

## Jack Straw



## Robert Holleyman P2



## Robert Mueller P14



# Jack Straw: Brexit's hard truths

**F**ormer British foreign secretary Jack Straw has explained why he believes Britain voted to leave the EU, and laid some of the blame at the door of the European Commission.

In an opening speech in yesterday's session 'Brexit or bust? Better together or the end of Europe as we know it?' Straw, who campaigned for the UK to remain in the EU, argued that many Brits never felt emotionally attached to the idea of a union. "It has always been seen as a transactional relationship," he added.

Straw criticised the viability of the euro currency. "A single currency beyond a sin-

gle country was inherently unstable," he said. "Breaking up the euro would be an unimaginable nightmare but there needs to be some honesty – particularly from those in the EU – about the monumental error of its creation," added Straw.

Straw explained that as the UK moved from being the so-called sick man of Europe in the 1970s to one of its most successful economies – with unemployment levels in the country now at 4.9% compared with the eurozone's 10.1% – membership became an increasing burden on the country.

He reserved particular scorn for Jean-

Claude Juncker, President of the European Commission, citing his statements during the Brexit campaign as damaging. "Juncker probably lost the Remain campaign more votes than any other figure. Every time he spoke, you could see votes for the Remain campaign drain away," said Straw.

Moving onto the fallout from Brexit, and the long process of negotiating a new relationship between Britain and the EU, Straw said that the UK's vote to leave the EU will not result in materially improved immigration controls.

The most potent argument in favour of leaving the EU was about taking back control of immigration. "But we will go on needing migration for lower skilled jobs. And there is an understanding that we will continue to welcome highly skilled workers too," said Straw.

Formal negotiations between the UK and the EU cannot begin until Prime Minister Theresa May invokes Article 50 and starts the corresponding two-year process, which UK Brexit Secretary David Davis

Continues on page 3

# ICC in the dock

**T**he International Criminal Court (ICC) has used untested evidence given by anonymous sources, according to a speaker at yesterday's panel 'Seventy years after the judgment at Nuremberg – has the US failed to support international justice at the ICC?'

"There is no transparency whatsoever and so we don't know how prosecutors at the ICC make their choices," said Caroline Buisman, ICC defence counsel in the Hague, the Netherlands.

Buisman has been involved in two high-profile cases, the Katanga case involving 24-year-old Congolese warlord Germain Katanga convicted of war crimes committed in the Democratic Republic of Congo and the Ruto case on post-election violence in Kenya.

She pointed to a pattern showing the ICC approaching easy targets not chosen by the prosecutor's office, which instead relies on other institutions, such as NGOs, to carry out the investigation.

The ICC defence counsel alluded to the Katanga case, in which the evidence submitted by the prosecutors was overlooked in favour of unverified evidence pointing to the defendant's recruitment of child soldiers. This turned out to be false as, according to Buisman, the defence team found evidence showing that they had lied about their age and were not child soldiers.

"If you look at the two cases, there is absolutely no logic to it and African states are very unhappy with the ICC," said Buisman. But she added that, in most cases, some of these states had called on the ICC to intervene.



Gregory Kehoe, co-vice chair of the War Crimes Committee.

Continues on page 3



### HUMAN TRAFFICKING

Efforts to tackle it are hindered by the lack of a coordinated response on corruption

PAGE 7



### A GLOBAL PROBLEM

How can the legal profession maintain its independence?

PAGE 8



### MARK ELLIS INTERVIEW

Long-serving executive director looks back on the body's achievements

PAGE 9



### SPONSORED BY



مركز دبي للتحكيم الدولي  
Dubai International Arbitration Centre  
An Initiative by Dubai Chamber of Commerce & Industry

**HADEF & PARTNERS**

# Warning on TPP delay

US Ambassador Robert Holleyman has warned against delaying the Transpacific Partnership (TPP), a regional free trade deal led by the US and involving 11 other countries. The alternative is that other countries in the region set the rules for trade – and gain the strategic upper hand.

In addition to the US, the partner countries to the TPP are Japan, Malaysia, Canada, Mexico, Chile, Peru, Vietnam, Singapore, Brunei, Australia and New Zealand. As things stand, those countries collectively represent 40% of global economic output. With the exception of Vietnam, they are also vital allies of the US.

“We have a choice. And that choice is very simple. Either we can reiterate our commitment to our partners and our allies or we can force our partners and allies to look elsewhere,” Holleyman said, speaking at the IBA’s Tuesday morning keynote address on trade.

In this context, ‘elsewhere’ can only mean Beijing, a reality that isn’t lost on countries in the APAC region as they search for indications of whether the future will be American-led.

“Many of our allies look to TPP as a demonstration of the US commitment to remain engaged at a critical time in a region that is both growing and in flux,” Holleyman said.

For now, the US isn’t fighting a losing battle. Three of the US’s closest partners in the TPP – Japan, Australia and Singapore – are, according to the ambassador, particularly instrumental in advancing the notion of a peaceful, transparent rules-based regime in the region. But the time to act is now.

“Fundamentally today we’re faced with a question about the direction of the global economy,” Holleyman said. “The longer we delay, the further less-open trade models advance.”

## Competing futures

Looming large in the American, and global, consciousness is the 2007/8 global financial crisis, which demonstrated how quickly conditions in one sector can flow throughout the US and, from there, to the rest of world. The answer to that disaster has, however, been a recovery in global trade. By 2010-11, the strength of World Trade



Don't delay TPP

Organisation rules and the United States’ existing free trade agreements had helped open world markets to US exports.

Learning from the history of financial and economic crises, Holleyman says a primary goal of the Obama administration has been to negotiate trade agreements. But Ambassador Holleyman was also keen to stress it’s not just the dimes and cents at stake.

“The administration’s decision to negotiate the TTP and Transatlantic Trade and Investment Partnership [TTIP] was not driven solely by economics,” he said.

Instead, two additional forces are at play. First, the fundamental American belief in strengthening the international trade system based on high-value trade agreements is something that should

strengthen the US’s global strategic position, while also promoting the global rule of law. Second, there’s competition. If the US doesn’t step up to the plate, particularly with the TPP, other regional competitors will.

“I want to make a strategic case for TPP and how it will promote existing alliances, and the rule of law throughout the region,” Holleyman said.

## Elephant in the room

The world’s second-largest economy is busy negotiating its own regional trade agreements, which aren’t likely to have the same high standards on labour, the environment, investor protection, IP rights and transparency.

“Knowing there are competing models, it’s critical the high standard TPP becomes the template for regional integration,” Holleyman said. By way of contrast with this alternative vision, the TPP will work to promote transparency, fight corruption and help end disputes.

Two US domestic hurdles remain to be crossed. The first is Congress, which must now approve the proposed trade deal. But

## Key takeaways

- US Ambassador Robert Holleyman has warned against delaying the Transpacific Partnership;
- The regional free trade deal is led by the US and involves 11 other countries;
- The alternative is that other countries in the region set the rules for trade – and gain the strategic upper hand.

the other is the state of domestic politics more widely in the US. Both candidates in the 2016 presidential election have raised questions over America’s participation in global free trade agreements. In addition, there’s also a hardcore dissent to both the TPP and its proposed sister agreement with the EU, the TTIP. That dissent focuses on how the agreements feature provisions for investor-state dispute settlement (ISDS) which, dissenters argue, favour big business over sovereign states and governments. Holleyman, however, is having none of it.

“ISDS is consistent with the American legal tradition and, moreover, the US has been at the forefront of improving the ISDS system,” he said.

In short, his message is simple: the time for the US to ratify TPP is now.

Connecting the dots from the world to the heart of South America

www.wwc.com.br

Wurth • Bedoya • CostaduRels  
ABOGADOS  
We're business ready!

Consortium  
L E G A L

TRLP LAW

LITIGATION  
ARBITRATION  
DISPUTE RESOLUTION  
INTELLECTUAL PROPERTY  
INTERNATIONAL TRADE

CORPORATE FINANCE  
ENERGY  
OIL AND GAS  
NATURAL RESOURCES

www.trlp.com  
everywhere you need us!

J-K GADZAMA LLP  
Legal Practitioners \* Arbitrators \* Mediators \* Regulatory Consultants

AN INTERNATIONAL LAW FIRM IN ABUJA AND LAGOS.

FIND US AT  
J-K GADZAMA COURT  
PLOT 1805, DAMATURU CRESCENT, GARKI II, ABUJA FCT, NIGERIA

www.gadzama.com

VISCHER

Basel Zürich www.vischer.com

YOUR TEAM FOR SWISS LAW



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



Continued from page 1

has insisted will be triggered without a parliamentary vote.

Caroline Vicini, deputy head of delegation of the EU to the US explained that the so-called divorce proceedings between the two parties will be arduous, largely because of uncertainty surrounding the UK's wishes.

"No one knows what will happen," she said. "Not even the Brits know what they are aiming for. No one has heard any sort of vision as to where the UK will end up," added Vicini. "It is impossible to say how we will respond to a negotiating position that we cannot even fathom. Because we don't know what the UK wants," said Vicini.

Offering a perspective from the corporate world, Alexander Ritvay, partner at Noerr in Germany was more positive. "It's not the

end of history. We have to get over it. Brexit might even have a positive impact."

**"Juncker probably lost the Remain campaign more votes than any other figure"** Jack Straw

Ritvay noted the rise in interest in UK companies from foreign buyers, specifically Asian companies looking to position themselves in the UK. He also said that choice of law clauses are unlikely to be drafted in English law for the time being. "I don't think it will last but it is the case for now."

The panel featured perspectives from remaining EU jurisdictions. Oana Bizgan, chief of staff in Romania at the Department of Trade and Investment explained that Central and Eastern European countries had long debated their relative position within the EU. "We worked so hard to get in and now the UK is leaving we don't understand why. We have more to lose in this divorce than we have to gain," she said.

**Key takeaways**

- Straw cited Brits' lack of emotional attachment to the idea of a union, the single currency and taking back control of immigration as some reasons why Britain voted to leave the EU;
- The outcome of the UK's Brexit decision is uncertain, for now;
- Other speakers insisted the divorce proceedings between the two parties would be arduous, largely because of uncertainty surrounding the UK's wishes.

Continued from page 1

Buisman also discussed the procedures taken by the ICC to render a verdict, explaining that judges often intervene by carrying out cross-examinations driven by their own political agenda.

She argued that this practice is, in itself, a real problem because any piece of evidence can be admitted while pointing to clear rules on the admission of evidence by US courts.

"You can have thousands of pages of rumours, hearsay, some of which is anonymous, as evidence," she said. "You have to go through all that and find a piece that is actually relevant, and it's really hard to test that, but it is relied upon by the ICC," added Buisman.

**The US approach**

Driven by the concern that its soldiers could be subject to ICC scrutiny, the US has long taken the view that its domestic processes are adequate to address war crimes committed by its own soldiers.

Colonel James Schoettler, adjunct professor of law at Georgetown University Law Center in Washington DC, while agreeing that the US should consider joining the ICC, argued that the country has put in place a comprehensive manual for all military services.

When asked if the US would still be subject to the ICC's conduct if a US soldier was on trial, Buisman insisted that there is nothing the US would be able to do. She used the

Ruto case in Kenya, for which the presiding judges relied on anonymous intermediaries. Buisman pointed out that they recruited individuals familiar with one another and able to concoct the evidence to then be submitted to the ICC.

She added that the judges simply took for granted witness testimony given to the prosecutors by unknown third parties.

But Schoettler said that he didn't believe that individual soldiers would be brought before the ICC. This is because of clauses in the ICC treaty stating a case will only be brought before the ICC if the country that would have jurisdiction over the crime in the first instance is unwilling and unable to take the case.

**Key takeaways**

- The ICC has used untested evidence given by anonymous sources, according to a defence counsel;
- The ICC's procedures were also criticised for the manner in which they rendered verdicts. Panellists said judges often intervene by carrying out cross-examinations driven by their own political agenda;
- The US' relationship with the court was also discussed. The country has long taken the view that its domestic processes are adequate to address war crimes committed by its own soldiers.

**Luther.**

Berlin  
Brussels  
Cologne  
Dusseldorf  
Essen  
Frankfurt a.M.  
Hamburg  
Hanover  
Leipzig  
London  
Luxembourg  
Munich  
Shanghai  
Singapore  
Stuttgart  
Yangon

Precision,  
perfect timing  
and an eye  
for what matters.

**Hits the mark. Luther.**

Legal and Tax Advice | [www.luther-lawfirm.com](http://www.luther-lawfirm.com)



# A guide to lateral hires

Lateral hires are at an all-time high, up by over one third since the post-financial crisis recession. They are also costing more money than ever – a study conducted by ALM Legal Intelligence estimates new partner hires in the US cost firms in excess of \$1.3 billion in compensation alone every year.

The lawyer movement business may be an industry in itself but it also raises some wide-ranging ethical, contractual and regulatory questions. Who does the client belong to? What are a

lawyer's duties and rights when leaving a firm? These were some of the questions asked by speakers at yesterday morning's "Departures from and lateral hires into law firms" panel session.

"It depends if you're talking well-developed, highly-regulated legal markets or less regulated jurisdictions where law societies don't have a tremendous amount of power," said Martin Kovnats, partner at Aird & Berlis and co-vice chair of the Professional Ethics Committee. "The rules are much more like the wild west in the latter."

## Who does the client belong to?

When leaving for a new firm, a lawyer may be tempted to take with him the clients he has spent time and money developing a relationship with. This is all well and good but it's not a straightforward matter.

According to Carlos Dominguez, partner at Hoet Pelaez Castillo & Duque, and co-chair of the Latin American Regional Forum, the lawyer has no property rights over the client, not only in his native Venezuela,

but more generally in the LatAm region and globally. As such, the fees accrued during the rendering of legal services belong to the firm, and the departing lawyer has no basis on which to withhold them.

"The client has final decision over what to do but I do consider that the firm has a better right compared to the individual lawyer," he told delegates. "There may however be some factors influencing the client's decision – the lawyer's unique expertise and who brought the client in."

The sentiment was echoed by Rachel McGuckian, principal at Miles & Stockbridge, and co-vice chair of the Professional Ethics Committee. "The individual partner holds the relationship on behalf of the firm – that's the rule," she confirmed, although conceded that when asked the question of who their lawyer was, clients tended to respond with the name of an individual or a group of people.

## Duties and rights

In most regulated jurisdictions, such as the UK, US or Canada,

the departing partner has strict duties towards their old firm – these can be contractual or regulatory. While ethical considerations are the same *de facto* in less supervised areas, in practice, things may be different.

In the US, whatever the conduct of lawyers and firms, they have to act in the best interests of their client who has an absolute right to choose their counsel.

This means that legal practitioners and their firms need to be clear and transparent about their movements and their duties, cooperate with the client and with each other, and not defer or wait to transfer any work, which could cost time or money. This means informing their law firm of their intention to leave before informing their client.

Harvey Cohen, partner at Dinsmore & Shohl, and senior vice chair of the Closely Held and Growing Business Enterprises Committee, said his firm carries out background and credit checks on prospective hires to ascertain if they have previously been involved in any regulatory duties or ethics violations.

However, Alberto Navarro,

## Key takeaways

- The individual partner holds the relationship on behalf of the firm;
- The client has an absolute right to choose their counsel, and nothing can impair that;
- In most regulated jurisdictions, the departing partner has strict duties towards their old firm but the situation is less defined in countries with less oversight.

partner at Navarro Castex Abogados in Argentina and co-chair of the Professional Ethics Committee, said that weak bar associations and a lack of sanctions in the case of legal duty violations in South America mean that matters tend to be solved on a case-by-case basis.

"There have been cases where a partner goes and takes 20 associates with him, and it was near impossible for the old firm to do anything," he said. "You could argue that these were cases of unfair competition, but commercial law principles don't apply to the legal profession."

**"The client has final decision over what to do"**



[www.leglobal.org](http://www.leglobal.org)

Stars, Stripes and a Globe.

**L&E GLOBAL**  
an alliance of employers' counsel worldwide

L&E GLOBAL is an international alliance of law firms, which provide counsel to employers on labour relations, employment law, immigration law and employee benefits through 23 international members, which have more than 1,500 attorneys across 5 continents.



# WE HOPE YOU HAVE MET OUR IBA TEAM



Sadiq Jafar  
Managing Partner



Richard Briggs  
Executive Partner



Sameer Huda  
Partner



Michael Lunjevich  
Partner



Yasser Omar  
Partner



Walid Azzam  
Partner



Constanze Doering  
Senior Associate



Dina Mahdi  
Senior Associate

HADDEF & PARTNERS

[www.hadefpartners.com](http://www.hadefpartners.com)  
Abu Dhabi-Dubai



# A high stakes debate

Microsoft, US intelligence and the Guardian newspaper wrestle over privacy and national security

Today's session tackling national security concerns, privacy and press freedom is particularly significant given the location of this year's IBA. Since appearing in Boston in 2013, Japan in 2014 and Vienna in 2015 this year's debate takes place in Washington DC, the backyard of the US intelligence and security establishment.

The session will be particularly prescient, given the number of recent confrontations between the US government and internet companies in the context of terrorist and criminal investigations and the recent Panama Papers leak. Apple's refusal to help the FBI hack a phone used by a terrorist in the San Bernardino attack and a court victory by Microsoft rejecting a government order to hand over customer emails stored on a server abroad will be on the table.

Perennial hosts Robert Balin from Davis Wright Tremaine (US) and Mark Stephens from Howard Kennedy (UK) have gathered an impressive panel. Representing the national security perspectives are Robert Litt, general counsel of the Office of the Director of National Intelligence (ODNI) and Susan Hennessey, a former National Security Agency (NSA) lawyer and fellow in National Security in Governance Studies at the Brook-

ings Institution who also edits the Lawfare blog.

On the side of the press is Gillian Phillips, the chief media lawyer at the Guardian; the newspaper that published the NSA documents leaked by Edward Snowden, the WikiLeaks state department cables and the Panama Papers.

Delineating the position that global internet companies find themselves in when governments request information on private citizens will be Steve Crown, deputy general counsel at Microsoft. Academia will be represented by David Schulz, a media lawyer and co-director of the Media Freedom and Information Access (MFIA) Clinic at Yale Law School.

## Delicate balancing act

A number of cases have recently sharpened the debate between national security needs and the principal of safeguarding privacy against a snooping state.

One of the most intriguing has been the investigation into the San Bernardino shooting in December 2015, which killed 14 people and seriously injured 22. Apple refused to create software that would allow the FBI to hack an iPhone 5C owned by San Bernardino



Robert Balin, Davis Wright Tremaine

County which had been issued to employee Syed Farook, one of the attackers. Shortly before the court case pitting the FBI against Apple the FBI withdrew, announcing that it had hacked the phone without Apple's help. The FBI had paid \$1.3 million for software developed by Israeli hackers.

In July 2016 a federal court also ruled in favour of Microsoft that the government in relation to a criminal investigation could not force Microsoft to disclose personal information from emails of customers held on servers located outside the US.

"What is it that internet companies should be doing?" asks Balin. "If they hand that data over they are putting someone's life at risk."

The debate broadens when the press is involved. A case in point being the recent hack

## SESSION

**Breaking news in the digital age: legal issues surrounding electronic delivery of news and entertainment**

## COMMITTEE

**Media Law Committee**

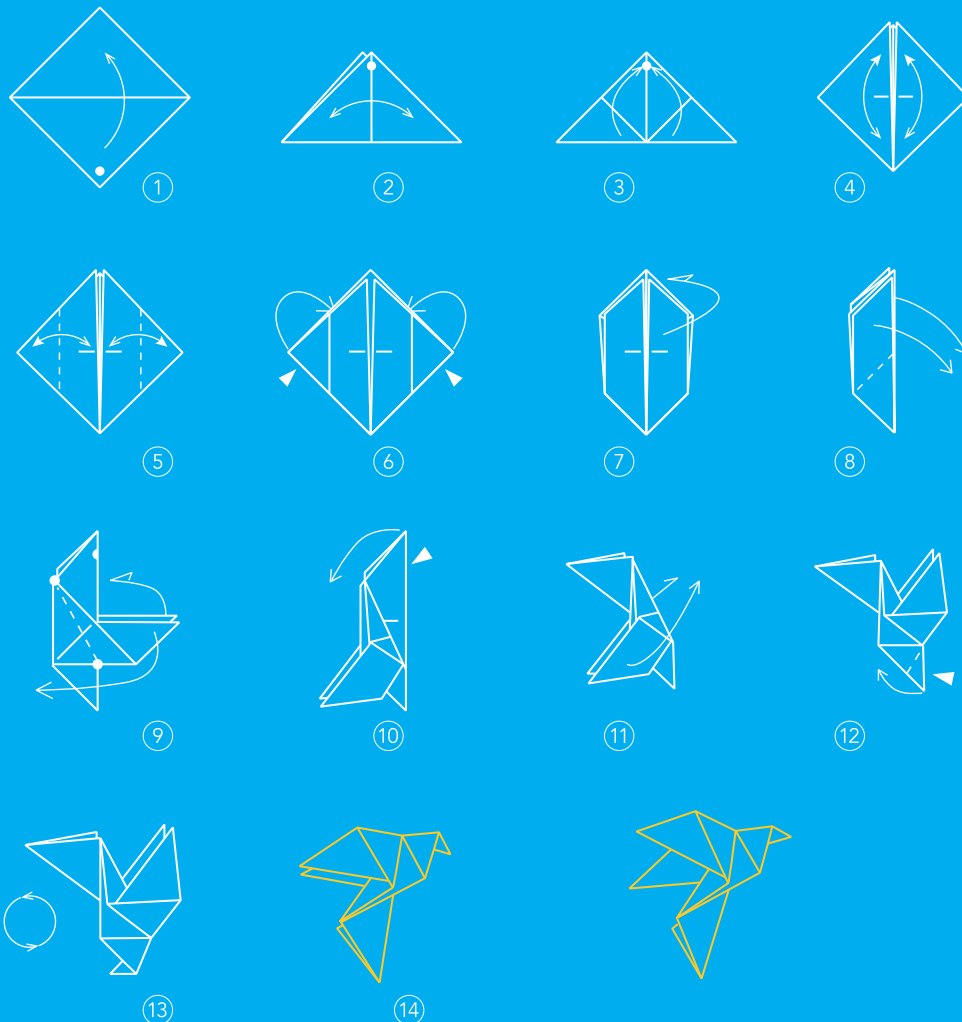
## TIME/VENUE

**Today 14:30 – 17:30  
Harding, Mezzanine level**

of the Democratic National Committee's emails and server allegedly by Russian spies, and then the publication of the emails. The revelation brought down Deborah Wasserman Schultz, the head of the Democratic National Committee. "It is a classic example of the tension between national security and the right of the free press to publish what is in its possession," says Stephens.

Laws regulating privacy and disclosure of secret or confidential information vary widely across the world, with even significant differences between the US and UK.

According to Stephens, the Bartnicki Supreme Court decision is the benchmark in the US. "If the media did not connive in a criminal way to get the material they can publish it," he says.



**SORAINEN**  
ESTONIA LATVIA LITHUANIA BELARUS

Shaping  
the  
future

**THE LAWYER**  
European Awards 2016

*European Law  
Firm of the year*

★★★★★

**Winner**

The first for the  
Nordic-Baltic region

# A long road ahead

Efforts to tackle human trafficking are being hindered by the lack of a coordinated global response to corruption

The International Labor Organization (ILO) estimates that there are 21 million victims of human trafficking globally. This transnational criminal enterprise is worth in the region of \$150 billion per year, the second largest source of income after drug trafficking. According to figures, 80% of all trafficking is labour-related.

But this multi-billion dollar industry could not grow without the cooperation of public sector officials, organised crime networks and individuals in positions of power.

They can help facilitate the trafficking process by transporting the victims, receiving bribes or obstructing the legal process. Corruption linked to human trafficking remains under-reported, under-investigated and under-prosecuted, says Luz Nagle, a professor of law at Stetson University College of Law and co-chair of the IBA's Presidential Task Force Against Human Trafficking.

"Our policies and strategies have focused mainly on trafficking while overlooking the actions of corrupt actors: public officials and private individuals who actively or passively facilitate human trafficking," says Nagle. "These actors are many and diverse: law enforcement, immigration, border and customs officers, labour inspectors, travel agencies, lawyers, diplomats, judges, politicians and businessmen."

While governments and organisations are tackling the issues of labour, sex and organ trafficking head on, corrupt practices and behaviours have not been given the same attention. As a result, corruption is held as one of the reasons trafficking persists. According to the foreword to the United Nations' Convention against Transnational Corruption (UNCATC), corruption "undermines democracy and the rule of law [and] leads to violations of human rights".

"Every time a police officer demands a bribe to ignore the presence of a child in a brothel or a company employs an individual who has been trafficked – this is part of the process," says Nagle. "We have been focusing on traffickers alone all this time, and not paid enough attention to the corrupt people who enable them – we have failed to make the connection between both."

## Sanctions

There are multiple international legal tools at the disposal of countries to tackle the problems of human trafficking and corruption separately. Crucially, however, there is no effective legislation linking both these crimes together, according to Gabrielle Williamson, partner at Luther in Brussels and Düsseldorf, and co-chair of the IBA's Presidential Task Force Against Human Trafficking.

"As is the case in most other areas, countries may sign a convention for political or economic reasons, but not necessarily implement or enforce it. Enforcement is the key," she explains.

Many countries worldwide have signed conventions and implemented them with some notable exceptions – North Korea, Somalia and Chad, in most instances.

The United Nations' Convention against Transnational Organised Crime has a whole

**"Countries ranked poorly in Transparency International's Corruption Perceptions Index also tend to be among the largest source countries for human trafficking"**

section on corruption, outlining the need for member countries to implement appropriate sanctions for people found guilty of receiving bribes or other advantages.

The 2000 annexed protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children criminalises human trafficking and outlines protection mechanisms for the victims. This is reinforced by the 2003 UNCATC, which goes into more detail: people found guilty of corruption shall be liable to "effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions".

The Organisation for Economic Co-operation and Development's Anti-Bribery Convention establishes a supply-side set of sanctions, criminalising foreign public officials who receive bribery during the course of international business transactions.

Although a lot of ground has been covered, Nagle believes there is still more to be done: prosecutions have actually gone down in the last five years. US Department of State data suggest that fewer than 10% of people who receive bribes to facilitate the trafficking process are prosecuted.

## Complicity

One of the key issues hindering the progress of anti-trafficking initiatives is that little effort has been made in numerous countries to enforce international legal provisions.

There is no universal way to address the multiple faces human trafficking can take – from a cultural, economic or legal perspective. Also, different attitudes towards this international problem can make enforcement harder. For instance, in some countries, cheap labour or sex trafficking may be significant contributors to the local economy.

"Corporations can engage in labour trafficking to maximise profits and stay ahead in highly competitive markets, reducing the



Luz Nagle, Stetson University College of Law

### SESSION

**The impact of corruption on human trafficking**

### COMMITTEE

**IBA Presidential Task Force Against Human Trafficking**

**The report on the issue will be available online during the IBA conference and as a hardcopy shortly afterwards**

### TIME/VENUE

**Today 10:45 – 12:00  
Salon 3, Lobby level**

workforce to little more than human chattel," says Nagle. "Our policies and approach to combating human trafficking have largely overlooked and ignored those whose corrupt acts sustain human trafficking world-wide."

Thailand, for instance, which was removed from the US Department of State's highest level watch list this year because of efforts by the country to tackle trafficking, still relies on fishing and sex trafficking as key sources of income, although Tourism Minister Kobkarn Wattanavrangkul announced in July she wants to eradicate sex tourism in the country.

In India, the proposed Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill of 2016 is intended to replace a host of state-level laws which have so far not made a significant impact on the country's high trafficking problem. Out of the hundreds of thousands of people forced into slavery or unpaid labour in the country, it is thought that the police only handled 720 human trafficking cases in 2014.

In Latin America, a number of countries' poor corruption track records – Venezuela for example is 158th out of 167 countries profiled by Transparency International – is seen as one reason human trafficking is a highly lucrative activity, just after drug and arms trafficking.

More generally, according to Transparency International, a number of other countries that are ranked poorly in its Corruption Perceptions Index also tend to be among the largest source countries for human trafficking victims. These include Indonesia, Nigeria, the Philippines and Pakistan.

## What happens now?

Today's IBA discussion will outline some recommendations made in the upcoming Presidential Task Force Against Human

Trafficking's report. "The Task Force report demonstrates that without corruption, human trafficking couldn't exist," says David W Rivkin, IBA President.

One of the key ways to tackle the trafficking and corruption problem is by encouraging the government and private sectors to develop best practices. This could include developing codes of conduct, information and data-sharing, training, employment rights guarantees or supply-chain vetting. A number of international companies have put due diligence processes in place to ensure they or their suppliers do not employ trafficked labour.

The IBA Task Force is currently involved in providing training for judges, prosecutors and law enforcement officials in key jurisdictions (Singapore and the UK, for the time being) to ensure they are prepared to spot problem issues ranging from fake passports to a victim's psychological needs. This is done in conjunction with local bar associations.

The Task Force is also tackling trafficking and corruption by highlighting the need to work on joint international legal frameworks to improve the detection, investigation and enforcement of trafficking crimes effectively. This would include setting out appropriate sanctions to punish individuals who have taken part in the trafficking process.

It would also entail regularly reviewing and monitoring anti-corruption and anti-trafficking strategies set out at national, international and company levels.

"The current system is not working," says Williamson. "There is a real need for not only symbolic sanctions – a country needs to be, and seen to be, taking serious punitive action as well. We want to send out the message that human trafficking and corruption are high risk activities, with insufficient promise of rewards."



# A global problem

How can the legal profession maintain its independence? Today's Bar Issues Commission showcase will answer the question

South Africa's Public Protector Thuli Madonsela was right when she said that while all the players in the justice system are required to have a level of independence, for the judiciary and the legal profession, independence is "paramount".

The independence of the legal profession is enshrined on an international-level in the United Nations Basic Principles on the Role of Lawyers. They were adopted in 1990 by 8th United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Cuba. One of the principles outlines that governments need to ensure that lawyers are able to perform all of their professional functions without "intimidation, hindrance, harassment or improper interference".

Indeed, taking the case of lawyers specifically: how can they carry out their professional duties if they face pressure or disruption from the government, private sector or the public? How can they ensure the proper representation of their clients when facing outside interference?

As such, the independence of the legal profession is considered a public right that is essential for establishing and maintaining the rule of law. But this right is in danger everywhere, for many different reasons, including threats to the principle of professional secrecy/attorney-client privilege, and the negative effects of anti-terrorism and surveillance legislation. The latter is especially relevant in light of recent wide-ranging data gathering legislation emanating from the UK and the US.

## Global threats

The World Economic Forum's Global Competitiveness Index includes a global ranking of countries according to their level of judicial independence. Significantly, most of the usual suspects such as the UK, Canada, Germany or Hong Kong ranked highly both in the competitiveness and independence categories. For the US and China, however, while the former was certainly true, they ranked 28th and 68th respectively, out of 140 countries profiled. Proof there is still some work to do globally to ensure lawyers are free from any undue interference.

In its report, the IBA Task Force has identified a number of threats that impede lawyers' ability to carry out their duties in line with professional standards and the rule of law. It has focused on some key threats that are more or less prevalent on a global scale, according to Sylvia Khatcherian, deputy general counsel at Bridgewater Associates, and co-chair of the IBA Presidential Task Force on the Independence of the Legal Profession.

For instance, the Task Force gathered information which showed that lawyers in some jurisdictions, especially human rights defenders, are routinely harassed and persecuted by governments or even the public. Such jurisdictions in the news recently have included Bangladesh, Burundi and Turkey.



Margery Nicoll, Chair of Bar Issues Commission

***"It is estimated that over 50 lawyers have been killed in Pakistan since the early 2000s"***

In China, it is estimated that nearly 250 lawyers and human rights campaigners have been jailed since July 2015. Most recently, Zhou Shifeng, a Chinese lawyer known for taking on cases against the PRC government – including exposing the tainted baby milk scandal in 2008 – was found guilty of subversion and jailed for seven years.

"The risk of arbitrary punishment or imprisonment, physical violence, or even death, can dissuade lawyers from undertaking cases that the government or the public finds objectionable," says Margery Nicoll, deputy secretary-general & director, at the Law Council of Australia, and chair of the Bar Issues Commission. "This, in turn, effectively takes away a lawyer's ability to make an informed, impartial and independent choice."

One other factor that can impact lawyers' independence is excessive governmental control over the regulatory framework in a jurisdiction. Indeed, the more control the executive branch has over legal professional regulatory organisations, the less likely it is that the legal profession will be independent.

According to Nicoll, where decisions on admission, disbarment, and disciplinary measures rest in the hands of the executive,

lawyers are less likely, for example, to undertake cases against the establishment, for fear of targeted disciplinary measures and disbarment.

For instance, in Malaysia, proposed amendments to the Legal Profession Act 1976 could derail the independence of legal practitioners in the country – the government wants to appoint two representatives to the Malaysian Bar Council to represent its interests, and reserve the right for the Minister in charge of legal affairs to oversee the Bar's election process. These changes have been deemed a government attempt to crack down the management of Malaysian Bar and to interfere with the administration of justice.

Similar issues have been raised in Ireland, with the country's government-appointed Legal Services Regulatory Authority having the ability to regulate the legal profession.

Another issue that is progressively impacting the legal profession is the underlying trend of commercialisation. In the UK, for instance, the Legal Services Act 2007 was introduced to liberalise the market for legal services, including by allowing non-lawyers to buy into law firms and even manage them. The Law Society, the professional association that represents all legal practitioners in England and Wales, called for a poll on lawyer support for so-called alternative business structures introduced under the Act, arguing that the increasing commercialisation of law could impact the independence of the profession.

This scepticism was echoed by the chief justice of the Supreme Court of New South Wales, in Australia, who said in 2012 that the "rise of litigation funders and mega-firms, the public listing of incorporated legal practices, the increased prevalence of private arbitration, international outsourcing, and the growing role of in-house counsel, all raise questions about how duties to clients and the courts may conflict with business practice, profit incentives and corporate expectations".

## SESSION

**BIC SHOWCASE: independence of the legal profession (Task Force report launch)**

## COMMITTEE

**Bar Issues Commission/Presidential Task Force on the Independence of the Legal Profession**

## TIME/VENUE

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

## Global solutions

There is no single solution to remedy threats to lawyers' integrity and ability to carry out their professional duties. But to effectively tackle threats emanating from the government, there must be both national and international cooperation.

In the Malaysian example, the country's bar has opposed draft changes to the Council's composition and election on the basis that they will introduce third-party control, and subsequently threaten the independence of the profession. It has been very vocal about the negative effects of the proposed amendments to the existing legislation in Malaysia, and has appealed for help from international actors and organisations, such as the IBA.

"Threats such as the persecution of lawyers usually arise in the context of political upheaval or instability, but not necessarily," explains Khatcherian. "They can more easily be resolved through diplomacy and political action."

Crucially, the latest attack on a group of over 170 lawyers and journalists in Pakistan, all of which assembled after the murder of Bilal Anwar Kasi, president of the Balochistan Bar Association earlier in August, highlight this trend of violence against lawyers, which is slowly spreading across Asia. It is estimated that over 50 lawyers have been killed in Pakistan since the early 2000s, after agreeing to defend people accused of blasphemy or of standing up against the government.

The IBA's own standards call on the professional associations of lawyers, which it says have a vital role to uphold professional standards and ethics. Beyond that, it says that governments worldwide should respect the proper role of lawyers within the framework of their national legislation and practice. "This is a scenario where it is very important for the IBA and our member bar associations to work together," says David W Rivkin, President of the IBA. "We need to consistently demonstrate to the public why it is so important that the bar is independent," he adds.



# Kick-starting the debate

Long-serving IBA executive director **Mark Ellis** looks back on the body's achievements, shares his hopes for the week and his fears over the US election

## In the 16 years you have served as executive director of the IBA, how have you seen it change and progress?

The most significant change is the broadening of the association. The IBA has truly evolved into 'the global voice of the legal profession.' With the remarkable support of a dedicated staff and member leadership, we have grown from 18,000 members in 2000 to more than 80,000 today, including 186 of the world's top law firms and corporate members from leading companies including Aviva, BP, Exxon Mobil, GlaxoSmithKline, Novartis, Rio Tinto, Shell, Standard Chartered Bank, and UBS AG. Bar membership presently stands at 194, and spans 114 countries.

In 2000, we had one office – London. Today we have regional offices in Seoul, Sao Paulo, Washington DC and The Hague. We founded a permanent litigation centre in South Africa – the Southern African Litigation Centre – and maintain representative offices in Geneva and Brussels.

Another major change is the expansion of the association's areas of focus. The IBA is now involved in almost every identifiable issue of substantive law. Not only do we address broad areas of law for our members, but on a wide remit of legal issues we work to make a tangible impact in the world. We have initiated special projects on the environment, anti-corruption and judicial integrity; created a number of guidelines in use across the global legal profession on topics including the General Agreement on Trade in Services, conflicts of interest in international arbitration and, most recently, on social media conduct. And, in the arena of business and human rights, we have worked alongside Professor John Ruggie to contribute significantly to the development of the United Nations Guiding Principles – 'a set of guidelines for States and companies to prevent, address and remedy human rights abuses committed in business operations'. The IBA website reflects our expansion and has become a rich resource for the legal profession. The site includes webcasts with notable individuals, films, podcasts, and a multitude of publications as well as our flagship magazine *IBA Global Insight*.

In addition, the IBA's Human Rights Institute (IBAHRI) has become a major player in the human rights arena. It works within the association to address a vast range of issues both topically and geographically. In the last 16 years it has become a remarkable institution of global stature and has earned an esteemed reputation worldwide.

## What do you think the IBA's key priorities should be, as we enter into 2017?

We will continue to work on several priorities presently in play, including climate change, judicial integrity and anti-corruption. Developing initiatives will focus on sanctions and combatting torture. Our new President, Martin Solc will bring a fresh set of priorities to his two-year tenure beginning January 1. Certainly, I think great at-



## The IBA is a microcosm of how the world could and should work

attention will be paid to headline issues affecting the legal profession such as cybersecurity.

In addition, the IBA will continue to work on its ground-breaking eyeWitness to Atrocities project. eyeWitness seeks to bring to justice individuals who commit atrocities by providing human rights defenders, journalists, and ordinary citizens with a mobile app to capture verifiable video and photos of abuses. With much needed court admissible footage gathered through the app, the eyeWitness project can effectively advocate to promote accountability for those who commit the worst international crimes.

## Friday will be devoted to the rule of law, with this year's symposium featuring sessions on Iran, and on regional challenges to the rule of law. How can the IBA's work in this area promote minimum standards?

We created the IBA Rule of Law Day nine years ago at our Annual Conference in Singapore to ensure a platform to address the pivotal principle of the rule of law. In tandem with this annual symposium, we created an IBA-wide Rule of Law Forum. Through this Forum, and also through the IBAHRI, we have created and worked to implement a range of standards that aim to

promote and strengthen the rule of law in an international context.

Some key IBAHRI initiatives in this regard include: the development of international *Fact-Finding Guidelines* for NGOs, produced by the IBAHRI in conjunction with the Raoul Wallenberg Institute and now available in several languages; the passing of resolutions regarding climate change justice and human rights; sexual orientation and gender identity rights; poverty and human rights; abolition of the death penalty; and the creation of *12 Basic Rule of Law Principles for new Bar Associations*. The IBAHRI has also produced several publications, including training manuals for legal professionals, on international human rights standards and international criminal law. To honour and recognise individuals who have contributed to the upholding of the rule of law through their work, the IBA has instituted an annual Human Rights Award, which is presented at our Rule of Law Symposium on the Friday of the Annual Conference.

## As someone with a strong track record in war crimes prosecution, how do you assess the progress of the International Criminal Court?

I've always maintained that international justice took a monumental leap forward on

July 1 2012 with the establishment of the International Criminal Court. Created as a permanent institution to prosecute individuals accused of the most egregious international crimes, this vanguard court is a remarkable development in international law.

However, it's important to remember that the Court was never envisioned to be the paramount instrument of accountability for these crimes. That responsibility was always meant to rest with national courts, as they became the accountability centres for international criminal trials. But the international community must do more to assist. Undertaking war crimes trials is an arduous and challenging endeavour, even for international courts. In post-conflict states, the process can be near impossible. These states face a myriad of problems, ranging from lack of resources, lack of political will, absence of human capital, corruption and politicised courts. More international assistance is needed.

## How do you think the fact that this year's conference is taking place in Washington DC, on the eve of the US presidential election, will add to the week for delegates?

The outcome of the presidential elections seven weeks from now will be the most important in my lifetime. The world has been anxiously watching the run-up to the elections and has mostly been baffled and perplexed by what is occurring in the US. It's likely that most of our sessions this week will at least tangentially, if not directly, touch on the elections. There will, of course, be much conversation around it during the week, and I think it will add another dimension to the experience of our delegates here from across the world. Most, if not all, delegates know that the outcome the election could have a damaging impact worldwide.

## You have secured many prestigious US government and regulatory speakers, ranging from General Colin Powell to the SEC's Mary Jo White. What can their North American perspectives offer international delegates?

The speaker line-up this year is one of the most wide-ranging and prestigious of any annual conference in the IBA's history. Our delegates have an unprecedented opportunity to gain insight into some of the most important issues facing the world today, from a North American perspective. This is useful because the premise of the IBA Annual Conference, indeed the IBA itself, is the exchange of ideas across geographical and cultural divides, contributing to a better understanding of the Other. We are a microcosm of how the world could and should work. This does not mean that there will always be agreement, but there should be respect for divergent opinions. So, while delegates may not always agree with what the speakers say, they will have the opportunity to consider the opinion and probe thoughtfully. This is a valuable exercise on all sides.

# A History of Washington DC

The nation's capital might share physical similarities with Paris, but its history of hard-won freedom is truly unique

**T**HE HISTORY of Washington DC is, in many ways, a reflection of the wider history of the US.

The capital – like the country – is the product of a precisely calibrated, yet often precarious, political compromise, one made between the two great forces in American history.

Of course, key episodes in US history have been driven by these forces; the Southern-originated focus on liberty as an absolute concept, on the one hand, and the Northern emphasis on the freedom provided by functioning, federal government, on the other.

From the early debates on the nature of the revolution, to the US civil war, and beyond, these forces have pushed the US forward. Throughout, the shadow of slavery loomed large – and the founding of the capital was no exception.

Initially, the early federal government sat in Philadelphia. This did not bode well with Southerners; a location in Virginia was their preference. For one, the Old Dominion was

*“Washington handed the task to Pierre L’Enfant”*

the most populous state at the time and so seemed a natural choice.

Famously, Thomas Jefferson devised the compromise. Typical to his utopian thought, and often off-the-wall approach to problems of government, he decided the best course of action would be to start from scratch.

## New beginnings

In 1790, a site on the Potomac was chosen for a new, separated federal district. This was a flash of brilliance – on new, neutral ground, no state would have primacy over the new government's seat. President Washington (1789-1797) himself was left to pick the exact locale, and chose a diamond-shaped area a little up-river from his home at Mount Vernon. Two states, Maryland and Virginia, ceded land to create the new district.

But the role of designing the new capital was still up for grabs, and Washington handed the task to a Frenchman, Pierre L’Enfant. But L’Enfant didn’t have time for coming up with a uniquely American style. Instead, he focused his design on what he knew best – the Paris he’d left behind. That decision gave rise to the city’s style and feel in the present day – long boulevards and public spaces with a European touch.

L’Enfant also introduced a grid system, the

centre of which was to house the Capitol building. But a darker history is also present. While the French provided the architectural vision, it was slave labour that provided much of the heft required to make that vision a reality.

In 2005, Congress investigated whether slaves were in fact involved in the erection of DC’s most important government buildings – including the White House. It found they were, and not just at the fringes – but intrinsically so. That work gave rise to certain ironies. One slave was recorded as involved in the work to cast the Statue of Freedom standing at the peak of the Capitol dome.

So the young republic had its capital, dedicated to freedom but complete with contradictions. In the mid-1840s, it saw perhaps its biggest physical change. Congress took the part of the District of Columbia on the Virginia side of the Potomac River, and handed it back to that state. It subsequently became Arlington County. Rumours that abolitionists in Congress were going to end slavery in the District drove the move forward, as did economic factors and a popular vote. But the full strategic implications of the change weren’t clear until around 15 years later.

The outbreak of the US Civil War (1861-1865) meant the capital was suddenly precar-

iously close to enemy territory. Only the Potomac separated the two warring sides, and the strategic imperative to defend the capital informed much of the earlier phase of the war. President Lincoln (1861-1865) wanted his generals to act – to move out of the North and crush the rebellion. But many, and notoriously General McClellan, sat still, using the Union’s growing armies very little. Frustrated, the President was usually swayed by the argument the capital needed to be defended.

In the event, those fears were somewhat unfounded. The capital was witness to much of the political drama of the war, but little of the slaughter. Interestingly, those slaves owned in Washington DC were emancipated on April 16 1862. That was a full nine months before the Emancipation Proclamation itself, and the time lag transformed the city into a centre for freed slaves.

## 20th century strife

Always at the heart of American politics the city was characterised by riots and civil unrest during the 1960s and 1970s and has been the site of many iconic speeches, events, marches and protests too. And while much of the city’s changes might be unrecognisable to its first inhabitants, its contradictions would make them feel perfectly at home.

## News

# Predicting the next crisis

**U**s and European counsel and regulators are warning another financial crisis will occur. And while much has been done to improve financial stability, and future bank sector resilience, there are limits to how far the law can protect against raw economics.

“The next financial crisis. Will it come? For sure. And this time it will be totally different,” said Joanne Kellermann, director of resolution planning and decisions at the European Single Resolution Board during yesterday’s panel on

the topic. “It will certainly cause a lot of work for lawyers, so rest assured,” she added.

Individual jurisdictions have spent the best part of the decade that followed 2008 transposing new internationally-agreed financial regulation into law. In the US, that process centred on one bumper bill: the 2010 Dodd-Frank Act. In Europe, where the legislative system doesn’t lend itself to single bills, over 40 relevant individual directives and regulations have been released.

According Hendrick Haag, partner at Hen-

geler Mueller, important work has been done. As one example, he cites how banks now hold far more capital to hand than before. Although, that higher capital has yet to be tested. “Whether this is really going to be comforting in a crisis still remains to be seen,” said Haag.

Thomas Baxter, executive vice president of the legal group at the Federal Reserve Bank of New York thinks five things have been done to improve the resilience of the financial system: higher capital levels, minimum liquidity levels, the FSB’s ability to bring non-banks under the

prudential regulatory umbrella, changes in risk management and bank stress tests.

But, according to Baxter, fundamental changes in the business model cannot be addressed by law. Before the crisis, the US saw just such a shift in its financial sector – away from banks extending and then carefully holding loans and towards quite the opposite: the originate-to-distribute (OTD) model.

“OTD was a very different way of doing business – you made a loan on day one, and sold it on day two,” Baxter, who was speaking in a private capacity, said. As a result, loan quality collapsed. Banks simply didn’t care whether the loans were good or bad. That was a negative situation, but doesn’t mean that law and regulation is the answer to future paradigm shifts.

# Harmonisation troubles

**D**espite a positive reception and widespread adoption globally, the UN Commission on International Trade Law’s (Uncitral) Model Law on Cross-Border Insolvency is facing challenges in practice, according to speakers at yesterday’s session on the topic.

The Model Law was adopted in 1997 with the aim of providing a more harmonised framework for cross-border insolvencies, and encouraging cooperation between signatory states.

To date, 43 jurisdictions have incorpo-

rated the law – the US via Chapter 15 of its Bankruptcy Code or Japan through its so-called Farip law in 2000 – although there are a number of high-profile exceptions including Singapore.

Various studies have shown that while the Model Law had helped streamline cross-border insolvency processes considerably, there were still a number of practical difficulties because of its lack of prescriptive approach, which has opened the door to divergent applications.

“What is important is that the Model

Law has infused a spirit of cooperation and communication in how cross-border proceedings are carried out,” said Dentons partner D Farrington Yates. “You see that in the Lehman Brothers’ case because the bankruptcy protocol in that instance covered issues like data sharing, asset preservation and right to appear without the need for a huge number of Chapter 15 proceedings.”

As such, there have been calls globally for a re-visit of the Model Law.

“Do we continue with its so-called procedural incrementalism or do we consider a



Yuri Ide Anderson Mori & Tomotsune, Tokyo, Japan

hard law approach like the EU Insolvency Regulation [EUR],” pondered session moderator Adrian Walters, professor of law at Chicago-Kent College of Law.



The Ellex logo is positioned in the top right corner. It features the word "Ellex" in a bold, green, sans-serif font, followed by a small green symbol consisting of three horizontal lines of varying lengths, resembling a stylized equals sign or a currency symbol.

No. **1**

## **BALTIC BUSINESS LEADERS' choice**

Baltic business leaders  
rank Ellex as the top law  
firm in Overall performance.

---

Prospera Tier 1 Law Firm Review 2016 Baltics,  
TNS Sifo Prospera (Sweden) March 2016

[www.ellexcircle.com](http://www.ellexcircle.com)

Former LAWIN Vilnius, LAWIN Riga and Raidla, Lejins & Norcous Tallinn  
offices have teamed up to form Ellex in May 2015, a circle of  
preeminent law firms from each of the Baltic States.

## PREVIEW

# Blasphemy in California

The complex world of geographical indications needs clarity. National commerce depends on it

Welcome to a world of emotionally combusive debates over what is Chablis, Champagne, Cheddar, Roquefort, Darjeeling Tea, Basmati rice and millions of other products around the world.

In this morning's session Alexandra Neri from Herbert Smith Freehills in Paris and John Wilson from John Wilson Partners in Colombo will moderate a panel that will explore the messy legal regime that underpins geographical indications (GIs) and other protectors of geographically specific products. The session will also discuss why protecting such products against 'genericisation' or 'bastardisation' is so important. A key question that will be tackled is what sort of global coherence can be made of the existing legal regimes.

The products in question are often deeply local and at the core of a region's identity. They are unique to and defined by both the region and manner in which they are produced. Others argue that they are generic, that Cheddar is just white cheese; that Chablis, so revered in France and by wine connoisseurs that it does not even deign to use the label Chardonnay, still appears on labels of Californian-produced wine and in the US can serve as a by-word for cheap wine, guzzled from a jug, never mind the grape that made it. "For us, the French, this is blasphemous," says Neri.

The complexity of the situation is largely down to the fact that there is a whole plethora of international and national legal regimes that define and protect products. Some of the better known include France's *Appellation d'Origine Controlée* (AOC) and the EU's Protected Designation of Origin (PDO), which also regulates Protected Geographical Indication (PGI) and Traditional Specialities Guaranteed (TSG). According to Neri three legal instruments mediate on a global level: the Convention of Paris, the Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods and the Lisbon Agreement for the Protection of Appellations of Origin.

To complicate matters, the EU has also recently been using bilateral agreements to find solutions. Each accord has its flaws, either being too narrow or leaving too much scope for debating issues such as what constitutes so-called false indication. It is a smorgasbord of conflicting interests and accords that is made more complicated by the number or variety of products that are covered and the fact that they can be emotionally, politically and financial charged.

## The session

According to Neri, one of the key dynamics globally is the confrontation between the EU and other continents. "On the one had you



John Wilson, John Wilson Partners

*"The products in question are often deeply local and at the core of a region's identity"*

have the European continent and on the other hand you have the American and Australian continents. Of course the EU tries to strictly protect the Appellations of Origin, or GIs, because the majority are located in Europe. On the other hand the two other continents want to use the GIs because they consider that some of them have become generic," adds Neri.

From the business perspective GIs are also important, says Wilson. "GIs are one very important element in the armoury that businesses use to sell their products and to educate consumers about their products. It is not simply

about trademarks, although it can go hand in hand with them." Neri goes further: "It is a question of survival of national production within international commerce. It is something very specific."

The problem lies in the complex and conflicting accords that regulate GIs globally, which has led to what Neri refers to as a worldwide war. The question the session will address is: "who will try to make the balance...which will allow us to attain a balance between national interests and international trade development?"

## SESSION

Champagne from New York, mon Dieu, quelle horreur

## COMMITTEE

International Sales Committee, Intellectual Property and Entertainment Law Committee

## TIME/VENUE

Today 10:45 – 12:30  
Delaware Suite A, Lobby level

## PREVIEW

# Don't mention the money

External law firms are pulling out all the stops to woo their clients. This morning's session will assess those methods – but ignore the issue of fees

A session covering the perennially relevant topic of what in-house counsel will look for in their external counsel will take place today, but with one crucial difference: there will be no mention of fees.

What law firms strive to provide clients has shifted over the past five to ten years, let alone the past six months. For example, concerns by legal departments in corporate social responsibility-aware companies over the gender diversity and ethnic balance of external counsel teams are becoming increasingly important.

Thanks in part to the anonymous leak of over 11 million documents from Panama-headquartered offshore firm Mossack Fonseca in April 2016, but also to the growing levels of cybercrime against law firms, the amount of cybersecurity that external counsel can demonstrate as protecting data stored on its servers or its email traffic is also higher on the agenda.

According to Peter Rees QC, barrister at 39 Essex Chambers and former legal director of Royal Dutch Shell, examining the relationship between the two sides is often hampered

by the issue of fees. "Whenever there is a discussion about the use of external lawyers by in-house counsel it always seems to move towards the question of fees, fee arrangements and innovative billing solutions," says Rees. "The idea of this session is to leave these to one side and look at all of the other things that in-house counsel look to get from their outside lawyers".

Rees will chair a panel of speakers that include Pii Ketvel, chief executive officer of Marcol Capital Europe in Luxembourg, Asma Muttawa, general legal counsel for OPEC (Organisation of the Petroleum Exporting Countries) and Elena Borisenko, first vice-president of Gazprombank and former Deputy Minister of Justice of the Russian Federation.

## Beating the competition

The panel will discuss many of the less obvious demands of in-house counsel, beyond high quality lawyers, high service levels and responsiveness. "For example, are your external counsel willing to enter into arrangements where they will not sue you, so that



Peter Rees QC, 39 Essex Chambers

you are sure that they are your lawyers and not simply guns for hire?" says Rees. "Are they willing to provide free advice lines for the first x number of hours of advice? What else will they provide which will be of use to you as well as to them?"

Secondees will also be discussed. Firms used to charge clients for embedding a lawyer in the company but this is increasingly part of the package, particularly as law firms have recognised just how beneficial it is to them. "It provides a resource for the in-house legal team but it also means that there is somebody in the external law firm when they return who knows precisely how the company works, how the legal team operates, where

the advice is given, the way in which it is given and what the preferred method of delivery is, among other things".

The gender and ethnic balance in an external legal team is also a big topic that is largely being driven out of the US, says Rees. "While I was at Shell, the gender and ethnic diversity of the lawyers in the team was something that was required to be assured as part of our panel arrangements". Also high on the agenda at the moment is cybersecurity.

The session will explore how important are issues such as email encryption or electronic data rooms that cannot be accessed by people trying to get hold of corporate documents.

## SESSION

Forget about the fees: what do in-house counsel expect of outside counsel?

## COMMITTEE

Corporate Counsel Forum

## TIME/VENUE

Today 10:45 – 12:30  
Delaware Suite B, Lobby level





# OMC Abogados & Consultores

Phone: (311) 626 – 1238 / Fax: (311) 626 – 1241  
E-mail: [omc@omc-abogados.com.pe](mailto:omc@omc-abogados.com.pe)



YOUR LATIN-AMERICAN LAW FIRM IN PERU ... THE HUB OF THE AMERICAS



*"Entering to the Latin American market never was so easy!"*

*"Local connections make all the difference when legal matters cross borders."*

With a large variety of practice areas, we are ideally positioned in the geographic center of the region, working side by side with our partners in PERU and LATAM. We must consider that local connections make all the difference when legal matters cross borders.

[www.omcabogados.com.pe](http://www.omcabogados.com.pe)



## QUESTION

What do you come to the IBA annual conference for?



**Dr Mercy Oke-Chinda**  
University of Port  
Harcourt  
Nigeria

It's an opportunity to meet female litigators who have been very successful. It's very encouraging for me, and comforting to know the challenges you face are the same in other jurisdictions.



**Juan José Alcerro Milla**  
Aguilar Castillo Love  
Honduras

To learn from my colleagues that give us their background experience and for the networking, getting to know people and to learn from people. It's great for networking.



**Nieves Briz**  
Jausas  
Spain

Because this is a great place for networking, there are lawyers from all around the world. The speakers are really interesting too, especially the session on artificial intelligence.



**Thomas E Tampubolon**  
Indonesian Advocates  
Association  
Indonesia

This is the third time I've come to the conference and I get a lot of benefits from joining the discussions. I'm especially here for the keynote speakers, they're very highly respected.



**Carlos Ruiz Lapuente**  
Ruiz Lapuente  
Uruguay

It's important to meet different cultures and gain business opportunities, and to understand the rule of law in lots of different countries. It's just amazing to meet people from everywhere.



**Alice Dimlong Asaije**  
Plateau State House of  
Assembly  
Nigeria

The conference is a world-leading organisation. I expect to meet senior lawyers and hope to learn from them, exchange information and make legal reforms back in Nigeria.



**Niklas JRM Schmidt**  
Wolf Theiss  
Austria

I've been coming for 10 years and it's a great opportunity to network with lawyers from other countries, establish new relationships and meet up with friends.

# Mueller: police training must improve

The training, hiring and recruitment of police officers in the US is essential to improving race relations in the country, according to the former director of the FBI Robert S Mueller III, speaking during yesterday's lunchtime discussion.

"The world witnessed the election of President Obama with great joy and the sense that racism was going to abate, that we were moving into a new world," said the IBA's executive director Mark Ellis, moderating the discussion. "But that seems to be challenged now...just on Friday there was another unarmed black man shot by a white police officer. What are we doing wrong for this to keep happening time and again?"

Mueller explained that when he was appointed director of the FBI in 2001 he learned that the average age of graduating new agents was 30 years old, and wondered why. "They said we give them a badge, a gun, and the power to affect people's lives. The most important thing they have to have is judgment and maturity."

Part of the training of FBI agents implemented by Mueller's predecessor involves going to the Holocaust museum. "We really put a lot into training our agents, and my belief is that we should be doing the

same in the police force," he added. "It's so important that these people have a greater worldview than someone just out of college."

The sheer number of law enforcement departments around the country including county, state and federal police, and all local sheriffs' offices makes this difficult. "It means unfortunately a town or city manager will look at the law enforcement budget, and the last thing they will consider is training," said Mueller. Larger entities with bigger budgets will be able to place a higher emphasis on improving it.

Mueller was sworn in as the FBI's director just one week before the 9/11 attacks.

*"I felt like a high school student who hadn't done their homework"*

Ellis asked how he feels it has affected him as a person.

Mueller said that on September 11 2001 he was being briefed on another case when an advisor came to tell him a plane had just hit a tower in New York. Then, they came back again and said a second plane had hit a tower – at which point they knew it was most likely a terrorist attack. Next the Federal Aviation Authority warned the Bureau of a hijacked plane heading towards Washington DC, 80 miles away. "What I remember most is trying to figure out the target – would it be the Bureau's building? Would it be the Capitol, or the White House?" That plane eventually crashed in a field in Pennsylvania.

"But what happened after was a really educating experience for me," he added, explaining that the first time he briefed President Bush after the event, he told how the Bureau was working towards identifying the hijackers by their seat numbers on the plane. "The President held up his hand and said 'stop – you're telling me you're bringing people to justice, and I expect the FBI to do that. But my question today is: what are you doing to prevent the next terrorist attack?'"

Mueller said he had not expected that question. "I felt like a high school student

who hadn't done their homework," adding that the next day he of course had an answer. "And that question was the same every time I briefed Bush after 9/11, and every time I briefed President Obama – it was always the same."

### Key takeaways

- More attention must be paid to the training of law enforcement officials to improve race relations in the US and prevent the shootings of unarmed black people by police officers;
- But it's difficult as there are thousands of police departments, little cohesion and small budgets;
- The FBI puts an intense focus on the training of its agents – requiring them to attend the Holocaust Museum for example – and Mueller thinks police forces should do the same.

#### EDITORIAL

Editor: Tom Young

Reporters:

Amélie Labbé  
Lizzie Meager  
Edward Price  
Brian Yap

#### PRODUCTION

Production editor: Joshua Pasanisi

Web production editor: Joao Fernandes

#### ADVERTISING

Head of sales: Richard Valmarana

#### Associate publisher: Americas

Roberto Miranda  
Tel: +1 212 224 3494  
rmiranda@euromoneyplc.com

#### Associate publisher: APAC & Africa

William Lo  
Tel: +852 2842 6970  
william.lo@ifrasia.com

#### Business development: Europe and Middle East

Liam Sharkey  
Tel: +44 207 779 8384  
lsharkey@ifra.com

Managing director: Timothy Wakefield  
CEO, Legal Media Group: Matthias Paul

IBA Daily News is produced by *International Financial Law Review*, and published by Euromoney Trading Limited, London. The copyright of all editorial matter appearing in this newspaper is reserved by the publisher. No matter contained herein may be reproduced, duplicated or copied by any means without the prior consent of the holder of the copyright, requests for which should be addressed to the publisher. No legal responsibility can be accepted by Euromoney Trading Limited, IFLR or individual authors for the articles which appear in this publication. Articles that

appear in IBA Daily News are not intended as legal advice and should not be relied upon as a substitute for legal or other professional advice.

**Directors:** John Botts (Chairman), Andrew Rashbass (CEO), Colin Jones, The Viscount Rothermere, Sir Patrick Sergeant, Paul Zwillenberg, David Pritchard, Andrew Ballingal, Tristan Hillgarth

Opinions expressed in IBA Daily News do not necessarily represent those of the IBA or any of its members.

Printed in Washington DC by Day & Night Printing, Inc.

#### IFLR SUBSCRIPTIONS

UK/Asia hotline  
Tel: +44 20 7779 8999  
Fax: +44 20 7246 5200

US hotline  
Tel: +1 212 224 3570  
Fax: +1 212 224 3671

hotline@euromoney.com  
Customer service: +44 20 7779 8610





**Irina Anyukhina**  
Alrud  
Russia

This is a great event where you can meet old friends, because I've come here for so many years. I hope to send a message about the legal situation in my country.



**Randall A Hanson**  
Womble Carlyle  
Sandridge & Rice  
US

To network. Our practice is in the south east of the US so meeting lawyers from around the world is important to attract clients and achieve a competitive advantage.



**Zahra Junejo**  
Smith & Williamson  
UK

We come year on year to the conference to see litigators we already work with quite closely, and to make some new connections on an international scale.



**Manuel Quinche-González**  
Brigard & Urrutia  
Colombia

We come every year and it's a unique opportunity to meet colleagues from parts of the world you wouldn't usually see and understand the challenges we are all facing together.



**Diego Pérez Ordóñez**  
Pérez Bustamante &  
Ponce  
Ecuador

Ecuador is an inbound market so for us networking and business development and nurturing our relationships abroad is essential. The quality of talks and all the events is always very good.



**Irene Welser**  
CHSH  
Austria

I come for the topics, the cocktails and the social activities. Every year it's the same 7000 people in a different location and they love it every time, it's just like coming home.



**Marisol Cruz Orrego**  
Cruz Urrego  
Spain

Because our firm is very small and we want to open in other countries and meet other firms. The topics are very interesting and it's great to meet other lawyers. I will come back.



**Eduardo M Sanguinetti**  
Sanguinetti &  
Asociados  
Uruguay

I think it's a fantastic platform to exchange experiences and understand the trends occurring in the profession. It allows me to meet new people and create meaningful relationships.

# DUBAI INTERNATIONAL ARBITRATION CENTRE (DIAC)



The Dubai International Arbitration Centre (DIAC) is the largest arbitration centre in the Middle East. It is a non-profit institution that provides efficient and impartial administration of commercial disputes. The DIAC Arbitration Rules, adopted in 2007, are in line with international standards. The DIAC is comprised of the Board of Trustees, the Executive Committee and the Secretariat.

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

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

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

Dubai International Arbitration Centre (DIAC)  
P.O. Box 1457 - Dubai, UAE  
Tel: +971 4 202 8343/375  
Fax: +971 4 202 8668  
E-mail: [arbitrationcentre@dubaichamber.com](mailto:arbitrationcentre@dubaichamber.com)  
[www.diac.ae](http://www.diac.ae)



مركز دبي للتحكيم الدولي  
Dubai International Arbitration Centre  
An Initiative by Dubai Chamber of Commerce & Industry