Defining genocide

Genocide case law is incoherent and securing a conviction is increasingly difficult, according to a panel on the subject yesterday morning.

The legal definition of genocide as a crime was coined by Ralph Lemkin following World War II, and ratified by the UN general assembly though the Convention on the Prevention and Punishment of the Crime of Genocide in 1951.

The definition was a legacy of the Nuremberg trials into the Holocaust, which also prompted the UN to enact so-called crimes against humanity into legislation as it sought to deter future acts of genocide.

Since Nuremberg, a number of international tribunals have been established to decide whether acts of genocide have been perpetrated. Among the most prominent cases were those for individuals accused of involvement in massacres carried out in the Gulf War, Rwanda and the former Yugoslavia.

Discussing the case law that has emerged from these trials, the panelists on ‘Genocide: national, ethnic, racial, religious groups – is the 1948 definition in need of reform or would it be too dangerous to change?’ agreed that some decisions have been confusing and have engendered an inconsistent body of law.

Professor William Schabas of Middlesex University cited the example of trials concerning events in the Bosnian war in the 1990s as an example of contrasting decisions that have been made.

In the trial that followed the war, it was not deemed that the mass murder of Bosnian Muslims by Bosnian Serbs was genocide. However, one event, a massacre in Srebrenica where around 8,000 men and boys were slaughtered, was ruled an act of genocide. That stayed with the case law, and was endorsed by the International Court of Justice in 2007.

“We’re left with incoherent law. It’s not logical to look at that conflict in Bosnia and conclude that wasn’t genocide apart from those five days in Srebrenica,” Schabas explained. The law will remain unless it is overturned at appeal, and one hearing continues today. “If this [a successful appeal] were to happen, we will have an even more incoherent body of case law,” Schabas added.

**Difficult to prove**

Since it became a defined crime, convictions of genocide have been relatively few because it is so difficult to prove, particularly when compared to a crime against humanity.

In terms of a hierarchy of severity of international crimes, genocide is regarded as the world’s most heinous, with crimes against humanity second, and war crimes taking third position in the eyes of courts and plaintiffs.

Yet the results of a conviction are similar, and for prosecutors, there are a number of additional elements that must be proved to secure a conviction for genocide that are not necessary when the charge is a crime against humanity.

While the latter is defined as a widespread systematic attack against a civilian population, in the case of genocide, the intent to destroy, in whole or in part, a national, ethnic, racial or religious group must be demonstrated. One of the key differentiators, and also the most difficult element to prove, is the “specific intent of the individual,” said Gregory Kehoe, a partner at Greenberg Traurig and former prosecutor with US Department of Justice.

Considering the challenges of securing a verdict of genocide, the benefit of seeking one over a perceived lesser charge of a crime against humanity has little merit, the panelists agreed.

Kehoe, who was part of the team prosecuting Saddam Hussein for his actions in the Gulf during the 1990s, questioned whether the difference was largely semantic. “If there are 230,000 civilians killed, which is approximately what we are aware of dealing in Kurdistan when we put the case together against Saddam, does it really matter to those victims if it’s genocide or a crime against humanity?”
How climate change law must evolve

Failure to address the human rights issues posed by climate change will have devastating consequences for millions.

That was the message at yesterday morning’s session ‘Preventing climate chaos – the latest judicial, legal and policy developments’ – in which the IBA’s presidential taskforce on the topic presented the findings of its latest report and explored the role of law in combating climate change.

Most often it is the poorest countries that are the least responsible for climate change that bear the brunt of wealthier countries’ actions. Working with those countries is not an option, said Professor Javier de Cendra de Larragán of IE Law School in Madrid. The taskforce seeks to pinpoint ways in which the law can help, as well as where certain laws potentially hinder progress.

Focusing on promoting trade without abandoning climate standards, they are looking at international agreements such as the Transatlantic Trade and Investment Partnership (TTIP) and the Trans-Pacific Partnership (TPP).

The revolutionary new report, titled ‘Achieving Justice and Human Rights in an Era of Climate Disruption’ made more than 50 recommendations to governments. While around 90 countries have implemented environmental laws, which the report comments, it urges more to follow suit. Its purpose is to provide a menu of provisions from which domestic jurisdictions can select the more appropriate recommendations, said David Estrin of the International Law Research Programme and co-chair of the IBA’s Presidential Taskforce on Climate Change Remedies working group.

It also identifies three key areas for the adaptation group to focus on: climate displacement, adaptation technology and food security.

The new normal

The aftermath of Cyclone Sidr which hit Bangladesh in 2007, killing thousands and disrupting hundreds of thousands of businesses and jobs provides just one example of climate displacement. When emergency aid inevitably ran out, thousands in more remote areas had no choice but to leave their homes in search of food and work.

People would more often than not prefer to stay, said Michelle Leighton, chief of the International Migration Branch at the International Labour Organisation in Geneva, but rebuilding is costly and takes time.

There are currently no legal instruments to assist in climate change migration. Existing laws are poorly suited, said Corina Gugler of Debevoise & Plimpton, secretary to the adaptation working group.

Climate displacement is not limited solely to natural disasters. Rising sea levels due to polar ice cap melting and seawater temperature increasing has already seen many communities move further inland.

And it can only continue: a 2007 report by the UN Intergovernmental Panel on Climate Change (IPCC) said that sea levels were likely to rise by 18cm and 59cm this century.

Adaptation technology is especially important in that it can prevent the need for climate displacement. “Climate migration really is the adaptation strategy of last resort,” said Humphreys.

The scope of needs-based technology transfers includes the installation of advanced equipment such as desalination plants, but is also about knowledge-sharing as to how to handle the new technologies. This is one area where legal barriers come in, as intellectual property (IP) protection can block the transfer in the first place.

Stephen Humphreys of the London School of Economics, who is academic advisor to the taskforce group on adaptation.

Climate change will ultimately make poverty reduction harder, said Professor Javier de Cendra de Larragán of IE Law School in Madrid. The taskforce seeks to pinpoint ways in which the law can help, as well as where certain laws potentially hinder progress.

Focusing on promoting trade without abandoning climate standards, they are looking at international agreements such as the Transatlantic Trade and Investment Partnership (TTIP) and the Trans-Pacific Partnership (TPP).

The revolutionary new report, titled ‘Achieving Justice and Human Rights in an Era of Climate Disruption’ made more than 50 recommendations to governments. While around 90 countries have implemented environmental laws, which the report comments, it urges more to follow suit. Its purpose is to provide a menu of provisions from which domestic jurisdictions can select the more appropriate recommendations, said David Estrin of the International Law Research Programme and co-chair of the IBA Model Climate Change Remedies working group.

It also identifies three key areas for the adaptation group to focus on: climate displacement, adaptation technology and food security.

The new normal

The aftermath of Cyclone Sidr which hit Bangladesh in 2007, killing thousands and disrupting hundreds of thousands of businesses and jobs provides just one example of climate displacement. When emergency aid inevitably ran out, thousands in more remote areas had no choice but to leave their homes in search of food and work.

People would more often than not prefer to stay, said Michelle Leighton, chief of the International Migration Branch at the International Labour Organisation in Geneva, but rebuilding is costly and takes time.

There are currently no legal instruments to assist in climate change migration. Existing laws are poorly suited, said Corina Gugler of Debevoise & Plimpton, secretary to the adaptation working group.

Climate displacement is not limited solely to natural disasters. Rising sea levels due to polar ice cap melting and seawater temperature increasing has already seen many communities move further inland.

And it can only continue: a 2007 report by the UN Intergovernmental Panel on Climate Change (IPCC) said that sea levels were likely to rise by 18cm and 59cm this century.

Adaptation technology is especially important in that it can prevent the need for climate displacement. “Climate migration really is the adaptation strategy of last resort,” said Humphreys.

The scope of needs-based technology transfers includes the installation of advanced equipment such as desalination plants, but is also about knowledge-sharing as to how to handle the new technologies. This is one area where legal barriers come in, as intellectual property (IP) protection can block the transfer in the first place.

Food security is the biggest threat to rural areas in Africa and Asia. The IPCC says that even minimal warming in dry and tropical regions reduces yield, but in reality, climate change is just one of many threats to access to food.

Land grabs – large-scale agricultural land acquisitions, 70% of which are concentrated in sub-Saharan Africa and often initiated by wealthy foreign investors and corporates – are blocking access to food in some local communities.

The right to food – a human right – stipulates that if people are deprived of food for reasons beyond their control, including after a natural disaster, the government is required to provide it directly.

Panelists explained that causation is difficult to identify. It is nearly impossible to pinpoint the exact cause of a rise in temperature or a natural disaster, let alone identify a perpetrator. Handling multiple claims from various parties, as well as managing the cost – many of those affected simply cannot afford litigating – are further obstacles.

“Fundamentally, the international legal framework is not designed to address this wicked issue of climate change,” said Estrin.

Earlier this year, however, Urgenda Foundation v The State of the Netherlands saw a civilian platform take the Dutch government to court on behalf of 866 people for failing to meet its commitment of reducing emissions by 25 per cent.

Baroness Helena Kennedy QC, who co-chaired the session, said that this groundbreaking verdict in the first successful climate negligence case shows exactly how the law can be used as one of the tools for fighting climate change.

Key takeaways

• Climate change is making poverty reduction more difficult as it blocks access to food, and natural disasters drive entire communities from their homes;

• Comprehensive laws protecting climate change – particularly violations of human rights – are lacking.

Javier de Cendra de Larragán of IE Law School in Madrid and Baroness Helena Kennedy QC.
Lost in a digital paradise

Law firms must better utilise social media in today’s digital age. Businesses, especially law firms, need to push their online presence further to harness the marketing potential at their fingertips, according to panelists at yesterday’s session.

The majority of those attending this week’s conference have LinkedIn profiles; it’s undoubtedly an excellent tool for the business of law. But are the lawyers of the digital age using the internet to its full potential, or is passive social media activity limiting its value as a marketing tool?

In yesterday’s ‘Business Development comme il faut or how social media and new technologies can help you step up your game,’ a panel of experts discussed how small firms can improve online visibility, while expanding their business in the process.

Speaker Joanna Michaels, a social media expert from Beyond Social Buzz, a social media marketing agency based in London, suggested establishing a clear goal for a social networking strategy early on.

The aim, she said, should be to minimise damage, while finding a way to pro-actively encourage positive word of mouth. “We must embrace social media, and use it to build a reputation and make more business.” According to Ceylin Beyli of CBL Law Office in Istanbul, the key to social media success is to put yourself out there, to clearly explain to your clients that you provide a good service: “It is important for a business to be visible, available and approachable.”

Outlining the benefits of other lesser-used social media platforms, Google Plus and Pinterest, the panel discussed the importance of lawyers not limiting themselves to an inactive LinkedIn account. It is important when using social media to be where the conversation is, and to cast a wide net.

Spoilt for choice

However, being drowned in choice can be a problem too. How can a firm be sure that they are employing the right platform? The unanimous message from the panel was to follow your clients. “You should be where your customers are,” said Michaels. “Establish where they are or you won’t be talking to many people.”

Michaels also outlined her strategy for being a ‘social media rockstar’. When using social media, it is important to share and be sociable; to show trust and allow client relationships to breed; to add value with your content and let your client know they are on your mind. Following these principles will promote your firm positively to a captive, worldwide audience.

A member of the audience voiced his concern with this concept; law by definition is a very conservative field. “We represent a professional type of work. Lawyers should not be rock stars.” A valid protestation, it is important to stay professional, adhere the risks of social media, and always offer full disclosure, agreed the panel. Losing face online can be just as damaging as in person, if not more.

Prolific social media user Itzik Amiel of international expansion specialist EyeRon Group, highlighted another concern of the misuse of social media. One firm had tweeted the message, ‘please can you give us some business’, several thousand times. An uninspired practice he suggested – and far more damaging than it was practical.

With correct practice, social media can be an extremely important part of a law firm’s marketing strategy. A final message in yesterday’s session was the importance of quality over quantity. Amassing 10,000 irrelevant followers is not as beneficial as having a hundred relevant ones. Social media is not just a numbers game; it is about the relevance to your business, and most importantly, relevance to your clients.

If the German industry trusts us*, why shouldn’t your clients?

*We provide comprehensive legal and tax advice to the majority of the DAX-listed companies and to a large number of the most renowned family-owned businesses in Germany.
LGBTI rights: breaking new ground

The US Supreme Court decision in June 2015 for same sex marriage and a German Federal Court of Justice ruling relating to surrogacy in December 2014 are two recent cases that have allowed many more people to have a family by law. But as speakers in this morning’s session will explain, much work remains to be done. Follow-on legislation, new forward-looking laws and the re-writing of outdated discriminatory statutes are needed to extend the right to more people.

Huge inroads have been made in Argentina over recent years to promote gender equality and extend the right to a family to more sections of society.

Existing legislation provides maternity leave for mothers to one of the fathers in a homosexual relationship and supports commercial surrogacy for gay male couples, full public access to IVF and same sex marriages with full adoption rights. The last was passed in 2010 and made Argentina the tenth country in the world to legislate for same sex marriages.

“Argentina has perhaps become the world leader on issues of gender equality,” says Federico Godoy, partner in Argentinian law firm Beretta Godoy, session co-chair and co-chair of the IBA’s Lesbian, Gay, Bisexual, Transgender and Intersex Law Committee, adding that these laws are “wonderful and necessary to recognise the rights of transgender persons”.

According to Steve Weiner, chair of Munz Levin’s Health Law Practice and co-chair of today’s session, at the core of the development in the right to have a family is the evolution of same sex marriage. “We are focusing on the legal issues around the family as a right and looking at the variety of emerging issues concerning this right,” says Weiner. “By and large one of the main issues around the world has been the same sex marriage question.”

In June 2015, the US Supreme Court decision in Obergefell v Hodges ruled for same sex marriage as a federal right and in so doing, says Weiner, made it possible to solve a whole range of family issues in law. From an advocacy perspective if a culturally hegemonic superpower like the US can legalise same sex marriage, other jurisdictions will surely follow,” says Godoy. Argentina and the US still remain an exception, globally speaking. As of 2015, only 18 countries legally recognised same sex marriage.

Beyond same sex marriage

Although the question of same sex marriage is key in the furthering of the right to a family, much needs to be done in terms of follow-on laws, new laws in areas relating to gender recognition and equality, new legislation to clarify positions regarding alternative ways of having a family and clearing discriminatory laws.

According to Godoy one of the many drivers behind the developments in Argentina was María Rachid, a City of Buenos Aires councillor who “pioneered several world-leading gender equality laws that have been adopted at a national level”. Rachid will discuss gender rights from an advocacy perspective.

Finally, Sanford Bernardo, co-founder of Northern Assisted Fertility Group and a specialist in surrogacy parenting and third party family building, will explore non-convention technologies for families and voice the case of LGBTI community members who want to have a family.

“I would like for this session to form part of the groundwork for people to stop looking at the LGBTI community by reference to its constituent L-G-B-T-I people, and start just treating them as people with the same rights as everyone else”, says Godoy, hoping that those from “jurisdictions where few rights have been recognised for the LGBTI community will take the message that this is not OK.”
When CCTV talks to streetlights

Being connected while remaining protected is becoming increasingly complicated, as the growth of smart technology has proven.

Recent instances where vehicles, and even smart LED lightbulbs, have been remotely hacked and controlled have brought the issue further into the public’s gaze.

The Internet of Things (IoT), a term coined in 1999, is at the core of this morning’s session, which is split in two and features speakers from Microsoft, Qualcomm and John Deere alongside a panel of tech lawyers and professors from the US, UK, Italy and Belgium.

The term IoT describes the growing network of ‘smart’ objects that can communicate with each other and complete tasks without any human involvement; it is a development of machine-to-machine technology and is reliant on the internet for remote communication.

The IoT is pithily summed up as coffee machines talking to alarm clocks, heating systems talking with motion sensors or Glasgow’s plan to put sensors on streetlights and traffic lights that integrate with CCTV. But the characterisation disguises the complexities behind the development and hides the huge amount of information and data being transmitted.

A study by tech advisory firm Gartner noted that there will be 4.9 billion smart objects by the end of 2015, 30% more than 2014, and 26 billion by 2020, with about half in the consumer sector and the biggest proportion in so-called smart homes.

Although seemingly innocuous home consumer products will be the most visible face of the IoT and issues such as privacy and data protection are key, the concerns quickly escalate at the prospect of such developments in the healthcare sector, for example.

Even with more obvious consumer products such as lightbulbs and cars, experiments have shown that they can be hacked remotely and in one case hackers brought a Jeep Cherokee to a stop on a highway.

The session, in this respect, will ask how data used in the IoT is regulated and processed and what sort of legal framework and regulatory infrastructure will be at play. Speakers Hartmut Seibel, general counsel at the European Payments Council in Brussels and Ronald Zink from John Deere & Company in Iowa, US, will explore IoT in their environments.

Developing case law

The IoT and other technological developments are placing a complex burden on the world of regulators and the legal community, particularly when it comes to the issue of copyright and patents, industry standards, identification and authentication and limitation of liability issues.

A recent headline case concerning programmers saw Oracle confront Google over the API. How applicability of patent and copyright law to APIs (application programming interfaces), which allow different computer programs to communicate with each other. Both sides of the argument believe they are fighting for entrepreneurs, and the US court ruling broadly in favour of Oracle, has surprised many programmers and developers.

In the first session Jim Beveridge, senior director of International Technology Policy for Microsoft and part of Microsoft’s Advanced Strategy and Research Group, will be joined by Ronald Zink, director of on-board applications at John Deere & Company and former in-house counsel with Microsoft, and Dahlia Kownator, senior manager for Government Affairs at Qualcomm Europe. They will explore trends, issues standards, antitrust and industry applications.

The second session will hear from Adam Chernichaw, partner in White & Case, New York, a specialist in patent and technology licensing; Christopher Millard, professor of privacy and information law and head of the Cloud Legal Project in the Centre for Commercial Law Studies at Queen Mary University of London; and Hartmut Seibel from the European Payments Council.
The start of the show

From Manuel Barroso to Benjamin, Rivkin to the Vienna Boys Choir, here are a selection of the best images from Sunday’s opening ceremony.
Foreign combatants and the concept of universal jurisdiction are two issues at the heart of this afternoon’s session, ‘Policing the world: the role of national courts in extra-jurisdictional conflict crime’. It will see a broad panel discuss cases such as the prosecution of Blackwater private security guards for civilian deaths in Iraq and the decision by South Africa not to detain Sudanese president Omar al-Bashir, who is wanted by the International Criminal Court (ICC).

Some commentators, such as British diplomat Sir Christopher Meyer and Oxford University professor Margaret Macmillan, argue that the credibility, relevance and efficiency of big international institutions, including the UN, have increasingly come under question.

Meyer sees a great unravelling of international institutions set up after the Second World War, with countries reverting to their nation states. Macmillan argues that the refugee crisis has been a fundamental challenge to European values and that it has become quite clear that there is no consensus on what European values are.

These volatile international-national fault lines are clearly visible when it comes to the mountain of legal entanglements faced by national courts when attempting to try purportedly universally accepted war crimes committed in foreign countries. Related to this is the lack of agreement on the concept of universal jurisdiction, in which states claim criminal jurisdiction for alleged crimes against humanity regardless of the accused’s nationality or country of residence.

A key question is if the credibility or validity of the ICC is in doubt and the concept of ‘universal jurisdiction’ is also undermined, what that will mean for complex war crime prosecutions.

According to criminal lawyer Jonathan Grimes from Kingsley Napley, the answer is simply evidence. “The landscape is constantly changing and principles that were thought to be established principles of international criminal law can fall out of favour,” says Grimes, adding that with such limited jurisprudence a single case can have massive law changing consequences. Cases in point include those of Chile’s Augusto Pinochet and potentially the current case involving Omar al-Bashir.

A fraught process

Speakers in the panel include Jeremy Gauntlett SC, general counsel of the Bar of South Africa, civil liberties solicitor Daniel Machove, of Hickman & Rose Solicitors, Michiel Pestman of Dutch firm Prakken d’Oliveira Human Rights Lawyers, David Schertler of Schertler & Onorato, Alain Werner of Civitas Maxima and Berlin-based ICC lawyer Natalie von Wistinghausen.

Moderators Grimes and Reinhard will tackle questions such as what acts on the battlefield are subject to universal jurisdiction. Is it necessary or appropriate for Western nations to act as global war crimes prosecutors and do they then risk being seen as the world’s police officers? Do we run this risk that war crime prosecutions become political footballs?

The numerous litmus test cases include the sentencing by a US court in April 2015 of four Blackwater private security guards for the killing of 17 civilians in Nisour Square, Iraq, in 2007. Schertler represented one of the guards charged with manslaughter in the case. Another is that of Sudanese president Bashir, who has been indicted by the ICC for war crimes committed in Darfur. In 2015 South Africa, a member of the ICC, chose not to detain Bashir while he was in the country and Gauntlett, a counsel for the South African government, has argued that the matter should be referred to the Supreme Court of Appeal.

Werner has been representing victims in the case against former president of Chad, Hissène Habré, in front of the Extraordinary African Chambers in Dakar, Senegal, another key current case being tried by an ad hoc purpose-established court in Senegal.

Ellex
Experience success

Ellex is a circle of pre-eminent law firms from each of the Baltic States that enables our Client to access the market with focus and clarity.

With over 150 legal professionals and the widest variety of practice areas, Ellex is ideally positioned to provide each client top expertise and in-depth specialized legal services both domestically (in Estonia, Latvia and Lithuania) and on a pan-Baltic dimension.

ellexcircle.com
More than money

All the financial investment in the world won’t solve Africa’s infrastructure shortage. Deep-seated market realities must change to improve projects’ underlying credit

The numbers are simply staggering. Sub-Saharan Africa needs an extra $50 billion per year to build the critical infrastructure it needs to continue its growth trajectory. If a country lacks, for example, functioning roads, investors won’t waste their time. This, in turn makes it difficult for a government to pull more of its population into the middle class.

The problem prompted us to poll readers on what should be prioritised in closing sub-Saharan Africa’s infrastructure gap. In line with the fact there is no single, or obvious, solution, the results are split. But a major theme that did emerge is that money isn’t the primary issue. For all the focus on dollars, many believe that neither project equity nor debt funding is the main issue.

Thirty-seven percent of respondents believe that improved concession and project structures need the most attention. Many projects in Africa flounder because there is not enough joined-up thinking beforehand, to make sure they are bankable. “I have seen a real clash between the different ministries in the government,” says one partner. While one department supports the deal, another claims no knowledge of it. Better coordination must also feed through to the drafting. “Very frequently you look at stuff for your bank clients and you realise they are sub-standard, full of gaps,” says one partner.

Governments need to have in mind a baseline position of lenders on the particular type of project when looking at basic project risk. “Often it is either unrealistic or ill-defined allocations,” says one respondent. Some don’t, for example, realise that expecting a developer to buy or lease the land needed to build a transmission line – which may require haggling with hundreds of local farms – is unfeasible. Another respondent recounts a tender where the government expected sponsors to bid without making any amendments. “The documents were so deficient that they actually had to re-issue them.”

Africa is plagued by business and macro risk perceptions – many of which are unfounded. Nonetheless, this compounds the importance of having a project that isn’t full of holes. “You actually need to make sure you are going to market with a structure that is the same or supports cashflow obligations. “The market often isn’t sufficiently developed, so you fall back on governments that have crappy credits,” says one London partner. He gives the example of a power plant. If the off-taker is a struggling utility, the developer’s payment stream depends entirely on the guarantee of a possibly unreliable government.

There are also non-technical losses – such as people stealing electricity by illegally hooking up to power lines – which, in the case of Nigeria, can lead to losses of 50%. “You can’t get paid for half of your output and hope to make any money,” the partner says. “So really the maturing of those markets is what we need – that would solve everything else.”

A bigger problem flagged by another respondent is the fact that in some countries the government doesn’t provide a guarantee. “For me that’s madness,” he says. “There needs to be a way for lenders and investors to get comfortable that if contractual rights aren’t met, then someone in the government will put their hands in their pocket and make the payment.”

Private equity

Diverting private equity and infrastructure debt funds won as many votes as improved structuring, yet it was harder to pinpoint the reasons why. In 2014, $4.1 billion was raised by Africa-focused funds looking to invest in operational businesses. Fundraising this year will far-exceed that figure. The problem is that there aren’t enough local enterprises ready to absorb that volume of capital. It’s sparked speculation that the money could be pushed into infrastructure.

To close sub-Saharan Africa’s infrastructure gap, what should be prioritised?

- Improved concession and project structures: 37%
- Capitalising on Islamic finance liquidity: 5%
- Attracting foreign PE and infra debt funds: 37%
- New support tools from DFIs and ECAs: 16%
- Other: 5%

It’s already happening in South Africa, with firms such as Actis investing in the country’s PFI renewable energy programme. A Johannesburg-based partner says there are other funds now looking at other power projects. “They are not quite your classic private equity funds, but still private equity of a certain ilk,” he says.

But for those that aren’t dedicated to infrastructure, they are likely to become involved only when the project is more developed. “Most firms require a certain level of certainty on returns, there is likely a limited number of projects that are sufficiently de-risked for broader private equity funds,” says one respondent.

DFI initiatives

Development finance institutions (DFIs) have a strong toolkit of guarantees and other support mechanisms which they are continually striving to improve. The African Development Bank (AfDB) is pushing for standardised suites of documents, and spearheaded the Africa50 fund which had its first closing in July. But 16% of respondents believe they must do more.

Part of this feeds back to the sovereign guarantees. Some DFIs don’t like governments taking on these obligations as it’s more debt on their balance sheet. But it’s a vicious cycle; less guarantees means less development and income. “If the World Bank and IMF were a bit more open-minded about what governments can and can’t do, that would free up an enormous amount of time and resources for people to progress projects without having to worry about nonpayment,” says one source. He also stresses that it’s only a contingent liability.

Of the remaining options, Islamic finance gained five percent of the votes and local bank funding was snubbed. “That’s not critical. One will get funding from South African and European banks,” says one respondent.

This article first appeared in the October issue of IFLR.
Thank you Vienna from Hadef & Partners

A huge thank you from our IBA team to Vienna and all our hosts for a successful conference.

www.hadefpartners.com
Regulators hit back on cartels

Punishments for concealing cartel offences can be just as bad as the offence itself, if not worse, according to Brent Snyder of the US Department of Justice.

Speaking in yesterday’s session ‘Hot topics in international cartel enforcement’, Snyder was addressing the question of whether to cooperate in cartel investigations. “Cooperation benefits but covering up never does,” he said, adding that obstruction of an investigation in the US carries a more severe punishment than cartel infringers.

The decision can also undermine later efforts to plead for leniency. Melanie Aitken and Andrew Ward, private practice lawyers from Bennett Jones in Canada and Cuatrecasas Gonçalves Pereira in Spain, voiced a number of concerns, in particular relating to leniency applications.

From the regulators’ side, drawing the lines between parallel activities (where prices coincide without amounting to market fixing) and a conspiracy, continues to be a fine art. According to Ward, this left companies with little option but to root out cartel activity.

The legal education dilemma

The legal profession is suffering from huge discrepancies between what is taught and what is practiced, according to professor David Wilkins of Harvard Law School.

Speaking at yesterday’s PPID keynote, Wilkins outlined how legal education is changing in the US and globally.

“We are having a crisis in legal education,” he said. “There is a debate over what we are supposed to be doing in law schools. Do we need to fundamentally reshape it or tinker round the edges?”

The employment market has worsened for lawyers. Last year barely half of US law school graduates found jobs that required JDs within nine months of graduation.

In Japan and Korea post graduation law schools are growing. In India, China and Brazil large numbers of underperforming schools are under threat of closure. There has also been a growth in elite private law schools like Jindal Global Law School, Peking School of Transnational Law and Bucerius Law School.

The disconnect

The focus on new courses and law schools is understandable, Wilkins, who teaches several courses on lawyers, argues that this disconnect used to be manageable when firms would spend several years training graduates in a guild-like model.

In Japan and Korea post graduate law schools are growing. In India, China and Brazil large numbers of underperforming schools are under threat of closure. There has also been a growth in elite private law schools like Jindal Global Law School, Peking School of Transnational Law and Bucerius Law School.

The decision can also undermine later efforts to plead for leniency.

“The mere fact that you discuss with your competitor future prices and strategy is enough for us to build a case,” said Dekeyser. According to Ward, this left companies with little option but to simply not communicate with competitors.
QUESTION
What have you enjoyed most about Vienna?

V J Mathew
V J Mathew & Co
India

We went to the Maritime and Transport Committee excursion to the national park this week. We saw the vineyard, tasted seven wines and had a delicious lunch. We really saw the beauty of Vienna.

Clara Ibirogba
Lagos State Ministry of Justice
Nigeria

My impression is of a very old city, so you can really feel the history. I saw the cathedral at Stephansplatz yesterday which was amazing. I also think the transport system's really clear and have enjoyed taking the trains.

Juan Felipe Bustamante
Bustamante & Bustamante
Ecuador

The Spanish Riding School was fantastic. We went last night and saw the horses. It is the only institution in the world which has practiced for nearly 450 years. It was an incredible spectacle.

Elmer Muna
Tark Grunte Sutkiene
Lithuania

I haven’t had much time in the city sadly. But I did manage to go to the Albertina Museum for the Edvard Munch exhibition which was fantastic. I saw his work, The Scream, obviously. The city in general is so relaxed. I admire its café culture and late closing times.

Ade Adeyemo
Law Reform Commission
Nigeria

I love the fact that there is so much art and music. I’m definitely going to try to get to the house that Mozart lived when he was a child later this week. I also like the weather. Coming from such a hot climate, this is genuinely refreshing.

Hasmik Baroian
Bombardier
Austria

As a resident of Vienna, I can speak highly of the international scope of the city. It contains the headquarters of major international bodies and is a fantastic place to do business. I adore the city centre, Stephansplatz too.

Ilya Komarevski
Tsetkova Bebov Komarevski
Bulgaria

My experience of Vienna relates to the social programme. I have been to several excellent receptions held by law firms. These include trips to the Albertina, the Imperial Palace and cultural tours too. It’s a fantastic city.

Rodrigo Fernández de Nestosa
Zacarias & Fernández
Paraguay

So far the architecture has impressed me the most. All the venues for the receptions have been incredible. The natural history museum in particular was fantastic. And today I had breakfast at the opera, which was really special.

Why a hummingbird?
The hummingbird has the fastest heartbeat in the world. It is courageous, highly specialised and extremely resourceful. It is distinguished by technical perfection and matchless proficiency. It is a model of success, because it does what it can do best. In a heartbeat.
The Dubai International Arbitration Centre (DIAC) is the largest arbitration centre in the Middle East. It is a non-profit institution that provides efficient and impartial administration of commercial disputes. The DIAC Arbitration Rules, adopted in 2007, are in line with international standards. The DIAC is comprised of the Board of Trustees, the Executive Committee and the Secretariat.

The cases registered with the DIAC relate to different sectors such as real estate, engineering and construction, general commercial, media, insurance and oil and gas with large amounts in dispute, some exceeding one billion dirhams.

The DIAC has developed a pool of experienced arbitrators from different cultural and legal backgrounds located in the UAE and abroad.

The DIAC has recently established DIAC 40, a forum for young arbitration practitioners, and organizes a wide range of specialized training courses and events.