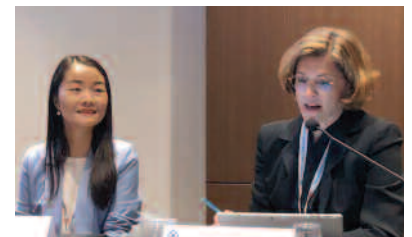




**VOX POPS**

Why do you come to the IBA annual conference?

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**NEWS**

Protecting the elderly

PAGE 7

## The GC's fine balancing act in a changing world

During yesterday's showcase session *The role of the general counsel in a fast-moving world: how to deal with complexities, challenges and change*, a diverse panel of in-house and private practice lawyers shared their insights on the rapidly-changing role of the general counsel (GC) in a highly complex and fragmenting world and the impact of the GC on company culture.

According to Simon Davis, president at The Law Society of England and Wales, in-house membership at the Society now stands at 25%. One of the main motivations for private practice lawyers to move into in-house roles is the opportunity to be involved in deals from start to finish. "As a private practice lawyer, you only dip into deals and work on separate pieces," said Davis.

Edith Shih, head group general counsel and executive director at CK Hutchison in Hong Kong added: "GCs can see a transaction from beginning to end. But you have to live with your decisions because there's no quick fix. You have to turn every stone and make sure you are happy with decisions, as you'll be accountable to the company in the years to come."

Not surprisingly, in-house roles are often filled by the best and brightest who are recruited from the external

law firms that work with the business. While there might be a concern that law firms are gradually losing their top talent to in-house, Charles Jacobs, senior partner at Linklaters in the UK, doesn't think it's something to be concerned about.

"The trend hasn't changed all that much," said Jacobs. "If you look back to the early 1990s, lawyers would get their training in a law firm then opt for the investment banking route because of the big bonuses. Nowadays, banks are recruiting less, but lawyers are joining hedge funds and startups."

Young lawyers have the entrepreneurial spirit, and there is a willingness to take more risks, even with a smaller salary in startups.

For Sirgoo Lee, CEO at Dunamu in South Korea, change was his biggest motivation to go in-house. Working in the cryptocurrency industry, he is able to create change not just within his company, but the broader industry too. "Working with cutting-edge technology means that there is no law or regulation, and we're making the rules as we go," said Lee.

In an increasingly volatile world filled with ever-more uncertainty and ambiguity, GCs have to be attuned to the varying demands of the business and be able to serve as a trusted adviser who can help the business make

sound decisions. "If you do not understand business, you can't give the best advice," said Asma Muttawa from Vienna Energy Consultants who previously served as the general legal counsel at OPEC. For instance, in the oil and gas industry, this translates to going into the field and understanding the issues and concerns that engineers are faced with.

Davis pointed out that the role of the general counsel has shifted from a narrow area of risk management to a guardian of culture.

Lee added: "The GC has to wear two hats, both of the referee and businessman. It takes a lot of self-discipline and being able to think in long-term value return."

**KEY TAKEAWAYS**

- A big motivation for private practice lawyers to go in-house is the ability to participate in a transaction from beginning to end;
- The general counsel needs to have a good understanding of all aspects of the business to give the best advice;
- The role of a general counsel is shifting from one of a risk manager to that of a guardian of culture.



**SHOWCASE PREVIEW**

The impact of modern populism

PAGE 14



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# QUESTION What do you come to



**Ashish Razdan**  
Khaitan & Co  
India

It's great for meeting colleagues from previous IBA conferences from across the world. It's also important to get updates on legal developments that impact our business – I'm a corporate and M&A lawyer, so anything involving investments and cross-border transactions is interesting to me.



**Hin Han Shum**  
Squire Patton Boggs  
Hong Kong SAR

This is my third IBA and I decided to come back because I had such an amazing experience and made so many new friends in Washington DC. The guest speakers are incredible, and it's just so well-organised.



**Charanya Lakshmikumaran**  
Lakshmikumaran &  
Sridharan  
India

The sessions are always excellent, particularly the fact they are practically all from a truly global perspective. I always meet lots of lawyers and manage to build up my network, and I particularly like meeting other lawyers outside of the office.



**Ignatius Andy**  
Ignatius Andy Law Offices  
Indonesia

I come for the exposure to such an international network. It's so important to be aware of what is going on elsewhere. It also wasn't too far for me to travel this year, which is very helpful.



**Andras Szecskay**  
Szecskay Attorneys at Law  
Hungary

The IBA conference is professionally very interesting, and of course networking is so important. I'm the vice-president of the Hungarian Bar Association so I have a lot of colleagues here. I've been coming for almost 20 years.



**Kadri Kallas**  
TGS Baltic  
Estonia

For networking, and making new connections. A big part of my practice is cross-border work.

## Whispering into your ear

Welcome to the new world of news creation and dissemination, where printed newspapers compete with aggregation sites and social media platforms

This morning's session, *Changing business models of media in the digital world and its implications for democracy*, will focus on the business models and economics of media companies in today's environment. It will also debate how the evolving models impact democracy.

"I'm sitting here with my print copy of the New York Times," says session co-moderator Robert Balin of Davis Wright Tremaine, "And I'm a dinosaur." As Balin notes, more and more people are consuming news and information online, through social media platforms, internet television and news aggregation sites.

This shift has opened up battle lines on multiple fronts. Copyright is one of those, and aggregation sites – which take news from a cross-section of more media titles and display them in one place with a short blurb – illus-

trate the tensions at play. For instance, how do newspapers protect their copyright and monetise content on these sites? How much of an article needs to be reproduced before copyright is infringed?

Legislators in liberal markets have been grappling with this issue; note the controversial EU Copyright Directive.

Another issue is investigative journalism, which sits awkwardly with aggregation sites, 24-hour and instant news and news digested in short blurbs. Organisations such as ProPublica (represented on today's panel) and the International Consortium of Investigative Journalists (ICIJ), which managed the Panama Papers investigations, have set up not-for-profit collaborative models to support costly investigations. Is this the new model?



### Goodbye democracy?

In 2016, using data from Facebook, Cambridge Analytica unleashed a form of news creation and dissemination that was brought to light by whistleblower Christopher Wylie, who revealed that the company was involved in the UK's Brexit referendum and the most recent US elections.

Wylie described the strategy as "playing with the psychology of an entire country without their consent or awareness". He revealed how data harvested from over 50 million Facebook profiles allowed the company to understand how to target individuals, what messaging they were susceptible to, its framing, contents, tone, how

**SESSION:** Changing business models of media in the digital world and its implications for democracy

**TIME:** Today, 9.30 – 10.45

**VENUE:** Room 318 B, Floor 3

**COMMITTEE:** Media Law Committee

they consumed their news, and how many times a message needed to be landed to be fully effective.

It was akin to "whispering into the ear of each and every voter", said Wylie. "And you may be whispering one thing to this voter and another thing to another voter." How can established news outlets (which in some cases are obliged to report in a balanced way) compete?

As Anna Beke-Martos, of Law Office of Dr Anna Beke-Martos, stresses, democracy is built on people accessing a mix of views and being properly informed, but the world of online algorithm-based news could all too easily lead to an echo chamber.

# the IBA annual conference for?



**Donald Ridge**  
Clark Hill  
US

The IBA is a great way to meet lawyers, develop relationships and gain a knowledge of world businesses and events in the international legal market.



**Jumanah Behbehani**  
Kuwait Bar Association  
Kuwait

This is my first time. We registered the Kuwait Bar Association in May, and we came to participate in the IBA to see how it goes and to improve our legal profession back home.



**Regis Chawatama**  
Mawere Sibanda  
Zimbabwe

I come to the IBA because I never go back home the same person: it's the sharing of ideas, trends, and just to get a feel of what other professionals are doing in other jurisdictions.



**André Arul**  
Arul Chew & Partners  
Singapore

To renew contacts with old friends, and also to meet new ones in the areas of practice in which I specialise, as well as peripheral areas.



**Ernesticia Asuinura**  
Ghana Book Development  
Council  
Ghana

I see the IBA as an opportunity for me as a young lawyer to build my expertise, and to develop the network that I need for my job. I have only been at the bar for two years so this is a unique opportunity.



**Chun-Yih Cheng**  
Formosa Transnational  
Taiwan

To make new friends and to learn new knowledge about the law and the legal profession across the world.

Lost in the jungle of French employment law?



Let's make it clear!



# The girl with seven names

Yesterday's lunchtime *Conversation with Hyeonseo Lee* left most of the auditorium with tears in their eyes. If the line to buy a copy of her memoir is anything to go by, just as many delegates clearly wanted to hear more of her remarkable story.

Lee told delegates of the difficulties she faced growing up in the northern half of this tragically divided country, captivating a packed auditorium with accounts of her father's brave personal sacrifice, the difficulties of living as a defector in China for 10 years, and the help she received in trying to rescue her family from the grips of Kim Jung Il's tyrannical regime.

The first account was of her father, who she had a troubled relationship with. After he had committed suicide, Lee discovered that he was not her biological father, and for many years was torn with the mixed emotions of both hating him for what he had done to her family, but missing his presence. It was only later that she realised it was his most grave of sacrifices that had kept her entire family from certain imprisonment.

Lee told IBA executive director Mark Ellis and delegates of a mysterious Australian backpacker, Dick Stolp, who had overheard her woes at not having the US dollars available to pay a bribe to have her mother, brother and three other defectors released from prison and into China. On hearing her story, Stolp instantly took Lee to an ATM and returned with her to pay the amount, telling her: "I am not helping you, I am helping the North Korean people."

"It was on this day I knew: there are angels walking among us," she said.

Echoing sentiments from yesterday's conversation with Thae Yong-ho, Lee told delegates about her country's relationship with former leader Kim Il-sung, whose death had broken a bubble and shown many in the country that he was not a god, as so many had believed.

"Not many people had TV at the time. I was crying and crying; everyone was so shocked. But people who didn't see the TV, who didn't have one at home, they couldn't believe what we said – they said 'this is a lie, you must be joking, he is god – how could



he die?' People didn't believe it at all," she said.

"I would guess that more than 90% of North Korean citizens were crying with their hearts in 1994...but later, when Kim Jong-il died in 2011,

the story had changed. Throughout that time people had realised he was no god. We are all human beings. When the second dictator died, around 60% of people were crying with their hearts."

# Here come the regulators

In yesterday afternoon's session, *Hot topics and regulatory developments for asset managers and investment funds*, panellists from South Korea and Australia warned that regulators are digging in their heels following scandals in their respective jurisdictions.

Australia's financial regulatory bodies have "beefed up efforts to look at best interest and responsibilities", said Sydney-based MinterEllison partner Stuart Johnson. In particular, he noted a shift



Stuart Johnson

from disclosure to an enforcement-first approach.

Australia is still reeling from the Commonwealth Bank scandal, whereby the bank was found to have breached anti-money laundering and terrorist financing laws, which resulted in money reaching drug importers. The case culminated in the bank paying a record fine of \$700 million last year following an investigation by the Australian Transaction Reports and Analysis Centre (AUSTRAC).

The case sent shockwaves through the Australian financial sector.

"The ownership of wealth management and life management companies is changing," continued Johnson, who added that the relationship between boards and management has also changed, with increased focus on enforcement. Before this regulatory shift, the most significant worry was disclosure.

**"Ownership of wealth management and life management companies is changing"**



Australia isn't the only jurisdiction seeing asset management more heavily regulated. In addition, firms in South Korea have also had to face the music.

Kyle Park, a Seoul-based panellist from Kim & Chang, pointed out an increased focus in the country on senior leadership and management teams, with them increasingly being held liable by regulators for corporate misdemeanours.



Kyle Park

Korean authorities are notorious for coming down hard on executives, with the Financial Supervisory Service having taken tough action against KEB Hana

Bank chief executive, Ham Young-joo – who was indicted in the summer of last year for alleged hiring irregularities – and his predecessor, Kim Jong-jun, who in 2014 was accused of inflicting losses on the company to increase capital at Mirae Savings Bank.

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Sadiq Jafar  
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# Inside a bribe

Speakers will discuss effective anticorruption compliance programmes and how to identify a bribe

Panelists in this morning's session, *The anatomy of a bribe*, will examine a corrupt transaction, analysing the motivations and methods of actors and facilitators involved. The carefully-selected speakers will offer a global perspective on the topic, with insights from Brazil, Germany, and the Middle East. The session will also present the outcomes of the IBA-OECD Task Force's report on the role of lawyers and interna-

tional commercial structures, which was created in late 2016 in light of controversies relating to the Panama and Paradise Papers.

Lawyers play a crucial role as key operators in the administration of justice and guardians of the rule of law to address issues of illegality in commercial conduct. First and foremost, a lawyer should not facilitate illegal conduct, and should undertake the necessary due diligence to avoid doing so inadvertently. While lawyers have a duty of confidence and privilege to shield wrongdoers. Where the conduct of a client may be illegal, the lawyer should file a suspicious transaction report.

However, the most perfectly designed compliance programmes are still not good enough when the level of trust is low in the social fabric of

some jurisdictions. "While the motivations of players may be the same in different countries, the costumes of corruption are very different," Leopoldo Pagotto, session chair and partner at Freitas Leite Advogados in São Paulo, tells the IBA Daily News ahead of the session.

For some countries, a bribe might be as straightforward as a cash payment, whereas in other cases it could come in the form of expensive gifts to better disguise the bribe. Ultimately, where the level of trust is low and people generally do not trust the institutions and civil servants in a society, there is more room for bribery.

Companies can reduce their exposure to potential corruption with well-designed compliance programmes – but these need to take into account local risks and due diligence practices. "Often, compliance programmes are just shell programmes," says Pagotto. "There may be a policy and code of conduct, but these may not necessarily consider all the markets the company operates in."

Rather than applying a one-size-



Leopoldo Pagotto

**SESSION:** The anatomy of a bribe: actors, tools and facilitators in corrupt transactions

**TIME:** Today, 11.15 – 12.30

**VENUE:** Room 317 C, Floor 3

fits-all approach a proper compliance programme needs to accommodate for due diligence techniques and risks that are country-specific. "Companies often assume the same rules would apply everywhere, but that's not the case," says Pagotto.

*"Often, compliance programmes are just shell programmes"*

ANALYSING HOW FINANCIAL INSTITUTIONS ARE REACTING TO CAPITAL MARKETS RULES

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# Lenders' global responsibility

In the midst of a global climate crisis, institutional lenders and investors have a growing responsibility to consider the environmental impact of their investments.

Panellists in yesterday morning's session *The role of institutional lenders and investors in promoting social and environmental responsibility* reviewed legislative action to introduce the concept of lender environmental liability (LEL), and particularly, how this relates to multilateral development banks (MDBs).

**"In many ways we are seeing an investor revolution"**

Throughout MDBs' 70-year history, such institutions have enjoyed a wide range of privileges and immunities – but a recent case in the US Supreme Court, *Jam v International Finance Corporation (IFC)*, has set the stage for greater accountability going forward. The case concerned construction financing provided by the IFC to the developer of a coal-fired power plant in Gujarat, India, in 2008.

"The *Jam* case opens a new era for stronger accountability for MDBs," said Manila-based Gene Soon Park, general counsel at the Asian Development Bank. "It's a new world we're entering, so it's very important to pay attention and watch how this evolves over the next few years."

In February 2019, the

US Supreme Court held that immunity granted to MDBs under the International Organizations Immunity Act is not nearly absolute, but evolves with the immunity available to foreign governments.

Environmental responsibility is far from unique to MDBs. The universe of envi-



Gene Soon Park

ronmental, social and governance (ESG) concerns brought to both public and private financial institutions is constantly evolving, said Andrew Irvine, legal and corporate engagement manager at the Extractive Industries Transparency Initiative in Oslo. "In many ways we are seeing an investor

revolution – people are very quick to condemn poor decisions," he said. There's an economic benefit too: companies with a better ESG performance can outperform their peers by as much as 40%.

When it comes to legislative action, though, some jurisdictions are fur-

ther ahead than others.

"The EU is definitely a global leader in regulating sustainable finance," said Margaret Wachenfeld, managing director of Themis Research, referencing in particular its recent action plan and taxonomy. There are approximately 730 EU hard and soft law policies across approximately 500 policy instruments. And it's an incredibly recent phenomenon: 97% of these instruments were introduced after 2000.



Margaret Wachenfeld

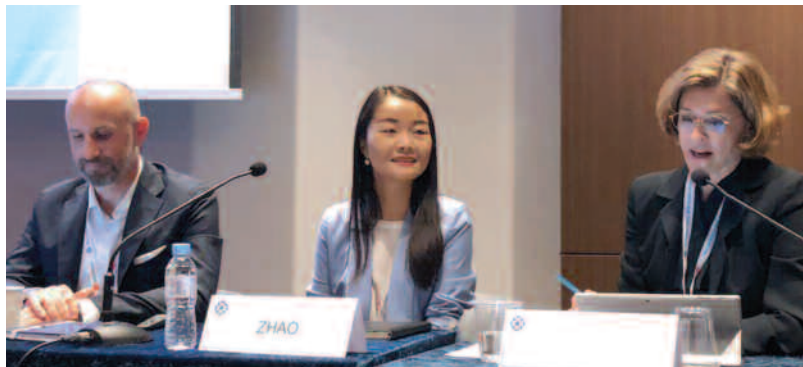
# Too little in the way of undue influence

In yesterday's session *The cook, the thief, their spouse and their lover*, the Family Law Committee and the Private Client Tax Committee assessed how easy it can be to take advantage of the vulnerable and the elderly – particularly where money is involved.

Unfortunately, the financial affairs of the elderly and their next of kin are often at risk from those in positions of trust. It can be from children, spouses, or even professional advisers and lawyers, who are able to abuse their position for professional gain to the detriment of the elderly individuals and their familial wealth.

"Diminishing capacity is of huge importance," said Joshua Rubenstein of Katten in New York. "We're all

**"We're all living longer – which isn't necessarily a good thing"**



living longer – which isn't necessarily a good thing."

Whether it's the cliché of marriage to a much younger spouse or manipulation from children or longstanding loyal caretakers, the elderly can be taken advantage of from multiple angles.

Florian Zechberger of Koenig Reibold Zechberger recalled the story of an increasingly vulnerable German woman with diminishing capacity. A relative in Germany was appointed her legal guardian, but as she lived abroad in Monaco she was provided with another guardian by authorities.

In a sad, twisted tale, both guardians abused their position and

manipulated her, with the Monaco-based guardian paying for helicopters to Germany and her relative using her wealth to attempt to purchase a property in California, despite the fact that she had never visited the US state and that medical staff had said she was in too ill health to manage the journey.

Zechberger stressed the importance of establishing a clear structure from the beginning. "It is difficult, if not impossible, to set this up later on," he said.

His cautionary tale was not the only Shakespearean psychodrama on offer from the panel, either. There were tales of secret marriages in China and South Africa too.

## KEY TAKEAWAYS

- The financial affairs of the elderly are still at risk of undue influence;
- Secret marriages and abuse of influence can be detrimental to personal and familial wealth;
- There is little in way of a legislative framework to help those at risk of undue influence in later life.

"We feel like there is nothing we can do at the moment," said Beijing-based Anjie Law Firm lawyer Echo Zhao, who recalled another case where the former partner and siblings of a man with dementia had struggled to invalidate his sudden secret marriage to one of his staff members.

Katten's Rubenstein said that should you feel your relative is at risk of being in one of these situations, the best option available (at least in the US) is to obtain a guardianship. The only problem is that, should proceedings fail, you risk cutting yourself out.

"If you are going to shoot the king, you'd better kill him," he said. "If you don't, he's going to retaliate."

# A conversation with... O-Gon Kwon

Exceptionally highly decorated Korean lawyer O-Gon Kwon is best known for sitting as a judge in the trials of Slobodan Milošević, Radovan Karadžić and Vujadin Popović

In an era of combative international relations and growing isolationist tendencies, Judge O-Gon Kwon's career symbolises what can be achieved through painstaking cooperation.

Following 20 years of experience as a judge in Korean domestic courts, Kwon was elected to the International Criminal Tribunal for the former Yugoslavia (ICTY). Set up by the UN Security Council as an intervention into and means of resolution for the Balkan conflict in the 1990s, the ICTY was unprecedented and operated off a hybrid legal model, melding US, British and European continental law. It was the first series of international criminal tribunals since the Nuremberg Trials and the World War II International Military Tribunal for the Far East.

Kwon's original term as an ICTY judge was four years. However, it was only 15 years later, in 2016, that he finally left The Hague for Korea.

In the ICTY, Kwon sat on the trial of former President of Yugoslavia Slobodan Milošević. This was the first ever case indicting a former head of state; previously, attempts had been made after World War I to indict Wilhelm II, Emperor of Germany, and to try Emperor Hirohito of Japan after World War II. The case was unresolved, as Milošević died in his cell five years into the trial.

Kwon also served as the presiding judge for the case against former Bosnian Serb leader Radovan Karadžić. One of Kwon's greatest achievements was bringing this case to a successful close. In March 2016, Karadžić was found guilty of genocide in connection with the Srebrenica massacre, war crimes and crimes against humanity, and sentenced to 40 years' imprisonment.

Kwon also heard the case against Vujadin Popović, a lieutenant

colonel and the chief of security of the Drina Corps of the Army of Republika Srpska. Popović was indicted for crimes including genocide, extermination, murder and deportation, and in 2015 he was sentenced to life imprisonment.

## The work continues...

Kwon's accolades are numerous. He was the first Korean to judge an international criminal case. He received a Moran National Order of Merit from the President of South Korea in 2008; the same year he was elected vice-president of the ICTY. He was re-elected ICTY vice-president in 2009 for a further two-year term.

Kwon served as assistant legal advisor to President Doo-Hwan Chun from 1980-1984. In 2011, he was elected by the Coalition for the International Criminal Court (CICC) as one of the



**SESSION:** A conversation with... O-Gon Kwon  
**TIME:** Today, 13.15 – 14.15  
**VENUE:** Room 401, Floor 4

five members in the Independent Panel on ICC Judicial Elections.

He continues to face down challenges. As President of the Assembly of States Parties of the ICC, Kwon had to negotiate the Philippines' renunciation of the Rome Principles and departure from the Court; a development he strongly regretted.

# Plastic: not so fantastic

Plastics have endless uses in our everyday lives – but as has become increasingly clear in recent years, disposing of them is an environmental nightmare. The volume of single-use plastics alone is of a scale that challenges our collective ability to address the consequences globally.

Speakers in this afternoon session will explore the current primary categories of work to address plastic pollution, including both product and production-focused solutions, solid waste management, and how to address the potential health consequences. They will assess how well all of these solutions are being applied and the differing actions being taken by government, industry and non-governmental organisations.

Waste plastics are now found throughout the ocean, from its depths to its shores. Plastic is strong, inexpensive, durable, flexible, moisture-resistant and lightweight. These are the qualities that make the material so popular – but also what makes it such a headache to dispose of. What is problematic about plastic is that while

it eventually does break up into smaller and smaller pieces – though this takes time – it does not really break down, and is not biodegradable.

As we collectively strive to figure out how to cost-effectively remove what we can without doing further harm, every single action to keep more plastic from entering our oceans is important.

For more than 50 years, the global production and consumption of plastics has been rising. Hundreds of tonnes of plastics are flowing into the oceans each year, and with the volume in the oceans already causing considerable harm, there is simply no time to waste.

“As lawyers, it is our responsibility to fully understand what is happening, how it affects the environment and how it poses both a challenge and an opportunity to clients worldwide who are increasingly focused on exploring alternative materials, product design innovation and waste reduction,” says Angeles Murgier, session chair and partner at Beccar Vaerla in Buenos Aires.

One of the biggest barriers to solving the issue is the world's general de-

pendency on plastics and the ongoing production of plastics worldwide – which is actually increasing in some areas – at such a scale that it seems impossible to stop these materials reaching the ocean, according to Beatriz Spiess, IBA Environment, Health and Safety Committee officer.

Another key barrier, especially in developing countries, is the low recycling capacity for plastic solid waste, for various reasons: lack of a market; too many formulations, additives and combinations; deficient infrastructure; and inadequate incentives for industries.

Lawyers and bar associations must play a central role in combating ocean pollution by participating in the development of new legislation in our different jurisdictions, to better address waste management systems, foster the development of technologies to improve recycling processes, and promote new economic models.

At the end of the day, we are all consumers, and small changes can make a big difference. Every single action to avoid plastic from reaching the ocean counts.



Angeles Murgier



Beatriz Spiess

**SESSION:** Ocean pollution focusing on plastic-impacts and solutions  
**TIME:** Today, 16.15 – 17.30  
**VENUE:** Room 317 C, Floor 3  
**COMMITTEE:** Water Law Committee



# The fact-free rhetoric

A panel of experienced immigration lawyers will discuss the political nature of their role and offer guidance on how best to manage relations with politicians and journalists

Nationalistic movements are increasingly gaining ground across the globe. Political leaders and parties in government often use anti-immigrant rhetoric as a means to position themselves or their parties. Panellists in this morning Session will examine the role of legal practitioners in various jurisdictions, especially those working in immigration and human rights law, to counter such rhetoric.

In the US, Donald Trump has taken an extreme anti-refugee, anti-migration position: refugees are consistently referred to as immigrants and portrayed as terrorists taking advantage of an unsuspecting host society.

Meanwhile, in the UK, language used during and since the Brexit referendum – “taking back control of our borders” – has a distinctly populist air to it.

“We can see the same pattern of fake news or fact-free rhetoric across many jurisdictions, from the US and EU to Australia and South Africa,” says Barbara Wegelin, session co-chair and senior associate at Everaert Advocaten in Amsterdam.

This type of rhetoric is slowly becoming more mainstream as other participants in the political or civic arena adopt similar language.

“It is practically impossible to reach the US and EU and apply for refugee status in a legal way,” says Wegelin. “For those trying to help refugees and prevent drownings during the crossings across Mexico and the Mediterranean, they are seen by

some members of the public as traffickers because of acrimonious sentiments fueled by false information surrounding migrants.”

In Australia, the mandatory visa cancellation policies that were put in place in 2014 have resulted in a large number of people being deported – even though they have lived in Australia since they were children. The practice of moving the problem elsewhere does not solve it.

“There is a massive presumption that the criminal justice system is flawless, and this is causing a huge problem when it comes up against immigration policies,” says Wajiha Ahmed, session co-chair and partner at Buttar Caldwell & Co in Sydney.

Lawyers who act on behalf of migrants have to discern between being a legal professional and helping people realise their rights – and avoid making it political. They face the conundrum of whether they should just quietly get on with their jobs and keep the politics out of it, or to vocalise their dissent. For those that opt to vocalise their dissent, an underlying question is whether they should challenge the facts and ignore the underlying sentiments, or address those sentiments too.

“The intertwining of politics and law is making it harder for lawyers not to be political,” says Wegelin. “The distinction between helping people access their rights but not being political is becoming blurred.” It is extremely frustrating and unfair for lawyers to be portrayed as partisan when they are



Wajiha Ahmed



Barbara Wegelin

**SESSION:** Challenging the fact-free rhetoric  
**TIME:** Today, 11.15 – 12.30  
**VENUE:** Room 327 B, Floor 3  
**COMMITTEE:** Human Rights Law Committee

simply trying to do their jobs: to give people access to their rights.

At times, lawyers may not even be aware of the political nature of their work in certain cases and the advice they give to their clients; for instance, criminal lawyers may not realise the immigration-related repercussions of their actions. “There is a strong requirement for lawyers to be aware of how far reaching the effects of their actions are,” says Ahmed. “From a social justice perspective, there has to be proper advocacy in the wider public.”

Bar associations and lawyers involved with helping migrants have an important role to play, and have to be equipped with the right tools to help them continue their human rights work.

A frequent issue is whether lawyers involved with helping migrants should be active on social media.

“If a lawyer is trying to set the record straight, is social media the best way to deal with an issue?” says Wegelin.

Panellists will be discussing the

advantages and disadvantages of using social media to get a message across, as well as tips and tricks for how best to communicate using various media, such as Twitter.

Another frequently encountered issue is how to talk to both politicians and journalists: how should lawyers approach false accusations, especially when they harm the rights of those they are trying to protect?

Another point that will be discussed is whether lawyers should team up with non-governmental organisations. Will these organisations be helpful in getting their message across, or will lawyers just be backed into a political corner?

What is clear is that lawyers are increasingly frequently faced with the challenges presented by fact-free rhetoric across the world – but they are not alone, and can build upon their knowledge and expertise through sharing rather than trying to blaze a path blindly.

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# The human element of business

Corporates still cannot wash their hands of complicity in human rights abuses, and their role today is more critical than ever

During this afternoon's session, *The business of human rights*, Sternford Moyo of Scanlen & Holderness in Zimbabwe will highlight how illicit financial flows violate human rights.

If anything, when it comes to the business community's role in defending human rights, the stakes have only risen since 2011, when the UN Human Rights Council endorsed the Guiding Principles on Business and Human Rights.

The so-called Ruggie Principles (after their lead author John Ruggie) have been translated into every language across the globe and adopted as the gold standard for corporate responsibility to respect and defend human rights.

One of the principles' explicit aims is to 'achieve tangible results for affected individuals and communities, thereby contributing to a socially sustainable globalisation'.

**"All lawyers are human rights lawyers....that is an excellent development"**

There have been tangible results. As Moyo will argue, there is today a much better understanding that business can impact human rights, and is not just about making a profit. "A business enjoys corporate citizenship, meaning it has responsibilities, and most good lawyers now find that they cannot ignore human rights," says Moyo. "All lawyers are human rights lawyers, as it were. That is an excellent development."

In their reporting, most corporates attempt to show what they are doing to improve the lives of the people in the communities in which they operate. In certain countries and industries, such reporting is mandatory. The increasingly widespread investor concept of ESG [environmental, social and governance] reporting is testament to this.

However, dramatic failings continue, some of which have been revealed by a deeper understanding and acceptance of the types of business activities that threaten human rights. While the principles have had a huge impact on corporate culture – although they do not go as far as setting legal obligations on businesses – business is still unwittingly, or wittingly, complicit in behaviour that undermines the basic rights of millions of people around the world.

As Moyo will emphasise, businesses must "understand that they can have an impact on virtually the entire spectrum of internationally recognised human rights".

## Key failings

Serious human rights concerns about the weapons industry or the behaviour of individual companies in respect of their labour practices do prevail, but the view of human rights has broadened to non-traditional areas.

Two cases illustrate this broadening view well: environmental damage, primarily in the context of climate change, and illicit financial flows, which are enabled by certain deeply-entrenched global financing practices.

The direct link between climate change and the ability of affected populations to exercise their human rights is clear. If, say, a pollutant causes rising sea levels that destroy a population's homes and livelihoods, their human rights have been stripped of them. As that 'population' could include everyone, climate change could prove to be the ultimate failing for business's respect and defence of human rights.

In recent years we have also better understood illicit financial flows and their link to poverty and human rights. Studies by the OECD and UN have calculated that Sub-Saharan Africa loses more through illicit financial flows than it receives in aid and foreign direct investment. It is a staggering failure.

"Businesses should be aware of the negative impact on resource mobilisation, and therefore the realisation of socioeconomic rights, arising from tax evasion and illicit financial flows," says Moyo. The mechanics and implications of this illicit system



are still being unearthed by leaks such as those from Panamanian law firm Mossack Fonseca (Panama Papers, 2015), which show how global the problem is, and how vast the sums of illicit money are.

Few would question that abject poverty undermines basic human rights. "Poverty is in itself a violation of human rights. One of the biggest threats to the realisation of human rights is socioeconomic rights," argues Moyo.

## No time for complacency

Corporate responsibility to human rights is even more critical in light of recent world events. "There is, globally, a decrease in the respect for democratic institutions that are put in place to protect the rule of law and, in the end, the main task of the rule of the law is to protect human rights," says session moderator Anne Ramberg, of the Swedish Bar Association.

As a measure of the unease, Ramberg likens the conditions to those preceding World War II, with the added factor of globalisation. These conditions include vast power imbalances exaggerated by globalisation, rising populism, a mistrust of experts, and a willingness at the highest levels of state to flout national and international conventions.

The way the corporate world behaves is therefore crucial, both to protect human rights and to defend the rule of law.

Businesses must take responsibility, and this session will explore how. For

**SESSION:** The business of human rights

**TIME:** Today, 14.30 – 15.45

**VENUE:** Room 317 C, Floor 3

**COMMITTEE:** IBA's Human Rights Institute

instance, in economically-poor but resource-rich countries, "it is undesirable for mining communities to have nothing to show for their resources other than a hole in the ground," says Moyo. "Business should invest in those communities, to replace the valuable resources they once had with something tangible: good schools, infrastructure, bridges."

Meanwhile for Ramberg, globalisation has acted like a shot of steroids into the debate.

The imbalances in financial firepower, expertise and technology between multinational corporations and states creates a rule of law problem. It goes the other way too, with global corporates willing to kowtow to some state's demands to secure new markets. Either way, the decisions are

in the hands of businesses.

The Ruggie Principles should be core to decision processes. For instance, Ramberg is concerned about the behaviour of the weapons industry, while pointing out the increasing link between climate change and international security.

Today's panel will look at the options on the table and what might be done to ensure businesses keep any undesirable stains off their hands.



Sternford Moyo

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# In-house: what we look for when appointing counsel

In-house lawyers have revealed that when looking to appoint external counsel, law firm fees are not the most important element of that decision.

“Project management skills are key – when I’m going through a transaction I do not want to be project managing it too,” says Cecilia Ferreira, principal M&A counsel at Anglo American in London.

“Some law firms are very good at this, but oftentimes professional project management support is required. This is often key to our decision when appointing counsel, and something we always ask about.”

She continues: “We look at the law firms’ experience, both in the relevant market and with similar transactions. We also look at the cultural fit, like how they use technology – whether it fits with the way we use technology – as well as the diversity of the team. All of these things can be as important as the fees.”

Law firms’ commitment to diversity was repeatedly mentioned as being key to in-house lawyers’ decision-making process.

According to a recent survey of UK businesses, nearly a third of in-house legal teams have refused to work with external law firms for failing to provide a sufficiently diverse team.

And recent research has revealed that in-house lawyers look for diverse private practice teams for a variety of reasons – but key is the ability of a diverse team to see different perspectives.

“Some private practice firms are now losing work over the diversity point, which has nothing to do with their fees or how good they are, but reflects a shift in the conversation,” adds David Jackson, head of group corporate, treasury and M&A legal at Barclays in London.

Many large companies now have specific policies addressing what they look for in external counsel.

In 2017, HP introduced a diversity



holdback requirement, which was received positively – and viewed as highly effective. As reported earlier this year, the company saw a 40% increase in the proportion of firms meeting these requirements.

Ferreira continues: “Diversity is not just about the law firm itself as a whole either. It’s about the team working on the transaction – who is doing the note-taking, who is doing the leg work?”

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# Crypto: the holy grail for gaming?

In yesterday's session *Gaming and cryptocurrencies: is gaming the best way to test cryptocurrencies in a digital economy?*, panellists looked at the potential use of cryptocurrencies in gaming in a number of jurisdictions, including South Korea, Japan, the UK and Malta, under the existing regulatory environments and risk appetites in these countries.

Proponents of cryptocurrency usage in gaming see it as a way to improve the gaming experience. "In-game

***"When there is not just one server maintaining the data and it's accessible to everybody, cryptocurrencies are almost seen as the holy grail"***

currencies are dependent on the main server of the gaming company," explained Chris Kang, senior foreign counsel at Yulchon in South Korea. "If the game doesn't generate enough revenue, it would close down and all the hard labour and hours spent by users would be gone." By using blockchain technology, information stored on different nodes on a blockchain network would lower the risk of that happening.

Gil White, international relations partner at Herzog Fox & Neeman in Israel added: "There is a trust issue for online gaming platforms. When there is not just one server maintaining the data and it's accessible to everybody, cryptocurrencies are almost seen as the holy grail."

While South Korea has taken a stance to promote entrepreneurship in blockchain technology, it is generally against the use of cryptocurrencies. Online gambling is illegal, and only foreigners can gamble in offline



Chris Kang

casinos, with the exception of one specific casino.

"Taking money out through online sites is out of the question," said Kang. "For ordinary games, the developer needs to ask the game supervisory committee to give a specific rating for an online game." However, the committee can refuse to des-

ignate this rating if it sees it having a speculative nature. What that actually means can be widely interpreted.

According to Takashi Nakazaki, partner at Anderson Mori & Tomotsune in Japan, some social game platforms are using online currency exchanges, and the government has some guidelines on their usage. However, more clarity is needed in the future.

Meanwhile, in Malta, the regulatory authority has taken a supportive stance on the issue and has created a



Gil White

## KEY TAKEAWAYS

- Cryptocurrencies have the potential to improve the user experience in online gaming by boosting trust and transparency;
- Regulation for cryptocurrencies in gaming remains murky across the globe;
- Lagging regulation can result in regulatory arbitrage and the creation of black markets.

regulatory sandbox to allow gaming licenses to test blockchain payments.

What is clear is that while some jurisdictions might have rules forbidding cryptocurrency use in gaming and others are still catching up on regulation, there is a risk of regulatory arbitrage. In the meantime, regulators are grappling with how to align their financial and gaming regulations so that they do not juxtapose each other.



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# The collapse of the middle?

The term ‘populism’ has become increasingly commonplace in recent years. Panellists in this Wednesday afternoon Showcase session will look into recent efforts by governments and political parties around the world to tighten control of the judiciary, get in the way of the rule of law, use the courts as a delaying tactic, and to manage lawyers and prosecutors under different slogans. While populism is putting pressure on bar and law practitioners, the legal profession has an important role to play in society to withstand this pressure.

At times, populism can pose a threat to the future of democracies, legal systems and the entire legal profession. Lawyers and judges feel many times pressed while seeking to maintain due process and legal representation of unpopular clients in the age of trials by social media – which are becoming increasingly prevalent in these digital times. Populism poses challenges not only in terms of attacks on the judiciary, but in terms of what is acceptable to say publicly.

“Populism has led to the disgrace of lawyers, and those in the legal profession who defend unpopular clients are being discredited by those who think differently,” says Alberto Luis Navarro Castex, session co-chair and partner at Navarro Castex Abogados in Buenos Aires.

“Lawyers are being targeted because as protectors of democracy and the rights of the individual, they present the tyranny of the majority,” says Martin Kovnats, session co-chair and partner at Aird & Berlis in Toronto.

As upholders of the rule of law, lawyers and judges are the minority who have the responsibility to stand against the tyranny of the majority. However, their powers as the guardians of the rule of law are being eroded by populists who do not want anything to stand in their way.

Scholars and practitioners say the trouble with the legal profession is not only that it can lose its autonomy and ability to act as a sociopolitical force that is independent from the ruling political party or coalition. With pressure coming from seemingly every corner, law can become an unattractive channel for widespread opposition to economic, political and social actions, and the policies of a society or government.

“There is a view where the winner takes all and the loser has no right of speech,” said Castex. This is,

**“Populism has led to the disgrace of lawyers, and those in the legal profession who defend unpopular clients are being discredited”**



essentially, no different from an authoritarian state ruled by a dictator.

## Upholding the rule of law

The judiciary’s power to safeguard the rule of law can be corrupted if the external pressures on legal professionals are overpowering. This has been proven at various points throughout history. For elected members of the judiciary, those with money have been seen time and again to get the judges they favour into office. In jurisdictions where judges are appointed, political leaders may use tactics to remove those they dislike from office and replace them with those more likely to rule in their favour.

For instance, Castex believes the Argentinian judiciary was seriously compromised when judicial reform was proposed by then-president Cristina Fernandez in 2013. The suggested bills were ruled unconstitutional by both the Argentinian federal and supreme courts. If the so-called democratisation of the judiciary had gone ahead, Castex believes it would have meant the loss of judiciary independence in Argentina. With more elections coming up in October in the country, he is concerned that this could enable the return of a deeply polarising leader.

Meanwhile, in the US, the constitutional right for the president to nominate Supreme Court justices has led to public outcry. The most controversial nomination to date was Brett Kavanaugh, who was accused of sexual assault and sexual misconduct by three women (he denied all three accusations). He was confirmed to the US Supreme Court on a 50-48 vote in July 2019 despite an incredibly high profile, public campaign, and multiple protests.

What many have found appalling is not only the number of judges that have been nominated by President



Martin Kovnats



Alberto Luis Navarro Castex

**SESSION:** BIC Showcase: Collapse of the middle – the different impacts of modern populism in and within bars and the legal profession

**TIME:** Today, 14.30 – 17.30

**VENUE:** Room 301, Floor 3

**COMMITTEES:** Bar Issues Commission, Closely Held and Growing Business Enterprises Committee, Professional Ethics Committee

Trump since he has been in office, but the lack of diversity in the nominations. Nearly one-quarter of the US’ federal judges have been appointed by Trump’s administration. Even after his presidency, these judges can remain on the bench for many years to come. This means they can have a huge influence over the lives of Americans and critical issues such as immigration, environment, LGBT+ rights, and more.

What is clear is that populism is not limited by geography or the economic development stage of a country. From the US and Argentina to the UK and Italy, populist ideas and politicians are working to undermine the rule of law everywhere. More and more countries are seeing the emergence, and continued support of, populist leaders.

As the middleman that stands to maintain checks and balances in society, judiciaries’ power is being eroded in many jurisdictions. Without the maintenance of the middle,

societies will crumple easily into the hands of the few who seek to manipulate the views of the majority with their populist agendas. The rule of law will fall victim to the new social order that is being created across multiple jurisdictions if action is not taken. And part of that responsibility lies with lawyers.

Rather than reinforcing the trend of populist governments taking over the courts by enhancing the legitimacy to do so by swaying public views, courts as an essential pillar of government must work tirelessly to resist populist agendas.

Bar associations have an important role to play in upholding the rule of law and ensuring the independence of the judiciary and the legal profession. Lawyers must work together to stand up to populism so that local voices can be heard. The first step is to continue to raise awareness of the issue so that lawyers’ power as guardians of the rule of the law is not lost – which is what this session will work to do.

# Powering the future

The energy sector in Africa continues to face a number of hurdles, but the opportunities in the region are vast – particularly in the gas-to-power and renewable sectors. That was the message in yesterday’s *Oil and gas in Africa: challenges and opportunities* session.

**“The issue right now is not that we are running out of oil. Actually, we may be running out of demand for oil”**

According to data provided by Peter Muliisa of the Uganda National Oil Company (UNOC) in Kampala, oil and gas across the continent accounts for only 3.9% of global consumption, and 4.2% of global crude oil consumption.

“Consumption in Sub-Saharan Africa in particular is still very low. That speaks a lot to the development and growth of economies, and to growth and consumption going forward,” he said. “There are a wealth of opportunities. Capacity and consumption is significantly low compared to the world. This is an opportunity for Africa.”

Muliisa did however highlight a number of challenges facing the sector in Uganda and further afield. These include: funding constraints; a lack of clarity in roles (some national oil companies are established without clear mandates); political interference and restrictive regulatory regimes; volatility in crude prices; socioeconomic expectations and allegations; changes in energy requirements; human resource issues, and geopolitical concerns.

In North Africa, it is a fairly similar story, but the issues facing the region are somewhat different. According to Norman Bissett of Hadiputranto Hadinoto & Partners in Jakarta, one of the key challenges going forward is the idea of peak oil.

“When I was a kid in the 1970s, North Sea oil reserves were going to run out in 20 years. People always say that North Sea oil is going to run out in 20 years,” he said.

“The issue right now is not that we are running out of oil. Actually, we may be running out of demand for oil. It is getting to the point where conceivably, if we all start driving Teslas and electric cars, we are reaching saturation on the demand side for oil.”

The question is what that means for the oil and gas industry, and what challenges and opportunities it poses. “We think that gas-to-power will be-



Peter Muliisa

come increasingly important for pretty much every energy or oil company out there,” said Bissett.

Marco Bollini of Italian oil company Eni also spoke of the opportunities on the continent. He drew attention to oil-rich countries like Mozambique, which do not have the legal framework in place

to cope with a major refinery project on hold for many years. Improving legal frameworks across the continent is crucial to ensure it reaches its true potential as a possible oil and gas net exporter.

Bollini agreed with the rest of the panelists that gas is king. “But gas developments require money, and if you look at the local markets – where there is good news for each country in terms of possible power generation and so on – we need to find a way to devise instruments to secure the payments and the supply of gas for these projects.”

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