Rape laws are ‘schizophrenic’

E
duality Now’s research into rape laws has revealed a huge inequality between countries’ abilities to serve justice to victims of rape.

The organisation presented the report’s initial findings at yesterday’s session: ‘IBA and Equality Now: rape laws crowdsourcing project’.

The report, whose findings are now being verified, shows how legislation and social attitudes towards rape vary widely, albeit with some common themes. It also shows how an endless list of circumstances neutralises unambiguous and well-meaning rape laws.

Among the obstacles, which are found in mature legal systems such as the US and UK as well as less developed systems, are poor police investigations, perverse judicial procedures, widely held attitudes and social stigma. These issues can often destroy cases in their early stages.

“There is schizophrenia in the law,” said Jacqui Hunt, director of Equality Now. Hunt cited examples where statutory rape was treated as criminal violence but parallel laws existed where a perpetrator could be exonerated if he marries his victim. “Another key issue is the talk of sexual violence framed in terms of morality rather than criminal violence,” she said.

Hunt gave examples of cases where morality frames the debate, creating a so-called trickle-down effect to other parts of the law. These included where rape is criminal but because it affects the victim’s honour or chastity (the way he/she is perceived), or where some laws stipulate that a victim must resist, implying he or she could and should have stopped the crime. Another instance looks at whether the loss of virginity makes the case worse. “How does that work?” asked Hunt.

Global testimonies

The session presented stories and testimonies from around the world, in particular from the UK, US, Nigeria and Sri Lanka.

Meg Strickler, from US firm Conaway & Strickler, argued that legal systems should “take the shame away from the victim and protect the victim”. She criticised the slow mechanisms in the US for collecting DNA evidence. Gillian Rivers from Penningtons Manches in London argued that there was much still to do in England and Wales, pointing to police failures in appropriately handling victims and social attitudes heavily stigmatising victims in the press.

Olufunmi Oluyede, from TRLPLAW in Nigeria, attacked Nigerian law for requiring the corroboration of evidence in rape cases. “The corroboration issue is completely out of place,” said Oluyede, pointing out that these crimes were not usually committed in public and a lack of witness evidence often threw cases out immediately.

Ruwani Dantanarayana, from John Wilson Partners in Sri Lanka, highlighted that 2,008 rape and incest cases were registered in 2014 by police. “Only one was convicted and 1,742 are pending”, said Dantanarayana, who also examined laws that exempt the Muslim community from statutory rape in marriage.

Train judges in financial disputes

A lack of specialised finance courts and financially literate judges could have dire systemic consequences, according to professor Jeffrey Golden, governor at the London School of Economics and Political Science.

Golden, who was speaking at ‘Derivatives: today and tomorrow’ yesterday morning, argued for more training of judges and arbitrators and outlined the risks of the continued failure to act.

Citing the growing complexity of derivatives contracts and the International Swaps and Derivatives Association (ISDA) Master Agreements following the financial crisis, Golden said: “When a judge misinterprets one of the terms in one of these agreements, that mistake goes around the globe and affects potentially billions of dollars of trading.”

The lack of regular specialised financial courts was puzzling, he said. “In many jurisdictions we have juvenile crime, intellectual property and tax courts. What about a finance court? Are these other areas more global, systemically important than finance?”

Some progress has been made. Golden outlined the work of the Panel of Recognized International Market Experts in Finance...
Merger control authorities must lead by example

Established merger control enforcement authorities must lead by example and keep investigations relevant. That was the message yesterday morning as competition lawyers from across the globe came together to celebrate the 10th anniversary of the International Competition Net-

work (ICN). While analysing the effectiveness of the best practices it established a decade ago, they also compared merger control standards and regimes in their own re-

spective jurisdictions. According to speaker William Kovacic, professor of law and policy at George Washington University Law School and ex-chair-

man of the US Federal Trade Com-

mission (FTC) its main challenge at the moment is establishing a recur-

ring review process. The problem with that, he said, is that ICN par-

ticipation is voluntary. Creating a country’s regime is a disincentive.

Competition law has come a long way in the recent past. In 1978 there were fewer than 10 jurisdic-

tions with a regime; there are now nearly 120, most of which are mandatory.

A mammoth task

In the initial stages of establishing a competition committee, regulators must be aware of the mammoth task they are undertaking. “Always start with higher thresholds, and re-

visit them after five years,” said Ko-

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As testament to its success, the ICN’s annual meeting is the single largest gathering of competition lawyers. But as an international or-

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Public opinion could be preventing Europe from maintaining its commitment to human rights. As millions flee conflict in Syria, the continent’s citizens are having their compassion tested considerably. Are the member states of the European Council doing enough, or are the rights of society being overruled by those of the individual?

This was one of a number of questions that arose at yesterday’s ‘Human rights in Europe’ session, hosted by Baroness Helena Kennedy of the IBA’s Human Rights Institute (IBAHRI). Increasing calls for tighter immigration and harder rules on terrorism across the continent are influencing government policy, due in part to the increasing impact of focus groups and pollsters on political parties.

According to Kennedy, many European citizens are claiming that their own freedom to exist is being undermined by the increasing numbers of immigrants arriving in their hometowns. “Increasingly, parties are jumping on the bandwagon to impose some of these fundamental rights.” Kennedy asked: “How do we counter the arguments that many members will make; that this is a reasonable response to that which is unreasonable?”

An integral part of the Council of Europe since its inception in 1949, the European Convention on Human Rights has long been embedded in European law. Panel member Hans Corell, a former legal counsel to the UN, believes that the current crisis stems from the political response to September 11. The problem arose, he said, “when extraordinary measures were taken.” A slippery slope he claims, that has resulted in countless violations of established human rights law. “A development that simply has to be countered,” he added.

Public mood

According to Christopher Pinter, head of the UN Refugee Agency in Austria (UNHCR), the key question is whether politicians are actually thinking what the local population is thinking. Pinter highlighted an example of recent local elections in Austria, and the corresponding success of the Freedom Party of Austria, a right wing organisation that opposes Austria’s current immigration policy.

Analysts agreed that the party had been boosted by public opinion that too many refugees are being based in Austria. It enjoyed its biggest success in areas where no refugees at all were accommodated. “As soon as the local population is in direct contact with a foreigner; they don’t know if the person is a migrant, an asylum seeker, a rejected asylum seeker, a recognised refugee, or even an Austrian who looks different,” he said, adding that “they don’t distinguish, and they are afraid.”

According to Pinter, the solution is to increase awareness of the obligation to protect the sacrosanct human rights that we have had in Europe for several decades. “How do we deal with the current situations, when politicians are afraid that they will lose elections?”

To further emphasise the point, Pinter turned to statistics on the European response to the refugee crisis. Much attention is given to the current situation in Greece, where, as of last weekend the number of refugees entering via sea reached 400,000. While clearly a significant number, Lebanon alone has received 1.08 million refugees to date. This amounts to around 25% of its population. Europe so far has taken in 0.1% of its population.

The human rights issues that arise from this, said Pinter, are compounded by the measures that have been implemented by several European nations to prevent the influx of refugees. Fences have been built, freedom of movement has been restricted, asylum durations have been capped, and numbers have been limited. The message from much of Europe, he said, appears to be: ‘Don’t come to us, you are not welcome here, we don’t want to look after you.’

Is public opinion blocking human rights?

Key takeaways

● Europe must remember its long cherished commitment to human rights, according to a panelist at yesterday’s session ‘Human rights in Europe’;
● The rights of the individual should not be put above that of the public at large. The general public should be educated with neutral information;
● Member states of Europe are increasingly retreating back to national sovereignty; it is no longer about making human rights for all.

Hans Corell, Baroness Helena Kennedy and Christopher Pinter
The value of classic cars has increased at a steadier rate than any other alternative asset over the past 10 years. For investors, the evidence suggests that they have been a cash-cow for some time. But should buyers uphold these personal passion projects, or delve into the unchartered territories of investment fund asset classes?

In yesterday’s session, ‘Classic cars as a new asset class’, a panel of experts was undecided on the answer to this question. Philip Kantor, of Bonhams International Auctioneers and Valuers, outlined the impressive levels of inflation seen on some models that has contributed to the markets overall steady growth.

As an example, Kantor gave the 1962 Ferrari 250 GTO. Known as a ‘widow maker’ for killing its first owner, it initially sold for around $18,000 (adjusted price). The Ferrari eventually sold in 2014 for $34.5 million, to this day a world record in the auction market. Another example is that of a rare McLaren F1, sold once in 2003 for $731,000, and then again earlier this year for a staggering $13.75 million.

“The top stuff always commands top prices, even when the market is flat,” said Kantor.

With the right investment, the market is clearly lucrative. Private banks are telling their customers to invest, but as panelist Dirk Kolvenbach of Heuking Kühn Lüer Wojtek suggested, there is a significant risk. “By yourself, you can buy, sell, make a profit. But if you invest in a fund, it can go wrong.” He goes on to suggest factors like human error, technical faults and problems with evaluation, that make classic cars far too much of a risk to be an asset class in their own right. Kolvenbach’s final thought: “If the fund goes wrong, it’s not like a wine fund, you can’t drink it.”

Law firms should encourage and enable partners to plan the latter years of their careers by having open discussions and clearly defined pathways. That was the message that emerged from yesterday’s afternoon session, ‘Trends in partner’s careers’.

A panel including several former European law firm partners shared their varying experiences of retiring from international firms, both forced and voluntary, and all were for actively planning for the future. Former Eversheds chairman, John Heaps, now a non-executive director at Yorkshire Building Society, left the firm at 60, the age partners may first retire. “I was fully aware I was going to leave and I began thinking about because I had an exact date in mind. I was grateful I knew when I was going to leave; I embraced the time I had left at the firm and planned for my next step.”

Not every firm defines a partner’s career options as clearly Eversheds. The experience of another panelist, Michael Lappe, who spent more than 20 years at Linklaters, leaving as senior partner, highlighted how detrimental contractual ambiguities can be. Lappe resigned from the firm on his fifty-first birthday, a year after he had unsuccessfully asked Linklaters to amend his, and all partners’ contracts, to include parameters for retirement.

“I think that in order to make partners aware of what the deal looks like today, less romantic and with more of a contracting aspect to it, it would be useful to formally implement into the articles of the firm when you will retire,” said Lappe.

“When you join the partnership you need to know it will end” – Michael Lappe
Corruption’s global problem

There are few better times to celebrate the fundamental principles of the rule of law than the 800th anniversary of the Magna Carta.

Corruption is often viewed as the biggest obstacle standing in the way of peace, stability and human rights. Reports of corruption can be detrimental to an individual or organisation’s reputation, besmirching its credibility for years to come. But when that corruption has spread so far as to infect even the judicial system, then the fundamental role of that system – to be fair to all – is compromised.

A judge who has taken a bribe or has in any way obstructed the course to justice, for any party, cannot be considered independent or impartial. The problem is worsened when the manipulation comes from a higher power, such as the government. This creates an environment which fosters further corruption. Objectivity and neutrality, the two most central principles to the rule of law itself, no longer exist and fundamental human rights are, by definition, violated.

Today’s IBA showcase on combating judicial corruption will come together to celebrate the importance of independent justice, and consider how to protect it.

Joining IBA President and partner at Debevoise & Plimpton David W Rivkin to moderate the session will be Homer Moyer Jr., partner at Miller & Chevalier Chartered and co-chair of the IBA’s Rule of Law Forum and Robert Wyld, partner at Johnson Winter & Slattery and co-chair of the Anti-Corruption Committee. Speakers will discuss the root causes of corruption and best practices for combating it. They will also look at anti-judicial corruption regimes in various countries, and consider what steps the IBA itself can take.

“The IBA has a particular responsibility to combat judicial corruption – it can be effective in ways that others cannot,” Rivkin tells IBA Daily News. “It has done a lot over the years in the wider fight, but we have not focussed on the government side before, and that’s especially important.” With 55,000 individual members and 195 bar associations and law societies around the world, the IBA has a unique grasp on the global legal community.

The roundtable session is taking place to highlight and celebrate the IBA’s Judicial Integrity Initiative, which was launched by Rivkin in February as one of the key priorities of his two-year tenure. This year it has been working with the OECD, the Basel Institute of Governance and various other anti-corruption committees.

In London in February and Singapore in March, the IBA organised a series of high-level discussions with prosecutors, civil society organisations, leading lawyers and business executives. Representatives from Australia, Hong Kong, India, Indonesia, Malaysia and South Korea have been in attendance at these meetings, and today’s session will reflect the true globalisation of the discussion so far.

The legal ramifications
Following these meetings, the IBA has been compiling a survey to circulate among its members. The idea is to raise awareness of the legal ramifications of judicial corruption and to find out members’ own personal experiences of how corruption in the judicial system arises, what forms it can take, and how it is dealt with in different jurisdictions.

Further in-country dialogues with similarly high-ranking officials are also being considered next year. In 2016, the IBA will compile the results of the survey and present a series of best practices and recommendations to further promote integrity among its members.

“I have been very pleased with the progress we have made so far. No one has done this kind of study before,” says Wyld. He hopes for a lively, interactive discussion in a roundtable format, much like those that took place earlier this year.

The session will feature an internationally diverse range of speakers, all offering their own viewpoints and experiences of judicial corruption regimes. Representatives from OECD, United Nations Office on Drugs and Crime (UNODC) and the University of Basel’s Faculty of Law, for example, will be addressing judges – at both high and lower court levels – on how they think corruption operates in their judicial system, how they respond to it and the extent to which it is managed.

“Today’s IBA showcase on combating judicial corruption is set to be an insightful and lively discussion,” says Wyld. “I’m most interested to hear about the perceptions of individual speakers – particularly judges – as to how they think corruption operates in their judicial system, how they respond to it and the extent to which it is managed.”

The IBA’s role is important in demonstrating the IBA’s ongoing commitment to its members which promotes the IBA’s Judicial Integrity Initiative, Rivkin says an essential to the rule of law. “I am very much looking forward to today’s showcase programme, because judicial integrity is so essential to the rule of law,” says Moyer Jr. “If corruption compromises judges, who are among the most important protectors of the rule of law, rule of law throughout society is put at risk.”
The right to be forgotten

Today’s session will consider the metamorphosing role of online platforms as they become the new ultimate gatekeepers of our personal information.

Over the past 20 years, the digital world has grown exponentially to establish itself as a central feature of modern life. The ushering in of the digital age has changed the way we do almost everything, and forced the general pace of life to increase.

While the benefits are clear and enjoyed by many, the constant and ever-growing use of online platforms has its own problems. Its rapid growth and the very nature of technology has always made it difficult for the law to keep up.

When it comes to the internet, what are the rules, and who makes them? What search engines doing with the information made available online? And is this the same as what should they be doing? How can an individual’s right to privacy be balanced with the protection of freedom of speech, another fundamental human right?

Today’s session will see speakers from a variety of backgrounds – including many of the online platforms themselves, as well as the entities that regulate them – considering the above questions.

The ruling

In May 2014 the European Court of Justice (ECJ) made the revolutionary ruling to give people the right to be forgotten’ online. Such was the result of a case brought to Google by a Spanish citizen, who wished for a newspaper article about his insolvency to cease appearing on the search engine.

The ECJ stated that internet search engines would now be required to remove information considered “inaccurate, inadequate, irrelevant or excessive”, or face a fine. In May, a full year since the ruling, Google had processed 253,617 requests to remove 920,258 links. It had approved around 40% of such requests. The ruling poses issues, with some claiming it is outright censorship that decreases the quality of information available on the internet by Rewriting history.

Controversy continues to surround the highly sensitive issue. As online platforms grow, so do the public’s concerns over how their information is handled. The rise of high-profile cyber-leaks and hacking cases further intensifies the debate.

The roundtable discussion is expected to give people the ‘right to be forgotten’ online. Such was the result of a case brought to Google by a Spanish citizen, who wished for a newspaper article about his insolvency to cease appearing on the search engine.

Speakers will be asked further questions such as what right an individual has to privacy against the state? To what extent can the state gain access to material held in the cloud? What steps should Microsoft or Google take to alert consumers that the state is trying to access their information?

Key takeaways

- Today’s session will approach the subject of how to protect an individual’s privacy rights in the digital age.
- Speakers from Google and Microsoft and the entities that regulate them will speak of their own experiences and consider the wisdom of the ‘right to be forgotten’ ruling made by the ECJ in 2014.
- The discussion will also consider the role of an online platform when approached by the state to provide information on a user.

The discussion will also consider the role of an online platform when approached by the state to provide information on a user.

Experts on the subject will share their own experiences of how they deal not only with states and totalitarian regimes around the world, but also on their approach to gathering data on individuals. Speakers will also consider the concept of the right to be forgotten and its effectiveness.

Speakers include A&E Television Networks’ Darci Bailey, Steve Crown of Microsoft, Google’s Yoram Elkaïm, Steve Wood of the UK’s Information Commissioner’s Office, Bertrand de la Chapelle of the Internet & Jurisdiction project, Sylvia Khachaturian of Bridgewater Associates and Olswang London’s Daniel Tench.

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Don’t miss former Prime Minister of Spain José María Aznar’s candid conversation with award-winning CNN journalist Todd Benjamin at lunchtime today.
Online streaming platforms have posed a new threat to traditional broadcasters. Where does the law come into it?

Online streaming platforms have had a profound impact on the way we consume entertainment. Just a few years ago, standard practice was to watch whatever was on, wait a week between episodes of TV programmes – no matter how gripping – and grin and bear it through the advertisements.

But a power shift has occurred. Viewers take control of their own experience now, deciding what to watch, when to watch it, and what platform to watch it on. Many of us binge-watch seasons of television programmes in their entirety, fast-forwarding through the advertisements.

And as is so often the case with technological progress, the law has struggled to keep up. Regulators and policy makers are aware they need to work things out, but in some cases faster than businesses and the law can keep up with, "says Kees. "We’re seeing a broad conversion from more traditional business models to content being everywhere – what geographic licensing laws can govern it?"

Even within the online streaming world, further problems present themselves. Net neutrality, intellectual property rights and geoblocking all raise issues for debate.

Difficulties arise when certain streaming platforms receive what is seen as preferential treatment over others. Net neutrality is the internet’s guiding principle; it keeps it free and open, protects and enables free speech and ensures equal opportunities for all who use it. The term ‘net neutrality’ was first coined by Columbia University media law professor Tim Wu in 2003 and has become the subject of a widespread debate.

While in the past streaming platforms were limited by slow download speeds and caps on data, technology advances at an exponential rate and so has the appeal grown. While some stakeholders have campaigned to abandon the principle, others have fought back. Barack Obama first made a commitment to a free and open internet in October 2007. Then, in February 2015, the Federal Communications Commission (FCC) voted in favour of a strong net neutrality rule after receiving overwhelming support from over four million people.

The FCC’s rules pertain that blocking access to legal content, throttling (impairing the quality of the content), and paid prioritisation are all banned under the Communications Act and the Telecommunications Act.

Giving one service priority over another in return for a fee violates the internet’s fundamental principles, but for the service providers with scope to benefit financially from such activity, it could provide the edge they need over their competitors.
What to eat in Vienna

A flurry of new luxury hotels has opened in Vienna in the past few years. Restaurants and bars have followed suit, upping the city’s culinary game for both residents’ and tourists’ benefit.

Vienna boasts 94 recommended restaurants in the Michelin Guide for main cities of Europe. Here’s a rundown of some of the best.

Steirereck, given two stars by the aforementioned Michelin reviewers and considered one of the top restaurants in the world by many others, would be a good – and luxurious – starting point. Chef Heinz Reitauer reinterprets traditional Austrian cuisine in a beautiful remodelled 20th-century dairy building in the middle of the Stadtpark on the banks of the River Wein.

Its main courses are highly recommended, but nearly every restaurant review mentions its extraordinary cheese selection; diners have over 120 options. For a slightly more casual option, sister restaurant Meierei is next door; it’s known for its brunch menu, cheese selection and its goulash.

A new and equally photogenic restaurant is the Clementine im Glashaus, which opened in 2014 in the Palais Coburg. Also given two stars by Michelin, it is located in the palace’s former greenhouse – a glass house, as its name suggests. The restaurant is open for all three meals and luxurious – starting point.

If you aren’t heading to a conference event in the evenings, there are a number of bars from which it’s possible to take in the city’s beautiful architecture. The Ritz Carlton’s L-shaped rooftop bar, Atmosphere, boasts views of St. Stephen’s Cathedral, Karlskirche and the hills of Ottakring and Kahlenberg. Another popular option for a view of St. Stephen’s Cathedral is Hotel Lame’s Café Bar Bloom, on the ninth floor of the hotel; it offers stunning views of the cathedral’s ornate geometric roof patterns. The Sofitel’s Le Loft is not an outdoor bar, but the venue, located on the top floor, offers floor-to-ceiling views of the city and has a mural ceiling.

Vienna is known for its coffeehouses, which will undoubtedly be helpful after long and late networking events throughout the annual conference; most also serve food and drinks, and are open all day. Some Viennese coffeehouses were frequented by famous writers and musicians, and those still exist today.

For example Café Central, in the Innere Stadt district, opened in 1876, and retains its notable architecture, including vaulted ceilings and decorated marble pillars. It was frequented by Leon Trotsky and architect Adolf Loos; Trotsky and Vladimir Lenin were also regulars in the 1910s. Sigmund Freud, another famous Viennese resident, favoured Café Spiri, which is in the Marriott sixth district of Vienna and is on the country’s register of historic places. And artist Gustav Klimt, most famous for his painting The Kiss – on view in the city’s Belvedere Museum – frequented Café Museum, originally designed by Loos.

Another famous coffeehouse, the Café Landtmann, was also frequented by Viennese luminaries. But it is best-known for its location on the ground floor of the Palais Lieben-Auspitz, near the Federal Chancellery, the University of Vienna and other landmarks. It remains popular with politicians, officials and journalists.

There is also the Palmehaus, located near the Albertina Palais Museum, another former greenhouse that offers gorgeous views of the city. The Jugendstil palmhouse was frequented by famous writers and musicians, and those still exist today.

The Clementine im Glashaus in the Palais Coburg - and afternoon tea – but it’s ideal for breakfast on clear days due to the picturesque views around it.

The palace is also home to the Silvio Nickol Gourmet Restaurant, which was also awarded two Michelin stars and is known for both its excellent cuisine but also its wine list, which boasts over 5,500 wines.

For those interested in enjoying a performance, the Albertina Passage is a dinner club at the Vienna State opera. Located in a former pedestrian underpass, live jazz music is played daily, although its music programme is taken over by DJs later in the evening.

A cheaper option is the Bitzinger Würstelstand, a bratwurst takeaway kiosk located under the Albertina Palais Museum known for its take on the Austrian classic, as well as its distinctive design.

A new and equally photogenic restaurant is the Clementine im Glashaus, which opened in 2014 in the Palais Coburg. Also given two stars by Michelin, it is located in the palace’s former greenhouse – a glass house, as its name suggests. The restaurant is open for all three meals

“Diners at the Steirereck have over 120 cheese options”

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Can the Security Council live up to its mandate?

In 1945, following a war that destroyed huge swathes of Europe and Asia, world leaders came together to form an organisation committed to global cooperation and engagement. The five leading countries of the time took positions as permanent members of one pillar of that organisation, dedicated to ensuring peace was maintained.

Though the international landscape has experienced significant shifts since then, the mandate of the United Nations Security Council to maintain international peace remains the same.

But with a global refugee crisis mounting and violent conflicts continuing to overwhelm parts of the Middle East, Africa and Europe the ability of the group to meet this directive has become unclear. Seventy years after its creation, the Security Council and particularly its five permanent (P5) members of the US, UK, China, Russia and France – are falling under increasing scrutiny not just for failing to prevent conflict, but inciting some themselves.

If it continues its trend of inaction both the Security Council’s relevance and the safety of the international system could fall apart.

“When the Berlin Wall came down we hoped that the situation in Europe would change and there were positive developments in the beginning,” says Hans Corell, former legal counsel of the United Nations. “But now things have gone wrong. The situation in Ukraine is particularly serious.”

Corell will chair the IBA Human Rights Institute’s (IBAHRI) showcase “The UN Security Council and human rights’ today, which will examine whether the Security Council is living up to its mandate and how this potential failure is leading to human rights tragedies. Corell will be joined by Kofi Annan of the Kofi Annan Foundation, who will offer unparalleled insights from his time at the UN and beyond.

“My hope is that the panel will highlight the duties of the Security Council and discuss to what extent the Council performs as we have the right to expect,” Corell tells the IBA Daily News.

Failing by example
Violations of the UN’s own charter by permanent members of the Security Council have undermined the organisation’s ability to act and deter warlords and dictators.

The 2003 US-led invasion into Iraq, supported by the UK and Russia’s attack on Georgia in 2008 and annexation of Crimea in 2014 serve as examples of the P5’s failures to obey the international laws they were tasked with protecting.

A lack of democracy and protection of the rule of law means that even in countries not experiencing outright war, citizens may still fear violence and a constant violation of their human rights.

The panel plans to look into the impact of both big conflicts and smaller instances where earlier intervention or assistance could have prevented human tragedy.

The plight of the refugees and migrants pouring into Europe is likely to be top of the list for examples used by the panel. The crisis is the largest Europe has experienced since World War II.

Corell and others have proposed limiting the use of the veto and requiring P5 members to only use it in the event of security risks or explain publicly the reason for using it.

The most important change though is not to the structure or to the mandate of the Security Council. It is the behaviour of all the members, but most importantly the P5 that needs to be addressed if real change and a focus on sustained international peace are to come about.

Without this change members of the international community who have less prominence in the UN may look for an alternative body to uphold the standards it was first created to maintain. Corell cautioned that for the P5 this could mean a new system where they have less power and legal mandate to act.
Guess who played rugby for Combined English Universities in 1988?

OUR IBA TEAM FROM THE TOP. FARAJ AHNISH, MANAGING PARTNER, SADIQ JAFAR, MANAGING PARTNER DUBAI, RICHARD BRIGGS, EXECUTIVE PARTNER DUBAI, MICHAEL LUNJEVICH, PARTNER, SAMEER HUDA, PARTNER, JAMES FARN, PARTNER, WALID AZZAM, PARTNER, DINA MAHDI, ASSOCIATE

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An app to fight atrocities

Key takeaways
- The IBA has released its eyeWitness to atrocities app which will help individuals capture video and images of war crimes.
- The data is being captured and stored in such a way to preserve the authenticity of the footage so it can be used in court proceedings.
- The app also includes features that will protect the data while it is on the phone by storing the images in a separate gallery and being easy for users to delete.

I n 2010, IBA executive director Mark Ellis was approached by the UK broadcaster, Channel 4 to verify what news producers there believed to be videos of war crimes committed at the end of the Sri Lankan civil war.

The conclusion to the 26-year long conflict had become particularly violent. There were reports of war crimes committed by the government against the civilians in rebel-controlled areas as they began escaping the South Asian island. The accusations persisted even after the conflict officially ended, with claims that the government confined nearly 250,000 civilians in camps and executed surrendering rebels.

After watching the footage, Ellis was left in no doubt that the video depicted war crimes. But he also recognised that the problems faced by the journalists in authenticating the video would pose the same challenges if lawyers ever wanted to use the video to hold these criminals responsible.

Over the course of the coming days and weeks Ellis began to search for videos of other atrocities on news outlets and social media. He found that even those that gained notoriety and brought attention to terrible situations faded from circulation and public consciousness, mainly because of an inability to verify their authenticity. “I wanted to create something that wouldn’t just shine a light on atrocities, but could really bring justice,” says Ellis.

Authentication

Determining when, where and by whom a video was shot are the most important factors for journalists trying to authenticate a video or photo they have not taken themselves. For lawyers the bar is set slightly higher because of the need to establish chain of custody, to prove the video has not been tampered with.

“This was the main challenge facing the creators of the eyeWitness to atrocities app. They began by outlining the key facts a court needs to accept a video or photo as substantial evidence.

They acted under the assumption that the person who shot the video file, which would convey the date and location, along with information about whether the file had been edited or tampered with.

“This creates a mechanism where videos can be filmed, sent and used as evidence,” explains Ellis. “We don’t even need to know who is taking the video, embedded is all the information needed to use the video as evidence.”

This embedded data includes the GPS signal, locations of Wi-Fi towers, the time and date as well as information on whether the file has been doctored or if attempts have been made to doctor it.

Once they have shot the video, users can choose to add information, such as who the people captured in the video are, what they are doing and if they are military personnel. This information is all optional and is not admissible in court, but it can help prosecutors down the line as they try to mount a case.

“The video is stored in a secure server, which the eyeWitness team calls a virtual evidence locker. A team of lawyers supported by the IBA will sort through the files to determine which ones the group should advocate for, which to send to authorities including war tribunals and which should be sent to news outlets for public broadcast. Even when IBA lawyers go through the videos they will be looking at copies. This ensures the files are never tampered with and the chain of custody is always clear.

While the videos themselves may be secure, the individuals being filmed could really bring justice,” says Ellis.

I wanted [to create] something that wouldn’t just shine a light on atrocities, but could really bring justice”
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QUESTION
What should the IBA’s priorities be in 2016?

Malene Stadil
Danske Bank
Denmark

Financial markets. There is too much on challenging the glass ceiling and human rights because they have little legal evolutions. But the world is getting smaller, there is conduct risk and a lot of deal risk that financial institutions have to adhere to.

Amr Eldib
Eldib Attorneys at Law
Egypt

The IBA is covering good aspects but I would be interested to see more emphasis on the profession itself and on the management of law firms. There should be education sessions to exchange experiences between top management in different firms, especially now as bigger firms are taking over smaller ones.

Fernando Bedoya
Wurth Bedoya CostaduRel Abogados
Bolivia

Increasing the value for law firms and individuals coming to the IBA. Previously, getting close attention to the IBA but in other firms in Bolivia you don’t see that much involvement. Bolivia is an interesting market and there is an opportunity for the IBA.

Ranjit Malhotra
Malhotra & Malhotra Associates
India

From the analytical and powerful debate we had on Sunday at the opening ceremony on migration issues, I think the time has now come for the IBA to plug in for a convention on migration and potentially refugee redistribution reorganisation. These are new generation issues.

Andre Godoy
Litter Mendelson
Colombia

Globalisation. The legal industry is in the middle of being globalised, with big firms starting to spread all over the world and small firms joining them. We need to figure out what the best way of managing this and how the industry is going to behave in the coming years.

Minna Melender
Finnish Bar Association
Finland

Young lawyers, because they are the future of the profession. We are, ob- getting older and the young lawyers will continue to practice and build interna- tional networks. We need to strengthen their idea of what it is to be a lawyer.

Ahmed Goniri Mustapha
Attorney General of Yobe State
Nigeria

As a person coming from a crisis area that has to deal with terrorism I think the IBA should focus on terror- ism and corruption. I am interested in the session with ICC prosecutor Fatou Bensouda; an excellent initiative that will benefit those of us coming from areas such as mine.

Rita Makarau
Judicial Services Commission
Zimbabwe

A few more sessions dedicated to judges’ forums. I know this is for legal practitioners but judges are also legal practitioners and it is important for the IBA to attract more of them. The general sessions are good but they could focus more specifically on judges.

Corruption penalties deterring LatAm investors

Increased regulation and harsher penalties for corruption are con- tributing to the general decline in foreign investment into Latin America. That was the message from members of the panel on ‘Cross-border deals between Latin America and European companies’ yesterday morning.

Foreign direct investment into the region as a whole fell by 16% in 2014 from the previous year. On the surface, the region’s economic dependence on commodities such as copper, gold and oil, the prices of which have been declining steeply, and a general economic slowdown in Latin American and China are to blame.

Delving deeper, there are social and cultural issues which are mak- ing investors hesitant. Some of these challenges are obvious and certainly not unique to those famil- iar with Latin America: corruption, political instability and cultural dif- fferences, to name a few. A more re- cent and less typical development which is making investors uneasy has been the increased focus on compliance and regulation, and the increased risk of being penalised.

Senior managing director of Control Risks and head of its Brazil branch, Geert Aalbers, said: “The reality in Latin America is not that there’s more corruption than there’s ever been. There has perhaps even been less.” However, he argued that when viewed from a risk perspective, there are two things that matter: the probability of getting caught and how much will hurt? Local authorities are taking a far more proactive approach to regulation and enforcement – Brazil and Colombia have both im-

plemented anti-corruption legisla- tion – and if there is any inertia or reluctance locally, US authorities will ensure an investigation takes place. “The probability of getting caught nowadays, with step-up en- forcement and Foreign Corrupt Practices Act (FCPA) enforcement, is higher than it’s ever been. The whole notion of impunity is start- ing to fade away. If we look at other types of enforcement across the region such as antitrust, the penalties are incredibly high even by Europe or US standards, and we are seeing anti-corruption legisla- tion move in that direction,” said Aalbers.

Miami-based DLA Piper corpora- tite partner, Francisco Cerezo, also highlighted the way FCPA regulation has encroached on invest- ment into the region. “Even the most ethical and honest play- ers who are abiding by their coun- try’s laws may fall foul of FCPA,” said Cerezo. He argued that the regulations may not be as dracon- ian as some believe but they can be significant and rigorous enough that, depending on the size, com- panies may need a dedicated com-pliance officer. “I’ve seen clients walk away,” he added.

Proceed with caution when in- vesting in the region was the over- riding message of the panel. In deals where a counterparty is sub- ject to FCPA, a Latin American seller, which may not by law be re- quired to be compliant with the regulation should not commit to meeting its guidelines. “When I’m on a sell-side of a transaction re- presenting a Latin American client and a big US company comes in asking for all sorts of FCPA reps, I would encourage them to agree a more reasonable representation. Say that you are not in violation of any anti-corruption laws in your country or that apply to the com- pany,” explained Cerezo.

“Even the most ethical and honest party may fall foul of FCPA”

Key takeaways
• FDI into Latin America fell by 16% in 2014, according to panelists at yesterday’s session on cross border deals between Latin American and European companies.
• The region as a whole re- mains high on the corruption index.
• Companies should not com- mit to meeting FCPA require- ments without properly understanding the risks.
Insolvency’s distant illusion

An internationally universal approach to insolvency proceedings is still a distant illusion, according to panelists at yesterday’s session ‘Preparing for the next crash: a UN insolvency Convention, EU amendments and national law reform’. After 55 years of work – the first attempt dates back to 1960 – it has not even been possible at an EU level, with member states having arrived at a state of so-called modified universality instead.

Modified universality refers to the idea of managing cross-border insolvencies in the interest of international comity. Its provisions allow member states to assess whether decisions made by overseas courts are consistent with their own findings at their own discretion.

Full universality has not been achieved within the EU because enforcement would require a treaty or convention – which requires all states to agree. When the 1995 Convention on Insolvency was proposed, the UK would not sign it, explained Ondrej Vondracek, legal and policy officer at the European Commission, so it was introduced as a regulation instead.

That regulation has been recast this year with a broadened scope, a new framework for group insolvency proceedings and interconnected insolvency registers, among other provisions. While this is undoubtedly a step forward, the Commission will continue to work towards the universalism principle, said Vondracek.

The need for universality only increases as business becomes more international. The insolvency of Lehman Brothers was held up as the ultimate example of why we must strive towards it: the firm filed 76 insolvency proceedings across 16 jurisdictions. “What had been an integrated enterprise became individual entities battling for assets, which took seven years to resolve,” said James Giddens, a partner at Hughes Hubbard and Reed who was appointed trustee of the Lehman estate, adding that a universal convention would have been far more economically efficient.
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.