Modern slavery is everyone’s problem

The term ‘modern slavery’ may be effective in attracting public attention, but it fails to represent the extent of the problem of forced labour. At yesterday morning’s session ‘Modern day slavery: corporate social responsibility and human rights’, panellists explained how the situation stretches far beyond the cartoonish image of people in chains that the term typically conjures.

“The lady who cleaned your hotel room this morning could be in a forced labour situation,” said Margaret Wachenfeld, director of research and legal affairs at the Institute for Human Rights and Business (IHRB).

“Types of exploitative situations are very fluid, and those doing it are very crafty at getting around the law.”

While modern slavery is generally more common in emerging markets, it is present in some form across the globe. For example, the Staff Wanted Initiative, a joint venture between the IHRB and Anti-Slavery International, seeks to improve recruitment and employment conditions for staff in the UK hospitality industry. And western consumers are often the end-users of the products manufactured in sweatshops: sophisticated companies from developed markets are among those fuelling the industry, said Juan Bonilla, of research and legal affairs at the Institute for Human Rights and Business (IHRB).

Representatives, who said that in São Paulo alone there are an estimated 12,000 to 14,000 sweatshops.

The São Paulo situation

Offering a different perspective was political scientists and human rights activist Carlos Bezerra Jr of the State of São Paulo House of Representatives, who said that in São Paulo alone there are an estimated 12,000 to 14,000 sweatshops.

Of 300,000 Bolivian immigrants living in Brazil, two thirds are thought to be in sub-standard working conditions or forced labour. While in the past this was more prevalent in rural areas, modern slavery in Brazil is now more concentrated in urban zones, particularly in the textiles and civil construction industries.

In 2008, the Brazilian government freed 4,364 modern day slaves in 133 separate cases. Bezerra Jr said that while the state and nation as a whole have made advances, including passing a progressive and innovative new law that introduced a public prosecution service, more needs to be done.

M&A due diligence is insufficient

Avoiding bad M&A and mitigating risk is a fine art. The red flags can vary hugely depending on where the deal is taking place and the type of transaction.

Corruption, antisocial forces, fraud and obscured ownership were some of the more common trials faced by practitioners and companies from developed markets are among those fuelling the industry, said Juan Bonilla, of research and legal affairs at the Institute for Human Rights and Business (IHRB).

In this sense prohibiting forced labour by law forces little change. The UK and Brazil are just two countries trying new ways to combat the exploitation of workers: UK companies must publish an annual slavery and human trafficking statement, to be signed off by the board of directors, on their website.

Bezerra Jr spoke of Brazil’s so-called dirty list which exposes all companies caught exploiting workers under abusive and coercive conditions. Between 2004 and 2014 the list included 300 companies. Unsurprisingly, it has undergone multiple constitutional challenges from companies since its implementation.
How eco tourism must change

Tourism companies must increase their efforts to involve indigenous communities when launching new developments. To do this they must cede control to the communities when negotiating projects, and be careful not to commodify their cultural output, according to panelists at yesterday morning’s session ‘The impact of tourism on local communities’.

Richard Sitorus, a linguist who works in the Bundjaryra Irra Wangga Language Centre in western Australia outlined the major problems faced by aboriginal communities when faced with tourists in their localities.

According to Keita Tokura, from Ander- son Mori & Tomotsuans in Tokyo, Japan has its own pitfalls. The lack of incentives to sellers against withholding information and the difficulty of redress for buyers if they could have known the issues at the time of signing are two such problems. Japan also has a zero tolerance policy if the subject or any person around the subject has any connections to the country’s mafia organisations.

The mitigation game

While stressing the importance of due diligence Francisco Mussnich, senior partner at Brazilian firm Barbosa Müssnich & Aragão warned that “due diligence is no guarantee that there is no fraud”. Along with the rest of the panel, Mussnich advocated thorough and detailed drafting of documents and careful analysis of corporate governance laws. Shielding buyers from price fluctuations in their targets are material adverse change (MAC) clauses, which are used widely in the US, explained George Schoen of Cravath Swaine & Moore. But they are more often used purely as negotiating chips.

Benjamin Burman of Darrois Villey Maillot Brochier in Paris turned the delegates’ attention to reverse takeovers and the vast fees incurred ($3 billion in cash in the case of AT&T & T-Mobile) and highlighted the deal risks of failing to obtain antitrust clearances.

Among the key cases discussed were Caterpillar’s acquisition of ERA Mining, in which Caterpillar would have lost $600 million on a $900 million acquisition due to false financial statements by ERA. It was only saved by a self-enforcing mechanism. In Switzerland, the multi-faceted litigation involving Saint-Gobain’s acquisition into Sika is also being carefully watched as unusual corporate governance structures are tested.

But while eco tourists are often well intentioned, they must be careful not to commodify the communities they are working with. As tourism spreads into indigenous communities there is an increased demand for their products such as paintings and carvings or even tours. This can lead to difficulties though, “Consumers become arbiters of what is authentic because they pay for experience,” said Sitorus. “It can be hurtful for local people to feel that their products are not authentic so Aboriginals will sometimes retreat, or even make up their heritage to feel authentic.”
Erratic approaches by European countries to renewable energy subsidies has had a divisive impact on the complexion and economics of the energy sector in the trading bloc, according to panellists in yesterday’s session, ‘Economic incentive regime of renewable energy projects’.

Decisions by countries across the EU to incentivise renewable energy development through feed-in tariffs and then, years later, retroactively cut the schemes, has had a dramatic impact on the energy market.

Feed-in tariffs, a state subsidy where the government guarantees a fixed-rate for the renewable energy a company produces over a certain period, were first introduced in Europe around 25 years ago, having been piloted by the US in 1978.

It was not until the beginning of the millennium, around the time countries such as Germany began offering a fixed feed-in for 20 years, that the industry really took off. Looking at the difference between EU’s wind energy capacity then and now is revealing. The bloc could produce 10GW in 2000; by the end of 2014 it was up to 130GW.

Investors were quick to catch-on to opportunities feed-in tariffs presented – mainly high, guaranteed returns – and with the strong cash-flows the sector grew accordingly. With the influx of cheaper, clean energy, some traditional power plants, such as coal-powered, have become financially un-viable. “The old system has collapsed,” according to the Ines Kastil, who manages the German wind park portfolio of Austria’s biggest utility, Verbund.

Ignoring innovation

Traditional businesses in the sector such as Verbund have suffered financially as the industry has grown more competitive. Kastil revealed that Verbund’s share price has dropped to around 30% of what it was in 2008. “Utilities were not active enough in renewables, we ignored the market for too long,” said Kastil.

Although the incentive model seemed like a sound strategy, the ramifications of over-capacity and falling energy prices had not been anticipated. “The problem was the system worked too well,” said Kastil. “There were so many windfarms the bubble of secure cash-flows burst. New players that came in – turbine manufacturers, project developers – got their piece of the cake. At the same time the energy prices have been falling,” explained Kastil. In Germany, wholesale electricity sells for a third of the price it did in 2008.

Unable to meet the prices they pledged to pay, governments have had no option but to amend the regimes, cutting subsidies and, in some countries, implementing taxes to balance costs. In Europe and the Nordics, only Germany, Sweden, Norway and Finland have not made significant changes to the existing feed-in tariff regimes. “We have seen retroactive active cuts to regimes and we have seen creative measures. Some countries have introduced building tax for renewable developments, for example,” said Kastil.

The changes have led investors in a number of countries to, including Bulgaria, Czech Republic and Spain, to challenge any revisions to laws and, in some cases, win damages. The long-term impact of cuts, however, is stalling renewable energy development. OECD countries in Europe added only 21GW of renewable capacity in 2014, down from more than 24GW in 2013 and the lowest amount since 2009.
Promoting access to justice

Access and the rule of law are principles to which all justice systems should be held to account, according to Lawrence McNamara, author of an IBA-commissioned report on the subject.

McNamara is from the Bingham Centre for the Rule of Law and is author of the report entitled International Access to Justice, which had its first oral presentation in yesterday’s session ‘The availability and effectiveness of legal aid for those accused of crimes/redress for victims of violence’.

In the words of its author, the report reveals the magnitude of disadvantage and highlights the need for localised solutions to improve access to justice.

The timing of the report, which had 50 participants (half of which had over 20 years of legal practice) across 26 countries, is apt, given the paring back of legal aid in the UK, similar debates elsewhere in Europe and issues raised by the refugee crisis.

“The report chimed with what I am seeing in court every day,” said Neelim Sultan from the Chambers of Lord Gifford QC in London and a practitioner to legal aid for 20 years. “The last 15 months has seen unprecedented changes and knock-on impacts of the severe curtailment of legal aid.”

Due to these changes in England and Wales, two thirds of family law cases in courts now have at least one side represented by a litigant-in-person. “It is driving judges to despair,” said Sultan, “I don’t think it’s an exaggeration to say that this is a crisis and there is a head of steam building.”

McNamara highlighted three key conclusions from the report. First, that the UN Sustainable Development Goals mean that legal aid is going to be incredibly important, and needs concrete measurements.

Second, that while access to justice and the rule of law are universal themes, there is a gulf between the barriers faced by those in developing communities and those faced in wealthy countries. “I don’t think we should kid ourselves that these are the same conversations, but there is common ground,” he said.

Third, that the current migration crisis throws access to justice into sharp relief in terms of transparency in decision making, rights to appeal, the risk of people becoming both the victim and accused and access to information, among other issues.

The report, he said, should provide “food for thought about applying innovative local solutions… and sheds light on the complexity of some of the issues,” said McNamara.

An offence on law

The session discussed situations in Nigeria, Belgium, Argentina, Poland and Tajikistan. In Nigeria the state-funded legal aid team has 240 lawyers serving a population of 160 million and the issue of access to justice is vastly magnified compared with that in Western Europe, for instance.

In Belgium, the legal aid bill has remained at €80 million for ten years, while in Argentina no equivalent legal aid system exists although lawyers are obliged to provide legal aid. A delegate explained that in Australia indigenous communities are severely disadvantaged due to language barriers, poverty and culture.

It was a point elaborated on by the Communications Officer for the Women Lawyers’ Interest Group Dominika Stepińska-Duch, who tackled the theme of access of justice to the poor and vulnerable, minority communities, people living far from cities, those exposed to strong religious authorities through the example of violence against women.

Dominika Stepińska-Duch argued that education is key, not just for vulnerable groups but also for young people and enforcers including police officers, who may be the first to receive reports of injustice.

The open question the report could help answer was what legal communities can do to promote access to justice. In this respect, Axel Filges, co-chair of the IBA Access to Justice and Legal Aid Committee, reacted to comments by British Justice Minister Michael Gove, who is considering mandatory pro-bono time for lawyers, as “an offence on law”.

Michael Gove
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As the world has become more connected the risk that activities on one side of the world could impact the position of a company on the other have become more acute.

Nowhere is this clearer for international business than when concerning bribery and corruption issues. The threat of a single employee making a corrupt decision, which puts the company in violation of laws in its home country or another where it operates is a daily concern for compliance officers. The best way to defend against such a threat is training schemes and internal whistleblower systems. But the landscape for this is changing. More and more countries are introducing legislation to address corruption and bribery, meanwhile new ways to evade these laws and commit corrupt acts are being thought up.

Despite the best efforts of some countries, rooting out this issue completely is difficult. “Corporate corruption is something that will continue to happen and people will find more creative ways of obtaining business,” says Peter Rees QC from 39 Essex Chambers in London. Rees is co-chair of the session ‘Corporate corruption and bribery’, which will examine the role of in-house and external counsel in educating and helping companies avoid the threat of corruption.

Among the topics that the panel plan to discuss are whether global anti-bribery programs have really worked and how the differences between anti-corruption legislation can affect a business. “Different regulations can create difficulties unless a company adopts the sensible approach of complying with the most stringent policies,” warns Rees.

Accepted business practices in some countries can be blatant violations of anti-corruption law elsewhere. In parts of West Africa it is not unheard of for intermediaries to be hired and paid a commission to broker a deal. Blind eyes are turned when part of that commission is used for bribes to close the deal.

The UK and US

Under both the UK Bribery Act and the US Foreign Corrupt Practices Act (FCPA) if these actions are committed by agent of a company with business in the UK or US the company is liable for those violations. In response, businesses are adopting clear chains of command and reporting structures that will help boards and CEOs be confident in the way deals are negotiated and paid for. But in some areas where bribery and corruption are a long-standing part of the culture, ensuring these practices are followed can be difficult. This is particularly true when the companies’ leadership is far away. Sometimes it can seem as though deals are impossible to secure without succumbing to corrupt acts.

But Rees stresses it is a matter of cultural acceptance, which can change as local businesses look to have a global presence where these sorts of practices aren’t tolerated and when international business open up that operate without accepting bribes or illicit favours.

It was not so long ago that a buying potential client tickets to a show or sporting event, or taking them out to dinners or drinks was acceptable in the US and UK. As anti-bribery laws became more enforced, companies took a greater interest in tracking how money was spent, what gifts may be given or accepted and how suspected acts of corruption are reported.

Up until 1999, Germany allowed corporations that paid corporate bribes to write these off as tax deductions. As those companies began to expand globally they became subject to new and harsher anti-bribery regimes. Despite the fact that these foreign bribes were acceptable in their home jurisdiction, businesses were forced to change their policies. Siemens famously fell prey to this after listing on the New York Stock Exchange. An investigation by the US Department of Justice revealed long-standing and ingrained ideas about accepting bribery and Siemens was eventually forced to pay $1.6 billion in fines. Following this example many companies, including Siemens undertook intense cultural changes to train employees throughout the company on avoiding bribery and reporting it where they see it. As these changes become the international standard fears of corruption should subside.

Attendees of this morning’s session should expect strong insight on how these changes are taking place and what type of advice and support companies need to reach that point.
Grounds for divorce

Jurisdiction is more crucial than ever when it comes to the complicated issue of international divorce. This was the underlying message of yesterday’s Destination divorces: where to go to call it quits?” session, presented by the Family Law Committee.

Growing numbers of multicultural marriages – and inevitably, divorces – has become increasingly important in today’s globalised world. The members of the panel, ranging from the Ukraine to the US, each outlined the intricacies of their own particular jurisdiction’s family law, and how they applied to international divorce. Each country offers very distinct methodologies, which in turn has significant implications on the proceeding’s outcome for both parties.

“In some countries you file for divorce and that’s it, in other countries, like Spain, it is much more complicated,” said co-chair Alberto Pérez Cedillo, of Alberto Pérez Cedillo Spanish Lawyers & Solicitors. He argued that the jurisdiction in which parties file for international divorce is paramount to its outcome; most countries cover important issues such as maintenance, asset division and child custody in entirely different ways.

**Spiritual home**

Panel member Tim Amos broached the subject of domicile in England and Wales, an issue of great importance in international divorce. “In England, domicile is your spiritual home, where you will end up dying.” British citizens have the right to argue about where they call home, he continued, “great news for lawyers, and great news for English citizens who have lived abroad for a long time”.

Other jurisdictions consider a citizen’s place of residence as their legal jurisdiction, according to international family lawyer and partner Roberta Ceschin of Ceschin & Restogni in Italy. She cited her home jurisdiction as an example, “in Italy, domicile is the place you actually live”.

To emphasise his point, Amos, a barrister based in London, turned to a recent trial he had worked on. His case involved a German couple, resident in England for several years, whose marriage had broken down. Both parties applied for divorce independently, the husband in Germany, the wife in the UK. EU regulation dictates that the first application takes precedence”.

**How to regulate epidemics**

Responding to epidemics is more crucial than ever. In a highly globalised world, in which two million people recently travelled to the Hajj in Saudi Arabia, where the Middle East respiratory syndrome (MERS) outbreak started in 2013, containing diseases is crucial. But there is a fine balance to be struck between over-reaction and failure to regulate. This is where the legal community can step in.

Coping with epidemics and outbreaks is far more than simply a medical challenge, as the current epidemics of Ebola and MERS have shown. Public health programmes, quarantining, travel restrictions, public education strategies, international volunteers, financing and incentives for the development of medicines and technology, fast-tracking medicine and vaccine approvals and collaboration between regulatory authorities and pharmaceutical companies have been some of the key weapons against and dealing with outbreaks of epidemic diseases may seem to be purely a medical issue, the need for adequate regulatory responses and enforcement is illustrated by the difficulties in

The first victim was a two-year-old in Guinea, who died in December 2014. Outbreaks in Nigeria and Senegal were officially declared over by the World Health Organisation (WHO) in October 2014. Notably, it took the WHO until August 2014 to declare a public health emergency, five months after the first official case.

MERS appeared in Saudi Arabia in 2013 and is from the same family as SARS (severe acute respiratory syndrome), which infected about 8,000 in 2003-04 and killed one in 10. Almost 1,300 people have been infected with MERS in Saudi Arabia and other countries and 458 people have died. Since 2013, cases in 25 other countries have been linked to travellers returning from the Arabian Peninsula and of these the South Korean outbreak, which started in May 2013, is the largest. South Korea responded by closing schools, keeping people in their homes and implementing aggressive quarantine measures.

The lessons

From these epidemics and other public health emergencies Jacob argues that concerns for public safety take precedence over individual rights and decisions. “But it can be too easy for this to be based in prejudice, bad or incorrect medicine, or panic,” he says. “And the danger of over-reaction must be balanced with the need for regulations of conduct linked to the spread of disease, such as failure to vaccinate or funerary practices.”

The panel consist of speakers from Nigeria, Spain, the US, South Korea and South Africa. They include Lema Abina, a managing associate from Sterling Partnership in Lagos; Jordi Faus, founder of pharmaceutical boutique firm Faus & Moliner in Barcelona; professor Mikyung Kim from Seoul National University College of Medicine in South Korea, whose research focuses on life science policy; Neil Kirby, a director of South African firm Werksmans Attorneys and chair of Campaigning for Cancer NGO; professor Robert Klitzman, director of the Masters of Bioethics Program at Columbia University; Tara Ramanathan, from the US Centers for Disease Control and Prevention in Atlanta; and Doil Son, a tech law partner in South Korea law firm Yulchon.

The discussion will focus on suitable policies, responses and some of the unexpected consequences of epidemics and explore examples such as the decision to quarantine people entering the US through Newark Liberty and Kennedy Airports for 21 days if they had direct contact with Ebola patients; India’s Epidemic Diseases Act of 1897; and how false claims about the unexpected consequences of
Today’s lunchtime interview with Anders Fogh Rasmussen, former Danish Prime Minister and secretary general of NATO, will tackle Russian tensions and the fight against Isis

The root of the debate is the battle between a more assertive and federalist minded European Parliament driving reform from the centre, and the alternative: a rise in nation states within a broader framework of cooperation and regulatory convergence.

“Russia has shown utter disregard for international law and a brutal determination to redraw borders by force,” Denmark and went on to act as Minister of Economic Affairs, prime minister of Denmark from 2001–04 and Secretary General of NATO from 2009–14, has argued that NATO is surrounded by an ‘arc of crises’ and that it must stand firm in the face of what he considers Russian bellicosity.

“Russia has shown utter disregard for international law and a brutal determination to redraw borders by force,” Rasmussen has said.

“The pattern is clear. From Moldova to Georgia, and now in Ukraine, Russia uses a mix of economic, political, propaganda and military pressure, to produce instability and manufacture hot conflicts which it can freeze at will.”

Rasmussen’s tenure at NATO oversaw the organisation’s expansion, including the accession of Albania and Croatia, while Bosnia and Herzegovina, Georgia, the former Yugoslav Republic of Macedonia and Montenegro either aspire to, or await, membership.

While Russia has considered NATO expansion as the instigator of current tensions in Ukraine, Rasmussen believes that the blame falls on both the left and right, across jurisprudential and intergovernmentalism, he adds.

As Reinprecht notes, the rise in populism – and as a result, nationalism – across Europe will play a part in this struggle. The past 12 months have seen power shifts to the right and a disaffection with the EU’s ‘it doesn’t matter which way we go as long as we get a united understanding and commitment of everyone in the Union.’

Beyond Europe

During his tenure as secretary general of NATO Rasmussen oversaw NATO operations in Libya and Afghanistan. Particularly in the case of Libya, there remains much debate over whether the intervention was a success; although in both cases strong arguments have been made over whether the interventions have overall increased security or spread chaos.

As Prime Minister, Rasmussen also oversaw the episode triggered by a Danish newspaper’s (Jyllands-Posten) decision in September 2005 to print a set of 12 cartoons depicting various interpretations of the prophet Muhammad. The result was what Rasmussen described as Denmark’s worst international crisis since World War II.

Both his role in NATO and as Prime Minister have informed his view on tensions in the Middle East and in particular the security threat posed by Isis. Benjamin will ask what the West’s approach to ISIS should be. The question also

Europe’s next steps

What to do about a problem like Europe? With this year’s annual conference taking place in the heart of the continent, and Vienna one of the European Union’s (EU) major strongholds, the setting is perfect for a frank discussion on the state of the bloc.

The timing for such a debate is also telling. The growth of emerging markets over the last decade has highlighted the economic challenges facing the EU. And with summer’s Grim situation casting certain European creditors in a harsh light, coupled with Britain’s summer’s Grexit situation casting markets over the last decade also telling. The growth of emerg-

The EU needs to address what we are and who we are?

- Jörg Menzer

SESSION
The future of Europe
European Regional Forum
TIME/VENUE
Today, 9:30 am – 12:30 pm, Hall L2

“The EU is surrounded by an ‘arc of crises’ and that it must stand firm in the face of what it considers Russian bellicosity.”

“The question also

links back to Russia, which supports Syrian president Bashar al-Assad and has indicated that further air strikes or ground operations against Islamist militants in Syria without a UN Security Council mandate would be an act of aggression. Alongside this, the West and Russia share the view that Isis is a great threat. Rasmussen’s stance on ISIS is, according to Benjamin, to “de-legitimise the organisation while disassociating it from the Islamic faith” and argue that Isis is “neither Islamic nor a state”.

SESSION
A conversation
Anders Fogh Rasmussen
TIME/VENUE
Today, 1:15pm – 2:15pm, Hall E1
Building a capital market

The European Commission's Jonathan Faull has been the driving force behind its Capital Markets Union (CMU) initiative. Here he discusses the CMU, how to fix securitisation and why regulatory silos are not a European problem.

On the eve of his move to the European Commission's new taskforce on the UK's referendum on EU membership Jonathan Faull, outgoing Director-General for the Directorate-General for financial stability, financial services and Capital Markets Union spoke with IFLR about the challenges of building the CMU, the importance of rulemaking without silos and why consumer protection must not result in inertia.

When do you think we will be able to judge whether the CMU initiative is a success, and how will you measure that success?

In 2019, when the term of office of this Commissioner Lord Hill, comes to an end, he will want to look back and show that capital markets are working better. How can that be measured? Costs of lending, costs of borrowing, and more generally, the state of the European economy. Have we added growth and jobs? Are SMEs growing, expanding and performing well? Have we given them a more diversified set of financing choices?

That will mean that the capital markets are not replacing bank lending, but they will be another choice open to people. So there will be lots of ways of looking at it: capital markets flourishing and doing their job in moving capital from where it is, collecting it more efficiently and then getting it into productive investment where that is needed.

Do you have specific benchmarks for measuring success?

We haven't got them yet, but we have an open mind. Some benchmarks have been suggested. It's always difficult to isolate metrics because in nearly all cases there are all sorts of external factors that will have an impact.

Who will be able to say that something could or could not have happened without the CMU? You can evaluate it in certain segments, and for instance compare securitisation volumes across 2014, 2015 and then 2019. But how much of that will be because of what we do to make securitisation more simple and transparent, people will argue.

So we won't claim sole responsibility. But we'd be very happy to see securitisation resume its place as a sensible financial technique. This isn't about glory or taking credit for things. We'd just all be

Bio

Jonathan Faull
European Commission
Former director general of financial stability, financial services and the Capital Markets Union

Jonathan Faull, until September 2015, was the director general of financial stability, financial services and the Capital Markets Union at the European Commission in Brussels.

Faull joined the European Commission in 1978, after law studies at the University of Sussex and the College of Europe (Bruges).
The human rights push

The IBA’s executive director Mark Ellis talks to the Daily News about the association’s priorities, this year’s conference and tackling the refugee crisis

What made you choose to join the IBA?

Before becoming the executive director of the IBA I spent ten years as the first executive director of the Central European and Eurasian Law Initiative (CEELI), a project of the American Bar Association.

Providing technical legal assistance to 28 countries in central Europe and the former Soviet Union, and to the International Criminal Tribunal for the Former Yugoslavia (ICTY) in The Hague, CEELI remains the most extensive international pro bono legal assistance project ever undertaken by the US legal community.

It was a life-changing experience and job for me. However, after ten years I was looking for a new challenge. The opportunity to work with the world’s bar associations and a network of professional individual lawyers who are passionate about the legal profession, and want to hold true to the founding principles of the association to support the rule of law through the administration of justice worldwide, was irresistible.

I could see the potential to narrow the false divide between business lawyers and human rights lawyers, recognising a mutual dependency, and thought there was no better place to contribute to this work than at the world’s foremost international legal organisation. The rest is history.

There are several panels and showcases focussed on human rights issues this year. What do you hope attendees take away from these sessions, and why does the IBA maintain such a strong focus on these issues at the annual conference?

There is no question that many of those who have escaped from the terror of life in parts of Syria will meet the Convention criteria of being refugees. All national governments must act with due care and responsibility in assessing all asylum seekers inside and at their borders, and ensure that they respond to those they determine to be refugees in accordance with these legally binding obligations.

The IBA stands ready to cooperate with our member bars, particularly those in Serbia, Greece, Turkey, Hungary and Croatia, to implement refugee law and human rights training to local bar members who decide to assist pro bono in the refugee crisis.

The annual conference provides an arena for open debate, and for the voiceless to be heard. I have no doubt that in some cases delegates arrive with a set of pre-determined ideas, and that after listening to the experiences of others, open their minds to the possibility of thinking about a situation differently. I think this is one of the most important lessons to take away from our annual conference, but also widely from any given situation.

What would you say to IBA members who attended these sessions and want to do more, but are unsure of how they can make a difference after they leave the conference?

I would say that it is likely to be music to the ears of the IBA committee officers. I would encourage such members to make contact with the officers while at the conference, but if not possible, locate the session chairs, or committee officers, via the IBA website, post conference, and make known their willingness to participate in the work of a committee. I would suggest doing this while momentum is high, that is within a couple of days at the latest, because as we all know procrastination is a thief. And if this doesn’t work, they should contact me directly.

The conference is in Vienna this year, at a time when Austria, along with the rest of Europe is working to cope with a mounting refugee crisis. Do you think the IBA as an organisation has a role to play in helping countries cope with this crisis?

Yes, the IBA needs to emphasise the responsibility of all nations to adhere to the 1951 Refugee Convention and 1967 Protocol. Nations must protect refugees by allowing them to enter their territory, and there is no question that many of those who have escaped from the terror of life in parts of Syria will meet the Convention criteria of being refugees. All national governments must act with due care and responsibility in assessing all asylum seekers inside and at their borders, and ensure that they respond to those they determine to be refugees in accordance with these legally binding obligations.

The strengthening effect of solidarity in such times is recognised, and the IBA annual conference provides an arena for open debate, and for the voiceless to be heard. I have no doubt that in some cases delegates arrive with a set of pre-determined ideas, and that after listening to the experiences of others, open their minds to the possibility of thinking about a situation differently. I think this is one of the most important lessons to take away from our annual conference, but also widely from any given situation.

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The eyeWitness to Atrocities app launched in June. The project is your brainchild and the product of hard work and support from the IBA. How has the app performed so far?

Everyone involved in the launch of the eyeWitness to Atrocities app is delighted with the widespread international attention it has received. Website statistics show hits from more than 130 countries, and that download figures compare favourably to, and in a number of cases exceed, other types of crime reporting apps.

The eyeWitness to Atrocities app has been described by one journalist as a “game changer”. As our work to further increase awareness among key groups of potential users continues, these early results and positive comments are very encouraging. A much-needed tool, the eyeWitness to Atrocities app provides citizen journalists and human rights defenders where atrocity crimes are being committed, with a means of capturing verifiable information that will provide investigators and lawyers with a source of credible and reliable evidence that can be used in investigations and admitted as evidence in court of law.

The most salient feature is that captured images and footage once uploaded to the eyeWitness repository can be verified. Presently, most video footage or photographs recording these crimes are not accepted as evidence in courts because they cannot be verified. The perpetrators know this and act with impunity. A documenter of appalling human cruelty, the app stands as an advocate for truth.

A large portion of IBA members are business lawyers. What does their support for projects like the eyeWitness to Atrocities app tell you about the future of the IBA and the business community in addressing humanitarian challenges?

That so many business lawyers support the eyeWitness project is a manifestation of one of my long-held beliefs that eventually all lawyers, regardless of discipline, will reach the understanding that doing business in a country which adheres to the rule of law is more beneficial to their clients than in a country which does not. The Legal Practice Division Showcase on Monday, with the former Secretary-General of the UN, Kofi Annan, addressed this topic.

“I could see the potential to narrow the false divide between business and human rights lawyers”
Guess who coached a team at a previous Rugby World Cup?

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

www.hadefpartners.com
A history of Vienna

From a Celtic settlement in 15 BC to theatre of war and espionage, psychoanalysis and Art Nouveau

Vienna’s first lasting incarnation came when the Romans founded the fort town Vindobona on the site of a Celtic settlement in the first century AD. Traces of Vindobona can be found in the present-day inner city, where the First District streets follow the old Roman walls. Discerning visitors can make out the layout of camp walls and moats.

Emperor and philosopher Marcus Aurelius died in Vindobona in 180 AD and an early landmark in Roman times was the significant Roman municipium, a town. In 212 AD saw the town become a municipium, a significant Roman city status. From 300 AD to 700 AD the frontier settlement fell prey to the ‘Barbarian Invasions’ of Franks, Vandals, Goths and other tribes. Sixth century graves have been discovered near the early century AD. Traces of Vindobona can be found in the present-day inner city, where the First District streets follow the old Roman walls. Discerning visitors can make out the layout of camp walls and moats.

In 881 AD the name Wenia, possibly the first written source of ‘Vienna’, appears in annals depicting a battle against the Magyars. However the source of the name Vienna remains contentious, possibly evolving from the Celtic-originating name Vedunia or from an earlier Celtic name Vedunia.

The Babenberg dynasty family ruled Vienna throughout the middle ages and oversaw its growth as a centre of commerce. In 1221 Vienna received its town charter, allowing it to further consolidate its position as a centre of commerce and eventually to become a key city in the Holy Roman Empire (HRE) in the 1300s alongside the likes of Prague.

The Habsburg imprint
Vienna is the home of the Habsburgs, an imposing dynastic family that ruled the city (and for long periods the HRE, Spain and many other territories) from 1278 until 1918. They governed from the Hofburg area.

The dynasty began in Vienna with Rudolf I. Rudolf IV ‘the founder’ established the University of Vienna in 1365 and initiated the construction of St Stephen’s Cathedral and in 1440 the city became the family’s permanent home. In 1469 Vienna became a bishopric with St Stephens its cathedral, and in 1556 it became the seat of the HRE emperor. Vienna was de facto capital of the HRE from 1483 until 1806. Vienna repelled two Ottoman invasions in 1529 and 1683, which were followed by a flurry of construction that mark it out today as an impressive baroque city. The building spree was peppered with lavish palaces and defined by two Italian-trained architects: Johann von Erlach and Johann von Hildebrandt, who between them created the Palais Liechtenstein, Palais Modena, Schönbrunn Palace, Palais Schwarzenberg, the Belvedere and sections of the Hofburg, among others.

Among other famous Habsburgs are Emperor Franz Joseph I, who started and ended his life in Schönbrunn Palace and ruled from 1848-1916 alongside his wife Elisabeth (‘Sisi’), a much loved Viennese figure. Under his watch in 1857 the Ringstrasse boulevard was built, signalling the dismantling of the walls that had been erected to fend off the Ottomans; the incorporation into the city of districts II to IX; and the construction of many monumental buildings.

War, peace and culture
Despite suffering two black plague epidemics and being occupied twice by Napoleon, Vienna steadily grew and then quickly expanded in the mid-1800s and early 1900s to reach a population peak of over two million in 1910. In 2015 the population is still short of that level.

The 1700s and 1800s also positioned Vienna as a cultural hub, boasting resident luminaries from Haydn to Mozart and Beethoven. In the 1900s the city became a centre for espionage, with allegedly more spies than soldiers.

Austria regained its freedom in 1955 with a treaty of future neutrality and non-alignment. Since then Vienna has enjoyed an economic boom. In the seventies it became an official UN seat and developments including the Vienna International Centre have helped position it as a seat for international organisations and conferences. Generally a low-rise city, in 2014 Buzz Aldrin opened the highest building: the 220-meter high DC Tower.

Vienna after the city walls were reconstructed in 1548.

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very happy if growth and jobs are spread around Europe.

It's the same for the Prospectus Directive. We want to make it easi-er for SMEs to raise money. And again, there's a metric to that which is how much equity they are able to raise. When we look at the figures in 2019, people will argue about how much will be down to the tightening of the Prospectus Di-rective, but it's still worth doing.

Considering their importance, why was there so little focus on the retail capital markets in the CMU green paper?

The bureaucratic answer is that we see that as a separate work stream. Retail finance is not only banking but also insurance and to a certain extent, access to capital markets. But it's wider than that.

There will be a lot of work done on retail finance, which some people think we have neg-lected a bit in recent years. Lord (Jonathan) Hill is very keen on that. We want to bring home the message to people that the ordi-nary banking that most citizens

are interested in the cross-border aspect: can you do this

and help.

But we don’t start off by think-ing that there are problems that are crying out for European regu-lation, to get it started. It’s much better for everybody if it has al-ready started somewhere and we can see in real life what works and what doesn’t.

There is a similar discussion to be had around green bonds with market-led initiatives such as those launched by the Loan Market Association and International Capital Market Association are just a starting point for the private placement market, or should they be the foundation of something more sizable and

binding?

We are very much in favour of market-led initiatives. The indus-try bodies are the people who know the business. They know their clients, and we’re very happy to see them do it and to hear their reactions to what makes it work or prevents it working as well as it could. And of course, given who we are and what we are trying to achieve, we are always interested in the cross-border aspect: can you do this next door? And if not, why not? And that’s where we can come in and help.

Why do you think it has failed to establish itself in certain markets?

I’m not going to single out specific causes. There is a mixture of expe-rience built up which breeds further experience, as well as people who have specialised in it. The regula-tory framework may be better ad-justed to it in some places than others. It is all of these things.

Do you think market initiatives such as those launched by the Loan Market Association and International Capital Market Association are just a starting point for the private placement market, or should they be the foundation of something more sizable and binding?

We certainly don’t want to tread on people’s toes if things are work-ing well. We don’t want to come in with heavy-handed rules which might disturb a nascent market.

On the other hand, people do want to know more, particularly if going cross-border. Problems in Europe are often different from one coun-try to another.

A minimum framework might be necessary to give the assurance that both issuers and customers need. But we don’t start off as-suming that dogmatically. We would like to see what actually happens on the ground in as many cases as possible.

The stated aims of the CMU obviously include growing the securitisation market. What do you think it needs to return to healthy levels?

It needs some stability, and some stability of definitions. It needs to reassure the buyside of the market that the lessons of the past have been learned. The underlying asset needs to be properly understood so that if the music stops we don’t end up in the mess we got into over subprime mortgages.

But it is quite wrong to assume that all securitisation is flawed be-cause of what happened there. It is a longstanding financial tech-nique that produces a lot of liq-uidity that might have otherwise been frozen. It makes a lot of sense. So there is a lot of work being done on definitions and ways of explaining to relatively unsophisticated buyers, as they may be, what the underlying asset is and what the securitisation process is about. So transparency and simplicity are important. We are not inventing the wheel here; everybody else that does interna-tional work on this is trying to do the same thing.

Some market participants insist that the major change needed is making the asset class more investable for the buyside. This would include, specifically, lowering capital charges on Solvency II. How likely is that?

It’s one of the things that we are looking at and we hear that too. This is part of the more general re-view of the large volume of legisla-tion that has been adopted in the last five years or so. It may be the case, though not deliberately, that we have done things that made sense for banking and insurance but have had a knock-on harmful effect on other markets such as securitisation. So that is something that is being looked at, certainly.

If you think it’s too early for EU involvement in what is a nascent market? We certainly don’t want to tread

on people’s toes if things are work-ing well. We don’t want to come in with heavy-handed rules which might disturb a nascent market.

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The full version of this interview was published in the September issue of IFLR
Bank securitisation needs regulation

Securitisation can be an effective tool for bank debt sales to non-banking investors when there is stable, decisive European regulation governing the method, according to yesterday’s panel, ‘Bank asset sales’.

Amid the discussion on the best way to handle the sale of assets from banks to investors, securitisation featured heavily. This method was traditionally used as a financing tool for banks but, more recently, has been used by lenders looking to transfer risk to non-banking investors. In a typical sale scenario, banks would face various hurdles when selling assets to unregulated entities.

The benefits of securitisations in this context for banks were highlighted by another speaker, joint managing partner of Italian firm, Chiomenti, Gregorio Consoli. “Securitisation allows banks to isolate assets into a separate pool disconnected from other risk, the insolvency of the seller, for example,” he explained.

Securitisation was a popular instrument until the financial crisis, which heavily tarnished its reputation. It has not fully recovered. European volumes remain at 35% of their pre-2007 levels, with around $28 billion having been issued so far this year.

At the time of the crisis, securitising debt instruments like collateralised loan obligations (CLOs) and sold the debt on in this way. Although securitisation was among the most regulated financial instruments in the last 10 years through various initiatives by national regulators in Europe, there is no supervisory regulation governing the securitisation of bank assets.

A regulatory blind spot
Partner at London based investment fund, Hayfin Capital, Stefano Loreti, said: “If there are rules on securitisation then people understand what they have to do. The problem now is it is very confusing. The regulators keep changing their minds, especially on the retention side. Until they actually come out with a framework that people think is going to last, I don’t think it will be an effective tool for asset sales.”

Although the securitisation of bank assets remains relatively scarce, deals have been appearing more frequently in Europe as banks look to meet the capital requirements demanded under Basel III, and divest of non-performing loans. Until regulation is in place, however, Loreti suggested that from an investors’ perspective, when buying an asset from a bank it is better to buy it outright rather than through the securitisation method, to avoid any risk of its price fluctuating.

There is hope that by next year a comprehensive European law governing bank asset securitisation could be in place. Consoli is part of a project group making recommendations for new legislation that will govern the market in Europe and include a concept of simple, transparent securitisation, he said. Additionally, UNCITRAL (United Nations Commission on International Trade Law) is close to finalising a draft law for the sale of secured transactions. Representing the body at the talk, its senior legal advisor, Spyridon Bazinas, said: “We are probably two meetings away from finishing the draft.”

Key takeaways
- Securitisation can be an effective tool for bank debt sales to non-banking investors but it needs stable, decisive European regulation
- Regulation governing European bank securitisation may be in place next year
- European volumes remain at 35% of their pre-2007 levels
Emin Abbasov
Azwest Group
Azerbaijan
I came to the conference to get an insight into what is happening in the legal markets around the world. I also come to make new contacts with colleagues from different fields and backgrounds, and to learn the latest developments in the legal profession.

Nick Eastwell
Kinstellar
UK
To meet old friends, and to make new friends in the areas of law that I practice. My main aim is to help Kinstellar build new relationships. It relies very heavily on referral law firms giving it work in the region, and it's all about making contacts.

Manuel Alvarez-Trongé
Bartolome & Briones
Argentina
I come to learn and share a lot of different opinions with colleagues from around the world. We make lots of connections here, and it's a very good environment to see what's happening everywhere else. Hopefully we can make the connection between Latin America and the rest of the world.

Abdullahi Nyako
Reliance Law Chambers
Nigeria
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Jack Husbands
Walkers
British Virgin Islands
The main reason I come is to showcase my lawyers. This is a place where you get to meet people, learn new things. It's also a good way to get a break abroad. It's all three of those three things in one.

Renato Lima Gonçalves
Lima Gonçalves
Brazil
I love networking. The IBA is a great opportunity for interaction. This is my eighth conference in a row, and I really enjoy coming here and meeting the friends that I've made along the way over the years.

Pablo Iacobelli
Carey
Chile
The IBA is an extraordinary organisation; a great place to meet people. It's a place where you can get out there, find out what is going on in your area, and generally in your profession. You can meet friends, and colleagues.

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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.