

Still some way to go



Twenty years on from the establishment of the International Criminal Court (ICC), work still needs to be done to make the instrument of international justice the fully functional intergovernmental ombudsman it was intended to be.

The Eternal City was a fitting location for yesterday's discussion, 'Multilateral justice: reflections on the International Criminal Court 20 years on,' as this year's IBA host city was also the locale for the diplomatic conference where the Court of last resort was originated in 1998 under the Rome Statute.

Although the court has made a number of key convictions, exclusively in sub-Saharan Africa, and is engaged in several investigations in states including Georgia, the Ukraine, Iraq and the UK, it has numerous well documented flaws that must be addressed. In particular, yesterday's session looked at the ICC's lack of an independent organ for the defence within its structure, and its lack of political support at the state level.

"One of the biggest gaps in the ICC is that the defence is not an organ of the court," said Melinda Taylor, the ICC counsel who was arrested in Libya after being accused of spying in 2012. "Equality of arms isn't just in the courtroom, it is

about everything that happens outside the court rooms that allows the parties to present their case."

Taylor joined the Office of Public Counsel for the Defence (OPCD) in 2006, after the first defendant had arrived at the ICC, and was only recruited because a judge issued an order requiring it. The prosecutions operation was the priority and while there was a functioning office of public counsel for victims, the defence was an afterthought. This impacted how functions operated within the court because a lot of the policies, systems and disclosures had already been developed.



Melinda Taylor

"It was set up in a way that fundamentally did not facilitate the work of the defence, and unfortunately that has had a knock-on effect," said Taylor. However, each subsequent court and tribunal has had a more powerful defence office. "The defence of the special tribunal for Lebanon is almost on par with the prosecutors because they realise they need a strong and independent defence to prevent injustice," she said.

The range of factors impacts against the fairness of the proceedings, and if you have a prosecutor who can go out and secure an operation but you don't have the equivalent for the defence, that means you have lop sided trials, and lopsided

Equality of arms isn't just in the courtroom

trials risk a miscarriage of justice.

"The way a court treats its defendants and the fairness it affords them, are essential to its legitimacy, because it is only if you have a fair, effective and vigorous trial that at the end of it you can say 'well, justice was done,'" added Taylor.

The lack of cooperation from states on the global stage is another fundamental flaw of the Court. The Rome Statute initially laid out the division of responsibilities between the ICC and the states parties, but how that works in practice differs in a variety of ways.

"What doesn't work well from a strategic perspective is the political and diplomatic support that is not out there for the Court," said Cecilia Balteanu of the ICC's External Relations and Cooperation Unit. "Twenty years on from the Rome Statute, where is the public and diplomatic support that it so needs? Without that, how can you get any support or willingness to actually engage and cooperate with the court?"

She added: "Without it, this court is not going to succeed, simply put this court is going to fail."



CROSS-BORDER HEALTH & SAFETY

How regulators in one jurisdiction are keeping track of practices in others

PAGE 2



VOX POPS

What should the IBA's priorities be in 2019?

PAGE 3



HIGHLIGHTS

A selection of some of the best of the 200 sessions this week

PAGES 6 TO 9



SPONSORED BY

ENYO LAW

DISPUTES. NO CONFLICTS.

HADEF & PARTNERS



Planning ahead

The 2012 EU Succession Regulation, also known as Brussels IV, aims to simplify succession matters across the region by clarifying the domestic law applicable to an estate, and establishing rules concerning the recognition and enforcement of decision between member states. So far, so good?

Not exactly, as panellists on yesterday afternoon's 'Who is inheriting the chateau, schloss or palazzo now? A review of Brussels IV (the European Succession regulations) in practice' session discussed.

"Brussels IV makes no distinction between the categories of assets and is a great planning tool," said Anne Guichard, *notaire* in Paris, France,

and publication and newsletter editor, Private Client Tax Committee. "But there are some areas of tension that remain, in particular where there is a common law element to the succession."

The panel explored the topic of choice of applicable law via a series of practical case studies.

For instance: what would the applicable law be in the case of the estate of a woman with UK and US nationality living in Rome, with assets in several EU jurisdictions as well in the US? There are multiple answers to that question depending on which territorial unit the individual had the closest connection to and if she chose to select the law of her nationality as



the applicable framework. There are further questions still if the applicable law is selected as US law, with 50 different frameworks to choose from.

"What is important is the wording of the relevant clause in an individ-

ual's estate plan," said Domenico Damascelli, of Tassinari & Damascelli Studio Notarile, in Bologna, Italy. "You don't want your choice of law to be invalidated because of a mistake in the wording."

One step closer

An increase in cross-border enforcement in environmental and health and safety law is closing gaps between jurisdictions and forcing lawyers to prove that a company has conformity and consistency between all the countries it operates in.

"I'm seeing that regulators, and increasingly prosecutors and judges, are interested in the records, not just within their jurisdiction, but across the world," Gerard Forlin, partner at Cornerstone Barristers, told delegates at the 'Disasters! Environmental, health and safety ramifications and solutions' session yesterday morning.

Gaps that were once large between jurisdictions are closing due to the In-

ternational Organisation for Standardisation, the body which provides health and safety standards worldwide, and an increasing emphasis globally on regulation with an extraterritorial effect.

The Grenfell Tower disaster last year, which killed 72 people, is one of the worst UK tragedies in recent memory and has become a symbol of the government's derogation of their duty to sufficiently secure the health and wellbeing of its citizens. A criminal investigation is ongoing, including charges for gross negligence, manslaughter and breaches of the Health and Safety Act, after it was deemed that the tower was wrapped in cheap, com-

bustible cladding. For lawyers, the co-existence of a civil and criminal investigation in this manner provides challenges.

"The civil part of the case cannot affect the criminal part of the case and sometimes you need to take a holistic view outside of the jurisdiction," Forlin said.

The Mariana Dam disaster in Brazil three years ago killed 17 people and caused untold damage to the environment after a dam burst and released over 50 million tonnes of mud, the effects of which are still being felt today. As well as criticising mining company Samarco, residents accused the local government of not being quick enough in their response.

Critics argue that the incident shows the importance of effective regulators; if you have an environmental licence without an effective watchdog it acts only as paper, and nothing else.

Another issue affecting the area in general is the difficulty to keep up

with technology which monitors and supplies data. But all in all, technological advancements are overwhelmingly helpful.

"Our laws have to adapt with technology," said Alexandra Campbell-Ferrari, executive director of the Centre for Water Security and Cooperation. "The more data available, the more transparent the situation is, and this makes it easier to hold people to account."

In a fast-changing world, lawmakers and companies need to react quickly.

KEY TAKEAWAYS

- An increase in cross-border enforcement in environmental and health and safety law is closing gaps between jurisdictions;
- Another issue affecting the area in general is the difficulty to keep up with technology which monitors and supplies data.



VISCHER

Basel Zürich www.vischer.com

YOUR TEAM FOR SWISS LAW AND TAX



Meet in Rome:
Rolf Auf der Maur, Benedict F. Christ, Urs Haegi, David Jenny, Roland M. Müller, Klaus Neff, Christian Oetiker, Nadia Tarolli Schmidt, Thomas Weibel

QUESTION IBA's priorities in 2019?



Jean Schaffner
Allen & Overy
Luxembourg

Gender equality is important in my profession and equal treatment is crucial to keep talent.



Daniel Kocab
Lansky, Ganzger & Partner
Austria

The IBA should focus on the challenges of climate change, alternative currencies, legal technology, and how AI is changing due diligence procedures.



Ashraf Shaaban Abdel Hamid
National Bank of Egypt
Egypt

It would be good to have more conference sessions on banking, especially international commercial transactions.



Rodgers Matsikidze
Matsikidze & Muचेche
Zimbabwe

We should never stop talking about the rule of law, and also the impact of technology on legal services.



Geraldine Clarke
Gleeson McGrath Baldwin
Ireland

The IBA should continue to represent lawyers and be involved in issues impacting the world, like climate change, and continue to change life for the better for people.



Paul Rodolfo B. Imperial
Villaraza & Angangco
Philippines

There should be more talks on bitcoin, blockchain and cryptocurrency because these are emerging issues that lawyers should know about.



Lucinda Storm
Law Offices of Lucinda L. Storm
USA

The rule of law and its enforcement, and the social and economic impacts of climate justice, are key themes for me.



Alix Mattingly
Pactolus Global
UK

The IBA should continue to provide leadership on human rights and global advocacy.



Abhijit Mukhopadhyay
Hinduja Group
UK

There should be more focus on human rights issues, and lawyers are the best to stand up and fight this battle.



UGHI E NUNZIANTE

STUDIO LEGALE

UNLAW.IT

Distinguished history.
Exciting future.

Roma

Via Venti Settembre, 1
roma@unlaw.it

Milano

Via Borgonuovo, 27
milano@unlaw.it

Milano

Via B. Zenale, 19
milano@unlaw.it

As we prepare to celebrate our first 50 years, we reaffirm our commitment to our clients and our community **for the next 50 years and beyond.**

HIGHLIGHTS

The week in pictures

A selection of some of the best moments of the IBA Annual Conference 2018



Annual IBA
Pro Bono Award

Sponsored by




HIGHLIGHTS



Stronger together

European nations must do all they can to work together and ensure that a strong, peaceful and united Europe can defuse tensions around the world, particularly those between the US and China, while defending threatened liberal democracies.

That was the message from Romano Prodi, former Prime Minister of Italy and President of the European Commission, and keynote speaker at Monday's opening ceremony.

"When Europe is united it has a voice in the world but when Europe is not united it doesn't have a voice," he said, warning that a divided and weakened post-Brexit Europe would have a detrimental impact on the continent's calming influence globally.

Drawing attention first to the increasing occurrence of populism and the growing desire to defuse traditional authorities, Prodi suggested that people appear more uneasy of traditional decision-making processes and democracy itself.

The leaders of today's political parties are dedicating themselves to the next generation without taking care of

the here and now, he said, and the populist revolution happening around Europe is a direct consequence of globalisation.

Another key theme was migration, with Prodi calling for the EU to defend the rights and history of justice of those countries devastated by brutal wars.

"Migration is the tort for world malaise," he said. "Clearly, in the US, in Asia, everywhere, the symbol of all fears is migration; in many case like Europe and Italy, migrants are indispensable to daily life."

Two pillars

Prodi continued to discuss the EU's current makeup, stressing its priorities have shifted from the creation of a union of minorities to a system heavily led by its two strongest constituents: Germany and France. "Europe was designed as one engine with two pistons, but now it's two engines with one piston each," he said.

This is on top of the impending loss of the UK following Brexit, a particularly important wheel in the EU that will have a vast impact. The only solu-



tion is to save free trade and to compromise on other issues, he said. The EU finds itself in a difficult situation, and as calls for a second referendum are amplified, it is increasingly important that negotiations favour both sides.

"A great part of the world looked at Europe through British glasses. We have to reshape the Union after Brexit, I don't think there is an alternative to this," he said.

Look after the rule of law and it will look after you

Prodi's keynote was preceded by a speech from IBA president Martin Šolc, who discussed how certain core values underpinning democratic civil

society are being corrosively eroded and the importance of the rule of law in their defence. "Lawyers must do all they can to preserve the rule of law," he said. "As guardians of the rule of law, they understand when it's suppressed and forgotten."

Šolc also announced an education campaign highlighting the significance of the rule of law in everyday life, with videos dealing with a different element of the concept, which he encouraged members to share and promote.

He concluded his speech by reading a blessing from the Pope who called upon the conference to explore ways that the law can be used to promote the wants of the needy first and foremost.

A call to action

A workplace that is able to embrace diversity can only become stronger as a result, says Monday's session co-chair Karine Audouze, partner at Ogletree Deakins and secretary of the IBA's Diversity and Equality Law Committee. But the legal world is, in some respects, less advanced than others when it comes to the heterogeneity of its workforce.

While the representation of women in private practice and in-house has improved, the gender pay gap is still very much present as lawyers progress through their careers. Women have only officially been able to practice law since the mid 19th century, when the first ever female legal practitioner was admitted to the bar in the US state of Iowa in 1869.

The conclusions are just as bleak when it comes to the numbers of black, Asian and ethnic minority (BAME) or LGBTI legal practitioners.

But even if women and minority lawyers are increasingly visible in the legal world, figures from the US-based National Association for Law

Placement put the situation in perspective: over 90% of partners are white and about three-quarters are men. There is a huge loss of women across the life of firms, and limited career progression and visibility for lawyers from under-represented backgrounds.

Practice makes perfect

A lack of representation and diversity isn't a sustainable situation, for the people or the business concerned.

"Recruiting from a varied pool of candidates means, in essence, a more qualified workforce," said session co-chair Olufunmi Oluyede, co-founding principal of TRPLAW and Legal Practice Division council member. "At the very least, diversity would help businesses avoid employee turnover costs – beyond that, there are some obvious advantages when it comes to a firm's capacity to innovate and stay competitive."

A commitment to hiring a diverse workforce requires both a change of mindset as well as strategic, practical action. This is when diversity becomes inclusion.



A number of initiatives that are spreading across the legal sector show progress has indeed been made. Some major law firms have committed to a so-called CV blind policy when recruiting aspiring lawyers, meaning the interviewer doesn't know the applicant's academic and personal background when considering their application. Others show support by providing work experience or workshops specifically for under-represented groups.

For more senior positions, firms have pledged to recruit lawyers from a more diverse pool of sources, with some hiring dedicated staff in charge of diversity who can help make this an integral part of the law firm or company's activities. Mentoring and

career planning programmes, work/life balance policies and skills development are also initiatives in place in a number of firms.

Carrot and stick

But for many organisations, good intentions aside, diversity isn't treated as a strategic asset. This is in part because there are no official industry-wide sanctions to ensure diversity is given the attention it deserves. But the pressure of being seen as sensitive and responsive to diversity issues often acts as the proverbial carrot.

Diversity by design is the only way forward to ensure female and minority lawyers get the focus and attention they deserve.

Legal aid fights back

Tuesday morning's session, 'Legal aid across the globe: best practice and economics,' marked the launch by the IBA of the first international principles in support of the funding and administration of civil legal aid.

The launch of these principles could not come at a more opportune time, as legal aid continues to be under threat in both developing and advanced economies.

The IBA collaborated with the UK-based Bingham Centre for the Rule of Law and legal aid experts from around the world to formulate a list of 27 principles which cover several areas: funding, scope and eligibility; administration; and provision of legal aid. The list of principles includes a series of comments, all of which were presented in an anonymised way to give contributors scope for full honesty.

"The principles are not intended to be prescriptive but rather to be a starting point," said session co-chair Lucy Scott-Moncrieff, former president of The Law Society and

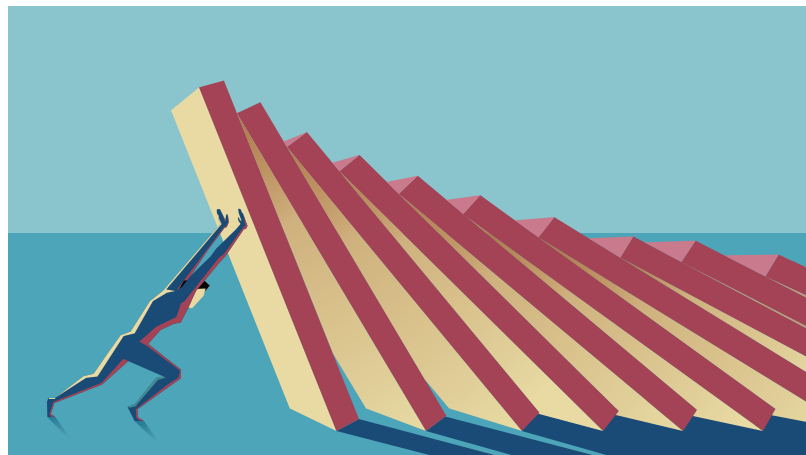
founder of Scott-Moncrieff Associates.

In total, over 25 jurisdictions participated to give a view on what they believe to be best practice or necessary improvements to be made.

But some principles are contentious. For example, Principle 12 of the guidance provides that the body administering legal aid must be operationally independent of government, subject to its accountability obligations. Many jurisdictions don't have this type of arrangement in place, and instead favour a system where the government has control. For some, the fear is that conflict of interest issues will arise when lawyers administer legal aid themselves but in doing so they may be in a better position to satisfy the needs of clients.

Cuts everywhere

In the UK, a jurisdiction widely considered to be the foremost globally, legal aid has been cut by £1 billion in the last five years. This is also happening in France, the US and many other jurisdictions, with far



more increased dependence on pro bono services to make up for the shortfall left by governments. A challenge then presents itself in whether pro bono services and legal aid can co-exist.

"I think it's really complicated," Scott-Moncrieff said. "People may not be eligible for pro bono services, but there might not be enough lawyers. The main issue is whether governments support legal aid."

Hopes are that the guidance will

be used by policymakers in decision-making, and that can only happen if IBA members get it on their radar. In doing so, legal aid might be put back on the political agenda.

"We want to provide access to justice," said session co-chair Péter Köves, partner at Lakatos, Köves and Partners. "The issue is that the primary responsibility lies with the government; pro bono should not be used as an excuse not to fund legal aid."

The hardest game to win

In the past few years, sport headlines have been dominated by scandal after scandal. These have even fused sport with politics, in the case of Russia's Olympic doping ban, bringing scrutiny from politicians across the globe.

Sports betting is a global \$250 billion industry and growing threats to such a valuable sector are making the job of authorities all the more difficult. In particular, ever since betting companies offered markets in events beyond the final result – such as yellow cards or throws – it has become easier for players to fix matches and harder for the authorities to detect any wrongdoing.

In Tuesday's 'Corruption, doping and match-fixing in sport' session, co-chair Natalie St. Cyr Clarke, legal affairs manager at the International Basketball Federation and co-chair of the IBA's Sports Law Subcommittee, said one emerging theme is the use of criminal law by sports bodies and national agencies to regulate these issues.



Natalie St. Cyr Clarke

In 2009, about 200 games across nine countries were implicated in a match-fixing investigation, leading to arrests in Germany and in Switzerland. Europol is leading an investigation into tennis match-fixing and has made some arrests, a sign that improvements are being made.

Recent allegations of corruption in tennis have also occurred: an investigation by the BBC and BuzzFeed found that 16 male players ranked within the top 50 had been repeatedly alerted to the Tennis Integrity Unit (TIU) on suspicion of throwing matches. The European Sports Security Association flagged more than 50 suspicious matches to the TIU in 2015 and said tennis attracts more suspicious activity than any other sport.

Authorities have a tough task on their hands. As betting becomes more sophisticated, authorities must adapt as well. Increasing criminal oversight is one solution, as is increasing the scope to pursue a charge for match-fixing.

Speaking out and speaking up

"There is no question that the legal profession must do better:

the evidence we have certainly suggests there is no room for complacency," says Neelim Sultan, barrister at 1 MCB Chambers, co-chair of the IBA's Human Rights Law Committee and of Tuesday's 'Preventing sexual harassment in the workplace: law firm legal and ethical compliance with international human and women's rights' session.

Law societies and bar associations worldwide have highlighted the scale of the problem, including a recent increase in reports of harassment, bullying and discrimination across the legal profession. "And this in a profession in which being able to effectively advocate on behalf of victims of injustice is an essential if not overriding criteria," said Sultan.

Global campaigns like the global

#metoo and #timesup movements have cast the spotlight on harassment and abuse of power within the legal profession. But progress shouldn't stop there.

Legal professionals have a duty to rise to the challenges thrown up by these movements.

They need to be aware of the task ahead on several fronts. They need to be mindful of the ethical,

legal and human rights compliance obligations raised by any sexual harassment claim they advise on – whether on behalf of the accuser or the accused. Young lawyers also have a crucial role to play in shaping this debate said Sultan.

But the legal profession also has to get its own house in order and stamp out toxic workplace practices. "Sexual harassment is about abuse of power – I hope our session can encourage an honest debate as to how such abuse occurs and continues," said Sultan.



Neelim Sultan

What in-house want

The increase in cross-border work means that in-house counsel need to rely on outside help to fill gaps and gain local expertise. This was the key takeaway from Wednesday's 'From Vancouver to Cape Town to Beijing: how to vet and select outside counsel in different legal markets' session.

Choosing between a local and an international firm is a question that in-house lawyers often struggle with. Some factors that need to be considered are whether legal advice is needed in multiple countries and if the firm has experience working with international clients. While some businesses may prefer international firms because of their reputation, it's important to keep in mind that not all local offices are strong.

Working in certain industries and countries sometimes requires in-house lawyers to work with local counsel, and choosing international firms may not work. "We need trusted advisers who are able to tell us how to navigate the industry and without local insight, it just doesn't work," said OPEC gen-

eral counsel Asma Muttawa. She cites the example of Libya where there are no international law firms and businesses going in have to choose from local firms. What businesses could consider is working with both an international and a local firm. The first may be better in areas such as strategy while the second may have better connections with regulators.

Local v international

As firms pretend to be international to attract clients, in-house counsel need to keep in mind that being international is actually not the key. What is more important is the capability to culturally understand what the business is seeking to receive and provide guidance on the sensitivity of the transaction locally.

Tapping into people networks is also key when it comes to assessing outside counsel. "In Asia, chambers of commerce are an excellent resource," said Graham Wladimiroff, vice president and assistant general counsel, retail branding and information solutions at Avery Dennison. "In China, I've been



involved in legal committees which are great communities to go to for names and references."

According to Stephen Solursh, vice president and associate general counsel at OPTrust Pension Plan, going to trusted counsel to see which firms they have worked with in the local country and going to conferences like the IBA can provide more opportunities for in-house counsel to meet outside lawyers.

What about directories?

While legal directories can be a good resource, they should not be the only one.

"Directories can be used as a screening tool to see who the top firms are in particular markets, but should be used along with other options particularly when selecting individual lawyers," said Solursh.

American Express vice president and senior M&A counsel Valentina Cassata added: "Legal directories help narrow down the choices but in-house counsel should not be shy to ask for materials, like detailed biographies of not just the lead partner but the team working on a transaction to see how strong their speciality areas are."

The fast fashion flow

Fast fashion is transforming the way intellectual property is being protected. The speed at which designs are being copied and the shortening of time from one collection launch to the next mean fashion houses need to be innovative in how best to protect their brands. Panellists shared best practices in the 'Fashion design and fast fashion: inspiration or imitation? Free ride or fair play?' session, which took place on Wednesday afternoon.

Trying to catch up with the pace at which counterfeits are being created is a futile race, especially as intellectual property protection budgets are shrinking.

One strategy for fashion brands is to have a targeted focus.

"In our work with Jimmy Choo, we created a strategy whereby we asked the design team to pick out one or two designs that they are emotionally linked to to focus on," said Shoosmiths partner Gary Assim. "Rather

than registering one design for €600 and multiplying that by 80 over two seasons, we had a zero-tolerance policy on those two designs only and applied injunctions. The damages were put back into the business as a funding strategy and they became a profit centre for the brand."

Trussardi corporate affairs, legal and compliance manager Sara Citterio said it's important for fashion houses to focus on what is really the most valuable and be selective.

"We've been focusing on protecting intellectual property rights in countries where we are distributed," she noted. "For instance, we're big in China, Italy and Russia so we choose to protect our designs more in these countries than others and also in countries where we produce."

She added: "We have found that counterfeits were coming from our own producers who were over producing and putting fake labels on the products."



Learning to live together

Over recent years there has been a step change in the pressures building around the relationship between bar associations and law firms. This is neatly summarised by Berit Reiss-Andersen, president of the Norwegian Bar Association and co-chair of the 'BIC Showcase: Can law firms survive without bar associations?'

"On the one hand, large law firms underestimate the importance of the work of bar associations in guarding the core values of the profession," she said. "On the other, bar associations need to adjust to the fact that our profession is also organised today in very big companies."

Bar associations developed their modus operandi dealing with the profession within the organisational framework of sole practitioners and small practices but the legal world now looks very different. Several current issues bring the bar association-law firm relationship into focus. Brexit is one example, artificial intelligence is another.

Bar associations are the guardians of the profession's values. Without the high standards that bar associations set in relation to principles such as professional confidentiality and conflict of interest, there would be no difference between lawyers and any other type of consultant.

"Our profession plays a role in society because every lawyer must also uphold rule of law principles, whether you are advising in the business community or in criminal law," Reiss-Andersen said.

There is a lack of understanding that needs to be bridged. In global law firms, commercial values, approaches to branding and the values and culture developed within a global firm over decades can turn the demands, values and standards of individual bar associations into irritating background noise. Associations across the world uphold a range of standards that can seem intrusive to large firms.

But the key takeaway is that the two sides are more dependent on each other than they may realise.



Berit Reiss-Andersen

AI know what you're thinking

The growth in artificial intelligence (AI) software and programmes and their roles in the practice of law are opening lawyers and bar associations up to a giddy new world of possibility and uncertainty.

In this murky future, there are some things legal professionals can count on. One of these is that AI will play a role. The question of regulating – what exactly to regulate, and how and when to begin – cannot be kicked into the long grass.

“AI will be an integrated part of legal services in the future,” said Merete Smith, secretary general of the Norwegian Bar Association and panellist on Thursday’s ‘*Regulating artificial intelligence: is it time?*’ session. “We have seen a little bit of it but not exactly what it will be. Do we wait and see or start regulating right now?”

AI and its potential as a disruptive technology to trigger unforeseeable changes make this a particularly diffi-

cult question to answer. While outside the legal world, AI technology has convincingly topped human minds in drafts, chess and now the ancient Chinese game of Go, in the legal world firms have tested and seen AI due diligence products outperform lawyers.

“When we talk about AI we are talking of something beyond word searches, we are talking about the ability of a robot or a programme to learn and teach itself to become more efficient,” said session moderator Steven Richman from Clark Hill.

The advent of AI raises new questions about what the ‘practice of law’ means. Companies or providers of legal AI are not regulated. While there may be programmes that can put together a contract, and putting together a contract is generally considered practicing law, the concept that only (human) lawyers, regulated by bar associations, practice law is no longer valid.

Lawyers have ethical obligations to

supervise work performed by non-lawyers in the context of what they do, but what happens if a client engages an AI firm directly, ponders Richman.

Know your tech

“Lawyers must understand the technology related to their legal practice,” he says. “They have an obligation to communicate with clients as to what is available.”

One of the most dramatic examples of AI use has been in case prediction. “What happens if you have one of these programmes, and it runs the analysis on your case and predicts the outcome that the client will lose. But you feel in your gut that there is a better chance, you persuade the client to go forward and then the client loses,” said Richman. “Are you guilty of malpractice because you didn’t follow the AI programme’s recommendation?”

There then follows the question of cost, and whether it is an overhead or a cost the client has to bear.

Lawyers need to know their technology to properly advise and represent clients and keep their best interests at

the fore. This amounts to an ethical obligation to know your tech.

If AI technology replaces armies of junior lawyers conducting due diligence and analysing case histories, training and legal practice will also have to evolve. The way legal services are provided will change with that, with non-legal entities conducting what is now considered legal practice, and legal practice re-focusing on other areas.

How and what to regulate?

“We have this paradox of the expansion of legal services beyond what lawyers have been doing with these notions of unauthorised practice of law, but the boundaries are still in flux,” said Richman. “Nevertheless, the ethics rules and regulatory regime need to be reviewed.”

It remains unclear whether AI can and should be regulated, and if so how. As to timing, no one knows the future. While very few answers have been proposed to these questions at this stage, the unavoidable reality is that their arrival and impact on the standards upheld by law professionals must be considered.



Merete Smith

Win and lose

Technology plays an increasingly important role both in the legal profession and within legal systems, but questions have arisen regarding its relationship with the rule of law and the values that underpin it.

A revolutionary change is happening in the way law is being practiced, according to Christina Blacklaws, president of the Law Society of England and Wales, chair of its Technology and Law Policy Commission, the UK government’s LawTech Delivery Panel and co-chair of Thursday’s SPPI showcase.

“The impact of technology on the legal world is one of – if not the – most important issues that lawyers need to understand and address in their careers and businesses, wherever they practice,” she told IBA Daily News.

Society and the legal profession increasingly rely on new technologies using algorithms, machine learning or distributed ledger technologies. Technology and automated processes are assisting and facilitating human decision making in many areas, and in some instance, replacing it.

As such, it’s vital that legal practitioners recognise the uses these may

have. “If we want to remain relevant to our clients and continue being trusted advisors, we need to embrace and own technological innovations. The lawyers who do will not only survive but thrive in this brave new world,” said Blacklaws.

Big Brother is watching you

But ethical issues are being brought to light for the use of big data and algorithms – for instance, when it comes to the possibility of bias in data sets, the impact of facial recognition technology on an individual’s right to privacy or the cybersecurity issues raised by data transfers. US non-profit ProPublica found that the data judges rely on in the automated assessment to determine if a criminal will re-offend appeared to be biased against ethnic minorities. Similar criticism has been levelled against the so-called predictive crime mapping technology used by several law enforcement teams.



Christina Blacklaws

For session organiser Tomasz Wardynski CBE, partner at Wardynski & Partners, while each human decision carries responsibility as to its consequences, the truth is more complex when it comes to machines and algorithmic intelligence. Automated processes by their very nature

don’t make decisions based on internalised sets of morals or emotions. Nevertheless, technology needs to be held to the same standard of conduct that society expects from individuals and the legal system, and to respect the same core values of fairness, integrity and impartiality.

“What we have noticed is that people are more technological than axiological and I think this is proving a growing problem, if not a threat,” said Wardynski.

Mr Robot, Esq.

If not addressed properly and globally, technology can also become a threat to the legal profession itself. While it is certainly one of the more relationship-driven sectors, it certainly has not

been immune from the penetration of technology.

Much has been written about the impact automation has had in sectors ranging from manufacturing to retail and financial services. The legal sector hasn’t received the same level of attention. Work is ongoing in various jurisdictions worldwide, including at EU level, to support policymakers to outline an appropriate legislative framework for the use of algorithms in the legal sector.

According to a 2017 IBA report, ‘more and more legal work is carried out by algorithms; this applies, in particular, to routine work, such as reviewing an employment contract, registering a trademark or making divorce papers available’.

For junior lawyers in particular, the issue is a real one, as they tend to be more involved in data gathering and management tasks than their more senior counterparts. A recent survey released by the American Lawyer found that 20% of associates believed automation was the main threat to their job and was set to impact some of their tasks.

“I think it’s important for the legal profession to think about who will gain and who will lose when it comes to automation,” said Wardynski.



Let's make it simple!*



*You thought that employment law in France was a jungle, let's make it simple!

66, avenue d'Iéna - 75116 Paris | T: 33(0)1 56 62 30 00 | contact@flichy.fr | www.flichygrange.com



ENSafrica.com



ENSafrica | Africa's largest law firm

HADEF & PARTNERS

Abu Dhabi | Dubai

Meet our IBA team

We are a firm of talented and diverse lawyers with in-depth knowledge and strength in the UAE.



Sadiq Jafar
Managing Partner



Richard Briggs
Executive Partner



Sameer Huda
Partner



Michael Lunjevich
Partner



Walid Azzam
Partner

DISPUTES. NO CONFLICTS.



Simon Twigden



Pietro Marino



George Maling



Timothy Elliss



Lucinda Orr



Daniel Levy



Paul Austin

We are a leading disputes-only firm based in London. Our dynamic team comprises highly experienced litigation and arbitration specialists, all of whom practised at leading international law firms.

Our firm has rapidly gained recognition for the results it has achieved for its clients, developing a strong reputation for succeeding in some of the highest value and most prominent international disputes before the High Court in London and in international arbitration proceedings.

Most of our cases are international and multi-jurisdictional in nature. We are independent of formal networks and where a case calls for cooperation with firms in other jurisdictions, we have the flexibility to work with leading lawyers in each jurisdiction appropriate for each individual case.

As well as receiving direct instruction from domestic and international clients, we are the natural choice for full service firms who trust us to advise their clients where they are conflicted.

ENYO LAW

Contact us at the IBA at iba2018@enyolaw.com

www.enyolaw.com