw off British rule resulted in the abolition of the Irish Parliament and the establishment of direct rule from London with the 1802 Act of Union.

One young lawyer, Robert Emmett, tried to mount his own rebellion against the Act of Union in 1803. Ill-equipped and lacking in manpower, his uprising failed, but not before the Lord Chief Justice of Ireland had been killed gruesomely by the mob. Emmett was captured, and his trial at Green Street Courthouse became one of the most famous in Irish history. His final speech was such a powerful piece of oratory, it became famous beyond Ireland: Abraham Lincoln is said to have memorised it. Its closing sentence proved inspirational for generations of Irish republicans: “When my country takes her place among the nations of the earth, then, and not till then, let my epitaph be written.”

In 1922 during the Civil War, the Four Courts were almost completely destroyed by artillery fire and sessions returned to their historic home of Dublin Castle until 1931. Amidst the turmoil, another landmark for Irish legal history was reached: in November 1923, Frances Kyle and Averill Devereil became the first women to be called to the bar in Ireland.

The Constitution of Ireland came into effect in 1937, finally severing links with the British government for all but the six counties of Northern Ireland. The Constitution remains the basis of Irish law today, and can only be amended by referendum. The current legislature was also established at this time: the Oireachtas, consisting of an Upper and Lower house, the Seanad Éireann and Dáil Éireann respectively. The restored Four Courts took their place as the seat of justice for the new republic: justice that the Irish people had waited long enough for.

**LAW FIRM MANAGEMENT**

The best way to bill

The billable hour is in terminal decline. But the alternatives are not always a panacea. Bryony Bates explains the difficulties facing firms.

The billable hour is taking a long time to die. Its many critics say that as client keep more work in-house and find other ways to cut costs, billing by the hour is not sustainable. Alternative fee arrangements (AFAs) are apparently the way forward, but are perhaps talked about more than they are implemented. Fixed or capped rates and discounts may be popular with clients but, handled badly, unprofitable for firms. However, by pricing the billable hour against AFAs, lawyers may be ignoring other ways in which they could improve their approach to fees.

On Wiener, consultant with the UK-based Moller PSF Group, believes that the billable hour in itself is not the problem. “There are times when [the] billable hour is probably the right approach, and there are times when it’s probably the worst,” he says. Wiener is co-chairing the session ‘Are lawyers’ fees fair and reasonable in all the circumstances?’ today and feels that the way lawyers negotiate fees is just as important as the kind of fees they charge.

Persuasive skills in the courtroom do not always translate to other areas. In Wiener’s opinion, “good lawyers are not always good business people”, and astute clients can use this to their advantage.

Racking up a lot of hours is not always profitable. Some clients have begun to use the hourly rate as a weapon against firms during fee negotiations, especially those in the financial sector. They can compare one firm’s rates to their rivals even when the work they are doing is not equivalent. Billing by the hour can make pricing seem simpler than it is in reality.

**Too rigid**

The reluctance of some partners to delegate work to associates may also be damaging. They fear, rightly or wrongly, that their performance will be undervalued if they have fewer billable hours to show, even if they have improved efficiency. Steven Richman, a partner at Druce Morris who is also speaking at the session, has voiced concerns about the apparent rigidity of the billable hour. “The billable hour is a means, not an end... there has to be discretion and flexibility.”

Things are changing. Some firms have abandoned the billable hour altogether due to client demand. Armenia Khachatryan of Astern in the Ukraine says that he does not recall the last time he worked with a client based on hourly fees. Khachatryan’s clients want flat fees and capped rates, and this is what his firm has to provide in order to keep the client.

Even the desire to maintain a good working relationship with clients can become a problem if it leads lawyers to take things too personally. “[Many lawyers] find negotiating on their own behalf very stressful because... they feel that criticism of the service they provide is implicitly a criticism of their individual personality” says Wiener. With this in mind, it is often easier to fall back on standard rates.

This reluctance to be creative where fees are concerned might make life simpler for lawyers, but it does not always make clients happy – and high prices alone are not always the problem. If bills are not transparent, clients may feel they are being charged too much. In Richman’s view, a common problem is that lawyers are not “engaged and upfront” as matters progress, leading to confusion on the part of the client.

Fees will remain a contentious issue all round in the legal world, but Wiener believes that one thing is certain: “lawyers need to become more professional and sophisticated in order to meet the needs of their clients and maximise the benefits to themselves.” Simply jumping on the AFA bandwagon is not the answer.
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Top ten: Dublin dining

From fragrant cheesemongers to Michelin-starred restaurants, Dublin’s culinary landscape is impressive. Gemma Varriale highlights the top ten.

The recession may have taken its toll on Europe’s restaurant industry, but Dublin’s eateries have gone from strength to strength. The city’s restaurateurs reacted to the credit crunch by coming up with creative menus and great dining experiences, with affordable prices. And it’s a strategy that’s paying dividends. From traditional Irish fare in historic pubs, to museum cafes serving fusion food, there are plenty of choices for the hungry delegate.

Ely

Ely has embraced the concept of showcasing the best of local Irish produce – a strategy that seems to be working. Located on three sites across the city, this high-quality chain is a jewel in the crown of Dublin’s restaurants. It includes a wine bar, a bar and brasserie and a gastro pub.

The brasserie is one of Dublin’s must-see destinations for lovers of food, wine and beer. Situated in a 200-year-old tobacco and wine warehouse, it offers everything from a relaxed family dinner, pre-theatre menu, private dining rooms and after work drinks. The classic menu reflects the best of seasonal Irish produce, with all meats sourced through the family farm in The Burren, County Clare.

Chapter One

Chapter One restaurant in Parnell Square is a Dublin institution. An award-winning Michelin star restaurant in Dublin city centre, its quality is unrivalled. Indeed, it has added to its extensive accolades, having recently won the Irish Restaurant Awards’ “best restaurant” of 2012.

Diners have described a meal at Chapter One as perfect from beginning to end, with elegantly and colourfully plated dishes. The four-course evening menu includes mushroom consommé with smoked potato and buttermilk foam, quail glazed with truffled honey and mustard and warm chocolate mousse with lemon marshmallow and praline. Need we say more?

One Pico

One Pico frequently appears in lists of Dublin’s top restaurants. Found on Molesworth Place, it offers a fine dining experience whose fame stretches far beyond Dublin’s borders. It serves modern classic cuisine with a twist. The menu changes monthly and the early bird set menu offers the great value that sets Dublin’s restaurants apart.

The Pig’s Ear

The Pig’s Ear on Nassau Street is also doing its bit to challenge the stereotype of unimaginative Irish cuisine. The chef, Stephen McAlistner, is perhaps more familiar from television shows, The Restaurant and The Afternoon Show. McAlistner’s winning formula includes good, honest Irish food served in a friendly environment. Indeed, the restaurant recently received a Michelin Bib Gourmand and previous diners have praised the stellar service and wonderful introduction to Irish food. The menu includes organic Irish salmon with crushed potatoes, beef tongue and cheek Guinness pie with rosemary roast potatoes and brown bread ice cream with crushed yellow man and gabshild buns.

Dublin Dining Trail

For those with an adventurous spirit, fabulous food trails run the Dublin Dining Trail, a tasting and cultural walk around the lesser-known parts of the city. Dublin’s eclectic atmosphere – a mix of city, countryside and coastline – is more than matched by the variety of food it produces. The aim of the tour is to link the food to the history and culture of where it’s produced and those who produce it.

The walk lists two and a half hours, with plenty of opportunities for pit stops. Tasting trails run every Saturday morning throughout the year and every Friday and Saturday morning during the summer months. The walk starts from the city centre at 10am and finishes back in the city around 12.30pm. It costs €20 per person.

The Brazen Head

For those looking for a more gentle form of entertainment, Dublin’s oldest pub, The Brazen Head, offers the chance to experience an evening of Irish folklore, storytelling and music while enjoying a traditional Irish candlelit dinner.

Running from 7-10pm, the evening offers a unique opportunity to travel back to another time, learning all about Ireland’s rich heritage of folklore and stories. Visitors can hear how Irish people lived off the land, why the potato is such an important part of Irish history, their beliefs in the other world of the fairies, as well as live traditional Irish music and ballads during dinner.

The event runs every night except Monday from April to November and costs €44 for an adult.

Chamelecon Restaurant

There’s also plenty on offer for visitors wishing to experience Dublin’s take on international cuisine. Chamelecon Restaurant, Temple Bar offers a piece of the Orient in the middle of Dublin. Run by husband and wife team Carol Walsh and Kevin O’Toole, the stylish eatery was founded in 1994 and specialises in Rijst-tafel (which translates as rice table), an exotic range of eight to ten dishes that give diners a taste of Indonesian cooking.

An intimate and ambient restaurant on three floors, Chamelecon opened in 1994 and has gone on to win numerous awards, including Bridgestone 100 Best in Dublin 2008 and Beck Best in Temple Bar. All dishes are prepared fresh daily and supplied by local artisan suppliers, the only imports are spices from Indonesia. Previous diners have praised the variety of vegetarian dishes on the menu.

The Silk Road Cafe

Museum cafes might not often make it into lists of best restaurants, but The Silk Road Cafe undoubtedly deserves a mention here. Located on the ground floor of the Chester Beatty Library, the cafe is considered one of Dublin’s hidden treasures.

As the name suggests, The Silk Road is an eclectic fusion of different nationalities of food, serving a hybrid of Middle Eastern-North African-Mediterranean cuisine. The menu includes mousaka, falafel and spinach and feta pie, all served in beautiful surroundings. Entering through a garden, diners will walk into a bright tall-ceilinged building with large, well-spaced tables. World music playing in the background adds to the ambiance.

Combine this with healthy food, friendly staff, and one of the best museums in Europe being a stone’s throw away (and free to enter) and it’s not difficult to see why no review of Dublin’s best eateries would be complete without a mention of this one-off destination.

Sheridans Cheesemongers

Wander off Grafton Street and you might stumble across Sheridans Cheesemongers at 11 Anne Street South. Those in the know say this is the best place in Dublin to track down a perfectly matured Ardaigh, Coolea or Laviester. It was founded in 1995, when Seanus and Kevin Sheridan opened a shop in Galway after selling Irish farmhouse cheese at the Galway market. Today, visitors can see artisanal Irish cheeses piled high on wooden shelves in this hidden gem. A highlight of any trip to Sheridans includes tasting free samples while learning about gourmet Irish cheese from the expert and passionate staff.
Guess who grew up in the Emerald Isle?

Our IBA team from the top: Sadiq Jafar, Managing Partner Dubai, Richard Briggs, Executive Partner Dubai, Alan Rodgers, Partner, Michael Lunjevich, Partner, Sameer Huda, Partner, Erik Muthow, Partner

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INTERVIEW: BERNARD KOUCHNER

The intervention medicine

Médecins Sans Frontières co-founder Bernard Kouchner talks to Bryony Bates about the duty to intervene, handling China and Russia and defining the rule of law

Bernard Kouchner is a French doctor and politician who co-founded the humanitarian aid agency Médecins Sans Frontières (MSF) in 1971. After training as a doctor in France, in 1968 he worked with the Red Cross in Biafra during Nigeria’s civil war. His experiences there eventually led to his involvement in founding MSF. Kouchner also co-founded Médecins du Monde in 1980.

From 1998 to 2001 he occupied various positions in the French government under a succession of socialist presidents, including Minister for Health and Secretary of State for Humanitarian Action. In 1999, he took up the post of UN Special Representative in Kosovo, working to rebuild the country after the war there until 2001. In 2007, he was appointed Minister of Foreign Affairs under Nicolas Sarkozy, a position he held until 2010. His appointment came despite having supported Sarkozy’s socialist rival Ségolène Royal in the election campaign.

He has been an outspoken advocate for the duty of states to intervene in other countries to prevent humanitarian crises and spread human rights. He is delivering the keynote address for the session ‘Is the rule of law relevant for the 21st century global community?’

How would you define the rule of law?

The rule of law is a term that is often used but difficult to define. The rule of law states that individuals, persons and government shall submit to, obey and be regulated by law, and not arbitrary action by an individual or a group of individuals.

In a political system which considers the rule of law paramount, the law is supreme over the acts of the government and the people.

The rule of law is interpreted differently by some, and it is not always respected. We should always be aware of the need to protect minorities that don’t have the means to protect themselves.

You have advocated humanitarian intervention throughout your career how do you think the rest of the world should respond to the crisis in Syria?

Currently the Syrian population is living a nightmare in front of the eyes of the international community and we have to do something about it and be involved in the matter. The [UN] Resolutions 43/131 and 45/100 will provide humanitarian assistance, distributing drugs and other aid to the civil population.

“The rule of law is interpreted differently by some, and it is not always respected”

The question is whether public opinion will remain alert for long, as people get tired of these massacres. I think it may not, and the reality shows us that humanitarian assistance may not reach Syria. Kosk Annan’s plan died due to a lack of support and unity in the Security Council.

As I wrote in the New York Times in June, we have to bring Syria to justice and use the international legal system through an appeal to international justice, which is the companion of the right to intervene. This is not merely a rhetorical position: it is the only path still open. We know the International Criminal Court opens cases at the request of the Security Council, and unfortunately we know that Russia and China would block that action by using their vetoes. They think there is no need to get involved in any country’s internal affairs.

We will have to discuss and negotiate with Russia and China, and with other countries such as Syria and Iran, and prove to them that it is in everybody’s interests to help the Syrian population.

How would you respond to a common criticism of liberal interventionism, that it leads countries to attack small states that commit human rights abuses like Libya and Syria while letting more powerful countries like China and Russia continue?

We have to be careful about the use of liberal interventionism in this kind of geopolitical matter. From my point of view, a military response to Syria would lead to a world war given that the Middle East is always ready to burst into flames. We must prevent that and begin with organised humanitarian assistance.

Regarding countries like China and Russia, we have to take into account that they are not our future enemies. All sanctions that could be taken will have to be taken through the UN Security Council.

The question is: are China and Russia more legitimate as they grow exponentially while failing to respect human rights? We face an interesting dilemma between choosing growth without respect for human rights and trying to make the respect of the rule of law a priority.

How can states maintain their commitment to human rights while cooperating with nations that commit human rights abuses?

It’s a difficult issue to deal with because we are not always aware of everything that’s happening. We must be completely informed before contracting anything with a country suspected of abusing human rights.

Having worked under both socialist and conservative French presidents, what do you think of Francois Hollande? I cannot compare yet the two presidents [Sarkozy and Hollande]. Hollande has just started his mandate of president and it will take time to see the results of his presidency. I only know that the task is heavy and I hope that Hollande will succeed.

How does the Eurozone crisis threaten European unity?

European unity is threatened by the Eurozone crisis, but also by the crisis of European governance. We have to build a European leadership that will gather together all Europeans and take into account popular opinion.

We have to give more power to national parliaments and to the European Parliament in order to develop European democratic governance. We built Europe with an unprecedented political idea through its economic system. We have to reconcile politics with the economy before it fades away.

What’s the best way for international organisations like the UN to provide global leadership while maintaining relations between member states?

This is the whole matter and work of diplomacy. Most of the time, negotiation and discussion lead to a compromise. It takes time and we need to be patient. At the same time, we mustn’t forget to be realistic and act when there is an urgent crisis.

I think that as soon as countries who have conflicting points of view agree that it is in everybody’s interest to understand each other, they are already on the way to reaching a solution.
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Looking for trouble

HFT critics have pounced on the Knight Capital, Bats and Facebook trade glitches. But some reforms could do more harm than good. By IFLR journalists in London, New York and Hong Kong

Investors in US equity markets have seen three high-profile trading errors this year, two of which involved high-frequency trading (HFT) firms praised for developing some of the fastest, most efficient, liquidity-enhancing algorithms. The impact of these errors was limited by regulations implemented in the wake of the May 2010 Flash Crash – when the Dow Jones plunged and recovered 1000 points over 20 minutes.

However, not surprisingly, there are now stronger calls to prevent errors in the first place. Commentators suggest that exchanges and firms have become overconfident in their systems, hastily launching new algorithms without contingency plans in an attempt to beat competitors. Regulators across the globe are scrambling for solutions – considering transaction taxes, speed restrictions and post-trade monitoring. But it seems the solution could be as simple as stronger risk management.

In March, Bats Global Markets cancelled its initial public offering (IPO) on its own HFT platform after a software glitch. Two months later, Facebook’s botched launch on Nasdaq occurred.

The most recent trading glitch to catch the world’s attention took place on August 1 when Knight Capital launched a new algorithm designed to lower prices for retail investors. The trades resulted in a $440 million trading loss for the market-maker, affirmed after the SEC denied Knight’s request to retroactively block the bad trades. HFT firms, lawyers and academics were all astonished Knight did not respond to the error sooner.

“They turned on the car, let it drive without a driver down the street and went back into the house,” Haim Bodek, founder and former CEO of Trading Machines, says of Knight’s new system.

Part of the problem is thought to result from an inability, or unwillingness, of exchanges and firms to retain talented programmers to oversee new systems. Regulators should bear in mind the strong human element in this year’s high-profile trades.

During the so-called Bats Crash, the exchange was without its most senior systems developer, Paul Rose, when a bad algorithm forced the HFT platform to pull its IPO in March. Rose had left Bats to join Tradebot Systems a few months earlier.

Facebook’s IPO also suffered from a depletion in human capital. IFLR has been told that a key programmer was not present for the erratic IPO.

**Speed bumps and risk controls**

Shortly after Knight’s glitch, the SEC began an investigation into the firm’s risk management procedures. The Commission’s market access rule, finalised in November 2010 and effective from last year, requires broker-dealers like Knight to maintain reasonably designed risk management controls and supervisory procedures. But it has its shortcomings.

“Unfortunately, it’s all very vague [and] it’s very subjective,” says Irene Aldridge, managing partner of research, development and implementation of high-frequency algo-rithms at Able Alpha Trading.

“There are no mandates to what kind of risk management a firm has to have in order to do this kind of work.”

That could change. According to an August 3 SEC release, Chairman Mary Schapiro has asked the Commission’s staff to hurry-up a rule proposal that would require exchanges and other market centres to have specific programmes in place to ensure the capacity and integrity of their systems. Mart Andresen, co-CEO at quantitative trading firm Headlands Technologies, says common best practices include systemic testing of orders sent to duplicative test environments, pre-trade risk checks done for all orders to be sent by a new algorithm, looping checks in which firms monitor for suspicious and unexpected system behaviour, market data health checks to make sure data is flowing in properly, and kill switches to stop errant trading.

“If you don’t design those speed bumps and risk controls, if you don’t have those operations then you will probably have an event like this at some point in time,” Bodek says. “The number of times risk controls intercept these events must be enormous – people screw up all the time.”

The SEC has also recently backed an initiative to introduce greater certainty into the US market by limiting the number of cancelled trades.

**European fragmentation**

How US markets were structured had a considerable impact on its vulnerability to trading glitches. The trade-through rule fostered inter-linkages between US trading venues. Consequently, whenever there was an erroneous series of trades caused by rogue algorithms it could affect the entire market. This structure is thought to have contributed to the May 2010 Flash Crash.

Shearman & Sterling’s Dr Andreas Wieland says Europe’s more fragmented trading venues make it much less vulnerable to the trading errors that spell disaster in US’ highly interconnected market.

But Europe is also introducing measures to curb HFT risks. The Markets in Financial Instruments Directive (MiFid II) will introduce a licensing requirement for HFT firms and a specific regulatory framework for algorithmic trading activities.

Germany, however, has pre-empted the proposed EU-wide reform with its own legislation. On July 30, the German Ministry of Finance published a draft Act for the Prevention of Risks and the Abuse of High Frequency Trading.

The new rules could slow down HFTs on the country’s regulated markets and multilateral trading facilities. But lawyers in Frankfurt warn that closer HFT supervision may not prevent another Knight Capital-like debacle.

The Act addresses many of the regulatory methods envisaged under MiFid II and those addressed in Isosco’s July 2011 report on the impact of technological changes on market integrity and efficiency. The reforms aim to better establish systemic stability in a sector that has to-date operated with little supervision.

Wieland says the suggested changes could have enormous consequences for the German market as some HFT firms struggle to comply. But he stresses that market vulnerability to algorithmic errors, such as that experienced in the May 2010 Flash Crash, and more recently by Knight Capital, was exacerbated by its specific structure and not just how HFTs were regulated.

The reforms will require HFTs to apply for licensing as a financial services institution with Germany’s financial regulator BaFin (Bundesaufsicht für Finanzdienstleistungsgesellschaften). Proposed amendments to the German Banking Act and the German Securities Trading Act will also enhance the powers of regulatory authorities, in particular requiring HFTs to submit their algorithmic trades and strategies to the regulator.

They avoid the more controversial elements discussed in connection with MiFid II, such as the requirement for a formal market-making obligation and a minimum lifetime for orders. Both would have the potential to destroy the business models of many HFT firms and would likely have severe consequences on liquidity and market efficiency at German trading venues, if implemented.

“The reforms force firms engaged in algorithmic trading to implement adequate and sophisticated risk management strategies and to ensure the trading system has sufficient capacity and effective safeguards to prevent erroneous orders,” Wieland says.
The newly-introduced maximum order-to-trade ratios, could have the effect that certain trading strategies cannot be deployed with the same leverage or volume as currently used, thereby curtailling the activities of HFT firms on German venues,” he adds.

Wieland said enhanced focus on HFT firms’ risk management process was undoubtedly a key tool to prevent a repeat of events like Knight Capital’s trading loss. But he questioned the efficacy of Germany’s approach.

“It is as much surprising as questionable that Germany has decided not to wait for a common European solution given that the MiFid II proposals are already at a fairly advanced stage,” he says. “Instead, Germany appears to opt – not for the first time – for a national solution that precedes and pre-empts legislation at an EU level.”

The compliance race

According to Wieland, the move had the potential to irritate the market.

The August 17 deadline for comments on the draft legislation left little room for the industry to influence matters further. “This will create substantial challenges for trading venues, investment firms and their trading and compliance departments,” says Wieland.

Interested parties will need to swiftly analyse the impact of the draft legislation on their business models and practices and decide whether and how these can be brought into compliance with the new legislation.

Training of personnel, surveillance and strengthening a culture of compliance will also be crucial to avoid trading practices that may subsequently be perceived as market manipulation, and consequent investigations, fines and penalties.

What’s more, if the new legislation is adopted as it stands, HFT firms that wish to continue trading in the country will need to quickly prepare for a licence in Germany or may have to cease trading at German trading venues. “It may be worth examining alternative solutions such as whether a MiFid licence could be obtained in another EU jurisdiction with a passport into Germany,” he says.

“Some HFT firms could avoid the need for getting licensed in Germany and retreat from the German market,” he says. “There is a risk that this could result in less liquidity on German trading platforms.”

Institutions engaged in algorithmic trading should closely monitor the development and impact of the proposed legislation. “It may well be that the proposed legislation will be subject to changes and clarifications during the parliamentary procedure,” he adds.

“Whatever the outcome, these suggested changes make clear that the time for HFT firms, be they US or European, to operate below the radar of regulators is over,” he says.

Who is liable?

While regulators search for ways to prevent system errors, the more immediate question for the market is one of liability. Knight shareholders are expected to file class actions on the grounds the company was negligent in responding to the trading error and did not include important information on the functionality of its trading systems in disclosure statements. Claims against broker-dealers are typically based on an individual basis before Financial Industry Regulatory Authority (Finra) arbitration panels – a process sometimes criticised for a lack of transparency and fairness.

“Well there are many problems with arbitration, it has been getting somewhat better the last number of years,” according to Jacob Zamansky, founding partner at Zamansky & Associates.

A Finra proposal to allow full public arbitration panels, rather than a panel including one financial industry professional, was approved by the SEC last year – a move expected to result in fairer decisions by the three-person panels. This may be a moot point, though.

The biggest losers in Knight’s debacle, aside from the company were its shareholders. This is because trades in the six other stocks most affected were declared erroneous and undone following the trigger of single-stock circuit breakers.

Nonetheless, people should be aware that even with the best regulation and risk management systems in place, mistakes do happen. “The German approach may help regulators better supervise HFT firms, but that does not entirely rule out singular events like Knight Capital from happening again,” he says.

Asia: ahead of the game?

As regulators in the US and Europe attempt to catch up with increasingly-sophisticated HFT and algorithmic trading strategies, Asian regulators are one step ahead. The trading strategy has received widespread media coverage across the continent, despite affecting Asian markets less than it does elsewhere.

Sources tell IFLR that Asian regulators are implementing frameworks for electronic trading before it becomes an issue. But counsel fear that increasingly prescriptive regulations could halt the natural evolution of market technology and create a substantial compliance burden.

Immunity will depend on whether Nasdaq’s system errors arose as part of a government function. The US Court of Appeals for the eleventh circuit has provided some guidance on where liability begins and ends for exchanges. In the 2006 case Weissman v National Association of Securities Dealers, the court affirmed that an exchange can be held liable when performing non-governmental functions, but recognised earlier case law regarding immunity in the performance of those functions. That case involved misleading Nasdaq advertisements.

Zamansky is one of the lawyers acting for the class of investors against Nasdaq. He says immunity does not apply in this case because Nasdaq was not acting as a regulator when its systems failed.

“They have an obligation to provide a system that works properly, and if they are on notice of a problem they have to act timely,” Zamansky says. “When you are talking about markets that execute in a milliseconds, two and half hours of a glitch is an eternity.”

While it is unclear how the court will interpret Nasdaq’s liability, Bodek thinks exchanges and HFT need to be more exposed to liability over the market-wide impact of bad algorithms.

The Securities and Exchange Board of India (Sebi) released norms for electronic trading in March, while Hong Kong’s Securities & Futures Commission (SFC) and Australia’s Securities & Investments Commission (Asic) have recently released consultation papers detailing new regulatory frameworks for HFT and algorithmic trading.

Though global standards for HFT and algorithmic trading regulation are advised by organisations such as Isoc, each regulator has taken a different strategy, noting that their respective jurisdictions are in varying stages of these strategies’ prevalence.

Sebi’s trendsetting

Of these jurisdictions, India’s exchanges are the smallest and least sophisticated. However, they are governed by the strictest rules. Though India’s regulators have been criticised for the country’s uncertain regulatory environment, counsel have quickly adapted to Sebi’s norms on algorithmic trading and HFT since they were announced in March.

Because of the market’s size, an errant algorithm on an Indian exchange is unlikely to destabilise markets globally. Instead, issues arise from the uneven environment created by HFT and algorithmic trading. Manisha Shah, partner at J Sagar Associates, says small players face unfair competition from those able to afford the technology for these strategies.

Indeed, such a view prompted the Delhi High Court to issue Sebi, the Reserve Bank of India, and Indian stock exchanges with notices in August, calling for responses to a plea seeking to abolish algorithmic trading at stock exchanges as the facility was not available to small investors. The petition, by retail investor group Intermediaries and Investor Welfare Association, alleges algorithmic trading puts small investors at a disadvantage in comparison to big brokers and foreign institutional investors. The matter is fixed for hearing on January 29 2013.

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Algoimic and HFT are increasingly popular strategies in China, but more prevalent in the commodities and futures markets. Local brokers are, however, becoming more interested in using HFT strategies on equity exchanges. Citic Securities, China’s largest broker, purchased algorithmic trading technology from Nasdaq-listed Progressa Software in May, and is understood to have agreed to use a platform to develop algorithms by Steambase, a US company.

While the Shanghai Stock Exchange says that it will implement new rules to manage HFT, including placing trading limits on firms with abnormal order volumes or frequent order cancellations, it has not yet specified a timeline. Sources tell IFLR, however, that regulators are gathering information about HFT. In China less than 2.5% of trades are executed via automated trading systems. In New York, that figure is more than 70%.

Kingsley Ong, partner at Eversheds Hong Kong, says that there is very limited systematic risk arising from automated trading, but notes that Chinese regulators are concerned at this stage. Ong expects the market for electronic trading to develop, though. “Development may be cautious and slow in China, but this does not digest from the growing trend and demand for electronic and automated trading. As the market becomes more mature, the trading volumes will likely accelerate,” Ong says. He predicts that brokers will develop more creative algorithms and innovative ideas for trading in China.

To date, the difficulty with HFT of equities has been that foreign investors likely to use automated systems can only trade A shares on the equities exchanges via the Qualified Foreign Institutional Investor programme. Also, investors must use exchange traded fund conversions to get around the T+1 restriction in the A-share market. That restriction, however, does not apply to the futures and bond markets.

The Zhengzhou Commodity Exchange, Dalian Commodity Exchange and Shanghai Futures Exchange are among the most popular platforms for automated trading purveyors, and have recently taken measures to regulate HFT.

In November 2010, the Shanghai Futures Exchange mandated additional monitoring on abnormal transactions – a move presumed to have been sparked by irregularities caused by electronic trading. Its provisions require exchange to monitor trades and safeguard the exchange from errant traders, but state that members should stop their clients’ abnormals transactions. A 2008 regulation had codified regulatory review of trading software.

There are also exchange rules that limit the strategies utilised by algorithmic trading, such as allowing only 500 order cancellations per contract per day.

China’s new arrival

“I have no mandates to what kind of risk management a firm has to have in order to do this kind of work” Irene Aldridge, Able Alpha Trading

relative to other forms of trading, so that institutional move this technology to other Asian markets, which could mean less liquidity in Hong Kong.”

ASIC’s search for balance

An alternative to the Hong Kong Exchange is the Australian Stock Exchange (ASX), in which HFT and algorithmic trading play a prominent role. In August 2012, ASIC CEO Elmer Funke Kupper estimated that HFT accounts for 15 to 25% of trades in the Australian market.

Like Hong Kong’s SFC, ASIC is looking to revise its market integrity rules and in conjunction its guidance on automated trading. However, it is important to note that ASIC has completed several iterations of consultation papers on the subject, while the SFC has not yet received market input on its first consultation paper.

ASIC released a consultation paper on August 13 that elaborates on several measures similar to those detailed in the SFC’s consultation paper. These include an annual review of systems and having direct and immediate control of all trading messages, including pre-trade controls. Though the rules seem similar to those proposed in Hong Kong, ASIC has had more time to fine-tune its proposals.

Damian Jefferie, director of policy at the Australian Financial Markets Association (Afma) says Alu was originally considering a quite prescriptive approach to HFT through the market integrity rules, but that would not have been the right approach. The aim is to have proper processes in place to ensure that systems are well-designed and well-implemented, he says.

Moreover, he cautions against targeting particular investment classes in respect to their access to and competence with technology. “Restricting technological innovation in the market carries its own risks,” he says. “We expect ASIC to be active in regulating HFT but this does not mean that undue constraints need to be placed on how business is done.”

But the ASX may change the environment for HFT and algorithmic trading on its own. Kupper, its CEO, has stated that ASIC has made submissions that suggest how to better protect Australia’s markets, including changing HFT transaction fees similar to those in Hong Kong.

The rules have worked

Securities regulators should be wary of basing HFT reforms on this year’s US trading glitches. Trading losses resulting from the Bats Crash, Nasdaq’s untimely launch and subsequent delay of Facebook shares, and the Knight Capital debacle were almost exclusive to those companies and their shareholders. If interpreted in a sense of market-wide impact, the SEC’s post-Flash Crash regulations did their job.

Single-stock circuit breakers stopped trading in the stocks most affected in each instance. This has the downside of making some trades erroneous and partly hurt market certain, because traders might not know if their trades will be busted. But the alternative would have meant actual wild price swings.

“The Knight situation is in some ways a validation of market mechanics,” Andersen says. “A private company made a series of mistakes which led them to do unprofitable trades in the market. Clients were not impacted, the exchanges were not impacted and the market data continued to flow smoothly.”

The question that naturally follows revolves around an interpretation of best practices. High frequency traders tell IFLR they usually would done things differently.

Regulators should not bow to public pressure, and not forget the enormous benefits of HFT. “It adds significant liquidity to the market,” Wieland says.

“A regulatory balance needs to be struck which stabilises the market by introducing effective risk management procedures, and emphasises the need for proper business continuity plans and algorithmic trading stress testing without killing the industry,” he says.

“Regulators worldwide must work to establish a regulatory framework that doesn’t put HFT firms out of business,” Wieland adds. “That would diminish liquidity on the market and ultimately make markets operate less efficiently.”

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How market rumours shape global M&A

Public M&A bidding rules vary greatly from country to country, meaning shareholders and corporate boards are not created equal. And the potential for competing bidders to push up prices is at the core of value in public M&A.

This was the clear message from a panel one of yesterday morning’s session ‘Public M&A – selected topics’, moderated by Craig Cleaver of Slaughter and May in London.

The discussion was structured around the scenario of a cash-heavy target facing competing bids from two hedge funds: one which has made a formal offer, and another which has publicly stated its interest in the company. Using this example, it was shown how the target’s value to shareholders changes depending on the number and length of bids.

The audience learned how different regulations – or lack thereof in the US – impact the bidding process in the UK, Germany, France, India and the US.

The US has the most open and longest-running bidding process. India’s merger regime, on the other hand, typically requires competing bids to be formally submitted within 15 days of a market rumour. European jurisdictions lie somewhere in the middle.

“I think the way the pricing mechanism is set in India, there is no incentive for a second bidder to start a rumour,” said panelist Zia Mody, of AZB & Partners in Mumbai. This is because rumours would cause price fluctuations that could negatively impact the bidder required to make its formal offer 15 days after stating their interest in the company.

That is in stark contrast to the US, where it can be unclear how many bidders will be in play as negotiations proceed. Potential acquirers are even allowed to publish press releases stating their interest in a target, without being required to make a formal offer. This can, however, complicate the process and drive-up price as a target company’s board usually has a fiduciary-out to consider larger offers.

“We love market rumours – they make money for Wall Street, which is very popular in the local press and national media,” Andrew Nusbaum, a New York partner with Wachtell Lipton Rosen & Katz, quipped sarcastically.

“You can have many rounds of bids (in the US),” Nusbaum said. “We’ve had them go five, six [and] seven rounds. There is no external rule as to how many rounds you can have or how fast they have to go in our country. It’s really up to the board.”

In 2006 France’s securities regulator the AMF (Autorité des Marchés Financiers) implemented its version of the UK’s so-called put-up or shut-up rule.

“If the regulator is convinced that somebody is preparing a bid the AMF asks the potential bidder publicly whether indeed they have the intention to launch the bid or not,” said panelist Jacques Buhart, partner with McDermott Will & Emery in Paris. “The potential bidder has to respond within four or five days usually. If [the bidder] responds ‘no’ [it is] stuck – it cannot launch a bid.”

The put-up or shut-up provision is neither a European Directive nor a provision of German law, but Hengeler Mueller partner Joachim Rosengarten said there is little incentive for a competing bidder to let rumours spread because it would affect its price.

“The way the pricing mechanism is set in India, there is no incentive for a second bidder to start a rumour”

Zia Mody, AZB & Partners

“Other than that, I think [the German bidding process] is quite nice for the shareholders,” Rosengarten said. “This could go on for a while.”

The UK is thought to be a less shareholder-friendly jurisdiction than the US and Germany because there is a cut-off period for bids. The UK has an auction procedure for resolving competing bids.

“The auction procedure can be anything really,” Cleaver said. “You can have full rounds of bids [for example]. Then there will be a cut-off point in the process where final bids will be submitted.”

Nusbaum said the bidder can control the clock of when to launch an offer in the US. This has implications for bidding wars and price.

“At some point somebody decides they would rather take a break-fece than buy the company at that particular price,” he said.

Libor litigation ‘most complicated ever’

Litigation arising out of the London Interbank Offered Rate (Libor) scandal is set to be the most complicated ever seen, a former US Securities and Exchange Commission (SEC) commissioner warned yesterday.

The $453 million penalty imposed on Barclays in July by the US Commodity Futures and Trading Commission (CFTC) and the UK’s Financial Services Authority (FSA) for manipulating Libor data, prompted a large-scale review of the rate-setting process within global financial institutions.

In Libor reforms published last week, the FSA’s managing director Martin Wheatley recommended significantly curtailling the number of currencies and maturity uses in the benchmark rate. CFTC chairman Gary Gensler said yesterday that he planned to further build on Wheatley’s recommendations.

Speaking on yesterday’s ‘Is the storm over? – the evolving liabilities of financial institutions’ panel, the former SEC commissioner Davis Polk & Wardwell’s Annette Nazareth said case work arising out of the Libor scandal would be extremely complex.

“There are cross-jurisdictional issues to consider,” she said.

“I also don’t know how you show causation,” she said. “How do you determine what the cause is when you’ve got banks that were part of the group providing the quotes and yet they were also using Libor in their own transactions? You’ve got people on both sides involved.”

The Bank for International Settlements’ Liam Flynn said determining whether or not financial institutions have credit for trades won would be offset against trades lost would also prove complicated.

Nazareth said: “It does look like the only people who are going to win in that one are the lawyers.” She believed the storm of litigation post-crisis was far from over too, at least in the US. “The US is a very litigious society. I don’t think we’re getting near the end of this at all,” she said.

ANV Underwriting’s Thomas Mannsdorfer agreed. “I think we’re going into a phase of more litigation,” he said.

Meet in Dublin: Rolf Auf der Maur, Benedict F. Christ, Urs Haegi, David Jenny, Christoph Pestakuzi, Nadja Taralli Schmidt
What is the IBA’s most important role today?

Gagangreet Singh Puri
KPMG
India
I’m a forensic accountant with KPMG and it’s my second IBA conference. The practice of law doesn’t just include lawyers, but also lawmakers and corporates, and it’s important to know that this event is useful for us as well as lawyers. I think in this sense, it would be useful to have more lawmakers here. And not just judges, but government representatives as well.

Jose Luis Vega Meza
Peroni Sosa Telechea Burt & Narveja
Paraguay
The IBA’s most important function is the platform it provides for the sharing of different jurisdictions’ cultures – to learn about local practices. For me, other Latin America countries are the most important in this sense, but also Europe and the US. Paraguay wants to follow the growth of Brazil and through the IBA we can learn which doors to knock on to achieve that goal.

Boris Suably
B & S Legal
Slovak Republic
I think the IBA has a strong symbolic role, in terms of being such a large international legal organisation. It’s my first time at the conference, but for me it’s a central point to meet other lawyers and gather new ideas. It’s also a good place to start thinking about legal issues from a different perspective.

Andrea Maia,
FindResolution
Brasil
I think the IBA’s primary role is to bring lawyers together to exchange ideas and learn what is happening around the legal world today. I think it’s very important to gather lawyers together for this purpose as it can help us implement practices being used in other countries. Also I know the IBA is very active beyond the scope of the conference.

Pit Reckinger
Elvinger Hoss & Prussen
Luxembourg
Through the annual conference, IBA is able to bring very good legal education to its members. Also, of course, the annual conference is a perfect place for networking opportunities. But for me, the IBA’s role in knowledge-sharing is more important. There is also the benefit of the various committee conferences, like the International Financial Law Conference, for the committee’s members.

Arthur Braun
BPV Braun Partners
Czech Republic
For me, the IBA is about supporting local bar associations in countries where they are weak. I see many other countries where improvements still need to be made. I’m not so convinced that setting international professional conduct standards is the best way, due to differences in local law regimes. But I think the IBA has a very important role in assisting local bar associations.

Veronica Raffo Ferrere
Ferrere
Uruguay
The best thing about the IBA is the annual conference, as it brings together so many lawyers from different countries and cultures. Not only does it help you become aware of legal trends from around the world, but also practice trends – the role of lawyers and how to manage law firms. With the world becoming closer every year, it becomes increasingly important to know what is happening elsewhere.

Irina Anyukhina
Aliud
Russia
The IBA annual conference is key to the body’s importance as it helps you understand legal trends, legislative developments and hot topics from around the world. Its lobbying and committee activities are very important as they unite the efforts being made in particular areas of law, and draw attention to important developments around the world.

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