



Europe's moral obligation

José Manuel Durão Barroso has labelled the Middle Eastern refugee situation a humanitarian crisis above all else, arguing that a refusal to act would see Europe failing its basic moral obligation.

Former European Commission President Durão Barroso kicked off this year's IBA Annual Conference by reflecting on the various crises that have hit Europe in the eleven years since he was first elected President.

When later asked by CNN journalist Todd Benjamin how exactly the refugee problem should be addressed, he insisted that as well as the obvious humanitarian dilemma, it is ultimately less expensive to help refugees now than later.

"Europe needs more migrants," said Durão Barroso, adding that a single EU-wide – or even global – regulation is needed.

"When implementing post-crisis financial regulations it was always about ensuring a level playing field, so the same common principles should apply," he said.

Durão Barroso acknowledged the reluctance of some within the EU and elsewhere to welcome refugees, and stressed the importance of assimilation, citing integration apprenticeship programmes in Austria and Germany as particularly effective. While mass migration has always been the norm for some European countries – particularly those with a colonial past – others don't share the tradition.

When asked by an audience member what his message to the Middle East would be regarding the crisis, he answered: "Do more to support your brothers."

Durão Barroso also defended the EU's record, citing the "remarkable resilience of

the European system". Despite being in the grip of seemingly unending crises, the EU grew from 15 members in 2004 to 28 just ten years later. Drawing on this evidence, he maintained a positive outlook for the future of the union.

On the role of lawyers in the current global landscape, Durão Barroso told the audience, "I personally believe you are going to become more important in the future."

Durão Barroso's speech followed an initial address from IBA President David W Rivkin. By noting the significance of the 800th anniversary of the Magna Carta this year, Rivkin spoke of the IBA's accomplishments over the past 12 months and celebrated the triumphs of what he called unsung heroes of the law.

Singling out one of the IBA's smallest committees, the Indigenous People's Committee, Rivkin told delegates of its recent work in Colombia. The committee spent time this year travelling throughout the country to help form relationships between indigenous people and representatives of the mining industry.

Rivkin also encouraged delegates to do what they can to help those fleeing war-torn states. "The refugees need legal advice on many issues, not just immigration and refugee status," he said. "I call on all of you to determine what you can do to help, to take action and then to encourage others to follow your lead."

He emphasised the importance of the bar remaining independent, describing the work he and the IBA has done in the past year to collectively defend against attacks on client privilege, self-regulation, independence and privacy.

Profile: José Manuel Durão Barroso

José Manuel Durão Barroso was the 11th President of the European Commission, serving from 2004 to 2014. Between 2002 and 2004 he was the Prime Minister of Portugal, having begun his political career in his late teens during the Estado Novo regime in Portugal.

In 1980 Durão Barroso joined the Social Democratic Party (PSD), and was first elected to Portuguese parliament in 1985. Then followed six re-elections, during which time he also served as vice president of the European People's Party. Durão Barroso acted as a key mediator of peace accords for Angola in Bicesse, Portugal, during this time, and launched

the talks with Indonesian ministers that ultimately led to the independence of East Timor.

PSD won the general election under his leadership in 2002. Durão Barroso remained Prime Minister of Portugal until July 2004, when the European Parliament elected him to the post of President of the European Commission. He received a unanimous vote for re-election in September 2009.

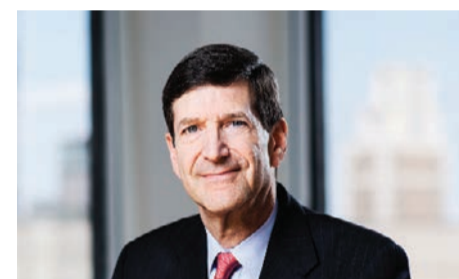
Durão Barroso's presidency coincided with a period of great change for Europe. The near-dissolution of the eurozone, the financial crisis and the outbreak of conflict in Ukraine are just a selection of his defining moments.



CONVERSATIONS WITH...

Fatou Bensouda, José María Aznar and Anders Fogh Rasmussen discuss their perspectives

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THE EVOLUTION OF LAW

IBA President David W Rivkin on the challenges facing the association

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REWARDING EXCELLENCE

Human Rights, Pro Bono and Outstanding Young Lawyer awards announced

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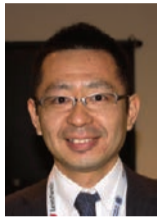
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QUESTION

What sessions are you most looking forward to?



Yuichi Urata
Oh-Ebashi LPC & Partners
Japan

I am interested in all the M&A sessions. I'm mostly here to network but am interested in cross-border investment into Asia as I mainly focus on advising foreign clients investing into the Japanese market.



Fraser Mendel
FM Legal Group
US

I'm looking forward to everything related to technology law; tech is the focus of my practice. I am especially excited about the 'Around the tables – breakfast and a taste of hot topics in the Intellectual Property, Communications and Technology Section'.



Akil Hirani
Majmudar & Partners
India

I'm looking forward to the session on Wednesday 'Europe invests in the world, the world invests in Europe: forum and networking'. There will be discussion on investment into and out of the Arab world.



Rachel Mainwaring-Taylor
Hunters incorporating
May May & Merrimans
UK

'Removing the glass ceiling from above: diversity as a leadership challenge' is one of the sessions I am most interested in. It's about the challenges female lawyers face breaking into senior roles in law.



Roberta Danelon Leonhardt
Machado Meyer
Brazil

There is a panel from the environment, health and safety committee – 'The diverse impacts of drought' that should be very interesting. There is a huge problem of drought developing globally.



Rodolpho de Oliveira Franco Protasio
Mundie Advogados
Brazil

I'm looking forward to M&A discussions. But I am also interested in the sessions run by the Closely Held and Growing Business Enterprises Committee and the International Construction Projects Committee.



Joe-Kywari Gadzama
J-K Gadzama
Nigeria

I am looking forward to the sessions on international arbitration. As an African of course I would also never miss any of the sessions discussing African trends.



Virginia Kalio
Customary Court of
Appeal
Nigeria

I am a Customary Court Judge and a magistrate in Nigeria and I am mainly into civil litigation. I am looking for anything to do with this area of law as that is the focus of my job, and also anything to do with enforcement of judgments.

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A welcome from the IBA

If you are unfamiliar with how to get the best out of this week in Vienna, here's a message from the forum's organisers

The conference

Each year the IBA holds its Annual Conference in a different major world city. This year, here in Vienna, there are thousands of delegates from across the globe, making it the largest gathering of international legal professionals in the world.

Getting the best out of the conference

The sheer scale of the conference can be daunting to delegates attending for the first time. Navigating your way through the hardcopy of the final programme of the conference, highlighting the sessions you want to attend, and using the 2015 Mobile Conference App (m.ibanet.org) will help you get the most out of your time in Vienna. For full details please see page 9 of the Final Programme, a copy of which will be in your delegate bag, or can be found online here:

www.ibanet.org/Conferences/Vienna2015.aspx

Staff at the IBA stand in the exhibition area will be able to help

you with your enquiries. On Sunday 4 October here will be a conference newcomer orientation workshop, entitled: 'How to make the most of this IBA Annual Conference and really enjoy it.'

The session will be held between 2:30 pm – 4:30 pm in Hall F2, Level 0 and is highly recommended for meeting other delegates who have not previously attended an IBA Annual Conference. **Tip:** Remember your business cards!

Sessions

Throughout the week there will be more than 200 informative and substantive working sessions providing the latest developments in areas including: antitrust, banking law, criminal law, environmental law, mergers and acquisitions, sports law and much more. Alongside these are sessions focussing on day-to-day issues faced by lawyers, including professional ethics.

There are also showcase and general interest sessions that

highlight some of the most important issues currently affecting the global legal profession. Debates with leading international experts in their fields provide delegates with unique opportunities to broaden their knowledge and interests beyond day-to-day practice.

Business meetings

Numerous business meetings are held over breakfast, lunch and dinner, and there are many receptions to attend, providing an incredible opportunity to develop contacts and conduct business with peers. You can use the delegate search on the **2015 Mobile Conference App** at m.ibanet.org to speed up the process and maximise opportunities.

The IBA Annual Conference provides an exceptional opportunity to develop your life as a lawyer. So, with business cards at the ready, take advantage of the opportunities offered and enjoy the experience!

The history of the IBA

Inspired by the founding of the United Nations, the IBA was established in New York in 1947 based on a similar model, with 34 bar associations as members and the aim of supporting the establishment of law and the administration of justice worldwide. It has since grown into the leading international organisation for lawyers, bar associations, law societies and law firms. The membership spans all continents and represents more than 160 countries. It includes individual lawyers from 170 jurisdictions, close to 200 bar associations and law societies (collectively representing many millions of lawyers) and entire law firms, known as IBA group firm members. Together, these different strands of membership make the IBA a truly global organisation.

The IBA's structure and objectives

The IBA's membership is divided into more than 70 committees,

each of which represents a practice area or an area of special interest, such as the Law Firm Management Committee, Arbitration Committee, Tax Committee, or War Crimes Committee. This structure reflects the interests of IBA members and enables the building of knowledge and contacts in fields of interest. In addition, there are six regional fora to represent the interests of members practising in, or with links to a particular region, for example, the European Regional Forum.

Building cross-border connections, promoting the harmonisation of law across borders, developing legal expertise, defending the independence of the legal profession, information sharing and promoting legal education are at the core of the IBA. We also provide IBA members with top-level professional development and networking opportunities, of which there are many at the Annual Conference.

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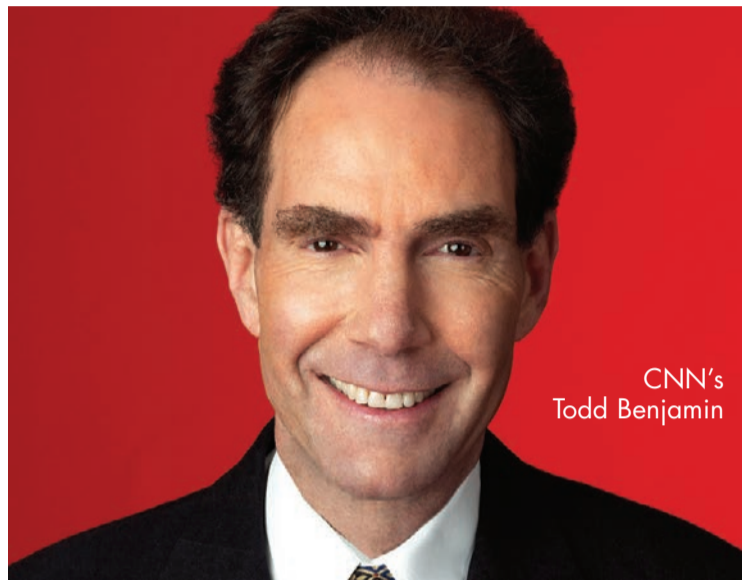
A lunchtime debate

By recent standards 2015 has thrown up its fair share of legal confrontations. **Fatou Bensouda**, **José María Aznar** and **Anders Fogh Rasmussen** discuss their perspectives

This year's one hour lunch sessions will see executive director of the IBA Mark Ellis speak with the prosecutor of the International Criminal Court (ICC) Fatou Bensouda, and former anchor, correspondent and financial editor for CNN, Todd Benjamin speak with former Prime Minister of Spain José María Aznar and former prime minister of Denmark and NATO general secretary Anders Fogh Rasmussen.

This year has by no means been a quiet one – both in terms of the fraught relations between Russia and Western Europe, China and its neighbours, and also of the numerous challenges to the credibility of and shared values in institutions such as the ICC, UN, NATO and EU.

The three speakers this year will share insights from the coalface of some of these events in a format that welcomes audience comments



CNN's
Todd Benjamin

and questions. "What makes these 'IBA conversations with...' so interesting is not only the perspective the guest brings but the perspective the audience brings with their questions," according to Benjamin.

"And their questions are certainly encouraged and welcomed. It's rare that an opportunity like this comes along."

Here's a rundown of the week's speakers.

Today: Fatou Bensouda

Bensouda is a decorated lawyer and former senior civil servant in Gambia who became the ICC's senior prosecutor in June 2012.

The session with Bensouda comes at a time when the ICC has been increasingly criticised by the African Union for unfairly targeting African cases. The ICC has nine full investigations underway and all are African. Among the highest profile of these are the investigations into Kenyan president Uhuru Kenyatta for alleged involvement in crimes against humanity during the 2007-08 post-election violence; and Sudanese president Omar al-Bashir for genocide in Darfur.

Both cases have been hampered, the former with allegations of corruption, non-cooperation and suspect witness testimonies and the latter when South Africa, an ICC member, decided not to detain al-Bashir while visiting the country, a move that Bensouda has condemned.

The ICC has also opened preliminary examinations into the actions of Israel and Hamas during the 2014 Gaza conflict and in the ongoing occupation of Gaza. (For more information see page 12 of today's Daily News).

Tuesday: José María Aznar

Aznar was Prime Minister of Spain for two terms from 1996 to 2004 and is also currently on the board

SESSION
"A conversation with..."

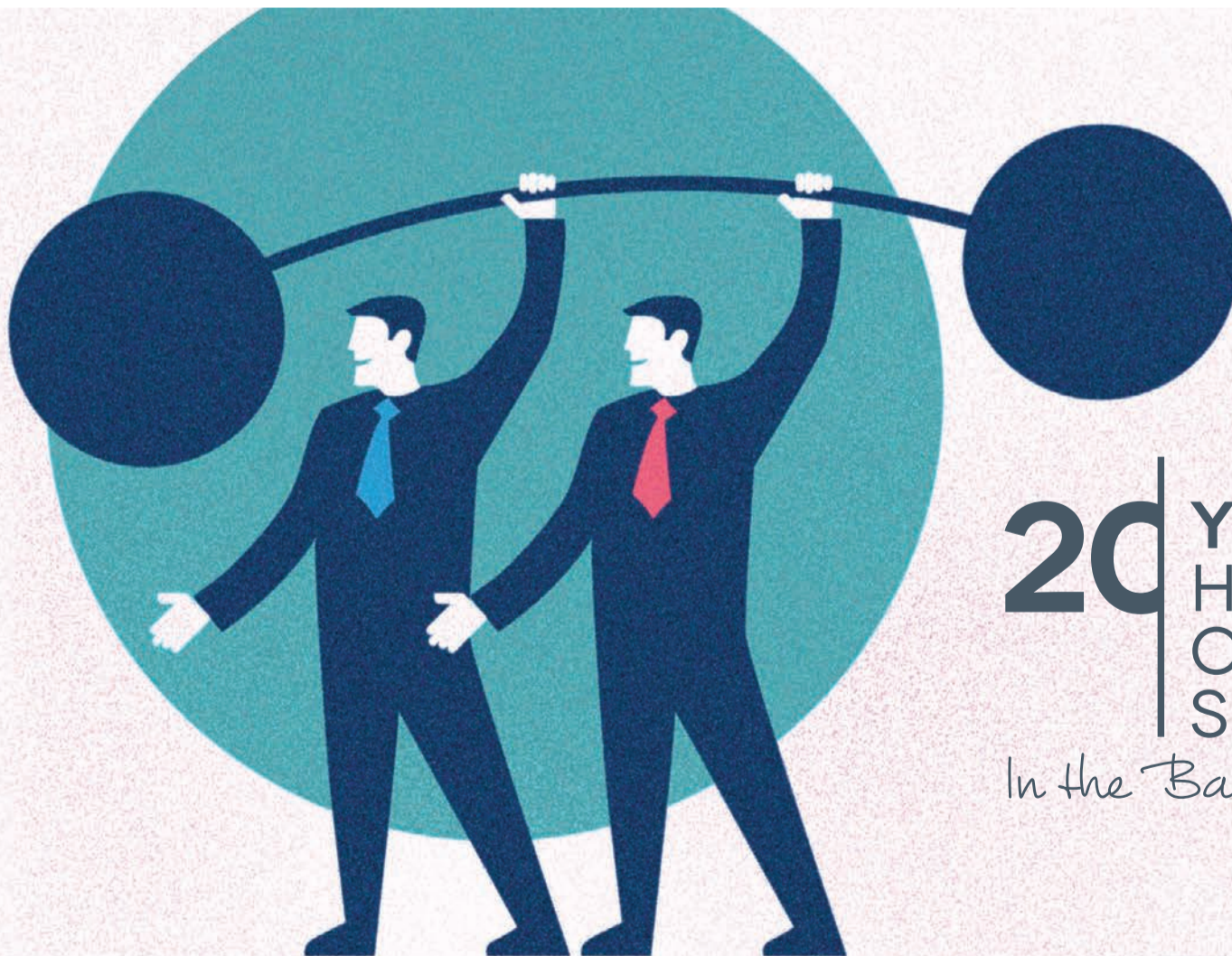
TIME/VENUE

1:15pm to 2:15pm, Today with Fatou Bensouda, Hall E1, Tuesday with José María Aznar, Hall E1, Wednesday with Anders Fogh Rasmussen, Hall E1

Key takeaways

- The sessions will host ICC prosecutor Fatou Bensouda; former prime minister of Spain José María Aznar; and former General Secretary of NATO Anders Fogh Rasmussen
- The conversations begin promptly at 1:15, last one full hour and welcome questions and comments from the audience
- Key issues at hand will include Russia's annexation of Crimea, ISIS, insecurity in the Middle East and the future of the European Union

of directors of News Corporation. His terms in office oversaw the introduction of the euro in 1999 and the 2003 invasion of Iraq, which Aznar supported. He is an active analyst of world issues and has recently returned from visits to Colombia and Peru.



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The session with Aznar will be moderated by Todd Benjamin, who will explore the divisive stance Aznar has taken on several issues. Among them are the fact that he supported the 2003 invasion of Iraq despite strong opposition in Spain and that he opposes Palestinian statehood. The discussion will explore the future of the European Union, the fight against Islamic State and ideological extremism and the current refugee crisis.

Wednesday: Anders Fogh Rasmussen

Rasmussen is a Danish politician who was the 12th Secretary General of NATO from 2009 to 2014 and served as Prime Minister of Denmark from 2001 to 2009.

Rasmussen advocates a strong role for NATO and countries allied against Islamic State, arguing that “with such groups, there can be no dialogue. They must be disrupted and defeated”. Another core issue for Rasmussen is Russia and its illegal annexation of the Crimea. “Russia’s behaviour is my deepest disappointment of the past five years,” he told the press in September 2014, adding that “Russia’s aggression against Ukraine has challenged our vision of a Europe whole, free and at peace”.

Benjamin will moderate and press Rasmussen on the topic of the European Union, ISIS, Russia and NATO.

Action plan shifts CMU priorities

Securitisation and infrastructure investment have been prioritised by the European Commission’s (EC) highly anticipated Capital Markets Union (CMU) action plan which was revealed last week.

London lawyers responded with cautious optimism, praising the EC’s minimalist approach to reforms, but warning that market participants may have to adapt their business models to take advantage of the new capital framework. The debate is sure to continue inside – and outside – panel discussions at the IBA’s annual conference this week.

The 30-page document consists of 20 measures to create a single EU market for capital, removing national boundaries and reducing corporates’ – particularly small and medium-sized enterprises’ (SME) – costs for accessing funding.

It follows the CMU green paper, launched in February, which flagged five early stage priorities: prospectus regime review; regulatory relief for simple, transparent and standardised (STS) securitisation; private placement; long-term

investment in infrastructure; and SME credit information.

Based on last week’s action plan, which incorporates the 700-plus responses to the public consultation that closed in May, those priorities have slightly changed.

Legislative proposals have been put forward in two areas.

There is a regulation setting out the criteria for STS securitisation, and a proposal to amend the Capital Requirements Regulation (CRR) to provide capital relief to banks issuing and investment firms holding STS notes.

The EC also published an adjustment to the Solvency II delegated regulation, to make it easier for insurers to invest in infrastructure and European Long Term Investment Funds (Eltifs). This follows a finding by the European Investment Bank that the continent needs up to €2 trillion in infrastructure investment by 2020.

Second level priorities – for which public consultations have been launched – are a pan-European covered bonds framework, improved access to venture capital, and the cumulative impact of post-crisis reforms.

This last consultation seeks to identify regulatory burdens that have affected long-term investment and growth. Some view the EC’s willingness to scrutinise its own reforms as a milestone in EU financial regulation.

“Last week’s action plan is a marked contrast from the previous Commission’s focus on financial stability,” said Mayer Brown partner Alexandria Carr, noting the cost-benefits analysis consultation and Solvency II changes.

“Also, in a departure from the previous Commission’s approach, the new Commission is not proposing a vast swathe of new financial services legislation to achieve CMU: it supports market-led initiatives and even recognises that financial legislation can stifle innovation,” she added.

Edward Chan, partner at Linklaters in London, said it’s too soon to say whether the plans are overly ambitious or even if they are achievable. “But with the need to unpick a broad range of existing laws, both at an EU and national level, specific issues may become politically very difficult,” he said.

STS securitisation

The changes designed to encourage STS securitisations come off the back of the EC’s consultation on the issue, launched alongside the CMU green paper earlier this year.

The draft regulations proposed last week envisage three approaches for calculating capital requirements, and follow recommendations set out in the revised Basel framework for securitisations which were published by the Basel Committee in December. The changes also adopt a more risk-sensitive prudential treatment for STS securitisations, similar to that proposed by the European Banking Authority in its report on qualifying securitisations.

Confirmation of the Commission’s desire to increase qualifying securitisation by reducing regulatory capital changes has been welcomed. But lawyers expect issuers, investors and even regulators to face difficulties when determining whether specific deals satisfy the STS criteria.

Originators and sponsors will be jointly responsible for that determination, and will be liable for incorrect or misleading STS notifications.

Peter Green, partner with Morrison & Foerster in London, said the big unknown at the heart of the CMU plan is how successful attempts to reinvigorate the securitisation market will be.

“Europe has taken tentative steps towards reviving the market. But there’s no denying that we are far from witnessing the same volume of asset backed securities as there was before 2008,” he said, adding that if the action plan opens the door further, it is likely to be a big step in the right direction.

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David W Rivkin, a partner at Debevoise & Plimpton in New York, succeeded Michael J Reynolds as President of the IBA in January 2015. Considered one of the world's top international dispute resolution lawyers, Rivkin is also co-chair of Debevoise & Plimpton's International Dispute Resolution Group.

Here he speaks exclusively to *IBA Daily News* about what he hopes to achieve during his two-year tenure, the main priorities of the IBA and the challenges facing it, and what delegates can expect to take home from this year's conference.

What have been the IBA's main priorities and greatest accomplishments over the past year, and what do you hope to achieve in 2016?

Many of the IBA's best accomplishments this year have come from the strong work of our many committees, whose projects we have been watching closely.

I started the year with a number of presidential initiatives and projects. The IBA has been working particularly actively this year on the relationship between human rights and business, using the UN's Guiding Principles as a model. A working group within the IBA has drafted two excellent documents providing practical guidance for business lawyers and for bar associations.

A key personal priority for me has been the launch of the IBA's Judicial Integrity Initiative. Earlier this year, we held meetings of experts from the UN, OECD, Basel Institute of Governance and other global anti-corruption committees, as well as senior judges from eight countries (incorporating every

"A key personal priority for me has been the launch of the IBA's Judicial Integrity Initiative"

continent and including three Chief Justices); everyone in attendance agreed the IBA could play a special role in combatting judicial corruption.

Working with the Basel Institute, we have now compiled and distributed among our members a survey on how judicial corruption materialises. We will use the results of that survey to create a number of projects in 2016 that will focus on the IBA's strengths to enhance global best practices to fight judicial corruption.

We have also continued our focus on the justice and human rights implications of climate change. Our committees are actively working on implementing



"Respect for the rule of law is unfortunately diminishing worldwide"

The evolution of law

the recommendations in our ground-breaking task force report. We have been working with the Mary Robinson Foundation and government officials to encourage the inclusion of language respecting human rights in the climate change treaty that governments will sign in December.

The IBA's human trafficking task force has been very busy preparing a report on the laws and corruption impacting human trafficking. They have been working with law societies in England and Singapore to create training programmes for anyone involved in law enforcement, which can be used as a model in other countries.

With the recent developments in Cuba in mind, we have been working with the Cuban association of law firms to train them on the basics of international business transactions. The IBA has excellent distant learning programmes that we are adapting for this training, which is essential for the economic development of the country.

Finally, I have also set up an additional task force focussed on the independence of national bars. It's essential that lawyers remain independent of their government, or else they cannot protect individual rights.

The IBA launched its new app, eyeWitness to Atrocities this year. How does it work, and what has been the response?

We are very pleased with the app, which is an amazing step forward in the fight against atrocities. It can record video, photographs or

audio, and most importantly, it embeds the metadata of the file confirming the time, date, location and authenticity of the material. As a result, the recording itself can be used to prosecute perpetrators of war crimes, which has previously been difficult as understandably, very few individuals feel comfortable personally testifying in such a trial.

The app can also be used by the media, as they can verify the authenticity of any material they receive from the app. It has been downloaded more than we could have hoped, and civil society organisations are ensuring their representatives in crisis zones are using it. I personally cannot think of a better use of our funds than taking such a strong stand in the battle against atrocities. [See tomorrow's issue for more information on the eyewitness app.]

What challenges will the IBA face over the next decade?

A big focus of the IBA at the moment is on developing a better digital platform, which will help us to continue engaging with younger lawyers in a meaningful way.

Another challenge for the IBA is simply maintaining our global voice as the number of international legal issues multiplies. The crises unfolding this year have seen huge breaches of human rights. International law has never been so important, in the public sector or in private commercial law. The IBA must be able to respond to issues promptly and effectively as soon as they arise.

What do you feel is the most pressing global legal issue today?

Respect for the rule of law is unfortunately diminishing worldwide. Corruption eats away at the integrity of government. Governments must resist encroaching on the independence of the bar and respect client confidentiality in the name of security so that we can maintain our role in protecting individual rights. Further, as we make progress in taking action against climate change, respecting human rights and providing justice for those harmed by climate change is paramount.

From my own perspective as an international arbitration lawyer, there has been much debate on the proper dispute resolution mechanisms to be incorporated into global investment treaties like the Transatlantic Trade and Investment Partnership (TTIP) and Trans-Pacific Partnership (TPP). If we do not come up with an appropriate answer, the treaties may be ineffective and international investment and trade may be harmed. While I recognise that the current system needs some reforms, it does not need to be thrown out altogether and started anew, as many politicians and interest groups are urging.

How can bar associations keep up with globalisation, and what is the IBA doing to support them?

The IBA supports bar associations in many ways, but one aspect of the IBA that I'm encouraging is for the bars to benefit from our committees'

work. IBA committees know their practice areas so well and can provide invaluable guidance. I also think that our current initiative on business and human rights – particularly the document we have drafted to provide guidance to bars on the UN Guiding Principles – will be of great benefit to bar associations and law societies around the world.

What parts of this year's conference are you most looking forward to?

Every one of the showcase sessions will be fascinating, and I hope for the opportunity to attend as many of them as possible. In particular, the session that I am leading on our Judicial Integrity Initiative will be an interesting development of the roundtables we had with experts earlier this year.

The LPD Showcase on business and human rights, with former UN Secretary General Kofi Annan and former UN Special Representative on Business and Human Rights John Ruggie, who drafted the UN's Guiding Principles, will be outstanding. We are honoured that they will be attending our conference, and with various chief executives and general counsel discussing the topic, it's set to be a great session.

As always, I am also looking forward to the Rule of Law Day on Friday. This year a particular highlight will be sessions on the successes and failures of the rule of law and the state of the rule of law in the Middle East today, several years after the Arab Spring.

The IBA

A who's who of your association's leading figures



Mark Ellis
Executive director

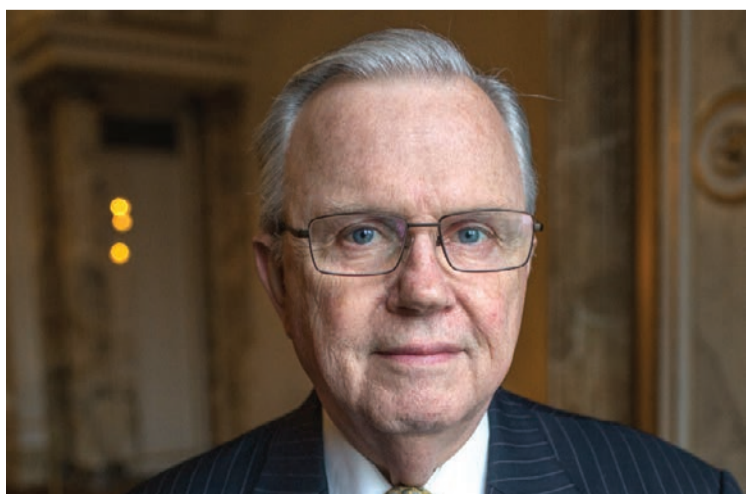
Mark Ellis has been the executive director of the foremost international organisation of bar associations, law firms and individual lawyers in the world for 15 years.

Before joining the IBA, Ellis spent 10 years as the first executive director of the Central European and Eurasian Law Initiative providing technical legal assistance to 28 countries in Central Europe and the former Soviet Union, and to the International Criminal Tribunal for the Former Yugoslavia in The Hague.

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

Hans Corell
Co-chair, the Human Rights Institute

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



Martin Šolc
Vice-president

Martin Šolc is vice-president of the IBA. His tenure is for the calendar years of 2015 and 2016. Šolc has been a member of the IBA for more than 25 years, and began representing the Czech Bar Association on the IBA Council in 1990. He held the presidency of the Czech Bar Association in 1994 and was a member of its management board from 1990 to 2002. After his term in office concluded, Šolc

took on an active leadership role in the IBA.

In addition to being a member of the IBA management board since 2003, posts have included: IBA secretary general (2013 to 2014); co-chair, Human Rights Institute (2009–2010); chair, Public & Professional Interest Division (PPID) (2007 to 2008); vice chair, PPID (2005 to 2006); chair of the Interim Bar Issues Commission (2004); member of the Council of the Section on Business Law (now Legal Practice Division) (2001–

Baroness Helena Kennedy
Co-chair, the Human Rights Institute

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

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



Margery Nicoll
Chair, the Bar Issues Commission



Margery Nicoll is the Chair of the Bar Issues Commission. She is also the deputy secretary-general and director of international of the Law Council of Australia. Following her career in private legal practice, she joined the Law Council and was appointed director of legal and policy, before becoming director, international in 2005. Her role at the Law Council involves representation and liaison with government, industry organisations, federal courts, law reform bodies, international legal professional associations, Parliamentary Committees, access to justice bodies, other professional groups and the public.

She has also overseen and contributed to the Law Council of Australia's International Strategy. Nicoll is also Special Councillor for Australia, LAWASIA, being appointed to that position in 2008.



2002); co-chair Eastern European Forum (1998–2000) and member of the IBA Council since 1990.

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

Horácio Bernardes Neto
Secretary general



Horácio Bernardes Neto is the secretary general of the IBA and a former chair and vice-chair of the IBA Bar Issues Commission.

A partner at Motta Fernandes Rocha Advogados, his areas of expertise include antitrust law, arbitration, contracts, corporate law, M&A and private equity.

As well as his work with the IBA he is also a council member of the São Paulo Bar Association, the German Bar Association and former president (2003–2006) and executive officer at the Centre of Studies of the Brazilian Law Firms, among many other roles. Bernardes Neto speaks Portuguese, English, German, French, Spanish and Italian.

Almudena Arpón de Mendivil
Chair, the Legal Practice Division

Almudena Arpón de Mendivil is chair of the IBA's Legal Practice Division and its former vice-chair. She has also held the position of IBA Treasurer. Arpón de Mendivil began her career in 1987 at the Gómez-Acebo & Pombo office in Brussels, where she practised until 1989 before being transferred to Madrid.

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

Arpón de Mendivil has a law degree from ICADE, a Master's de-



gree in community law from the College of Europe in Bruges (scholarship from the Ministry of Foreign Affairs, 1986) and a PIL from Harvard Law School.

She is an advisory board member of The Academy for American and International Law.

Stephen Macliver
Chair, Section on Public and Professional Interest

Stephen Macliver is the chair of the IBA Section on Public and Professional Interest and the Secretary/Treasurer of the International Bar Association's Human Rights Institute. He is a Former Secretary-Treasurer (SPPI) and IBA Assistant Treasurer. Macliver is Sparke Helmore's national executive officer and a member of the executive committee. He has had a career in law firm management for more than 20 years.

He initially practised law and, since 1987, has consulted to law



firms or held in-house senior management positions.

Before joining Sparke, he was the chief executive at leading New Zealand law firm Bell Gully and prior to that appointment held the role of executive managing partner of Minter Ellison.

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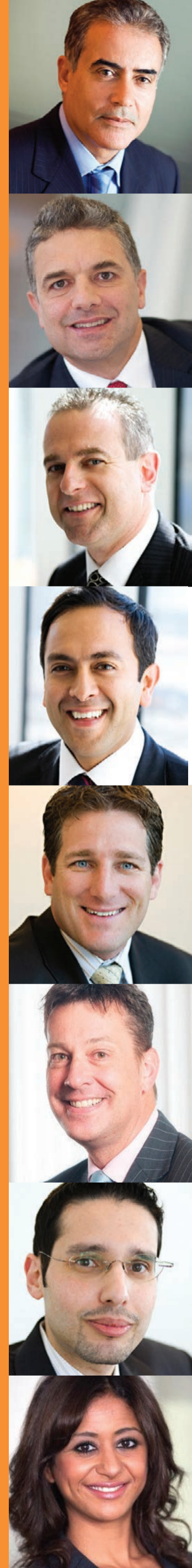
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Guess who adores Sachertorte?

(Sacher-Torte is a chocolate cake. 5th of December is National Sachertorte Day)

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

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The Best of Vienna

City of music, city of dreams: Vienna has plenty for lovers of history, art, music and architecture, writes [James Wilson](#)

Vienna is a historic capital city rich in classical music traditions, high art and baroque architecture. But beneath all this lurks a more idiosyncratic character. It has been home to musicians Franz Schubert, Johann Strauss, Wolfgang Mozart, Gustav Mahler and Ludwig van Beethoven and it produced its own unique modernist art movement, Austrian secessionist, with artists including Gustav Klimt, Otto Wagner, Egon Schiele and Oskar Kokoschka, not to mention philosopher Ludwig Wittgenstein and psychoanalyst Sigmund Freud.

In the city centre there are regular reminders that Vienna was resident city of the Habsburg dynastic family, which ruled Austria from the thirteenth century until 1918, the Holy Roman Empire from 1478 to 1740 and produced rulers of Spain, Hungary, Germany, Russia and Portugal. Today the Habsburg influence shouts out from its lavish palaces, gardens, baroque buildings and art collections in and around the Hofburg area of central Vienna.

The city has more dubiously been home to some of the more notorious figures and events of recent European history and over the past couple of years can add a series of less dramatic claims. It is the second most popular destination for international conferences in Europe, after Paris; it is the seat of numerous international organisations including OPEC, the UN and the International Atomic Energy

“The most visited palace and arguably a must-see is Schönbrunn, where in 1772 the six-year old Mozart gave a concert”

Agency. In a surreal contrast, in 2015 it hosted both the conclusive talks over Iran’s nuclear programme and the Eurovision Song Contest, thanks to the victory in 2014 of a certain Conchita Wurst.

Art and music lovers and historians can find a wealth of sites to visit. The Ringstrasse Boulevard, built to aid city expansion and



designed to show off Habsburg glory, includes the Hofburg area. Here, visitors can find the Hofburg Imperial Palace, home to the Habsburgs until 1918, visit the expansive art collection held in the Albertina and peek in at the Imperial Crypt, where 149 Habsburgs lie silent. Nearby are the Art History (Kunsthistorische) Museum, the vast and sprawling national art gallery, which has the largest collection of Bruegel pieces in the world, the Natural History (Naturhistorisches) Museum, guarded inside by a full-scale diplococus, and the Spanish Riding School (Spanische Hofreitschule), one of Vienna’s most popular sites where visitors can be transported to a world of dressage training on famous Lipizzaner horses.

Also in the Hofburg area are City Hall (Rathaus) and the Vienna State Opera (Staatsoper), which has a busy schedule in October.

The most visited palace and arguably a must-see is Schönbrunn, where in 1772 the six-year old Mozart gave a concert. The vast palace grounds also boast the world’s oldest zoo, the Tiergarten, which was built in 1752 and in 2007 saw the first ever natural birth of a captive Panda.

Another landmark is the Belvedere Palace, former home of

one of Europe’s most successful military commanders Prince Eugene of Savoy and current home to the world’s biggest collection of Klimt paintings. Last but not least is one of the city’s most iconic symbols: St Stephen’s Cathedral, an impressive piece of gothic architecture whose foundations are thought to be above an Ancient Roman burial ground.

Scattered treasures

Take a leaf out of Freud’s book to scratch beneath the surface, and another city emerges. One of the most popular sites is the giant Ferris wheel Riesenrad, with the Vienna tourist board proclaiming: “One thing is certain – only when you have taken a ride on Riesenrad are you really in Vienna!” The Riesenrad lifts visitors 200 feet in the air for great city views, on a clear day. It was initially built in 1897 alongside other panorama wheels in Chicago, London, Blackpool and Paris but it has since been redesigned.

The Riesenrad is also of interest to film buffs or those curious about post World War II Vienna under Allied rule, which was a hotbed of espionage. The 1994 film *The Third Man*, written by Graham Green, explores this period of Viennese history and a key scene is

set in one of the wheel carriages. *The Third Man* also has its own dedicated museum which offers themed tours of the city.

There are several museums and landmarks to past and present Viennese figures of note. Visitors can seek out the house where Mozart briefly lived from 1784-87 (Mozarthaus), now converted into a modest exhibit, or the fourth floor flat where Beethoven lived from 1804-14 while composing his only opera, *Fidelio*, his Seventh Symphony and Fourth Piano Concerto. Today his apartment offers a small, somewhat modern and sparse, museum (Beethoven Pasqualatihaus). For pure auditory pleasures devotees can pick up a Mozart requiem at St Charles’ Church, by all accounts a special experience, or visit the more modern museum to music, Haus der Musik, which opened in 2000.

Illustrious composers have also been commemorated in Hollywood-style stars of fame at Kärntner Strasse, Stephansplatz and on the square in front of the Opera, while in Mariahilfer Strasse visitors will see similar stars for famous Austrian skiers. Freud has his own museum in a former residence, aptly named the Sigmund Freud Museum and offering Freud city tours. Visitors can also sip coffee at

his favourite coffee house Café Landtmann, which was also frequented by Gustav Mahler, Max Reinhardt and Marlene Dietrich.

If historic art and architecture are not to your taste, Vienna offers ample opportunity to bask in more modern movements. Among the highlights are the curious works by architect Friedensreich Hundertwasser (1928 – 2000), which can be seen at the Kunst Haus Wien and the nearby Hundertwasser Haus. The Museums Quartier, located just off the Hofburg area, also houses the Leopold Museum, which showcases the Viennese secessionist movement and the MUMOK (Museum of Modern art), while opportunists might also want to take notes from the Museum of Fake Art, which explores forgeries and fakes.

Dudeln, Heurige, Beisl

It would be remiss to visit Vienna without sampling some of its heartier delights. Among them is Viennese yodelling, which is done inside rather than on a hill side. The dudeln has been recognised by UNESCO as part of Austria’s intangible cultural heritage and traditionally the best place to listen to it is in a wine tavern, otherwise known as a Heurige. Wine lovers could take a tour of the vineyards or visit a Heurige, many of which are located in the 21st District, north east of the city centre near the vineyards.

Other gustatory treats are the Beisl, traditional laid-back restaurants typically decorated by panelled walls and wooden tables with checked tablecloths. The Beisl serve

“Visitors can seek out the house where Mozart briefly lived”

up Austrian dishes such as Tafelspitz (braised beef), Vanillerostbraten (roasted meat), Schnitzel (fried meat) and Apfelstrudel (apple strudel) alongside local beer on tap.

The city also has an array of Michelin starred restaurants, the best known of which are the Steirereck, Silvio Nickol and Restaurant Bauer, and a healthy obsession with chocolate embodied by exclusive chocolatier Xocolat. Guten appetit!

Diamonds and oil: The power of parallels

Changes in the balance of power in the trade of global resources can become either the source of immense wealth to a nation and security to its people, or of upheaval and economic disaster. The way these markets are structured and how the shifts are negotiated will be at the core of this morning's session run by the IBA's Energy, Environment, Natural Resources and Infrastructure Law Section (SEERIL): 'Supply of Energy and Resources: geopolitical challenges'.

According to one of the session's co-chairs, Amsterdam-based Allen & Overy partner Arent van Wassenaer, at the forefront of today's concerns is how to best manage changes



the phosphate market is controlled by Morocco and if they close the market for two weeks, prices globally go up 40-50%. This is important because phosphate is an essential substance for food production all over the world. If it is managed well it is ok but if not there will

"About 80% of the phosphate market is controlled by Morocco and if they close the market for two weeks, prices globally go up 40-50%"

that impact the demand for a resource or threaten the stakeholders that have an entrenched or unbalanced interest in that resource.

For Wassenaer the structure of the markets is also crucial and the existence of monopolies can greatly increase the stakes. "About 80% of

be problems."

Parallels are evident in the very different oil market, where unexpected low prices, exacerbated by propped up production levels, are having a multitude of good and bad effects on other energy resources, energy security, the power balance be-

tween producers and consumers or upstream and downstream players, and the balance sheets of oil producing nations.

Equally, political tensions with Russia have raised questions about the security of continued natural gas supply, while the opening of the US shale gas market and the discovery of vast gas reserves in East Africa could indicate a seismic shift in gas markets and undermine power centres. "Changes in prices and the end of monopolies can lead to threats to international safety," says Wassenaer, or in other words: rock the boat too fast and the boat may tip.

The same geopolitical questions can be raised in relation to water, as a resource, and more broadly to climate change, as a key driving force of resource trends.

Common themes

In moderating the discussion Wassenaer wants to ask what common themes can be drawn

from experiences in very different sectors, particularly diamonds, oil and gas and nuclear. The session will also discuss the roles of the international community and legal community. Helping him will be co-chair Jean-Andre Diaz, special counsel to the legal department of Total E&P in Paris.

Among the five speakers is Edward Asscher, president of Royal Asscher Diamonds and the World Diamond Council. Asscher will use his time to speak about the Kimberley Process (KP), which has tackled conflict diamonds and helped bring to justice Liberia's Charles Taylor.

Francis Perrin, founder and president of Stratégies et Politiques Energétiques (SPE), will look through the lens of oil prices to examine energy, economics and geopolitics and issues such as OPEC, Iran, Iraq and unconventional oil. From across the Atlantic,



Arent van Wassenaer

SESSION
Supply of energy and resources: geopolitical challenges

COMMITTEE
Energy, Environment, Natural Resources and Infrastructure Law Section (SEERIL)

TIME/VENUE
Today, 9:30am – 12:30pm, Hall L8

Key takeaways

- This session will root out common geopolitical themes across several resource sectors globally
- Edward Asscher, president of the World Diamond Council, will explore the Kimberley Process and conflict diamonds
- Speakers from the International Atomic Energy Agency and International Energy Agency will discuss the Iran nuclear deal and German and Japanese withdrawal from nuclear
- Panellists will look behind the scenes of current oil prices and the growing gas market

Akin Gump partner and former commissioner of the Federal Energy Regulation Commission (FERC) Suedeen Kelly will provide a US and Canadian perspective on gas, oil and shale gas. Peri Lynne Johnson, legal adviser to the International Atomic Energy Agency (IAEA) and the director of the IAEA Office of Legal Affairs, and legal counsel of the International Energy Agency Pascal Laffont will take on nuclear and in particular the developments in Japan, Germany and Iran.

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PREVIEW

The ICC's shining light

Today's lunchtime interview with the International Criminal Court's chief prosecutor, **Fatou Bensouda**, promises to be a fascinating start to the series

The first of this week's 'A conversation with...'; a series of lunchtime interviews with leading figures across the fields of law will be Fatou Bensouda, chief prosecutor at the International Criminal Court (ICC).

It promises to be a fascinating session. Bensouda is at the very front of international criminal justice, having been elected by consensus by the Assembly of States Parties to serve as the prosecutor of the ICC in 2012.

When Bensouda became the court's chief prosecutor she had plenty of work to do. The court was nine years old at the time, having been established with notions of ending impunity for "unimaginable atrocities that

deeply shock the conscience of humanity".

But the arrest in Libya in June 2012 of four members of the court's defence team, who were visiting Muammar Gaddafi's son, Saif al-Islam, marked a new low in the court's history. And with only one conviction in its history, an exclusively African caseload, and relations with other African states also at breaking point, the court's reputation left much to be desired.

In stepped Bensouda, the Gambian who became chief prosecutor – the second in the court's history and the first African woman.

She was nominated and supported as the sole African candidate for election to the post by the African Union. But any suggestions

of tokenism have been batted away. "I am an African and I am very proud of that, but I think it is not because I am an African that I was chosen for this position," she said at the time. "I think my track record speaks for myself ... I have been endorsed by the African Union, but I am a prosecutor for 121 states parties and this is what I intend to be until the end of my mandate."

She certainly has the track record. Between 1987 and 2000, Bensouda was successively senior state counsel, principal state counsel, deputy, director of public prosecutions, solicitor general and legal secretary of the Republic, and attorney general and minister of justice, in which capacity she served as chief legal adviser to the president and cabinet of the Gambian government.



She has served as delegate to United Nations conferences on crime prevention, the Organization of African Unity's Ministerial Meetings on Human Rights, and as delegate of The Gambia to the meetings of the Preparatory Commission for the ICC.

Court of last resort

The court has had plenty more success since Bensouda's arrival, too. As a court of last resort, it exercises its jurisdiction only where national criminal justice systems are unable or unwilling to do so genuinely.

The court is investigating nine situations and is conducting eight preliminary examinations. ICC judges have issued 28 arrest warrants and nine summonses to appear.

Proceedings against a total of 11 accused persons are currently at the trial stage. Seven suspects

are in the court's custody while 13 remain at large. At the time of writing 36 people have been indicted in the ICC, including Ugandan rebel leader Joseph Kony, Sudanese president Omar al-Bashir, Kenyan president Uhuri Kenyatta, Libyan leader Muammar Gaddafi and Ivorian president Laurent Gbagbo.

Putting the questions to Bensouda will be the moderator of the session, IBA executive director Dr Mark Ellis. Ellis is perfectly placed to lead the discussion having served as legal adviser to the Independent International Commission on Kosovo and appointed by OSCE to advise on the creation of Serbia's War Crimes Tribunal.

He was actively involved with the Iraqi High Tribunal and also acted as legal adviser to the defence team of Nuon Chea at the Cambodian War Crimes Tribunal. In 2013, Ellis was admitted to the List of Assistants to Counsel of the International Criminal Court.

SESSION

**A conversation with...
Fatou Bensouda**

TIME

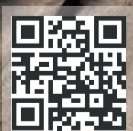
Today, 1.15 pm – 2.15 pm

VENUE

Hall E1

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Awarding excellence

The winners of this year's IBA Human Rights, Pro Bono and Outstanding Young Lawyer awards have been announced. They will be presented this week

The 2015 Pro Bono Award

The winner of this year's IBA Pro Bono Award is Marcus Roberto Fuchs. Fuchs is the executive director of the Instituto Pro Bono and was one of the first professionals to advocate for pro bono practice in Brazil. The Instituto Pro Bono has been a pioneer institution in the area and a leading force for culture change in Brazilian society, encouraging pro bono as a more common practice



within private law firms. His nominator praises his "outstanding record in the defence of pro bono legal services".

Each year, the IBA Pro Bono Award, established in 2010 by the Pro Bono Committee, honours a lawyer who has shown an outstanding commitment to pro bono work as part of their legal career.

The award includes free registration for the IBA Annual Conference, a contribution towards travel costs for the same, and a year's free membership of the IBA. Previous years' winners have included Nicholas Paul (2014), Susan Finegan (2013) and Tong Lihua (2012).

WHEN

The presentation will be made at the Pro Bono Committee's session entitled, **'International pro bono: charity doesn't have to begin at home' today, from 9:30 am – 12:30 pm**

VENUE

Room -2.31

The 2015 Human Rights Award

The winner of this year's Human Rights Award is Intigam Aliyev, a widely respected human rights defender and lawyer in Azerbaijan. Currently imprisoned on what Amnesty International believes to be trumped up charges and persecuted for his human rights activities Intigam Aliyev is a prisoner of conscience, detained solely for his work as a human rights defender.

Others agree. Stephen Macliver, secretary-treasurer of the IBA's Human Rights Institute and a member of the selection committee panel this year said: "In Intigam Aliyev we have a person who has dedicated more than two decades of his life to the promotion, defence and development of human rights. And doing so in the face of significant adversity and at great personal cost."

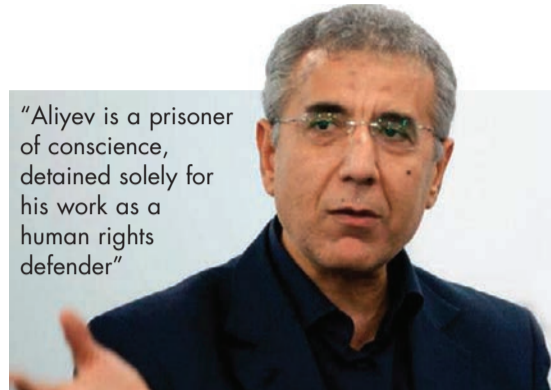
Aliyev has led the Legal Education Society (LES) since it was established in 1998 and also coordinated local lawyers and regional

NGOs to better promote human rights. He has done so in often incredibly hostile and antagonistic political environments though. On April 22 2015, he was sentenced to seven and a half years' imprisonment, having been found guilty of large-scale embezzlement and fraud, illegal business and tax evasion, claims that are widely believed to be fabricated attempts to halt his work.

Aliyev has personally advocated numerous petitions in various non domestic courts. He has had a particular focus on political prisoners, human rights abuses and challenging the judicial system.

His cases have involved freedom of expression and association, democratic rights, the prohibition of torture, and due process rights. Aliyev has strived for the legal protection of victims of human rights violations for more than 15 years and has to date represented them in proceedings before the

"Aliyev is a prisoner of conscience, detained solely for his work as a human rights defender"



court in more than 200 cases (around 40 cases are currently awaiting decision).

When he was detained he was defending more than 140 people. By detaining him, the Azerbaijani authorities have also deprived their citizens the right to appeal and seek justice before the court.

He will not be able to accept his award this week due to his remaining in prison though his adult children are expected to collect it on his behalf.

WHEN

The presentation will take place at **12:15 pm on Friday October 9, during the morning session of the Rule of Law Symposium**

VENUE

Hall F1

The 2015 Outstanding Young Lawyer of the Year Award

A deserving recipient of this year's award, Federica D'Alessandra has been named the IBA's Outstanding Young Lawyer of the Year.

The IBA Young Lawyers' Committee, in recognition of William Reece Smith Jr, annually present an award to a young lawyer who has shown not only excellence in their work and achievements in their career to date, but also a commitment to professional and ethical standards.

Federica D'Alessandra is a fellow at the Carr Center for Human

WHEN

The presentation will be made at the Young Lawyers' Committee's session, **'Young lawyers introductory session' today from 9:30 am - 12:30 pm**

VENUE

Rooms 1.85 & 1.86



Rights Policy, Harvard Kennedy School, as well as a UN Representative, Public International Law & Policy Group, where she serves as an advisor to various governments and institutions on peace negotiations, war crimes prosecutions, and the establishment of transitional justice mechanisms.

She is actively involved in the IBA, serving as the co-vice chair of the War Crimes Committee as well

as the Secretary of the Human Rights Law Working Group. As her nominator states, "Federica has led a much needed effort to collect a set of guidelines and best practices for the investigation and documentation of gross human rights violations to be made available to civil society and local actors. She is a catalyst for change, and she is gifted with a broad-range vision."

A message from LexisNexis

LexisNexis is extremely proud to partner with the IBA on these very important and meaningful awards. We congratulate the 2015 honorees and we commend each for their commitment and dedication.

We also have a higher purpose at LexisNexis, that encompasses both our commercial work and our actions as a responsible corporate citizen; that purpose is to advance the rule of law around the world. These awards inspire lawyers to pursue these same values and recognize outstanding individuals for their commitment to society.

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

Answering Nirbhaya's call

Is rape in marriage illegal? Does the law forgive the rapist if he marries the victim? Are rape laws implemented? NGO Equality Now has harnessed the power of crowdsourcing to compile a global database of laws governing sexual violence in order to drag the issue into the light.

In December 2012 large parts of the world were shocked by a fatal attack in Delhi in which a 23 year-old woman named Jyoti Singh Pandey was gang raped and fatally assaulted on a bus by six men. Pandey died two weeks later in a hospital in Singapore and the case triggered protests and worldwide press coverage and condemnation. As India's laws prohibited the naming of rape victims, Pandey was given the nickname Nirbhaya, meaning 'fearless'.

The case shone a painful spotlight on the glaring inadequacy of global efforts to combat sexual violence against women, the struggle to eliminate rape and an entrenched social response of laying blame at the door of the victim to excuse the perpetrator. Comments by some public figures in the wake of the Nirbhaya case further revealed what



is likely the tip of the iceberg in attitudes towards victims of rape, which are often then carried into inadequate laws or their application.

Indeed, according to Jacqui Hunt, director of the Europe office of the NGO Equality Now that has spearheaded the global project to crowdsource global rape laws, "one issue that has been drawn into greater focus during this work, is the way law frequently appears to reflect the current thinking of society rather than reflecting agreed human rights standards. For example, many rape laws are written in terms of morality rather than bodily integrity so focus more on defending public morals than the personal rights of

"We want to elevate the conversation about rape. We want to reinforce the message that rape is not inevitable"

the survivor". Hunt argues that given "continuing widespread discrimination against women in all our societies, this makes it harder either through the law or in its implementation for women survivors of sexual violence to get justice".

Recent and current cases around the world abound and the project is not a response specifically to the case of Nirbhaya. Current cases include the ongoing plight of 11 year-old Mainumby in Paraguay or the instance of rape being used as a punishment by elders against two sisters in Uttar Pradesh; a practice which the Supreme Court has deemed illegal.

Equality Now's project aims to analyse how different countries define their rape laws and to identify best practice. "We have collected information from around 80 jurisdictions, covering every area of the world," says Hunt, adding that "we want to elevate the conversation about rape. We want to reinforce the message that rape is not in-

evitable and to ensure attention is focused on this issue at the national, regional and international level".

Issues at hand

Hunt will present findings from the report while session speakers Olufunmi Oluyede, Ruwani Dantanarayana, Gillian Rivers and Meg Strickler will discuss policy issues, harmful provisions in the law in various states and avenues for promoting change.

All panellists have legal backgrounds and an intimate knowledge of laws from their different states. Oluyede is co-founder and partner of TRLPLAW in Lagos, Nigeria; Dantanarayana is a senior associate in John Wilson Partners in Colombo, Sri Lanka; Rivers is a partner and head of the family law team of Penningtons Manches in London; and Strickler is co-founder and partner of Conaway & Strickler in Atlanta, USA.

The panel will focus on problems in the law itself and "highlight good practice procedures from around the world so that countries can learn from each other", says Hunt, in order to convince governments to "take a step back, see that they are

SESSION

**IBA and Equality Now
rape laws crowdsourcing
project: final report**

COMMITTEE

**Crimes Against Women
Subcommittee, Family
Law Committee**

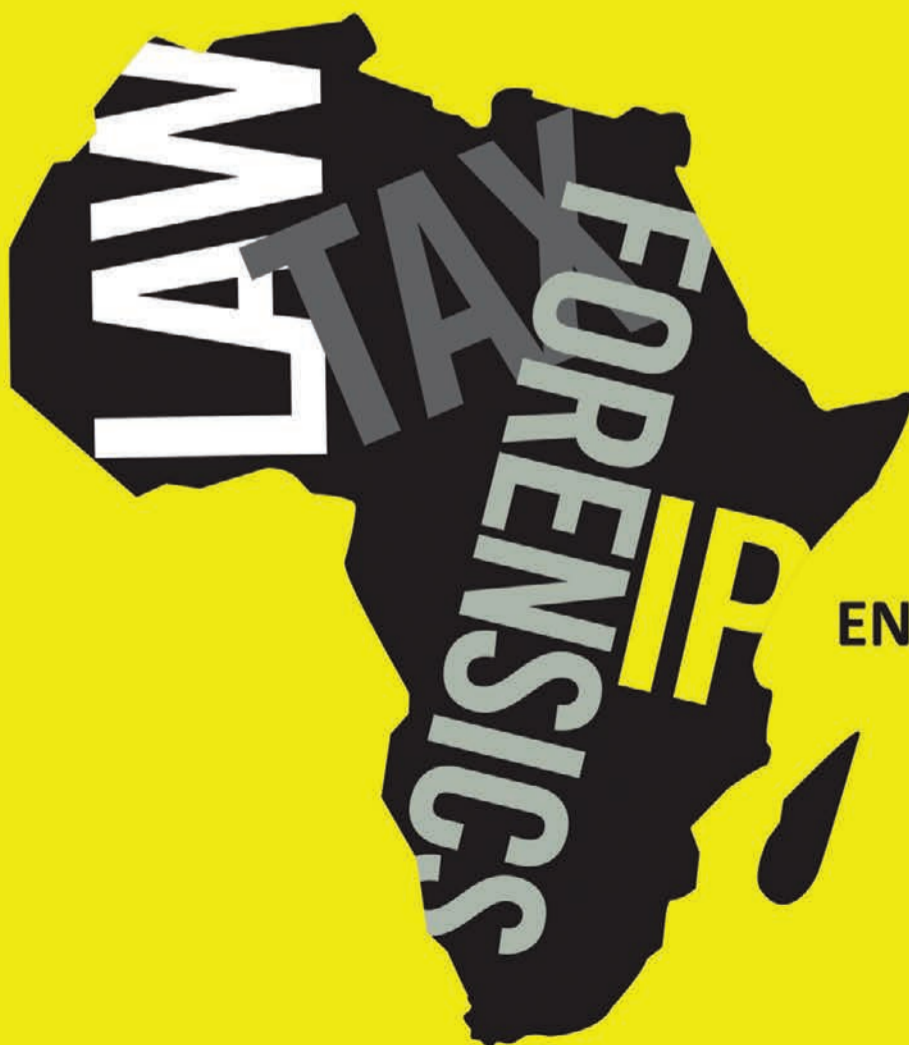
TIME/VENUE

**Today 2:30pm – 3:45pm,
Hall L1**

Key takeaways

- The report used crowdsourcing to collect information on sexual violence laws from about 80 jurisdictions
- The panel will analyse specific issues in the laws of different states and discuss ways forward to change attitudes and improve legal protection for girls and women
- The session will stress that lawyers are well poised to play a key role in ensuring that good laws exist and that they are properly implemented

failing their girl children in particular and look to develop an integrated programme of law reform and civic education to change attitudes and provide girls with the legal protections they need".



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Embedding the right mentality

Kofi Annan, John Ruggie and civil society representatives will make a case for human rights in the business legal community this afternoon

The challenge of incorporating a comprehensive awareness of human rights into everyday business practice may be complex, but it is being increasingly confronted. The global standard that guides states and businesses in this process, as accepted around the world by governments and institutions including the OECD and World Bank, are the provisions in the UN Guiding Principles on Business and Human Rights (UNGPs).

Although the UNGPs are non-binding, the observation of fundamental human rights, and by default the UNGPs, is becoming increasingly hard to ignore for business – and by extension for business lawyers. A mixture of social pressure, expected standards for raising finance from stock markets and international lenders and costly punitive actions are pushing human rights closer to the core of business transactions.

“Human rights in the corporate environment is a very important fundamental principle over which there is now much more sensibility in the public and in legislation,” says Felix Ehrat, general counsel of Novartis.

In May 2015, the world football governing body FIFA officially recognised the provisions of the UNGPs and made it compulsory for both contractual partners and those within the supply chain to comply with them. The move is an instance of what Stéphane Brabant, partner at Herbert Smith Freehills and chair of today’s session, calls “soft law becoming hard law”; human rights standards evolving from non-binding soft law into contractualised legal obligations.

“These norms [UNGPs] are in the process of morphing from soft law into hard law and it is now seen as something you have to do rather than something you can do,” adds Jeffrey Collins, senior counsel for International Policy at Chevron.

The current trend in non-financial reporting has also brought with it increased focus on human rights in business and again, by default, on the UNGPs.

In this respect, the European Union and national entities such

as the UK’s Financial Reporting Council have put particular pressure on foreign investors, publicly-listed companies, public interest companies and large enterprises. About 8,000 companies are signatories to the UN Global Compact, which also requires non-financial reporting.

Human rights is often incorporated in best practice guidelines for such reports and in 2015 global brands including Unilever and Ericsson issued the first ever company reports explicitly based on these provisions.

Finally, there are the costly punitive consequences for businesses that may have failed to either conduct thorough human rights due diligence or enforce best practice standards. Examples range from long running and high profile cases such as the \$9.5 billion damages suit against Chevron for alleged contamination of part of the Amazon in Ecuador to the case against Nestlé for allegedly aiding and abetting child-slavery in the Ivory Coast.

Live cases

The OECD’s National Contact Points (a mediation and conciliation system) are currently hosting 29 cases, over half of which relate

“These norms [UNGPs] are in the process of morphing from soft law into hard law”

to alleged human rights abuses with companies such as BG Group, Eni and Van Oord on the receiving end. Cases before Canadian courts have also highlighted the fine line between public statements made by companies endorsing corporate social responsibility



(CSR) and human rights standards and their potentially being held liable for neglecting a duty of care to uphold the UNGPs. On this basis Tahoe Resources was being sued in Canada by Guatemalan plaintiffs allegedly fired on by an indirect Guatemalan subsidiary and Eritrean plaintiffs were suing Nevsun Resources for allegedly being forced to work under threat of torture by the Eritrean state.

The big picture

According to Brabant, businesses should follow UNGPs in order to be in a position to know how to respect human rights so that they can declare they respect human rights and have evidence to show it and prove it. “In my view, the best manner to get the UNGPs implemented is to win over not only CEOs and business managers but most importantly lawyers,” he adds.

This is a key year for the debate, marking, as it does, 15 years since the UN Global Compact and Millennium Development Goals were established. This week the IBA Council will also consider and vote on draft Bar Guidance in order to guide bar associations around the world on how to help their members more fully put the UNGPs into practice. The IBA also plans to submit for adoption its Practical Guide for Business Lawyers in May 2016.

In order to make the case for the importance of the UNGPs for

business lawyers, in the first session Brabant and Jane Nelson, director of the Corporate Social Responsibility Initiative at Harvard Kennedy School, will moderate a discussion with Kofi Annan, chair of the Kofi Annan foundation, and John Ruggie, who between them formulated the UNGPs and the UN Global Compact.

According to Collins, this first session will be a high-level and broad brush discussion, covering the relevance to lawyers of Annan’s work with the Africa Progress Panel, the visions that Annan and Ruggie have of the UNGPs and their perspectives on the role lawyers can play in their implementation.

At the coalface

The second session brings together a large panel of speakers to discuss what the UNGPs mean to in-house and external business lawyers on a practical day-to-day basis.

“The most pressing issue for lawyers is demystification,” says John Sherman, general counsel of Shift and a former adviser to Ruggie. “Lawyers who advise on business are sometimes less comfortable advising on human rights for a variety of reasons, but the problem of demystification can be dispelled by taking a look at how lawyers advise businesses to stay out of human rights problems [and] finding what they mean for each area of practice.”

Sherman will argue that lawyers need both the technical legal

SESSION:

LPD Showcase: UN Guiding Principles on Business and Human Rights

COMMITTEE:

Corporate Social Responsibility Committee, Legal Practice Division

TIME/VENUE:

Today 4:15pm – 6:30pm Hall F1

Key takeaways:

- The panel will discuss the role in-house and external counsel play in making sure business is in a position to observe human rights and tackle negative impacts of business on human rights
- Speakers will show how the global standard for human rights, the UN Guiding Principles on Human Rights, is increasingly morphing into hard law
- The session will explore practical implementation of human rights in business law
- It will feature the experiences of Novartis, BHP Billiton, l’Oréal, Chevron and others
- Kofi Annan and John Ruggie will explore the history, global concept and importance of the UN Guiding Principles

expertise, to know how to file a court pleading, cross-examine a witness or paper an M&A deal and the ability to play the role of wise counsellor, says Sherman. “It is on the request of companies themselves that this role is changing,” adds Brabant.

Successful implementation means different things for different sectors. But according to Collins it broadly necessitates companies having a human rights policy and taking steps to implement this through human rights due diligence and grievance mechanisms.

Collins will moderate the second session alongside Rae Lindsay, Clifford Chance’s publications officer of the Corporate Social Responsibility Committee. “This means a holistic approach to human rights in business, from the formation of a contract to its execution and subsequent monitoring of contract performance” says Collins.

The session will hear from business speakers, including Ehrat, Novartis general counsel; Geoff Healy, chief legal counsel of BHP Billiton and Emmanuel Lulin, senior vice-president and chief ethics officer of l’Oréal. It will also include representatives from civil society groups including Mark Hodge, executive director of Global Business Initiative on Human Rights, Chris Jochnick, CEO of Landesa, and Sherman from Shift. Christianna Wood, chairman of Global Reporting Initiative, will examine developments in non-financial reporting.

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.

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