



You are merchants of trust

The IBA and IMF share the common goal of fighting corruption in both the public and private sector, according to Christine Lagarde, managing director of the IMF.

“Corruption undermines the ability of the state to raise revenue, and entrenches poverty and inequality,” said Lagarde during her opening address to delegates last night.

“As Pope Francis has said, it is a cancer on society, threatening economic stability – and that is why the IMF is concerned.”

In countries where corruption is rife, infant mortality can be twice as high as others, according to Lagarde. The annual cost of bribery alone, just an element of corruption in itself, is at least \$1.5 to \$2 trillion – approximately two percent of global GDP.

“In the areas of public corruption and un-

ethical behaviour, the rule of law plays an important role,” she said. “When you meet clients and draft documents, you are effectively merchants of trust – which is both in high demand and hard to come by, if we are to believe the public opinion surveys.”

That is particularly the case in the world of finance. Incidents like the Panama papers have given the world a window into the scale of global financial secrecy, continued Lagarde.

Excessive risk-taking – a contributing factor to the financial crisis, which some countries are still recovering from – is unethical even if it does not involve fraudulent behaviour. The goal of those working in financial services should be to not just deliver value for shareholders but to serve society: “Think of the whistle-blower who refused his share

of an award in protest at the lack of action against illicit behaviour,” she said.

Lagarde spoke extensively of the work the IMF has done in Ukraine to assist in the country’s fight against corruption, speaking of her admiration of the authorities that chose to publish the Fund’s especially candid and hard-hitting report. “Publication is often a hallmark of determination to address the issues,” she said. “Of course the process has not been perfect, but they have engaged and that is the point.”

Lagarde was introduced by IBA executive director Mark Ellis, who reminded the audience of the keynote speaker’s standing with the news that she has more Twitter followers than David Beckham.

That came after an initial address by IBA President David W Rivkin, who welcomed delegates to Washington DC at a pivotal time; at the end of an administration he very much admires.

Reflecting on the work the IBA has done over the past year Rivkin spoke of the essential role that lawyers play in preserving the liberties of everybody – “especially those who cannot afford to pay us”. [See page 9 for an extended interview with Rivkin]

Encouraging IBA members to ‘feed your good wolf’, the outgoing President spoke of the need for lawyers to use the power they have and to promote the rule of law in any way they can.

“Write a piece in your local newspaper, or on social media – whatever it is, we must serve the reputations of all lawyers,” he said. “Because negative publicity about one lawyer who has gone too far damages us all.”



LUNCHTIME WITH COLIN POWELL

Former Secretary of State offers insight into the country’s corridors of power

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A CHANGING WORLD

IBA President David W Rivkin on why supporting local lawyers is crucial

PAGE 9



THE IBA’S AWARDS 2016

Human rights, pro-bono and the young lawyer of the year

PAGE 12



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Profile: Christine Lagarde

Christine Lagarde is the managing director of the IMF, a post she’s held since July 2011. A French lawyer and politician, she has held a variety of ministerial positions in the French government, including Minister of Economic Affairs, Finance and Employment. She was the first woman to be appointed finance minister of not just France, but of all the G7 economies.

As a teenager on an exchange programme she worked as an intern at the US Capitol, where she helped Republican Representative William Cohen with his French correspondence.

Next Lagarde was a partner

specialising in antitrust, labour and M&A at Baker & McKenzie. The firm made her its first female chairman in 1999.

When she was elected to head the IMF the world was still in recovery mode from the financial crisis. Lagarde is widely credited with taking the institution through some well-needed reforms, and for providing countries still in distress with practical support.

Lagarde is also the IMF’s first-ever female managing director. She was re-elected to serve a further five years in this position in July, and this year was voted the sixth-most powerful woman in the world by Forbes.

QUESTION

What should the IBA's priorities be in 2017?



Benjamin Mourot
Bignon Lebray
France

I specialise in IP/IT – I noticed there was an IP and entertainment law committee but it is not really dedicated to IP. So maybe the IBA should start focusing more on IP, and divide the committee with IP on one side and entertainment law on the other.



Liz Chung
Kim & Chang
South Korea

Public international law is an area we are seeing a lot of interest in, especially in light of terrorist attacks and other global issues. International arbitration and white collar crime defence and compliance are also increasingly important.



Saelese Haynes
Ministry of Energy
and Energy Industries
Trinidad and Tobago

I was at the IBA conference last year, and there was a big focus on human rights then. I think this should continue in 2017 and beyond. The IBA is the perfect platform for doing this.



Juan Martín Olivera Amato
Olivera Abogados
Uruguay

The global rules on how we do business are changing, and are affecting transparency, the exchange of private, tax and financial information etc. I think the IBA should provide more of a forum where these issues can be discussed, along with proper defences we need to provide our clients.



Russell DaSilva
Hogan Lovells
USA

One important area of work for the IBA is attracting young lawyers to the organisation, and finding ways to reach out to them and meet their needs. The IBA should also focus on financial technology and issues of cyber security and cybercrime as they relate to the financial world.



Aseem Chawla
ASC Legal
India

The IBA as a forum needs to continue bringing the global legal profession on one platform, and strengthen the community feeling. It also needs to improve the technical quotient of its various programmes.



Bulus Yakubu
Nigerian Postal
Service
Nigeria

I would like to see more initiatives on the African situation. For example, I want more work done to recognise the African style of arbitration and mediation, as most of it is currently quite EU and US centered.

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Turenna Ramirez Ortiz
Sánchez Devanny
Mexico

The IBA could add some more committee sessions to promote the interaction between the specialisms and nationalities gathered here, for instance, international trade and taxation, logistics and compliance.



Mark Crane
Gowling WLG
Canada

I am a litigator, and bilateral agreements are a growing trend in dispute resolution. I also anticipate global issues such as energy will grow in importance for the IBA.



Pancrazio Timpano
CTM Avvocati
Italy

I am in the family law committee and I think the IBA needs to work more on human rights especially to make everyone more aware of the current issues affecting key jurisdictions such as Turkey or Africa.



Andrei Gusev
Borenus
Russia

Compliance, white-collar crime and combatting corruption are the areas I am professionally interested in, and believe need to be discussed and addressed more in this forum.



Chungwan Choi
Lee & Ko
South Korea

We need more discussion going forward on the harmonisation of ethics rules and basic bar association principles. What should our common goals be and how do we get there?



Anna Zorya
Arzinger
Ukraine

The IBA is doing a fantastic job, but could add an industry focus to its sessions and conferences, for instance, agriculture and IT. I am from the Ukraine and so would like more of a focus on the CIS market.



Pii Ketvel
Marcol
Luxembourg

The IBA could focus on growing and expanding its reach, notably by ensuring that both the global firms and so-called second tier national firms' needs are met. It's a constant challenge.



Gregory Buxton
Winkler Partners
Taiwan

I would like to see more work on cross-border M&A. Given the increased importance of Asia, I would like to see more focus on the APAC region and some additional focus on southeast Asian economies.

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Mark Ellis
Executive director

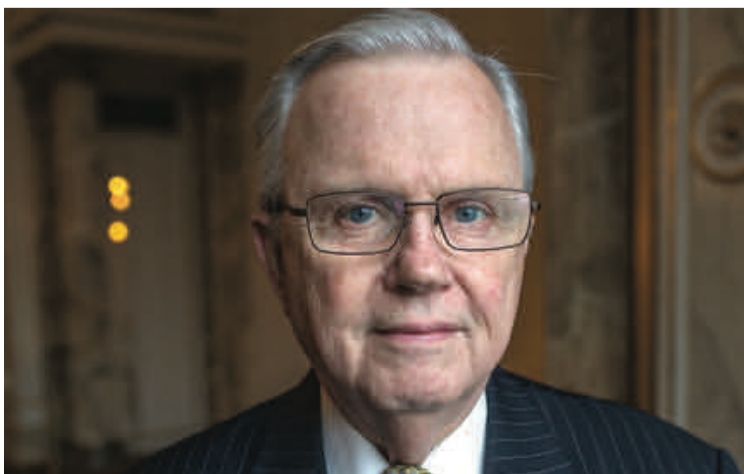
Mark Ellis has been the executive director of the foremost international organisation of bar associations, law firms and individual lawyers in the world for 15 years.

Before joining the IBA, Ellis spent 10 years as the first executive director of the Central European and Eurasian Law Initiative 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 in The Hague.

Ellis has served as legal advisor to the Independent International Commission on Kosovo, chaired by Justice Richard Goldstone and was appointed by the Organization for Security and Co-operation in Europe to advise on the creation of Serbia's War Crimes Tribunal. He earned degrees in economics and law from Florida State University and a PhD in International Law from Kings College, London.

Hans Corell
Co-chair, the Human Rights Institute

Hans Corell served as under-secretary-general for legal affairs and the legal counsel of the United Nations from March 1994 to March 2004. In this capacity, he was head of the office of legal affairs in the UN Secretariat. Before joining the UN, he was ambassador and under-secretary for legal and consular affairs in the Swedish Ministry of Foreign



Martin Šolc
Vice-president

Martin Šolc is the vice-president of the IBA and a candidate for the office of the IBA President (2017-2018). Immediately prior to holding the vice presidency position he was the IBA secretary general. For more than 25 years he has been an active member of the IBA Council and the representative of the institutional members on the Management Board. In addition, he has served as co-chair of the former Eastern Eu-

ropean Forum; a member of the Council of the Section on Business Law; chair of the Interim Bar Issues Commission; chair of the Public and Professional Interest Division; and co-chair of the Human Rights Institute.

A founding partner of Kocián Šolc Balaščík, in the Czech Republic, Šolc's primary area of specialisation is mergers and acquisitions, corporate restructuring and company law (including group reorganisations). International rating directories such as Chambers Global, Chambers Eu-



rope, IFLR 1000, Legal 500, and Who's Who Legal list Mr Šolc as a leading Czech expert in these areas.

Baroness Helena Kennedy
Co-chair, the Human Rights Institute

Baroness Helena Kennedy QC is co-chair of the IBA's Human Rights Institute, (IBAHRI) council member of the Public and Professional Interest Division (PPID) and sits on the IBA Council and Management Board. Baroness Kennedy is one of Britain's most distinguished lawyers and an expert in human rights law, civil liberties and constitutional issues. She has spent her professional life giving voice to those who have least power within the system, championing civil liberties and promoting human rights.

Baroness Kennedy has used many public platforms – including the House of Lords, to which she



was elevated in 1997 – to argue with passion, wit and humanity for social justice. She has also written and broadcast on a wide range of issues, from medical negligence to terrorism to the rights of women and children. She is a member of the House of Lords and chair of Justice, the British arm of the International Commission of Jurists.

Margery Nicoll
Chair, the Bar Issues Commission



Margery Nicoll is the chair of the Bar Issues Commission (BIC). She was senior vice chair of the BIC in 2013-2014, during which time she chaired the BIC Policy Committee. She is also the deputy chief executive officer and director, International, of the Law Council of Australia.

Following her career in private legal practice, Nicoll joined the Law Council and was appointed director of legal and policy, before becoming director, International, in 2005. Her role at the Law Council involves representation and liaison with the International Law Section, government, industry organisations, federal courts, law reform bodies, international legal professional associations, other professional groups and the public. She has also overseen and contributed to the Law Council of Australia's International Strategy.

Almudena Arpón de Mendivil
Chair, the Legal Practice Division

Almudena Arpón de Mendivil is chair of the IBA's Legal Practice Division and its former vice-chair. She has also held the position of IBA treasurer.

She has been a partner of Gómez-Acebo & Pombo since 1994 and was a member of the management committee from 1997 to 2001. She is head of the firm's corporate technology, media and telecommunications practice area.

Arpón de Mendivil is a member of the board of directors and of the executive commission of the Spanish satellite operator HISPASAT,



Horácio Bernardes Neto
Secretary general

Horacio Bernardes-Neto is the secretary general of the IBA and a former chair of the BIC - Bar Issues Commission. He joined the IBA in 1992, has served in several LPD and PPID committees and has held many officer positions, including deputy secretary general for Latin America. Presently, he chairs the IBA Risk Committee and is a member of the IBA Presidential Task Force on Challenges to the Independence of the Legal Profession. He is also a member of the Latin American Forum Advisory Board, having contributed to the creation of the Forum. He is a partner of the Brazilian law firm Motta Fernandes Rocha.



S.A. She is also secretary general of the Spanish luxury brands association Círculo Fortuny and of the European Cultural and Creative Industries Associations. She also stands as secretary to the Board of several corporations present in Spain.

Stephen Macliver
Chair, Section on Public and Professional Interest



Stephen Macliver is chair of the IBA Section on Public and Professional Interest (SPPI) and the secretary-treasurer of the International Bar Association's Human Rights Institute. He has held numerous IBA Officer positions, including IBA assistant treasurer, SPPI secretary-treasurer and advisory board member of the Law Firm Management Committee Advisory Board.

Macliver states that the areas of work covered by the 17 committees constituting the SPPI are relevant to

lawyers across the globe, as they cover some of the most fundamental issues that define the legal profession and go to the core identity of being a lawyer. Primary issues include: access to justice, the rule of law, human rights law, professional ethics, and poverty and social development.



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Time to clean-up

IBA leverages its position and launches global initiatives to take on judicial corruption

In January 2015 the IBA launched its bid to tackle corruption in judicial systems around the world with its Judicial Integrity Initiative (JII). In this morning's session, the results of a wide reaching study into judicial systems around the world and a series of targeted practical initiatives aimed at weeding out the corrupt practices identified will be discussed.

The JII will be presented by IBA President David W Rivkin, who has personally driven the project into existence, with a roundtable consisting of judges involved in the Initiative's working group and voices from in-house counsel and NGOs.

The Initiative was developed with the Basel Institute on Governance through meetings with judges and counsel around the world and with close attention to NGOs involved in the field, including the Global Justice Project and Transparency International. The team carefully structured its approach so as to best to leverage the IBA's strengths and not duplicate the efforts of other organisations.

Its first step was to conduct a study to identify how and why judicial corruption arises and which forms it takes. The study is entitled *The IBA Judicial Integrity Initiative: Judicial Systems and Corruption* and was published in May this year on the IBA's website. It is a 79-page report centred on key findings from a survey of 1,204 legal professionals across 30 countries.

Rivkin and the JII working group consider the question of corruption in the judiciary as especially important. Firstly because it is close to the IBA's heart and secondly because it is especially damaging to societies. According to Chief Justice of Singapore, Sundaresh Menon: "development is key to the alleviation of poverty and the promotion of social justice. Corruption seriously thwarts these goals. And nowhere is it more pernicious than when the judiciary, which is the guardian of the rule of law, is corrupt."

Rivkin adds that the IBA is well placed to do something about it. "When there is corruption in the judicial system that means lawyers are involved and as the world's leading association of lawyers we have some responsibility to fix that. The IBA is in a privileged position to take steps that other organisations cannot," he says.

The survey

The survey generated a number of findings with respect to how, why and in what forms judicial corruption occurs across 30 key study countries. These were primarily in Europe, Latin America and North America, with a smaller collection from Africa (Nigeria and Uganda) and Asia (Philippines and South Korea).

The nature of the surveys' respondents is relevant. Sixty-nine percent were lawyers, 22% were judges and judicial and court personnel made up the remainder. Significantly, the majority of respondents were currently in work and had over ten years of experience.

Two forms of corruption emerged as the most frequent: bribery and undue political influence. The percentage of respondents from each of the study countries that reported never having had – and do not know anyone who has had – any direct experience with corruption in the judiciary is intriguing. Surveys in Finland and Canada returned with 100%, meanwhile Uganda, Russia and Argentina came back with 13%, 18% and 19%, respectively.

In a third of the study countries at least half of the respondents has had, or know someone who has had, direct experience with judicial corruption. The result for Nigeria at 56% is better than might be suggested by its ranking of 136 in Transparency International's 2015 Corruption Perceptions Index. Spain came lowest in Western Europe with 49% while the US, France and Poland posted 81%. The UK posted 90%.

Corruption is by no means limited to bribery in countries with perceived weak governance structures and rule of law. The survey found that 40% of respondents in 12 study countries perceived the incidence of undue political influence or political interference as very high. "Undue political influence can be high, or perceived to be so, even in countries that have strong institutions and where the rule of law is generally respected," says the study, noting that political influence is most often perceived to be directed at judges, but also prosecutors and investigators.

More subtle forms of pernicious influence were also noted such as racism, ageism or gender bias. Respondents also highlighted partisan appointments, questionable budget allocation, closed informal networks, nepotism, favouritism and influence peddling as prevalent practices.

The perception that corruption is associated with wealthy groups was largely confirmed by the survey responses. Bribery also occurred in many different scenarios within the system, involving judges, lawyers, prosecutors and court personnel and in a system's contact with the public. The study, for example, points to complex court procedures that can be used to extort bribes, and convoluted or vague processes and sanctions regimes.

Take the bull by the horns

The JII has put together a series of projects that it hopes will tackle some of the issues raised in the survey.



"Two forms of corruption emerged as the most frequent: bribery and undue political influence"

SESSION

Combating judicial corruption: the keys to an effective judicial system

COMMITTEE

IBA Judicial Integrity Initiative

TIME/VENUE

**Today 10:45 – 12:30
Salon 3, Lobby level**

The first key initiative is the Anti-Corruption Compact. According to Rivkin, it is designed to be signed by judges, lawyers, prosecutors and court administrators in which they each make a personal commitment not to engage in corrupt acts and to report corrupt activities if and when they see them. The aim is that national bar associations will publish the Compact and its signatories on their websites. "It will give lawyers confidence that their counterparts are not engaging in corrupt activities," says Rivkin.

Australian judge Justice Martin Daubney also strongly supports the Compact. "The public act of subscribing to the Compact sends a very loud message to politicians, business people, and the community at large," he says.

The IBA will also aim to conduct a study of national laws to see whether they capture the corrupt practices identified. "Depending on what we find from the national survey we would then potentially draft a model statute designed to make illegal those forms of corrupt activities in judicial systems. We hope our member national bars would then push adoption of this statute in their own countries," says Rivkin.

The JII team has also been working on an ambitious project to create a certification system in the model of what ISO or British Standards does for companies. "We will create a set of judicial standards and a system by which they can be investigated, audited and potentially certified," says Rivkin. Its aim is to create competition between countries to bring their system up to the level where they can be certified, he adds, "Because certification would be a major driver for investment."

A fourth initiative will tackle the difficult issue of how judicial corruption is investigated in order to identify what has and has not been effective and to provide best practice compilations that can be used by bar associations. This last point about how the judiciary is monitored is perhaps one of the most sensitive one:

Particular care needs to be taken with the issue of investigating judges for alleged corruption, according to Daubney. "At its most fundamental level, it requires a balancing of the doctrine of the separation of powers against the responsibility of the State to assure protection of the rule of law," he says. Such investigations can also notoriously be used as a thinly-veiled attack by partisan political or social interests on independent judges.

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A conversation with... General Colin L Powell

As the US elections draw nearer, today's lunchtime session with former Secretary of State will prove a fascinating glimpse into the country's corridors of power

Colin Powell was born in 1937 in Harlem, New York, to Jamaican immigrants. He rose to become a four-star general in the US army and the 65th Secretary of State under George W Bush (2001-05). He was the first African-American to hold the post of Secretary of State and to serve on the Joint Chiefs of Staff. In 1995 he was also widely tipped to run as Republican presidential candidate against Bill Clinton.

His career has spanned over 50 years of public service to the US, holding posts including national security advisor (1987-89), commander of the US Army Forces Command (1989) and chairman of the Joint Chiefs of Staff (1989-93). Nicknamed the reluctant warrior, he is highly respected across the political spectrum.

Although he declared himself a Republican in 1995 and remains a high profile member of the GOP he has not held back from either criticising the Republican Party or crossing the divide to support Democratic Party candidates, as he did in both 2008 and 2012 when he endorsed Barack Obama's candidacy. Interestingly, Powell has not yet endorsed a candidate in the 2016 US elections.

At 79, the respect that Powell continues to

command in the US is second to none. Republican senator for Illinois Mark Kirk, recently declared he would write-in Powell for president in the upcoming elections. Powell's endorsement of Obama in 2008, in which he attacked insinuations that Barack Obama was a Muslim and linked to terrorism, has recently been widely circulated in the context of the current Republican campaign: "Is there something wrong with being a Muslim in this country? The answer's no. That's not America."

The career

Powell earned a degree in geology from City College New York in 1958 but more importantly it was here that he found his vocation as a soldier, joining the Reserve Officers' Training Corps. On graduating he became an army second lieutenant and served in the former West Germany. He subsequently served two tours in Vietnam, in 1962-63 as an advisor to the South Vietnamese Army and in 1968 as a major and assistant chief of staff of operations. In his second tour he was decorated for bravery.

After Vietnam, Powell obtained a White House Fellowship under Richard Nixon. He served as a lieutenant colonel in South Korea



and in the 1980s acted as senior military assistant to the secretary of defence, notably advising in the invasion of Grenada and 1986 airstrike on Libya. At 49 Powell became Ronald Reagan's national security advisor and in 1989 was made a four-star General. It was president George Bush Snr who made him commander in chief of Forces Command and chairman of the Joint Chiefs of Staff (JSC).

From 1989-93 Powell served as JSC Chair and oversaw the invasion of Panama to remove General Manuel Noriega and the 1991 Desert Storm Operation in the Persian Gulf War.

Powell was again briefly touted as a presidential candidate in 2000 but decided not to run and instead became Secretary of State under George W Bush. He played a central

SESSION

A conversation with... General Colin L Powell, USA (ret) - US Secretary of State (2001-2005)

TIME/VENUE

**Today 13:15 - 14:15
Salon 2, Lobby level**

role in the Iraq invasion, urging caution and pushing a policy of cooperation with international partners and the UN that lost out to more hawkish elements in the administration. He famously urged President Bush to consider the consequences of invading: "if you take out a government, take out a regime, guess who becomes the government and regime and is responsible for the country? You are. So if you break it, you own it". Opponents of the War have criticised him heavily for a 2003 UN speech in which he made the case for war based on spurious evidence for the existence of weapons of mass destruction.

Since leaving public service Powell, who has hobbies including fixing up old Volvos according to his 2012 memoir, remains one of the most trusted figures in American public life.

The dawn of the AI lawyer

The legal profession is rapidly adopting artificial intelligence. Today's session addresses both the opportunities and challenges

When it comes to artificial intelligence (AI) in law the reality of its application is obscured by bigger debates: machines versus humans, concerns over liability and the loss of thousands of jobs to computers.

In today's session, speakers from law firms in the US and Europe, chaired by Joan Roca Sagarra of Roca Junyent in Spain and Vagn Thorup from Lundgrens in Denmark, will present examples of AI in action, specifically in trial law and corporate transactions. The panel, which includes Timothy Cameron of Cravath Swaine & Moore, Vittorio Nosedà of NCTM Studio Legale, Sajai Singh of J Sagar Associates and Catherine Dixon of the UK Law Society, will also explore some of the worries held by the legal community about applying the technology.

The rapid development of AI has big implications for law firms - particularly over the next ten to fifteen years. There are claims that one associate working with AI can do the work of five associates without it.

Such efficiency savings will challenge the traditional pyramid partner-associate structure of firms, carry implications in staffing and recruitment, impact legal services outsourcing and lower fees. The competitive advantage is clear; the key is seeing the potential and investing in developing the right systems.

A number of firms are already using forms of AI technology. Dentons, along with around 20 others have invested in ROSS, an app that conducts legal research powered by IBM's cognitive computer Watson. To a question posed in plain language, ROSS can look up an obscure court ruling, find the associated case and provide an opinion on its relevance to the matter at hand, in plain language. ROSS can then monitor the law and flag up developments that positively or negatively impact the matter. US firm BakerHostetler is another ROSS convert, having put the system to work in its bankruptcy and insolvency practice.

Elsewhere, Linklaters and Berwin Leighton Paisner have separately joined up with AI provider RAVN, while Pinsent Masons and

Linklaters have both developed their own respective AI-driven programmes called TermFrame and Verifi. There are many other examples of firms teaming up with start-ups or universities to develop AI programmes.

The message from the session, says Thorup, is that these are not future developments, they are happening now. "It will be a major competitive advantage rather than having lots of members of staff," says Thorup, "right now it is used very much for high volume processes but in time it will become much more sophisticated". Indeed, AI is becoming an indispensable weapon against ever increasing amounts of data in complex deals and there is a lot in legal work that could be intelligently automated.

AI-lawyer pairing

The most likely big impact AI will have will be in its deployment in partnership with lawyers, rather than as a standalone dispenser of legal advice, and the theory is that AI will free lawyers up to focus on the more sophisticated aspects of the work earlier in their careers.

According to Roca, in one trial AI was run alongside traditional lawyering in a complex corporate transaction. "AI was in many ways more reliable than the due diligence research

SESSION

Artificial intelligence: preparing lawyers for new technology in practice

COMMITTEE

Academic and Professional Development Committee; Technology Law Committee

TIME/VENUE

**Today 10:45 - 12:30
Virginia Suite C, Lobby level**

done by lawyers, where junior lawyers may overlook a clause over the course of 24 hours but the computer will never get tired."

The session will also address some of the concerns that surround AI. "One of the biggest questions is the ethical one," says Roca, "what happens if the computer is wrong about due diligence, who is liable?" In a profession that can sometimes be reactive and wary of ceding direct control of details to a computer, Thorup concedes that it is difficult for lawyers to embrace the technology openly. "But firms are looking at it and working on it and there are more apps and services using AI than ever".

HADEF & PARTNERS

ABU DHABI - DUBAI

Meet our IBA team at today's Arab Regional Forum panel session

The topic is "Regulatory, Compliance and Enforcement Challenges in the Arab Region".
The session starts at 10:45am and will be held on Balcony B, Mezzanine Level.

Our IBA team from the top: Sadiq Jafar, Managing Partner Dubai, Richard Briggs, Executive Partner Dubai, Sameer Huda, Partner, Michael Lunjevich, Partner, Yasser Omar, Partner, Walid Azzam, Partner, Constanze Doering, Senior Associate, Dina Mahdi, Senior Associate

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A changing world

IBA President **David W Rivkin** discusses the IBA's recent progress, his proudest achievements and why supporting local lawyers is more important than ever

This is David W Rivkin's last year as IBA President, but he's made every second count. Having managed his IBA responsibilities with a role as partner and co-chair of Debevoise & Plimpton's international dispute resolution group for the past two years, in December he'll be succeeded by current vice president Martin Šolc.

Here he talks exclusively to the *IBA Daily News* about how he has fulfilled his presidential plans, most notably extensive work on combating judicial corruption, and what members should expect from this week in Washington DC.

Last year one of your priorities for 2016 was developing projects aimed at tackling judicial corruption. What work has the IBA done on that front since Vienna?

Our Judicial Integrity Initiative has been extremely active. Following the Vienna conference, we conducted a global survey about judicial corruption: its frequency, how it occurs and in what circumstances. The experts we consulted told us that no one had conducted such a survey about the root causes of judicial corruption. We received more than 2000 responses, not only from IBA members but also from members of our national bars and members of the International Association of Jurists, among others. Working with the Basel Institute on Governance, we analysed the data and in May published a comprehensive report on the survey. The survey found widespread concern not only about bribery but also about political and other interference in judicial decision-making. The survey is available on the IBA website.

Working with the findings of our report, we have now embarked on multiple projects that I hope will have a practical impact on judicial corruption. We have drafted a model Judicial Anti-Corruption Compact, in which each signatory states his or her commitment not to engage in corrupt activities and to report any corrupt act witnessed. We hope that in individual countries this joint declaration will be signed by judges, lawyers, prosecutors, court clerks and the bar association, and that the declaration and its signatories will be posted on the national bar associations' website. These public commitments and the attention that should be given to them should help change public expectations that corruption is necessary to obtain a favourable result. Several national bars have already indicated a desire to initiate such a declaration in their countries.

We have also begun work on two best practices compilations: one showing how



bar associations deal with allegations of corrupt conduct and sanction those found to be guilty; the other focusing on prosecutorial practices. We have also begun to work with several organisations in considering the creation of a certification process, similar to ISO [International Organisation for Standardisation] or British Standard that would ensure judicial systems have appropriate mechanisms in place to prevent corruption.

If such a certification process were created, it would of course be voluntary for a judiciary to decide whether to submit to that scrutiny, but we hope that it will create competition among judiciaries to show that they have proper mechanisms in place and thereby attract investment, dispute resolution and other benefits. Several of our committees will be undertaking a survey of national anti-corruption laws to see whether they capture the types of corruption found in our survey report. Our hypothesis is that many such laws are aimed more at procurement than at the types of corruption that occur in judicial systems. Finally, we are also considering whether asset recovery mechanisms may be enhanced to prevent judicial corruption.

All of these issues will be discussed at the showcase programme on the Judicial Integrity initiative this morning. I hope that many members will join us for that fascinating discussion. [see page 6 for preview]

What else has the Association achieved over the past year that you're proud of?

This has been an extremely active year for the IBA, and we have had many accomplishments of which I have been proud. There are too many to list here, but I will mention a few.

The Council's adoption of the IBA Practical Guide for Business Lawyers on Business and Human Rights will have a substantial impact on the profession. Lawyers around the world need to understand how to advise their clients on avoiding human rights impacts and to meet the standards of the UN Guiding Principles on Business and Human Rights and similar documents. As lawyers, we also need to know how to meet our own obligations under the UN Guiding Principles. Many thanks to the working group that worked so hard in developing the Practical Guide and the much more detailed reference

annex that has also just been published. Both are available on the IBA website.

Our work on climate change justice has continued. We have been integrally involved in many important conferences, including conducting programmes at COP21 in Paris last December and a major conference in Washington in May with the UN and the World Bank. Many of our committees have continued to work actively to implement the recommendations of our groundbreaking 2014 report.

Our Presidential Task Force on Human Trafficking has published an excellent report on the impact of corruption on human trafficking. The report makes many valuable recommendations, and it will be a very important contribution to the field.

The Presidential Task Force on the Independence of the Profession has also completed an excellent report on the need for independence of the bar and indicia of such independence.

The IBA Human Rights Institute's work in creating the Independent Lawyers Association of Myanmar culminated in the inaugural meeting of that association in Myanmar's capital in January. This is a great contribu-



INTERVIEW

tion to the democratisation of the country. I had the honour of opening that conference with Aung San Suu Kyi.

We have been conducting training programmes for Cuban lawyers on the basics of international business law. This knowledge is essential if the country is to attract the kind of trade and economic investment that it is now beginning to seek.

In all of these and in the IBA's other efforts, we have contributed broadly to the development of the rule of law, the protection of human rights and economic development around the world. I am very proud that, because of these efforts, the IBA has been recognised as a critical player by governments around the world. We have been invited to be the principal, and sometimes only, legal organisation to address many important governmental meetings including a Ministerial Meeting at the OECD on corruption, the UN/World Bank Conference on Climate Change, Prime Minister Cameron's anti-corruption conference in London, and a conference on human trafficking at the Vatican that was addressed by the Pope.

How can members help to further these goals?

Members can contribute directly to the development of many of these efforts. For example, I hope that every member will read and understand the Practical Guide on Business and Human Rights and put it into practice in daily interaction with clients and in one's own law firm. This alone could contribute substantially to reducing human rights impacts. Many of our bar associations have encouraged this by publish-

ing the Practical Guide on their own websites, and I would encourage other bars to do the same.

Similarly, every lawyer needs to be involved in the fight against judicial corruption and to promote the rule of law generally. I also think lawyers need to do a better job of explaining to the public the important role that we serve in preserving the rule of law and protecting against excessive government power.

What will the IBA's focus shift to over the next twelve months?

I am very proud of the work I have been able to do as IBA President these last two years, but on December 31, I will be pleased to turn over the reins to the next president, Martin Šolc. Martin will be an excellent president. Not only an outstanding business lawyer, he has fought for the rule of law since his university days during the pro-Soviet regime in the Czech Republic.

It will be up to Martin to decide the IBA's priorities during his term, but I know that he will continue the work on the Judicial Integrity Initiative and the independence of the profession, among others, and that he intends to begin new presidential projects in other areas such as cybersecurity.

How will the IBA continue to balance its global aims with providing support for local lawyers?

That is the beauty of the IBA's organisation: combining the power and reach of our bar association members with the knowledge and initiative of our individual

“Many of the IBA's projects are not only adopted by the IBA's Council but implemented by its bar association members”

members. Many of the IBA's projects are not only adopted by the IBA's Council but implemented by its bar association members. Importantly, the IBA and our committees focus both on global issues – such as climate change justice or improving arbitration procedure worldwide – and also on issues that impact individual countries or lawyers.

We have spoken out against the detention and prosecution of lawyers in countries such as Turkey, China and Venezuela, and we have sought to protect against the infringement of the independence of the legal profession in many countries around the world. Our work supports individual bar associations in both developing and developed countries – the Myanmar and Cuba projects are great examples – and we comment on or provide support for national legislation where it is appropriate.

What sessions, speakers and social activities are you most looking forward to this week?

I am very excited that, in addition to our outstanding opening keynote speaker, Christine Lagarde, we open every day with a morning keynote address by US cabinet officers: Homeland Security Secretary Jeh Johnson, US Trade Representative Michael Froman and Attorney General Loretta Lynch.

This is a new format for the annual conference and it provides all our members with an opportunity to hear directly from the top officials in Washington. I hope that all members will take advantage of this extraordinary opportunity. Each of the presidential task forces will also present showcase sessions: Judicial Integrity (which I will moderate), Climate Change Justice, and Independence of the Profession and Human Trafficking.

I am also very excited about the Rule of Law Day on Friday. Not only will we have an address by US Supreme Court Justice Anthony Kennedy, but we will be hearing from a remarkable group of young Israeli and Palestinian lawyers who have been part of a discussion group that I created as one of my initiatives. These lawyers have met three times in Prague and again here in Washington to discuss the many issues affecting the region and how international law may be used to solve them. It has been heartwarming to see how quickly they bonded and how much they have learned from one another. Indeed, I have learned so much from them. I hope that everyone can come to hear them talk about their experiences on Friday.



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preeminent law firms from each of the Baltic States.

Recognising talent

The winners of this year's IBA Human Rights, Pro Bono and Outstanding Young Lawyer awards have been revealed. Congratulations to the winners, who will receive their awards throughout the week

The 2016 Pro Bono Award

The winner of this year's Pro Bono award is Odette Geldenhuys, founder of probono.org, the first pro bono clearing house in South Africa. With no pro bono culture in the country prior to this, the firm focuses on helping marginalised and underprivileged people.

As part of this, Geldenhuys has created the first housing cooperation, the Seven Buildings Project, as a way of securing black property ownership. She was also the first director of Access to Justice of the statutory Legal Aid South Africa, and in every strand of her work recognises the important role the private profession has to play in ensuring access to justice for all.

The judging panel cites her clear interest in, passion for, and track record of contributing



to the area of pro bono, and her resilience in getting probono.org off the ground despite some local resistance to rendering pro bono legal services.

Her nominators were also impressed by other public leadership roles she's held at different times, including deputy national director of the Legal Resources Centre, and as the first director of Legal Aid. Case work has also not been overlooked, for example, her outstanding work on behalf of 16 workers against a micro lending credit provider.

The Pro Bono Award, established in 2010 by the namesake committee, honours a lawyer who has shown an outstanding commitment to pro bono work throughout their legal career. The prize includes free registration for the conference and a contribution towards travel costs, and a year's free IBA membership.

The 2016 Human Rights Award

The winner of this year's Human Rights award has been working towards freedom of both expression and information since 1995. Galina Arapova is the director and a senior media lawyer at the Mass Media Defence Centre, the only Russian NGO providing advice to Russian journalists.

Arapova has defended small local and regional newspapers, regional TV networks, national newspapers and online publications, as well as the New York Times in the Russian courts.

She has worked on over 300 cases and won a majority, regularly progressing these to the European Court on Human Rights on free speech issues.

Arapova is also the author/editor of over 20 books on a variety of issues relating to Russian media law and international standards on freedom of expression and is also a trustee of human rights organisation Article 19, serving as vice-chair since 2014.

On top of that she lectures at Voronzeh State University's journalism school and the Swedish Media Institute, providing training on freedom of expression related issues for journalists, lawyers, barristers and judges.



WHEN

IBA President David W Rivkin and LexisNexis' Ian McDougall will present Geldenhuys with her award at the Pro Bono session today at 14.30

VENUE

Virginia Suite B, Lobby Level

WHEN

Arapova will receive her award on Friday at 13.30

VENUE

Salon 3, Lobby Level

The 2016 Outstanding Young Lawyer of the Year Award

This year's Outstanding Young Lawyer of the Year Award goes to Remy Choo Zheng Xi, director at Singapore firm Peter Low. During his time at the firm he's successfully transformed the image associated with studying and working in the law for young people.

In recognition of William Reece Jr, the IBA Young Lawyers' Committee presents this award to a young lawyer who has shown excellence in their work and great achievements in their career to date, as well as that extra mile of commitment to professional and ethical standards.

Peers describe Choo as an example of how 'doing well' does not have to be mutually exclusive with 'doing good'. From the judge's perspective, he stood out for his work in Singapore in the very 'unpopular and challenging area of human rights litigation, being an advocate for free speech and leading significant public interest cases'.



WHEN

IBA President David W Rivkin and LexisNexis' Ian McDougall will present the award at the Young Lawyers' breakfast today at 8am

VENUE

The Blue Room, Omni Shoreham Hotel [by invitation only]

A message from LexisNexis

LexisNexis is extremely proud of its partnership with the IBA on these prestigious awards. We congratulate the 2016 honourees and we commend each for their commitment and dedication. We too have a higher purpose that encompasses both our commercial work and our actions as a responsible corporate citizen; that purpose is to advance the rule of law around the world. These awards inspire lawyers to pursue the same values and recognise outstanding individuals for their commitment to society.

**Ian McDougall,
EVP and General Counsel,
LexisNexis Legal & Professional**

The change-maker

Secretary of Homeland Security **Jeh Johnson** is set to deliver a fascinating keynote address

Jeh Johnson has been the Secretary of the Department for Homeland Security (DHS) since 2012 and a core member of President Barack Obama's security team since 2009.

He is an accomplished trial lawyer and was the first elected African American partner in white shoe law firm Paul Weiss Rifkind Wharton & Garrison. He served as general counsel of the Airforce under President Bill Clinton from 1998-2001 and general counsel of the Department of Defence in Barack Obama's first administration from 2009-12.

He graduated from Morehouse College and obtained a JD from Columbia Law School, after which he joined Paul Weiss as an associate in 1984. In 1989 he became an assistant US Attorney in the Southern District of New York. Johnson acted as special counsel to John Kerry's 2004 presidential cam-

paign and served as a fundraiser for Obama's 2008 campaign before joining Obama's transition team. Several times throughout his career he has returned to private practice.

In 2012 Obama appointed him Secretary of the DHS, a department created by George W Bush in response to the 9/11 attacks that handles immigration issues, citizenship, domestic security, border patrol and customs, to name but a few. In this role he has been a key player in Obama's Countering Violent Extremism (CVE) policy. The strategy marks a clean break with the War on Terror era and Johnson has proved a nuanced proponent, working to neutralise what he has termed "over-heated political rhetoric".

Johnson has argued that attempts to isolate and vilify American Muslims are counter to national interests and security and stressed that there is no one single

American Muslim community, or single Hispanic community. He has been a peripatetic DHS Secretary, visiting communities around the country in order to build bridges and relentlessly asserting – "although it should be obvious" – that the overwhelming majority of American Muslims are patriotic people dedicated to the US.

Building bridges

Johnson's tussle with counter-security has been a consistent theme throughout his career. He was born in New York on September 11 1957 and witnessed first-hand the 9/11 attacks. As GC for the Pentagon's Department of Defence Johnson was the legal architect of Obama's counter-terrorism strategy and drone policy and spent a great deal of time giving the legal sign-off on counter-terrorism measures.

One of Johnson's key recent goals has been his work in counter-terrorism at the DHS where he has sought to define a strategy to confront a new lexicon of 'self-radicalisation' and 'terrorist-enabled' attacks. He has argued that we are now in "a more complicated world" facing a new phase of the global terrorist threat not necessarily dominated by acts perpetrated by foreign trained operatives. He has also tightened airport, aviation and cybersecurity and invested in state and local police.

Johnson has an uncanny knack of imple-

SESSION

Morning Keynote Address...Homeland Security Secretary Jeh Johnson

TIME/VENUE

**Today 9:30 – 10:30
Salon 2, Lobby Level**

menting landmark changes in very different areas and perhaps surprisingly, some of his best known achievements have come in civil rights. He famously led an internal Defence Department review that helped overturn the 'don't ask, don't tell' policy that banned openly gay and lesbian service personnel. At the helm of the DHS he has also been instrumental in reforming immigration policy and implementing an executive decision by Obama, viscerally opposed by Republicans, which potentially legalised four million undocumented migrants living in the US.

And despite not boasting vast managerial experience he has begun to turn around the juggernaut that is the DHS; one of the most beleaguered, criticised and complicated state departments. When he took the helm in 2012, the DHS had 15 vacant senior positions and consistently posted the lowest levels of staff morale of any public department. It has improved vastly since.



"Johnson has been a key player in Obama's Countering Violent Extremism policy"

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Dear future President...

As the US elections draw near, the IBA's Human Rights Institute will today call on the next President to set higher standards in human rights and lead the way for other nations

Leading human rights figures including Baroness Helena Kennedy and former ambassador Hans Corell will call on the next President of the US to redouble efforts to abandon institutions and practices that undermine the plight of human rights around the world.

The panel will argue that issues including mass incarceration, torture, the use of the death penalty, solitary confinement and Guantanamo Bay constitute an affront to human rights and give succour to human rights violators around the world, serving as a "permission to lower standards", in the words of Baroness Kennedy. Speakers will also endeavour to raise the flag on gender equality, climate change and human rights in business.

The plea to raise standards will come in the form of a letter to presidential hopefuls, drafted by the IBA's Human Rights Institute and based on the conclusions drawn from the session. The session itself promises to be a lively one, in which panellists will actively seek opinions from the floor in order to draw a cross-section of perspectives from lawyers around the world.

One of the highest profile issues that will be raised is that of Guantanamo Bay (Gitmo), which so clearly exemplifies continued and systematic violation of human rights. According to Corell, Gitmo is a flagrant violation of human rights. Kennedy agrees. "In creating Guantanamo and locking people up without access immediately to trial process and lawyers, the US sent out a

"In the military sphere the panel will highlight torture, targeted killings, secret detention and extraordinary rendition"

very negative message to the world," she says.

Under President Barack Obama efforts have been made to close the centre and, following its creation in 2002, there have been numerous attempts to bring some sort of legal resolution to its detainees. Despite some positive progress and strong rhetoric from the Obama administration the US has to date failed to close it and the centre currently has 71 detainees, 59 of whom have been there for over ten years (in 2009 when Obama took office it had 242).

The majority of the detainees who have left have done so through government negotiations with other countries to transfer, repatriate or resettle inmates. The government is currently considering an option for transferring detainees to foreign countries for prosecution while military commissions are trying seven detainees.

While the numbers of detainees are not high it is the centre's symbolism that has such a powerful effect. "Opening something like Guantanamo sends a terrible message to the world, no one should be arbitrarily arrested and it is an abominable argument that US law doesn't apply in Guantanamo," says Correl.

Lowering standards

Among the other issues the panel is keen to highlight are mass incarceration and racial discrimination. The US currently has two million people in national, local and county jails, accounting for a staggering 22% of the world's prison population. Of the two million, African Americans (12% of the US population) account for 44%, according to Amnesty USA.

"The US has one of the most depressing stories on this," says Kennedy. "The last President has been outspoken about his concerns and particularly that mass incarceration has been visited upon minority communities disproportionately. We've seen that it is black men and brown skinned men who are filling the jails of America". Kennedy argues that huge numbers of people are in prison because of standardised sentences and the 'three strikes and you're out' system.

The two chairs will also shine a light on



"It is an abominable argument that US law doesn't apply in Guantanamo" Hans Corell

the continued use of the death penalty and of solitary confinement. "The US uses solitary confinement in a way that really is an affront to human rights," says Kennedy. In the military sphere the panel will highlight torture, targeted killings, secret detention and extraordinary rendition.

Speakers are also keen to raise broader human rights issues and the role that the US could play in these. Human rights concerns related to climate change is one example where strong leadership may avert the potentially catastrophic consequences of rising sea levels and desertification on people's livelihoods. Gender equality is another, where the panel feel that the US could still do more, as is promoting human rights in the context of corporate globalisation.

America sneezes...

The IBA's Human Rights Institute writes regular letters, often in response to specific events that threaten lawyers and human rights but in this case the HRI is making use of the IBA as the most extensive organisation of lawyers around the world and of the event's location in Washington on the eve of an election to make an impact.

SESSION

HRI SHOWCASE: Human Rights in the United States – a letter to the next President from the international legal community

COMMITTEE

IBA's Human Rights Institute

TIME/VENUE

**Today 14:30 – 17:30
Salon 3, Lobby level**

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Slipping away?

The Transatlantic Trade and Investment Partnership is on thin ice due to Brexit and the US elections

The Transatlantic Trade and Investment Partnership (TTIP), the free trade deal between the US and the EU, may now potentially be dead in the water. The existential threat comes partly from Brexit but also from the nature of the debate on free trade agreements in the US elections.

This afternoon's session boasts two trade negotiators from the deal. From the US side is Dan Mullaney, assistant US trade representative for Europe and the Middle East at the Office of the US Trade Representative. From the EU is Damien Levie, head of the Trade and Agriculture Section of the EU Delegation in Washington DC.

They will be joined by analysts including Doug Palmer, senior trade reporter from Politico and Thea Lee, an economist and current deputy chief of staff of AFL-CIO.

"This is one of the most important trade deals that will affect the economic relationship between the US and the EU," says Hansel Pham, partner in White & Case and session chair. "What we are hoping to do is have separate panels," says Pham. The first will be with the lead negotiators from the US and the EU to get their perspectives and ascertain what they are trying to accomplish on behalf of their constituents and their governments.

The second is comprised of experts who are commenting on the advantages and disadvantages of the deal.

TTIP was envisaged as creating the largest free trade area in the world and has as its main aim lowering trade tariffs between the US and EU and harmonising regulations to ease the flow of trade. The agreement was launched with much optimism on both sides of the Atlantic. An independent study published by the European Commission estimated that it would boost the EU economy by €119 billion a year (\$133 billion), the US economy by €95 billion a year and the global economy by €100 billion a year.

Nevertheless public opposition to the deal has been steadily increasing. There have been vociferous campaigns by groups such as War on Want, Global Justice Now, Democracy Now and Greenpeace and pointed criticisms by some political and social figures against TTIP and many of its provisions.

In 2016 a number of European voices also cast doubts over TTIP's progress, with French Trade Minister Matthias Fekl and German Vice-Chancellor Sigmar Gabriel effectively announcing that the deal had failed. French President Francois Hollande, himself preparing for a presidential election in 2017, stated that the



Hansel Pham, partner at White & Case

deal would not pass in 2016.

The mounting challenges

Regardless of the deal in itself, the two key challenges to TTIP that the session will discuss are Brexit and the US elections.

"[Brexit] has a huge role not only for the EU but also US willingness to continue to engage in this process as it currently stands," says Pham. "The second is of course the US presidential election. There has been a lot of tough talk by both candidates about trade deals, mostly looking at the Trans-Pacific Partnership (TPP), but it is hard to see how TTIP also would not be included to some degree".

Donald Trump has labelled TPP "a rape of our country" and vowed to "declare our economic independence once again". Hillary Clinton is also opposed the TPP deal, despite

SESSION

Transatlantic Trade and Investment Partnership and its impact on transatlantic relations

COMMITTEE

European Regional Forum and the North American Regional Forum

TIME/VENUE

Today 14:30 – 17:30

Roosevelt 3, Exhibition level

previously being a proponent. The messages may mark a change in appetite for free trade deals. What is said in the campaign may stay in the campaign, but as Pham notes: "one has to give a grain of thought for what they have said and right now both candidates are very vocal about opposing 'unfair trade deals'".

Quite apart from the existential threats to TTIP are the loud objections from sectors of the public, politics and civil society groups. The key sticking points here include TTIP's inclusion of an Investor State Dispute Settlement mechanism (ISDS), which opponents argue undermine democracy. Other strong objections have come in a perceived threat of privatisation to services. The debate is sure to be a fascinating one.

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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.

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